A new approach to regulating harassment and sexual misconduct in English higher education: Summary of consultation responses

A report by Pye Tait Consulting for the Office for Students

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Contents

Figures

Executive summary

Background

The Office for Students (OfS) is the independent regulator for higher education in England.

Harassment and sexual misconduct (HSM) are serious issues in English higher education. The OfS had hoped to see concerns about HSM addressed through effective self-regulation by universities and colleges and had undertaken a range of activities to support the sector.

In April 2021, the OfS set out voluntary standards in its statement of expectations to support providers to develop and implement systems, policies and processes, to prevent and respond to incidents of HSM. An independent evaluation of the OfS's statement of expectations, published in November 2022, found that the statement had led to some improvements in the policies, systems and processes – but it also found distinct variations in practice.

Following this, the OfS developed and consulted on seven proposals for a future approach to regulating HSM in English higher education. This report details the key findings to a consultation, held in 2023, from 261 respondents and three student roundtable events.

The seven proposals are listed in section 1.1, an overview is provided at the start of each subsection in section 2, and the full proposals are in Appendix 3. Further details relating to the consultation approach, methodology and limitations, are outlined in section 1.

Key findings

Note: some respondents provided comments which 'agreed' with one aspect of one proposal and 'disagreed' with a different aspect of the same proposal. The result is that numbers in the report may not sum to 100% due to cases where a respondent agrees with one aspect and disagrees with another aspect of the same proposal. Further detail on interpretation of findings is contained in section 1.3.3.

Proposal A: Introduce proposed ongoing condition E6

58% agree with certain aspects, 43% disagree with certain aspects

Respondents agreeing with the proposed new condition of registration welcome this for the reasons of providing consistency across providers, ensuring that action is being taken, and increasing confidence in the English higher education system that HSM incidents will be dealt with effectively.

There is concern the proposal will be a substantial implementation burden for providers, especially for those that are smaller and specialist, and just over one in six (18%) suggest a more self-regulatory approach similar to that in the OfS's statement of expectations.

One third of those commenting would welcome the OfS providing more detailed guidance on what the condition of registration will require from providers, and what best practice might look like.

There is majority support for the OfS's proposed definitions of the terms 'harassment' (57% agree) and 'sexual misconduct' (55%). They provide clarity and avoid ambiguity, although

elements of language used are felt to be inaccessible to lay audiences, and may require review to ensure they are non-restrictive. Suggestion is also made that definitions should not be derived from the Protection from Harassment Act due to the implications of the use of legal and criminal terminology.

Proposal B: Proposal to require a provider to develop and publish a 'single document' with 'minimum content requirements'

45% agree with certain aspects, 50% disagree with certain aspects

Those agreeing say the single document will help provide clarity, transparency and awareness of policies and procedures.

However, half (50%) disagree with some aspect(s). Concerns exist among those disagreeing about the document's length and its impact on accessibility, or the potential for creating confusion in how it aligns with existing policies, and suggestion is made to allow greater autonomy for institutions.

Around two in three (69%) support the inclusion of 'minimum content requirements', arguing this will provide consistency across institutions and ensure students are protected equally. A minority (11%) feel having such requirements is overly prescriptive. About two thirds (64%) support the proposed requirements outlined by the OfS, although 43% raise concern with one of the proposed requirements, 'how the provider ensures that students are appropriately taught', predominantly around the timeline (see proposal G) to implement, and the implications for students with lived experience of HSM.

Around two in three (64%) agree with the concept of 'content principles' for the single document, although concern is raised that this might be over-prescriptive.

Proposal C: Requirements relating to capacity and resources

62% agree with certain aspects, 30% disagree with certain aspects, 8% neither agree nor disagree

Respondents feel providers should already have the resources required for compliance or be able to take the steps needed to do so. Concern is raised that this may disproportionately impact smaller or specialist providers, and some (18%) suggest additional funding support may be required. Some (9%) are unclear how this proposal will be enforced or seek greater clarity around the use of some wording.

Proposal D: Requirements relating to freedom of speech

56% agree with certain aspects, 32% disagree with certain aspects

The explicit acknowledgement of freedom of speech principles within the proposals is welcomed by those agreeing, with the caveat that there is further guidance from the OfS to ensure providers accurately navigate freedom of speech in relation to this condition. Those disagreeing state providers already have obligations in this regard, for instance to the recently enacted Higher Education (Freedom of Speech) Bill.

Proposal E: Requirements relating to restricting the disclosure of information

85% agree with certain aspects, 9% disagree with certain aspects

The vast majority support the prevention of using non-disclosure agreements (NDAs) for cases of HSM. However, confidentiality is still stressed as important in some instances, for example to enable the fair resolution of cases, or to protect a victim's identity. Concerns centre on the legal ramifications of the proposal to apply this retrospectively. It was queried how third parties will be integrated into this proposal with the suggestion that this aspect may, in practice, be more difficult for providers to control.

Proposal F: Requirements relating to personal relationships between staff and students

62% support option A or variant for a register, 22% support option B or a variant for a ban

Around three in five (62%) support the OfS's preferred option A, or a variant thereof, which requires relationships between students and staff to be reported and a register of relationships maintained. Around one in five (22%) support the alternative Option B, or a variant thereof, to ban such relationships.

Option A allows for complexities and a variety of contexts, but privacy and data handling concerns are raised about the proposed register. Option B is felt to be overall too restrictive and heavy-handed, requiring certain exemptions to still be in place.

Generally speaking, the majority are against Option B – many who choose Option A list issues they have with a ban as part of their reasoning. While Option A is actively supported by the majority, albeit often with suggestions for improvement, some appear to have chosen A as preferable to B rather than desirable in itself.

Proposal G: Proposed implementation

30% agree with certain aspects, 64% disagree with certain aspects

The majority (64%) disagree, predominantly about the proposed three-month timeframe to implement the proposals, with many doubtful that it is feasible or possible for providers to implement all proposed regulation in three months. They are seen as being too ambitious, particularly for the time it would take to train staff and students, and alongside existing priorities. A six to 12 month timeframe is instead suggested.

General comments

Around 63 (40%) respondents – mainly providers – point to the potential additional burden or impact for institutions and the availability of resources and time to implement the proposals effectively. Meanwhile, greater clarity and additional guidance is sought on certain aspects of the proposals to enable providers to implement the condition as intended.

1. Introduction

1.1 Background

1. A public consultation setting out the Office for Students (OfS) proposals for its future approach to regulating harassment and sexual misconduct (HSM) in English higher education was launched on 23 February 2023 and closed on 4 May 2023. The consultation was open to anyone interested in responding, either as an individual, organisation, or group. The seven proposals centre on the following:

    a) Introducing a proposed new ongoing condition of registration E6 (HSM), with proposed definitions for harassment and for sexual misconduct.
    b) Requiring a provider to develop and publish a 'single document' with 'minimum content requirements' and 'minimum content principles'.
    c) Requirements relating to capacity and resources.
    d) Requirements relating to freedom of speech.
    e) Requirements relating to restricting the disclosure of information.
    f) Requirements relating to personal relationships between staff and students.
    g) Proposed implementation.

2. In Spring 2023, Pye Tait Consulting, an independent research agency, was commissioned to undertake an analysis of the consultation responses. This report presents the findings from the analysis of all responses received to the consultation.

3. The OfS will publish its own decision paper alongside this analysis report which will give a more detailed analysis of the considerations it has taken into account, including other information/factors that may not be mentioned in this report.

1.2 Aim and objectives

4. The overarching aim of this research was to analyse all responses received to the consultation and to report the outcomes to the OfS. Specific objectives were to:

    - conduct an objective and comprehensive quantitative and qualitative analysis of all responses to the consultation, including feedback from student roundtable events,
    - identify and categorise themes, focus areas or questions, and
    - report on the findings.

1.3 Methodology

1.3.1 Consultation approach

5. The OfS developed the consultation questionnaire which comprised nine core sections to seek views on different aspects of the proposals: an 'about you' section, one section for each of the seven OfS proposals, and a final section capturing general comments. The final consultation questions can be found in Appendix 3, and the structure of this report mirrors that of the consultation. A summary of each proposal is provided at each section throughout the report, and Appendix 3 contains the detailed proposals and consultation documentation.

6. The consultation window was open from 23 February to 4 May 2023. The main route through which to submit responses was the OfS online 'smart survey' portal. In total, 280 responses were received, of which 269 were received through the online portal, while 11 offline responses were received by email/letter.

7. Alongside the consultation, the OfS also ran three roundtable events for current students. Students could register to the roundtables through the OfS's website, and a total of 22 students attended. The sessions were run by an external facilitator but a member of OfS staff was present at each session.

8. The OfS shared all consultation responses with Pye Tait Consulting, having first removed any personal data from responses where consent had not been granted, and in line with OfS's privacy policy and data sharing agreement. The OfS also shared anonymised notes from the roundtable sessions. Pye Tait Consulting then undertook onward analysis of all responses and roundtable feedback.

1.3.2 Approach to the analysis

9. Before undertaking a detailed analysis, responses were first reviewed and cleaned. This process involved checking for campaign responses, errors, blank, or duplicate responses. Two duplicate and 17 blank responses were found and removed, leaving 261 unique, valid responses for onward analysis. Of these 261, 39 were partial responses where the respondent had provided a substantive response to at least one question.[1]

10. Quantitative analysis of the sole closed consultation question was undertaken in SNAP software. Responses were analysed at an overall level, and subsequently sub-group analysis was undertaken to explore any notable differences by:

    - respondent type, and
    - for higher education provider respondents, student typology – defined and classified according to the OfS's methodology.[2]

11. Details of the grouping can be found in Appendix 1.

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[1] Partial responses are defined as responses not formally submitted but where a respondent has completed at least one question. Partial responses were included in the analysis at the OfS's request.
[2] Office for Students, 2022, Provider typologies (page 8). See
https://www.officeforstudents.org.uk/publications/provider-typologies-2022/

12. Qualitative analysis of responses received to the open-ended questions was undertaken by Pye Tait Consulting in three successive stages:

   a) High-level review of all responses to identify broad themes and sentiment.
   b) Identify key themes arising to each question. Based on this, a coding framework was developed by Pye Tait Consulting, with checks for inter- and intra-coding consistency, and finalised in collaboration with the OfS.
   c) A comprehensive review to code each response according to the coding framework, to identify frequency of themes overall and by respondent subgroup.

13. On completion of each pass, outcomes were discussed with the OfS before moving forward to the next phase.

### 1.3.3 Interpretations and limitations

14. An open consultation of this nature does not seek to be a representative sample of the whole population. The implication of self-selection bias is that an assessment of views can only be made for the respondents who choose to participate and will not represent the entire target population, but rather a small subset. As such, the findings should be interpreted with caution.

15. It should be noted that a small number of 'organisational' responses were collaborative responses with contributions from multiple organisations and/or individual members. In addition, some organisations spent a great deal of time and effort in organising, for example, workshops to gather feedback on the OfS proposals. This was welcome but it should be noted we can only report on the summary response provided as not all the material from those discussions was contained in organisations' consultation responses. Furthermore, it should be noted that some responses were received from representative bodies which therefore reflect the views of their community. Organisational responses, including those from representative bodies, have not been weighted in the analysis – in effect, this means each response has an equal weight, although trends by organisation type (for instance, key points made by representative bodies) are drawn out in the report. The reader is advised to bear these points in mind when interpreting the report.

16. Each sub-section outlines the number of survey respondents providing views in response to that particular question or questions. Numbers and percentages quoted relate to each consultation question being discussed, not to the overall total number of survey respondents. Numbers and percentages quoted include only survey respondents and do not include student roundtable participants. Notes from student roundtables were organised by proposal and analysed alongside survey responses.

17. Some respondents provided comments which covered more than one of the themes that were identified as most commonly arising within each question and analysis. Further, some respondents provided comments which 'agreed' with one aspect of one proposal and 'disagreed' with a different aspect of the same proposal. Responses for each theme/code were counted, meaning some responses were counted more than once per question as more than one theme/code was covered. The result is that numbers in the report may not sum to 100% due to cases where a respondent agrees with one aspect and disagrees with another aspect of the same proposal.

18. Reasons for agreeing or disagreeing are generally presented in order from most to least frequent themes, with the descriptors 'many', 'several', and 'some' being used in cascading order to represent relative weight of feeling for each sub-section.

19. Differences in levels of agreement between respondent sub-group are drawn out at the start of each section throughout the report.

20. Note that the report includes some anonymised quotations from respondents. These extracts are included to provide examples which reflect the most common points raised. Quotations from higher education providers are attributed to their student typology – see Appendix 1 for further detail.

1.4 Respondent profile overview

21. Of the 261 responses received, most (60% or 157) were submitted as collective (or organisational) responses and others (30% or 77) were from individuals (remaining respondents did not consent to this information being shared). A list of the 207 respondents that were willing to share their organisation's name is in Appendix 2.

22. Respondents were manually assigned to a respondent category by Pye Tait Consulting in agreement with the OfS. Around two in five (38%) of responses are collective responses from higher education providers, while one in six (17%) are from individuals at higher education providers. A similar proportion (17%) are from students or student representative bodies, with 5% from advocacy groups, and 4% from both sector and higher education (HE) professional bodies, and third sector or private organisations. The 4% of 'other' respondents comprise four former higher education staff, sector press, a self-employed consultant, and one higher education provider not based in England.

Figure 1 Breakdown of organisational respondent types

- Higher education provider - collective
- Higher education provider - individual
- Student or student representative body
- Advocacy group
- Sector and HE professional body
- Third sector or private organisation
- Other
- Not specified
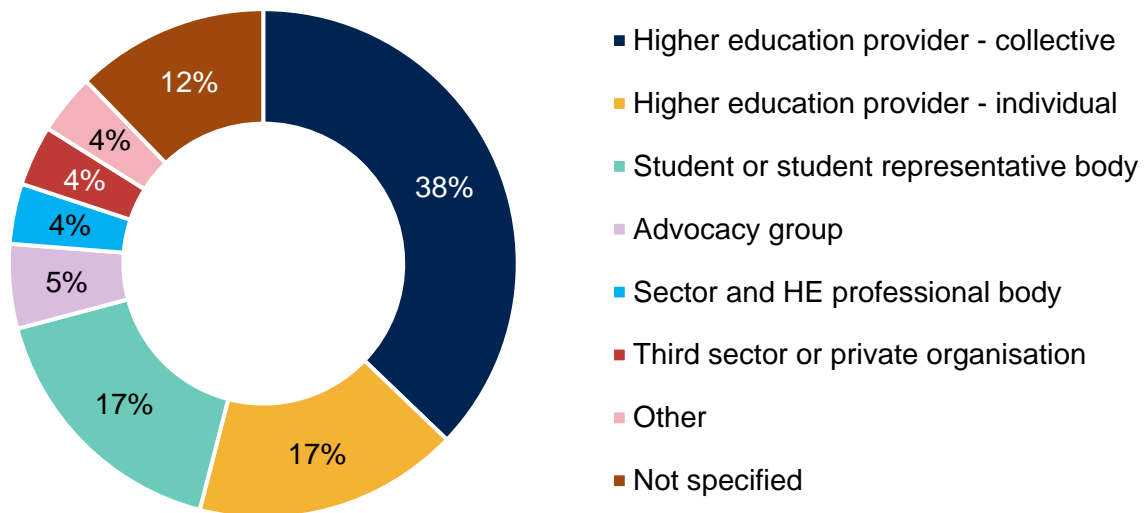
Base: 261 respondents. Source: OfS consultation, 2023.

23. A more detailed breakdown of respondents is provided in Appendix 1.

2. Key findings

2.1 Proposal A: Introduce proposed ongoing condition E6

24. Findings relating to proposal A are split into three sections relating to feedback on a new general ongoing condition of registration, and views on the proposed definitions of 'harassment' and 'sexual misconduct'.

2.1.1 Introduction of a new general ongoing condition of registration

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Summary of Proposal A: Introduce proposed ongoing condition E6

➢ The OfS proposes to introduce a new ongoing condition of registration E6 (harassment and sexual misconduct), which would place regulatory requirements on all registered providers. Later proposals B-F describe the proposed content of condition E6.

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25. Respondents were asked to what extent they agree with the proposal to introduce a new ongoing condition of registration relating to harassment and sexual misconduct. Of the 250 comments received, about three in five (146, 58%) agree with certain aspects, and around two fifths (107, 43%) disagree with certain aspects. Some respondents do not indicate a level of agreement, while some provide arguments both for and against.

26. Almost all responding students or student bodies agree with this proposal (40 of 42 agree), as do three in four individuals responding from higher education providers (33 of 44). In contrast, many collective responses from higher education providers disagree (68 out of 97), as do most sector and HE professional bodies (eight of 10).

Reasons for agreeing

27. Many (81, 32%) believe the proposed new condition of registration will directly address any past concerns with reporting HSM incidents, particularly instances where higher education providers have not been taking adequate action when responding to reports. This view is shared by a high proportion of students and student representative bodies (20 out of 42 responding to this question). Around one in four (58, 23%) believe this is an often-ignored, but highly important, issue to tackle. One in seven (35, 14%) are in favour of the condition on the grounds that it will help ensure students, and prospective students, have an increased confidence in the English higher education system, and ensure that any cases of HSM are dealt with efficiently and effectively.

28. One fifth (50, 20%) feel the proposed condition of registration will increase consistency across English higher education institutions, and provide transparency in approaches. This is noted by a range of higher education providers with different student typologies as well as by students and student representative bodies.

> We do not oppose the introduction of a condition of registration, as we hope it will lead to greater consistency of approach in the way in which harassment and misconduct allegations are handled, and support is provided. We recognise that despite significant progress in recent years,

> there is still further to go in tackling harassment and sexual misconduct.
> – Higher education provider – collective, High tariff

29. One respondent in support of this proposal recommends the OfS 'should have the power to impose conditions of funding or registration (such as withholding or requiring repayment of funding or imposing a fine)' if providers had not taken sufficient steps to address HSM.

Reasons for disagreeing

30. Several (47, 19%) feel a blanket condition of registration could be a significant burden for providers to implement, particularly for smaller and specialist institutions which may have limited resources. This is noted primarily in collective responses from providers (28), including a high proportion of low or unknown tariff providers (14 of 43 responding to this question) and specialist: other providers (three of four). A few (10, 4%) suggest this condition will be excessive or heavy handed.

31. Some (22, 9%) feel it is not the OfS's place to make such demands of universities, arguing that higher education providers should be monitored on their quality of teaching, rather than 'pastoral or welfare matters'. Such respondents are concerned that the condition may imply responsibility for the providers to act in a criminal legislation landscape, which oversteps the remit of both the provider and the OfS.

32. Others (33, 13%) believe the condition is unnecessary as existing regulations and laws covered in providers' policies, and by the OfS's statement of expectations, are adequate to mean that no further input or oversight from the OfS is required.

> We disagree with the proposal to introduce a new ongoing condition of registration relating to harassment and sexual misconduct. In response to the OfS's statement of expectations, the university has already done a substantial amount of work in this area, takes this matter very seriously, and will continue to work on this as a matter of priority.
> – Higher education provider – collective, Medium tariff

33. Three respondents specifically agree with one sector and HE professional body's response, raising concern that the proposed condition does not sufficiently account for the complexity of HSM issues within a higher education setting, and that prescriptive actions could therefore be considered constraining. They note the approach could be problematic specifically for 'providers with large numbers of mature students, those that deliver their courses online, are part of blended HE/FE[3] campuses or have specific PSRB[4]/industry requirements related to personal contact'. They also feel that the wording, by being prescriptive, does not adequately meet the HERA[5] section 7 requirement to ensure registration conditions are proportionate to the risk posed by individual providers.

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[3] Higher education/further education
[4] Professional, Statutory and Regulatory Body
[5] Higher Education and Research Act

Further suggestions

34. Respondents were asked if they had alternative suggestions to the proposal to introduce a new general ongoing condition. Substantive comments were received from 126 respondents, of which a few (13, 10%) explain the content is adequate, addresses important matters, or aligns with existing policies.

35. Around half (69, 54%) would welcome the OfS providing guidance on what the condition of registration will require (45 of 87 responses received from collective higher education provider respondents): namely how will the proposal be enforced, what data publishing requirements will be, and – as noted by 34 respondents (27%) – what best practice might look like in adhering to the conditions. Further specific content for such guidance is suggested to include the following:

    - Best practice in the nuances and complexities of HSM and what is expected of providers in handling reports (12, 10%).
    - The practicalities of implementing the regulations, and clarification on the level of the OfS's involvement (10, 8%).
    - How conditions may change for smaller and specialist providers (10, 8%).
    - Further insight on interactions with further education (FE) as well as HE (five, 4%).
    - Elaboration on monitoring and evaluation activities and how this will be enforced (four, 3%).
    - Expectations of student engagement in both policy development and implementation (three, 2%).

36. Some (16, 13%) suggest that the OfS should also increase accessibility and awareness of the proposal to help inform the layperson of the responsibilities of higher education providers. To note, some of this guidance is already available, suggesting a lack of understanding or low awareness among respondents.

37. Three in ten (38, 30%) suggest that a self-regulatory approach to allow for provider autonomy would be more appropriate, with most of these respondents (29, 23%) specifically preferring the approach that was outlined in the OfS's statement of expectations. It is suggested that more time should be allowed to assess the outcomes of the statement of expectations prior to implementing any further reforms via the condition of registration.

    > There has been a limited period of time for the statement of expectations to take effect and the move to introduce such stringent regulation seems premature.
    > – Higher education provider – collective, Low or unknown tariff

38. Ten respondents (8%) specifically suggest that the condition of registration should not subscribe to a 'one size fits all' approach, as they are concerned this may be detrimental to unique situations or local context. They instead suggest a more flexible approach, and this is noted by higher education providers of varying student typologies, and also by students or student representative bodies.

39. Some suggest new or alternative content could be included within the condition of registration, including:

    - consideration of a risk-based, proportionate regulatory approach instead, to avoid a 'one size fits all' approach (10, 8%),

- a more flexible, less prescriptive approach to allow providers to tailor to their needs (10, 8%),
- an expansion of the condition to be a broader, safeguarding ongoing condition (five, 4%), and
- changing the language used so as not to overpromise provider impact (one, 1%).

40. Some (10, 8%) providers – four of which are high tariff – also suggest the OfS could provide targeted funding to support providers to implement the requirements of proposed regulation, potentially via recruitment of Sexual Violence and Harassment (SVH) Prevention and Response Managers and/or dedicated trauma-informed trainers within providers.

41. Six respondents (5%) – including higher education providers and one advocacy group – suggest a more diverse approach for the conditions of registration. This is based upon concern that the proposed condition might not recognise or reflect the diversity of the sector, nor allow for a more flexible or risk-based approach that gives consideration to local context and diverse student communities.

42. One employee of a higher education provider stated that there should not be a cross-over with existing conditions of registration. They suggest it is important that any new OfS regulations do not cut across existing content within the Good Practice Framework of the Office of the Independent Adjudicator for Higher Education (OIA).

2.1.2 Proposed definition for 'harassment'

The OfS's proposed definition of 'harassment'

➢ Taking the definition set out in section 26 of the Equality Act 2010 as a starting point, the OfS proposes that 'harassment', in the context of the proposed condition, should mean:

'harassment' has the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act (PHA) 1997 (in its entirety, and as interpreted by section 7 of the Act).

➢ The OfS also proposes to use the meaning of harassment in section 1 of the Protection from Harassment Act 1997 (in its entirety, and as interpreted by section 7 of the Act). Under that Act, harassment is:

'a course of conduct conducted on at least two occasions that harasses one other person, or a course of conduct that harasses two or more persons at least once each. References to harassing a person include alarming the person or causing the person distress'.

43. Respondents were asked to provide their opinion on the OfS's proposed definition of harassment. A total of 227 commented. Around three in five (129, 57%) agree or partially agree with the proposed definition, and about two in five disagree (96, 42%) or partially disagree. Some do not indicate level of agreement but provide some thoughts, and some offer arguments both for and against the definition.

44. Agreement levels vary by respondent group, being higher among individuals at higher education providers (29 of 42 agree) and sector and HE professional bodies (eight of 10

agree). Meanwhile, both students and student representative bodies, and collective responses from providers, are equally divided in whether they agree or disagree.

Reasons for agreeing

45. Around one in five (50, 22%) welcome the clarity the definition provides. Of these, some (27, 12%) note the wording utilised is clear and concise – by being the same as the Equality Act 2010 and PHA Act 1997, it avoids ambiguity and misinterpretation. Further, some (26, 11%) believe it provides credibility and consistency across higher education providers, a key requirement when addressing and handling HSM incidents.

46. Some (17, 7%) could not envision any differences or alternative definitions that would be more appropriate. A few (11, 5%) additionally feel that it is a good definition to ensure that providers maintain a responsibility to act upon incidents and are held accountable in addressing issues.

47. A small number (10, 4%) – mostly students or student representative bodies – also feel the proposed definition will equally help protect students both with, and without, protected characteristics.

> We agree with the definition of harassment in the proposed condition. This is mainly because it does not only protect individuals with protected characteristics but also those without such protected characteristics. Harassment and sexual misconduct are perpetrated by individuals in a position of power and it does not always depend on the victim's protected characteristics.
> – Higher education provider – collective, Large Level 4/5

Reasons for disagreeing

48. Several (31, 14%) feel the proposed definition is too restrictive, for the following reasons. Some (23, 10%) – the majority being collective higher education provider responses – take issue with the restrictive phrasing of 'at least two occasions' being a prerequisite for harassment under the Protection from Harassment Act; they believe this diminishes the impact that a single incident can have on a victim. Students attending roundtable discussions were concerned that a second incident of harassment has the potential to be worse if the perpetrator believes they got away with it the first time. Two low or unknown tariff higher education providers believe the proposed definition sets too high a bar and may result in cases where unacceptable behaviour does not meet the given definition of harassment.

49. Some (20, 9%) comment that the definition is too vague and lacks clarity. For example, one respondent believes there are contradictions within the Equality Act 2010 and PHA 1997 relating to whether the misconduct must relate to a particular protected characteristic for the incident to be defined as harassment or unlawful. Four (2%) express concern that this may potentially lead to confusion in allegations, particularly in deciding whether a reported incident is clearly defined within the proposed boundaries.

50. Seven (3%) – five being higher education providers – also note the definitions may be difficult to apply within international partners which may have differing local laws relating to protected characteristics and harassment. This is reiterated by students within roundtable discussions, who suggest disclaimers be added to the proposals for the sake of international students.

51. One advocacy group (1%) disagrees with the OfS's proposed definition of harassment and argues that the proposed use of the Equality Act 2010 for the definition of harassment may not be legal. They argue that providers should not be beholden to manage students within the duties and regulations under the Act, as this might unlawfully inhibit free expression. They additionally state that the Act is often misquoted by providers such that it is "more restrictive of speech than Parliament intended", which may lead to further inclusions of non-legal criteria within providers' policies, especially regarding protected characteristics.

52. Students at roundtables were additionally concerned that there may be unintended consequences of unfair bias, for example in a situation where someone reports an act of racial harassment, and a predominantly white team was appointed to determine if the definition of 'harassment' is applicable. They also pointed out that the definition being based upon the Equality Act 2010 may mean the definitions do not align with their interpretations of harassment (i.e., they were concerned that online offences might not be included). They noted the definitions of "sex" in the Equality Act may be subject to change by the government, which they considered would potentially be detrimental to marginalised groups.

Further suggestions

53. Respondents were asked if they had any alternative suggestions regarding the proposed definition for harassment that may be more appropriate, and 93 substantive comments were received.

> Having a definition of harassment creates a strong foundation for people to be able to avoid or address incidents of harassment. It is a step toward creating a safer and more respectful environment.
> – Higher education provider – collective, Small Level 4/5

54. Two thirds (62, 67%) feel the definition of harassment needs refining. Some (25, 27%) believe the definition should not be derived from criminal law – i.e., they suggest that there should not be reference to the PHA and only the Equality Act definition should be included. This is on the grounds that some may misconstrue that providers hold legal jurisdiction or responsibility for any incidents of harassment that occur on site, if legal terminology is used. These respondents express concern that legal jargon may be inaccessible to student audiences – noted primarily by higher education providers and supported by students at the roundtable events. Students at roundtables specifically noted that legal language is not useful, and that definitions should instead follow the formatting of what was included within the statement of expectations.

55. One provider (collective response) (1%) additionally suggests that the definition of harassment should not be taken from definitions used in a legal setting, as instances of harassment relating to equality may be more difficult to "prove", deterring students from coming forward with their experiences.

56. Around one in four (25, 27%) suggest changes could be made to simplify and clarify the text, with an additional 12 (13%) noting that definitions for some wording could be used to aid reader understanding, particularly among students. Some refer directly to Universities UK's 2016 'Changing the Culture' guidance, which provides a glossary of terms which do not reference criminal law and suggest these definitions could be adopted instead.

> It is outside the remit and authority of providers to enforce the law. Where
> institutions rely upon legislative definitions, it must be clear this does not
> mean their decisions carry legal authority.
> – Higher education provider – collective, Medium tariff

57. Just under one in three (30, 32%) suggest other forms of harassment which they do not
feel are fully captured within the proposed definition, listed below from most to least
frequently mentioned. (Some forms listed below are covered by the OfS's proposed
definition, whereas others – such as domestic violence – are not, indicating a potential
lack of awareness or understanding among respondents.)

- Harassment unrelated to protected characteristics (five, 5%).
- Domestic violence and abuse (four, 4%).
- Digital/online harassment and harm (particularly noted by students at roundtable
discussions) (four, 4%).
- Verbal/non-physical (four, 4%).
- Stalking (three, 3%).
- Bullying (three, 3%).
- Microaggressions (two, 2%).
- Modern slavery (one, 1%).
- Voyeurism (photos without consent, 'up-skirting', etc.) (one, 1%).

58. Some students at roundtable events would welcome the inclusion of domestic violence
within the definitions and regulations.

59. Some (16, 17%) feel that higher education providers already have specific,
contextualised definitions of harassment within existing policies. Therefore, they suggest
there is room within this proposal to allow for flexibility and for providers to adopt their
own wording.

> Many institutions have undertaken extensive reviews of student codes of
> conduct which set out, in terms relevant to the institution and its students,
> what constitutes harassment. We suggest that institutions be required to
> consult on and agree a definition of harassment which is informed by all
> relevant legislation but is not restricted to or required to be defined
> according to the current proposal. The definitions would more appropriately
> form a minimum standard.
> – Higher education provider – collective, High tariff

60. A few (11, 12%) feel the OfS could include examples within the definitions, so that
context for the definition of harassment is provided.

61. Four (4%) also comment that, in the context of this definition, there should be
consideration to the negative impacts of defining harassment, particularly relating to the
impacts on bystanders and witnesses, or those wrongly accused. For example, these
respondents feel there is no clear indication of how cases will be dealt with such that
witnesses, and those who are falsely accused, suffer the least amount of mental or
emotional strain during harassment investigations.

2.1.3 Proposed definition for 'sexual misconduct'

The OfS's proposed definition of 'sexual misconduct'

➢ Taking the definition set out in section 26 of the Equality Act 2010 as a starting point, the OfS proposes that 'sexual misconduct', in the context of the proposed condition, should mean:

any unwanted or attempted unwanted conduct of a sexual nature and includes but is not limited to:
   i.   sexual harassment as defined by section 26(2) of the Equality Act 2010, and
   ii. assault as defined by the Sexual Offences Act 2003, and
   iii. rape as defined by the Sexual Offences Act 2003.

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62. Respondents were asked if they agreed or disagreed with the OfS's proposed definition of sexual misconduct. A total of 221 responses were received, with over half (122, 55%) agreeing with some aspect(s), and around half (114, 52%) disagreeing with some aspect(s). To note, some provided comments both for and against this proposal.

63. Agreement levels are higher among students and student representative bodies (31 of 38 agree). In contrast, disagreement levels are higher among collective provider responses (58 of 94), sector and HE professional bodies (seven of 10) and advocacy groups (six of seven).

Reasons for agreeing

64. Those who agree consider the proposed definition to be logical and clear (44, 20%), to provide consistency across institutions (21, 10%), and to protect victims by addressing serious issues such as exploitation and power imbalances – this is noted particularly by students or student representative groups (17, 8%) – and is overall unambiguous. One respondent in support of the definition argues it helps to protect against violation of students' dignity, and the prevention of an 'intimidating, hostile, degrading, humiliating or offensive environment for the student'.

> I agree, as the proposed definition is intended to provide greater protection against sexual misconduct and to send a clear message that all forms of unwanted sexual conduct are unacceptable. By including 'attempted unwanted conduct of a sexual nature', it acknowledges that sexual misconduct can occur even if the conduct does not escalate to the level of a criminal offence.
> – Student or student representative body

Reasons for disagreeing

65. Just under two in five (86, 39%) disagree with the legal terminology used within the definition. Of these respondents, the majority do not agree with the language, including some of the criminal definitions used within the Sexual Offences Act 2003 (i.e. definitions for rape and assault), arguing that higher education providers do not, and should not, have jurisdiction in determining if an act is criminal in nature. Students within the roundtable events additionally note that assault and rape require the offender to have a reasonable expectation of knowing that they are violating consent, which in

many cases is difficult to prove. Based upon this, they feel the legal definitions – which are founded on standard of proof beyond reasonable doubt – would be inappropriate to instigate within a non-legal higher education provider setting.

66. Others (11, 5%) disagree with the proposed definition due to the legal notation used being inaccessible to students and laypeople. A further 11 (5%) express concerns regarding some of the phrasing having too many caveats, with six stating the phrase 'unwanted' may be difficult to define, causing interpretation issues. Three (2%) additionally feel the phrasing 'but not limited to' is tautological, and instead they believe that the primary descriptors given are sufficiently inclusive.

67. Two high tariff higher education providers (1%) are worried the legal definitions may lead to the discouragement of reporting less serious sexual misconduct which students may not view as criminal. This may leave minor inappropriate sexual behaviour unaddressed.

Further suggestions

68. Respondents were asked if they had any alternative suggestions for the OfS's proposed definition of sexual misconduct that may be more appropriate and 92 substantive comments were received.

69. Around half (48, 52%) commented on the language used within the definition. Specifically, three in ten (28, 30%) – of which half (14) are collective responses from providers – reiterate that the proposals should not include reference to criminal law, arguing that providers do not have jurisdiction to define if an act of sexual harassment is criminal in nature. Further, providers recognise they can lack a detailed understanding of the justice system and note a lack of guidance with specifics as to how civil cases can be brought to the criminal justice system.

70. Around one quarter (20, 22%) suggest the language could be simpler and less complex through the use of plain English. However, some (15, 16%) feel the inclusion of specific statutory references in the definition is necessary to ensure accessibility for students, and to ensure consistency is maintained across institutions (five, 5%). An additional 12 respondents (13%) highlight the need for the definition to be fully unambiguous, particularly relating to the definition of consent, which is reiterated in student roundtables.

> It is our view that the proposed overarching definition of 'any unwanted or attempted unwanted conduct of a sexual nature' is all-encompassing and obviates the need for inclusion of legal terminology.
> – Advocacy group

71. Around one in four (37, 40%) believe that there should be specific changes allowed for the definition of sexual misconduct, with some (six, 7%) feeling this should be flexible to provider context, with changes permissible on a case-by-case basis. One student or student representative body noted that the phrasing "unwanted behaviour" is particularly vague, and they feel there is a "continuum of behaviours beyond that can constitute misconduct". Some higher education providers state their institution's definition, and suggest other forms of sexual misconduct should be more referenced more heavily, including the following forms:

- Content relating to the Domestic Abuse Act 2021 (nine, 10%).
- Sending unsolicited explicit messages or graphic images, or sharing private sexually graphic material of another person without their consent, which should include 'up-skirting' (eight, 9%).
- Lower level, non-physical and verbal unwanted sexual advances, i.e., demeaning speech (seven, 8%).
- Online and electronic forms of sexual misconduct (six, 7%).
- Grooming or coercion (e.g., financial, physical) (two, 2%).

72. About three in ten (26, 28%) – just under half (12) of which are collective responses from providers – feel the OfS should set out clear expectations and guidance on the definition of sexual misconduct and how providers will implement this in practice. These respondents would welcome greater clarity on the description of certain HSM behaviours, disciplinary procedures, and sharing of best practice for providers including examples to demonstrate the range/scope of misconduct i.e., contextualisation, and training provision for staff relating to dealing with incidents. Seven (8%) – including four students or student representative bodies – further this and state the guidance should extend to students, via awareness campaigns and accessible policies.

73. Nine (10%) suggest that additional consideration is needed for vulnerable students or students with protected characteristics, arguing that extra care is needed to ensure these individuals are not negatively impacted by the definitions, i.e., the perceived omission of domestic violence and abuse leads to greater safeguarding measures being needed in the proposal. This is noted by students or student representative bodies, and advocacy groups.

2.2 Proposal B: Proposal to require a provider to develop and publish a 'single document' with 'minimum content requirements'

74. Findings relating to proposal B are split into three sections relating to feedback on the proposal to require:
- a provider to develop and publish a single document,
- this single document to have 'minimum content requirements', and
- for this single document to have 'content principles'.

2.2.1 Proposed requirement to create and publish a 'single document'

Summary of proposal to require a provider to develop and publish a 'single document'

➢ The OfS proposes providers maintain and publish a single document which comprehensively sets out policies and procedures on subject matter relating to incidents of HSM.

➢ If a provider did not have such policies and procedures when any new condition was imposed, it would need to develop these. A provider that already had such documents would need to review them to ensure that they meet the proposed requirements and present them in a single document.

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75. Respondents were asked for their view on the proposal that providers should create a single document, and 226 comments were received. A large minority (101, 45%) agree with some or all parts of this proposal, and half (114, 50%) disagree with certain aspects.

76. The majority of individual respondents from providers (21 of 36 respondents), students and student representative bodies (25 of 38) and advocacy groups (seven of 10) agree with aspects of the proposal. In contrast, most collective responses from providers (68 of 96) and sector and HE professional bodies (seven of 10) indicate disagreement.

Reasons for agreeing

77. One quarter (56, 25%) believe the proposal for a single document will provide clarity, transparency and awareness of policies and procedures to current and prospective students, all staff members, and members of the public. The single document format will be helpful for ensuring that everyone in the organisation is aware of what is and is not acceptable behaviour, and how best to respond to incidents. It will also remove the requirement to search through multiple documents. This theme was particularly echoed by students at roundtables.

78. Furthering this, some (12, 5%) note that the increased transparency and awareness of policies and procedures will encourage students to report incidents and will instil a greater confidence in the institution for handling these cases.

> From a student's perspective we are supportive of the proposed requirement. We hope such a document would ensure transparency and encourage complainants to come forward.
> – Higher education provider – collective, Medium tariff

79. The publication requirements of the single document are praised for their accessibility by one in seven respondents (32, 14%). These respondents agree it should be accessible to all, without institutional logins and security checks. They further agree it should be published in an easily identifiable place, so students are assured that their institution has processes in place to prevent HSM, and to address incidents promptly and sensitively.

80. Others (nine, 4%) feel that the proposal will increase the accountability for providers when following their procedures and taking action when HSM incidents occur.

Reasons for disagreeing

81. Just over three in ten (69, 31%) raise concerns about the single document's length and its complexity, with many of these being collective responses from providers (42). It is noted that the document could be hard to navigate due to the requirement to comprehensively set out all policies and procedures. Both students at roundtable events and consultation respondents suggest this might act as a barrier for students seeking guidance on reporting incidents.

> We have some reservations about whether students will wish to wade through a long and potentially complex document, especially in a time of crisis. The length of this document, as dictated by the minimum content requirements, could create additional accessibility barriers for students, rather than removing them.
> – Higher education provider – collective, Medium tariff

82. Students at roundtables shared this concern, fearing that the document could become unwieldy and inaccessible which will lead to disengagement and a reduced likelihood that students will read or use it.

83. The alignment of existing policies and procedures within institutions and the single document is a concern for some respondents (30, 13%). They discuss how existing policies overlap and are complex, and the format of a single document might take away from existing good practice adopted by some institutions – again, this is most predominantly reported by collective responses from higher education providers (24). These respondents emphasise that incidents of HSM can overlap with other areas of policy, including bullying, disciplinary, grievances, student complaints and public complaints. As well as this, students and members of staff at some higher education institutions are already expected to comply with institutional codes of conduct (although this is not mandated), frequently including HSM, which might cause confusion and inefficiencies in reporting and handling these instances.

84. Some (20, 9%) report that the single document will result in an unnecessary duplication of existing policies which will cause confusion for those seeking support and information – this is raised predominantly in collective responses from providers.

85. The creation and maintenance of the single document is described as 'over-prescriptive' by 17 (8%) respondents, five of which are higher education providers with a low or unknown tariff. The potential administrative burden is noted by those both agreeing and disagreeing with the proposal by 32 (15%) – mainly in collective responses from providers (25).

86. Students at roundtables expressed concern around the grouping of sexual misconduct and harassment into one document, reporting that institutions might provide greater coverage and attention to one issue over the other.

Further suggestions

87. Respondents were asked if they had alternative suggestions relating to this proposal, and 85 comments were received.

88. Around three quarters (66, 78%) suggest the single document acts as a signpost to existing policies and procedures, rather than as a single source which comprehensively outlines such information. They suggest this consists of a designated webpage on a provider's website which is accessible to all students, staff, and members of the public. This is noted by just under half of providers that responded collectively (41) and around one in three students or student representative bodies (nine of 30).

89. Some students at roundtable discussions agree that the document should be interactive and provide summaries for each topic to help students that struggle to engage with longer documents and who might have reading or language difficulties. However, one notes that it should not contain hyperlinks, but suggest for all summative information to be highlighted in a box alongside appropriate contact information.

> It would be beneficial for the information to be embedded into relevant access points for students, including relevant web pages, with dynamic digestible content. The content needs to be easily searchable and the relevant information easy to find which is not achievable through one long written document.
> – Higher education provider – collective, Low or unknown tariff

90. Some (25, 30%) question the audience and purpose of the document and raise concern that a single document to inform students, staff, and the OfS of all policies and procedures may not be accessible for all these audiences due to the language used. They suggest the OfS considers the publication of separate documents for students, for staff, and for the OfS's monitoring purposes so that the language used can be tailored accordingly. Four, including higher education providers (collective and individual) and an advocacy group, emphasise the document should use a trauma-informed approach to ensure it is accessible for students and staff when they are in need of support.

91. In parallel to earlier comments that the proposal is 'over-prescriptive', some (22, 26%) request providers have greater autonomy and flexibility when implementing such requirements – this is mainly noted by providers in collective responses (15). Greater autonomy would allow institutions to recognise their context and existing student body and communicate its policies and procedures appropriately.

> How the provider assesses and articulates [its commitment and strategy] to its community should be on the provider's 'reasonable judgement' and discretion, allowing providers to provide the information in an intelligible and accessible way that they know, based on evidence and feedback, will work for their own community and population.
> – Higher education provider – collective, Low or unknown tariff

92. The format of the single document is also discussed (18, 21%) in relation to how it might be prominently published, as stated within the consultation document. Suggestions include:

   - ensuring that alternative formats are available to accessibility purposes (five, 6%),
   - include infographics to make policies and procedures most accessible and digestible (three, 3%),
   - ensuring the single document is 'one click away' from the institution's website landing page (two, 2%),

- include the document in induction packs for new students and staff (three, 3%), and
- publish the document in multiple formats (e.g. PDF, online, PowerPoint presentations) – mentioned at student roundtables.

93. Further guidance is requested by some (17, 20%), to provide more detail on:

- minimum expectations for what information could/should be included (nine, 10%),
- examples of good practice (eight, 9%), and
- guidance for what constitutes as a prominent location (one, 1%).

94. Other suggestions for the proposed single document include:

- consulting students on their views and considering the co-creation of the single document between institutions and their students (12, 14%),
- distributing it on an annual basis, as a minimum, and updating it at least every three years (10, 12%), and
- following a similar approach to the requirements for Access and Participation Plans, with a single document that highlights institutions' strategies (five, 6%).

95. A further 13 (15%) ask for the OfS to ensure the document serves students who need to access information quickly when in distress, reaffirming that the single document should support students and reassure them that they will be supported through the process to minimise impact on successful completion of their degree. Various other inclusions for content are suggested by respondents such as:

- clear reporting and management processes (four, 4%),
- outlining expected timelines for responding to allegations of HSM (three, 3%),
- examples of different types of HSM in a variety of formats including videos or bite-sized information (two, 2%),
- signposts to support and student services (one, 1%),
- clear reporting and management processes (one, 1%),
- a self-assessment document for institutions to evaluate their policies and practice (four, 4%),
- publishing the document in multiple languages for international students (noted by students at roundtables),
- a clear outline of the complaints and reporting processes (student roundtables), and
- including aspects of the student voice by creating separate sections that address different audiences (student roundtables), such as:
  - the person who is considering reporting,
  - the person responding to an allegation, and
  - anyone else who is aware of someone who is going through harassment or sexual misconduct.

2.2.2 Proposed requirement to have 'minimum content requirements'

> **Summary of proposal to have 'minimum content requirements' for the single document**
>
> ➢ The OfS proposes minimum content requirements for the single document that will require a provider to take meaningful action to prevent and reduce HSM where it occurs towards its students, while recognising that the types of action that would be appropriate will depend on the provider's context.

96. Respondents were asked for their opinion of the proposal that minimum content requirements are specified, and 210 responses were received. The majority (145, 69%) agreed with certain aspects, while just under one quarter (50, 24%) disagree with certain aspects. Just over one in ten (23, 11%) do not clearly state if they agree or disagree with aspects of the proposal but provide suggestions or raise other concerns within their response.

97. Agreement levels are broadly similar across different groups, but notably, no students or student representative bodies disagree with this proposal, while a higher proportion of collective respondents from providers disagree (33 of 95).

98. A similar number (205) commented on the minimum content requirements that the OfS proposes providers should maintain. Around two thirds (131, 64%) agree with some aspect(s), and just under two fifths (80, 39%) disagree with some aspect(s). Some (32, 16%) agree and disagree with different proposal aspects and some (26, 13%) provide comment without stating a view either way.

99. Agreement levels in this respect are highest among students and student representative bodies (27 of 36 agree) while disagreement to some extent is higher among collective respondents from providers (43 of 95) and advocacy groups (seven of nine).

Reasons for agreeing

100. Of those agreeing with the proposal to have minimum content requirements, around two in five (79, 38%) suggest that including this will provide consistency across institutions and ensure that students are protected equally no matter where they choose to study. They voice that these requirements will set a standard across providers and clearly set out expectations for all parties, and what will happen if those expectations are not met.

> This will reinforce the importance of a 'whole-system' approach to prevention and response. Specifying minimum content requirements will help ensure that students understand what constitutes unacceptable behaviour, know how to report their concerns or pursue a complaint, and have confidence that their provider will support them and take appropriate and effective action.
> – 'Other' collective respondent

101. A further 20 (10%) emphasise that minimum content requirements provide clarity for institutions of what is expected of them and transparency for current and prospective

students, staff, and members of the public which instils faith that a provider will take HSM incidents seriously.

102. Respondents that refer to the specific minimum content requirements particularly welcome the following:

- The ways in which students, staff and other persons are able to report behaviour that may amount to harassment and/or sexual misconduct to the provider (19, 9%).

- The appropriate support that will be provided to students in response to incidents of harassment and/or sexual misconduct (13, 6%).

- How the provider ensures that staff and other persons responsible for receiving information about, investigating, or taking decisions on, matters relating to incidents of harassment and/or sexual misconduct are appropriately trained (16, 8%).

- How the provider ensures that persons directly affected by any decisions made in respect of incidents of harassment and/or sexual misconduct are directly informed about the decisions and the reasons for them (17, 8%).

103. Others (seven, 3%), predominantly students or student representative bodies (four), believe the minimum content requirements will ensure that institutions are held accountable for adhering to standards and allow the document to act as a monitoring tool for such.

104. A few (15, 7%) disagree with the proposed single document but agree that minimum content requirements would be essential for its successful implementation.

Reasons for disagreeing

105. Those who disagree with the proposal to enforce minimum content requirements for the single document feel that they are overly prescriptive (23, 11%), that they reduce institutional autonomy (13, 6%) or will be a resource burden for institutions (seven, 3%).

106. In reference to the minimum content requirements themselves, some (20, 10%) feel that more detail could be provided, and request further detail on each requirement to better understand the OfS's expectations. They also suggest that the proposals need to demonstrate more a proactive misconduct prevention (10, 5%), and that the language used should be standardised to allow for a common understanding across the sector (10, 5%).

107. There is notable discussion by around two in five respondents (89, 43%) around one particular point of the proposed minimum content requirements:

- how the provider ensures that students are appropriately taught.

108. Common concerns raised with this requirement include:

- the three-month timeframe to implement training is too restrictive and will compromise its quality (25, 11%),

- the implications for students who have experienced harassment and/or sexual misconduct and if they may be exempt or compelled to undertake training (and the consequences of non-attendance) (15, 7%),
- delivering training to all students will have resource implications (14, 7%)
- it is improbable providers will be able to measure changes in attitudes to HSM within the short time period specified (14, 7%),
- students from religious backgrounds or with protected characteristics may not feel comfortable attending training (14, 7%),
- students should not be 'trained' or 'taught' about HSM issues to match terminology used for staff training (14, 7%),
- consequences should be outlined by OfS for students who do not complete the training (12, 6%),
- the specifics around training content are unclear (11, 5%),
- logistical issues for conducting all training in-person (11, 5%),
- small institutions will be disproportionately impacted by the administrative burden of delivering training (two, 1%), and
- clarity on who would be responsible for organising and running training (one, 1%).

> Some individuals, due to their religious beliefs, sex, disability or lived experience (e.g. being a survivor of sexual assault), may not wish or be able to undertake this type of training in the manner described. Delivering mandatory training across all registered students at an HEP [higher education provider] would be exceptionally difficult to implement and would likely not achieve the desired outcomes.
> – Higher education provider – collective, Low or unknown tariff

Further suggestions

109. Respondents were asked if they had any alternative suggestions to the minimum content requirement proposals and 72 substantive comments were received.

110. Some (17, 24%) suggest the minimum content requirements are used as a baseline or as a guide for an institution so it can include any additional content specific to its context and student body.

111. Just over seven in ten (51, 71%) discuss the reporting and investigation procedures with regard to potential risks surrounding maintaining the confidentiality of their students. Some (10) note that Universities UK (UUK) has already provided guidance entitled "Changing the culture: sharing personal data in harassment cases" and suggest that the minimum content requirements take this into consideration, allowing institutions to reserve the right to disclose only when appropriate.

112. Some (13, 18%) request further guidance from the OfS for the application of the content requirements, and would welcome the OfS providing:

- further clarifications of the requirements, including recommendations and examples of best practice (eight, 10%),
- a template or framework for the creation of the single document in line with the requirements (two, 2%), and
- clarity on the timelines for implementation of the single document (one, 1%).

113. Others (15, 21%) discuss accessibility implications, suggesting that having minimum content requirements might increase the length of the document and reduce its accessibility. They propose that consideration could instead be given to 'maximum requirements' to reduce this risk and show that providers are encouraged to work beyond the minimum but prevent providers from 'overshooting'.

114. Respondents were asked if they had alternative suggestions for the minimum content requirements themselves, and 101 provided further thoughts. Many (53, 53%) focus on the requirement that the content includes:

- how the provider ensures that students are appropriately taught

with over half (29) being collective responses from providers, including half of those with a low or unknown tariff student typology (noted by 15 of 31 responding to this question).

115. Several (25, 25%) request further guidance for the source, content, and delivery of training for students and staff. They emphasise that all training should be backed by research and evidence of 'what works' for students and staff to prevent and respond to HSM incidents and should also educate students on consent. Other suggestions relating to this content requirement include that:

- training should be flexible to suit the student cohort and staff (eight, 8%),
- online sessions are recognised as suitable training as in-person sessions will have greater resource demands (seven, 7%),
- the word 'mandatory' is removed (six, 6%),
- all training should be accredited to maintain the standard of training (four, 4%),
- consent and bystander training is integrated into course curricula (a notion supported by students at the roundtables) (four, 4%),
- training could be broader than just active bystander training (two, 2%),
- there is scope to use external providers to deliver training (two, 2%),
- a standardised online training package could be used (one, 1%), and that face-to-face training might be inefficient (one, 1%),
- institutions should implement a student and staff training strategy that reflects the needs and requirements of different groups, i.e. students, new starters, staff supervising students, students as leaders (one, 1%), and
- training centred around the policies and procedures is outlined within the single document (one, 1%).

116. A few (seven, 7%) suggest the minimum content requirements are based around broader terms with simpler statements that refrain from using legal language. Three (3%) note this could be to explain how the institution discourages HSM, what behaviours it expects of its community, signposting the support, and report mechanisms.

117. In line with the OfS's proposed content requirement that "appropriate support that will be provided to students (including, but not limited to, actual or potential victims and actual or alleged perpetrators) in response to incidents of harassment and/or sexual misconduct", students at roundtables would like to see support provided by an appropriately trained professional or designated sexual violence liaison officers. Furthering this, they state communication is key, and that students should be privy to the outcome of reporting processes and receive victim support.

118. Other suggested changes include:

- have measurables and methods of assessment for each content requirement (eight, 8%),
- scale back the requirements and regulate on broad principles (seven, 7%),
- provide examples of good practice for each content requirement (six, 6%),
- simplify the phrasing of the minimum content requirements (four, 4%),
- include a summary at the start of the document as a content requirement (three, 3%),
- provider guidance on collaborating with other organisations (e.g. police, social services) (three, 3%),
- have a greater focus toward misconduct prevention by enforcing further work on consent (two, 2%), and
- ensure all staff are aware of and have received training for domestic abuse policy (student roundtables).

2.2.3 Proposed requirement to have 'content principles' for the single document

Summary of proposal to have 'content principles' for the single document

➤ The OfS proposes content principles for the single document, for example that the document is published in a prominent position on a provider's website and easily accessible, and a clear and easy to understand statement about the existence of the document, its content, and how to access it is communicated to students and staff.

119. Respondents were asked their extent of agreement with the proposal for content principles for the single document, and 181 commented. Most (115, 64%) agree with certain aspects, and one quarter (46, 25%) disagree with some aspect(s).

120. Agreement levels are broadly similar across most respondent groups, but higher among advocacy groups (six of seven agree) and lower among collective higher education provider respondents (29 of 88 disagree with some aspect). Among providers, disagreement is highest among low or unknown tariff providers (17 of 36).

Reasons for agreeing

121. Respondents who agree believe this will ensure consistency (38, 21%) across institutions' definitions, scope, and content in their respective single documents. It will also ensure that no content within the document is contradictory (18, 10%), serve the same purpose (five, 3%), and allow students to use its commitments to hold the institution to account (four, 2%).

122. Some (23, 13%) feel that the content principles provide further clarity for the creation of the single document.

> We agree with the proposal for content principles. These should increase clarity and deliver against the content requirements. This enables flexibility and individualisation but within broader standards.
> – Advocacy group

123. Others who agree state that the content principles:

- ensure that the focus on HSM within the single document is maintained and prioritised (three, 2%),
- should be a condition of registration (two, 1%),
- cover a range of areas that will contribute to an institution's response to HSM prevention (one, 1%),
- reflect good practice (two, 1%), and
- are necessary for student protection (two, 1%).

124. In addition, some (nine, 5%) specify that they do not agree with the single document proposal, but agree that if this were to be mandated, that 'content principles' would be appropriate.

Reasons for disagreeing

125. The most common reason for disagreeing (31, 17%) is that the content principles are overly prescriptive, too specific and may cause further confusion on the requirements for the document. This is mainly raised by providers in collective responses (23).

> We do not see the need for this level of prescription. We are concerned about the statement that the provider must not include information and provisions on matters relating to harassment and sexual misconduct in any other document which could reasonably be considered to contradict, undermine or conflict with the minimum content requirement.
> – Higher education institution – collective, Low or unknown tariff

126. Some (six, 3%) consider the content principles to be a threat to providers' autonomy, and state that the proposed approach does not allow for flexibility to account for institutional differences and to act in the best interest of their student cohort.

127. A few (three, 1%) highlight that the content principles might detract from the minimum content requirements and could further complicate and lengthen the single document, thereby reducing its accessibility.

128. One respondent (1%) points out that the content principles could be misinterpreted if the single document does not have to be titled 'harassment and sexual misconduct' as long as all minimum content requirements are met.

Further suggestions

129. Respondents were asked if they had alternative suggestions on the proposal for content principles and 40 substantive comments were received.

130. Around half (21, 53%) provided alternative suggestions, including:

- providing further guidance and clarity on what is required from the content principles (seven, 18%), i.e. guidance on what might constitute as a conflict or how institutions should respond if they observe unexpected outcomes,
- providing examples of best practice for institutions, and examples of how the single document should look with minimum content requirements and content principles in place (four, 10%),

- allowing the acknowledgement of existing provider policies and the existing legal landscape for when cases may need to be referred to law enforcement (three, 8%),
- providing advice, guidance and support for staff and students that is informed by best practice across the sector (three, 8%),
- working based on less prescriptive, broader principles (three, 8%), and
- ensuring the document's accessibility by requiring multiple formats (one, 3%).

2.3 Proposal C: Requirements relating to capacity and resources

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Summary of Proposal C: Requirements relating to capacity and resources

➢ The OfS's proposal would require a provider to have the capacity and resources necessary to facilitate compliance with the condition.

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131. Respondents were asked for their view on this proposal and 204 responses were received. Around three in five (126, 62%) agree with some aspects of the proposal, three in ten (62, 30%) disagree with some aspects, and 17 (8%) neither agree nor disagree.

132. Agreement is noticeably lower among collective responses from higher education providers (45 of 93 agree, and 42 disagree) compared with higher agreement among students and student representative bodies (29 of 34 agree) and individuals from higher education providers (23 of 31 agree).

Reasons for agreeing

133. Several (37, 18%) believe that providers should already have the resources to comply, or that institutions will be able to take the necessary steps to ensure they can comply. Respondents acknowledge this will differ between providers, or that in some cases more resources may be required for more vulnerable groups.

134. Despite agreeing in principle, respondents do highlight challenges around implementing this proposal. For instance, some (22, 11%) agree under the caveat that the proposal has additional clarity, such as what would be required beyond existing obligations to ensure providers have the resources to meet the conditions of registration. Guidance on how providers should meaningfully assess this requirement, or relating to what support services should be provided by institutions over and above what is provided by GP and NHS counselling services, would be welcomed.

135. Of the collective responses from higher education providers who agree with this proposal, the two main reasons given relate to those discussed in the previous two paragraphs – namely around existing resources, and agreeing on the basis that greater clarity is provided.

136. Several (37, 18%) agree but note that additional resources will be required by institutions to meet the OfS's expectations. Furthermore, others (22, 11%) are concerned about the disproportionate impact this might have on smaller institutions and suggest mitigations for specialist institutions, or that a provider's context must be considered.

137. Some (23, 11%) agree but harbour concerns about the small pool of expertise available in the sector to train and support providers in complying with this requirement, noting such staff have, historically, been difficult to recruit.

138. Among some respondents (18, 9%) there is concern that, without enforcement, the proposal is either meaningless or that it is pointless to include if there is no means to implement it (13, 6%), or that it is unclear how it will be evidenced that sufficient resources are in place (12, 6%).

139. One respondent notes that they agree with the proposal because, in 2016, the Universities UK (UUK) Changing the Culture Taskforce stated that tackling violence against women, harassment, and hate crime was crucial to ensuring the wellbeing of students and recommended that all university leaders give it priority and dedicate resources to tackling it. They believe there is a risk that without effective reporting systems and data collection at the provider level, analysis into harassment and sexual misconduct is not prioritised or given appropriate investment. Additionally, many public authorities have a duty through the Public Sector Equality Duty of the Equality Act, which requires organisations to consider how they could positively contribute to the advancement of equality and good relations.

Reasons for disagreeing

140. The most common reason for disagreeing (53, 26%) is that providers and the sector as a whole are facing a constraint on resources, and it may take time to put additional resources in place. In particular, this proposal may detrimentally impact smaller or specialist providers who have fewer resources.

> These requirements will produce disproportionately greater burden on providers such as colleges with a smaller number of HE students. If this is an explicit ask, we feel there should be funding available to meet this need. To expect smaller providers to bear higher per student costs without any additional support would be very unreasonable.
> – Sector and HE professional body

141. Some (18, 9%) believe this proposal duplicates elements of the OfS's Condition D: Financial viability and sustainability, which in part iv) states that 'the provider must have the necessary financial resources to continue to comply with all conditions of its registration'. Respondents feel this may lead to confusion around why this proposal would explicitly state the same when others do not. Meanwhile, a small number (11, 5%) feel the requirement is unnecessary, either perceiving it as duplication of conditions (five, 2%), or because it is self-evident that providers will need resources to respond to the new requirements (five, 2%).

142. Several (26, 13%) believe this proposal goes against a provider's right as to choose how and where to allocate resources – this is raised mainly in collective responses from higher education providers (17).

143. Similarly, fourteen (7%) disagree because no additional funding has been proposed to support the new requirement, creating an imbalance against other areas of the student experience.

144. Others (17, 8%) feel the wording within the proposal is ambiguous and would welcome clarity on what 'necessary' and 'appropriate resources' encompass and how 'sufficient'

capacity will be measured – again this is mainly raised in collective responses from higher education providers (11).

145. Seven (3%) disagree because it is difficult to see how likely this condition would be possible when all universities will be required to implement policies and training at the same time. There are questions around the capacity of external providers in this area.

146. A few (four, 2%) suggest the proposal as worded requires providers to know what resources will be needed ahead of time, and that resourcing level may be unpredictable as cases fluctuate each year.

Further suggestions

147. Asked for alternative suggestions relating to this proposal, 84 respondents offered substantive comment.

148. Around three in five (47, 56%) focus on resources. Several (27, 32%) of these respondents suggest that additional funding is required for providers to complete this condition of registration. Some within that number (eight, 10%) – mainly collective responses from higher education providers – believe that the OfS should directly ensure providers have the ability and resources to meet the condition if it is to add this requirement.

> It would be useful to clarify whether the OfS will be providing any resources, whether that is additional funding or guidelines.
> – Student or student representative body

> We need the OfS to set out in this proposal timelines for how long investigations take, a timescale of when universities reach out to students in support. This will show universities if they need more resources and capacity to tackle sexual misconduct and harassment.
> – Student roundtable

149. Another suggests the OfS undertakes an analysis of the financial impact the proposals will have on providers, including a cost-benefit analysis to confirm whether the expected effect of reducing HSM incidents will be proportionate to investment.

150. Around one quarter (19, 23%) suggest this proposal is removed from the condition instead of offering alternatives. Most commonly, respondents argue that this element is simply included to demonstrate intent when actually having sufficient resources to comply should be implied. The majority (14) of such responses are collective responses from higher education providers.

151. Other suggestions include requests for clearer guidance (18, 21%), including definitions for what the OfS means by 'capacity and resources', the required level of evidence for compliance, and expectations around specialist roles and their capacity. A further 15 (18%) suggest the OfS provides best practice examples, such as by offering clearer, more specific projects or toolkits tailored to size with accompanying resources. This approach would alleviate some of the resource burdens, particularly for small or specialist providers.

152. A small group (10, 12%) suggest that the condition includes reference to partners, as this might alleviate issues with resources, or offer wider competency within an organisation. In particular, this could help smaller institutions comply with this condition.

153. A few (seven, 8%) believe providers should be allowed to retain autonomy in the allocation of resources, including the ability to decide what is required for implementation of the registration condition – such responses are mainly from higher education providers (five).

154. Six (7%) suggest the OfS could clarify to providers what training would be recommended. One specified that, for smaller providers, teams and people resources are smaller and it is less likely specialist training is available in house. Three (3%) suggest the OfS could vet a network or list of specialist training providers for providers to use and three (3%) suggest the OfS could assist with training directly.

155. Other suggestions, each separately noted by one (1%) respondent, include:

- an online portal could be developed to help with auditing any set of standards that providers work against, where institutions can upload supporting evidence,
- assessment of local need is implemented in addition to existing minimum expectations to ensure low levels of reporting are not construed as low levels of prevalence,
- if adopted, there needs to be a core team who undertake cases for a consistent and timely level of approach experienced across an institution,
- incorporating an obligation for providers to notify the police for exploitation offences,
- that, if this condition is imposed, it does not include complicated compliance data gathering and documentation, and
- the OfS taking provider context into account when judging compliance.

2.4 Proposal D: Requirements relating to freedom of speech

Summary of Proposal D: Requirements relating to freedom of speech

➢ The OfS proposes providers comply with the requirements of the condition in a manner which is consistent with the freedom of speech principles.

156. Respondents were asked for their views on this proposal and 189 comments were received. Most (105, 56%) agree with certain aspects of the requirement, and just under one in three (60, 32%) disagree with some aspect(s). Others do not state a view but provide further comment.

157. Agreement levels are relatively higher among individuals from higher education providers (18 of 27 agree and five disagree), compared with collective responses from providers (50 agree and 33 disagree of this group of 90) and to students and student representative bodies (11 agree and 12 disagree among these 30 respondents).

Reasons for agreeing

158. Just under one fifth (35, 19%) simply state they agree with the proposal in some way, suggesting the proposal should comply with the law, or to welcome that freedom of speech principles are being explicitly addressed within the reforms.

159. One in five (38, 20%) agree by outlining how freedom of speech is enshrined within higher education and should not be undermined by any institution. Some of these

respondents state – either explicitly or implicitly – that higher education providers already do this.

160. Some (25, 13%) agree but suggest that more guidance or clarity from the OfS is needed on the exact ways providers should navigate freedom of speech in relation to this condition, to avoid the chance that institutions may, unintentionally, act unlawfully. Most of such comments are from higher education providers themselves. Others welcome the proposal and emphasise that freedom of speech and expression is important for students' rights, with four (2%) saying more clarity and further guidance is required, particularly around the line between freedom of speech and harassment.

161. Some (13, 7%) suggest the OfS will need to offer greater support to higher education providers beyond increased guidance, in form of assistance and advice to navigate the complex legal framework surrounding the topic. Some (three, 2%) believe the OfS should provide legal support directly.

162. Seven (4%) agree that compliance should be consistent with freedom of speech principles, noting there are other regulatory requirements that providers are beholden to which already cover this area, such as the Higher Education (Freedom of Speech) Bill.[6]

163. Six (3%) agree and mention the rebuttable presumption is appropriate.

164. One 'other' respondent welcomes the OfS's desire to protect freedom of expression; the rebuttable presumption in the proposal is in line with external guidance and is also welcomed. However, this respondent believes it important this requirement does not imply to providers that free speech principles have primacy over considerations in the Equality Act 2010, as this may give rise to legal risk, and supports an amendment to the proposal in this vein.

Reasons for disagreeing

165. The most common reason for disagreeing (noted by 46, 24%) is that providers already have other freedom of speech duties, such as the Higher Education (Freedom of Speech) Bill. This Bill places obligations on providers in relation to freedom of speech and gives the OfS powers to enforce the new obligations, and adding further commitments on top of the Bill is viewed as unhelpful, given the considerable complexity in the area. Further, this Bill is felt to supersede anything that the OfS proposes in this consultation. Over half (26) such respondents are collective responses from providers themselves.

> It is not necessary for the OfS to set out separate freedom of speech principles through regulation when the Higher Education (Freedom of Speech) Bill will supersede this.
> – Higher Education Provider – collective, High tariff

166. Several (29, 15%) disagree that the proposals should include any reference to freedom of speech at all. They feel the freedom of speech topic is too major to be considered as part of HSM reforms, and therefore should not be mentioned in the proposal, and may overcomplicate policies and procedures, potentially making them less effective.

167. Sixteen (8%) disagree with this proposal on the basis that more clarity is required. For example, clarity is sought as to whether this is applicable to student unions as they want

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[6] The Bill was enacted into Law shortly after this consultation closed.

to know if they have to have their own codes of conduct or not. Some (five, 3%) say clarity is needed on how providers approach the balance between ensuring a safe and inclusive environment for students and enabling free speech.

168. Others (12, 6%) highlight how the relationship between freedom of speech and protection against discrimination and harassment under the Equality Act 2010 is complex and beyond the scope of providers to resolve, arguing this puts an unfair burden on the sector, particularly when there is already a legal obligation on institutions regarding freedom of speech.

169. Some (15, 8%) disagree as they feel the rebuttable presumption exposes students with protected characteristics to the risk that harassment may yet occur under the guise of academic freedom.

170. Five (3%) disagree as they believe there are already adequate protections in place for freedom of speech within the law.

Further suggestions

171. Respondents to the consultation were asked whether they had alternative suggestions to the OfS's proposal and 68 provided substantive comment.

172. Most commonly (29, 43%), further clarity and guidance is requested. This includes guidance on the rebuttable presumption and practical examples of what it would take to override the presumption, with 17 (25%) requesting case studies or examples of how to respond to complex cases where freedom of speech principles and harassment complaints come into conflict. Respondents believe the current guidance is not specific enough on how freedom of speech differs from hate speech and sexual harassment, especially inside a classroom setting – particularly with the rebuttable presumption.

173. Some (17, 25%) suggest waiting until the Higher Education (Freedom of Speech) Bill is passed to simplify wording and to ensure there are no conflicts.[7]

> Make reference to the relevant legislation rather than create added complexity by adding a new regulatory requirement which seeks to cover the same ground.
> – Higher education provider – collective, Low or unknown tariff

174. A similar proportion (16, 24%) suggest removing this proposal from the proposed condition of registration, arguing that the OfS has no duty to enforce free speech principles as part of its regulatory activity – this is most commonly raised in collective responses from providers (nine). Two (3%) say that putting freedom of speech and HSM regulation together makes regulating both less effective.

175. Eleven (16%) suggest the proposal is unnecessary as there are already legal requirements toward freedom of speech that providers must abide by.

176. Other suggestions are each mentioned by one or two respondents.

- The proposal is fine, but the rebuttable presumption should be removed (two, 2%).

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[7] This Bill was enacted into law on 11 May 2023, shortly after this consultation closed.

- The general proposal is good, but paragraph b should read "irrebuttable presumption" instead, as freedom of speech should not be open to challenge by the idea of some evidence (one, 1%).
- An approach to safeguarding freedom of speech aligning with student wellbeing would be preferable (one, 1%).
- Include content warnings for material or discussions related to HSM issues to warn students in advance, and alternatives provided if necessary (one, 1%).
- Greater clarity that the proposed rebuttable presumption has a basis in statute (Equality Act 2010) (one, 1%).
- The condition should be qualified so that the OfS will accept the judgement of the provider in any case, provided it is within the range of reasonable responses that could be reached in that case (one, 1%).
- Amend the wording to be more safety-facing, perhaps with a third obligation of 'freedom of speech, harassment, and student safety' (one, 1%).
- Amend wording to be more aimed at providers and students rather than a legal audience (one, 1%).
- There should be a rebuttable presumption of harassment, not freedom of speech – just as there is one for freedom of speech, not harassment (one, 1%).

2.5 Proposal E: Requirements relating to restricting the disclosure of information

Summary of Proposal E: Requirements relating to restricting the disclosure of information

➢ The OfS proposes prohibiting any contractual provisions that prevent or restrict someone from disclosing information about an allegation of harassment or sexual misconduct which affects one or more students.

177. Respondents were asked for their views on the OfS's proposal and 205 responses were received. The vast majority (174, 85%) agree with one or more aspects, and a small number (18, 9%) disagree with one or more aspects.

178. Agreement levels are high among all respondent groups, but particularly so among students and student representative bodies (all 35 of this group agree) and among advocacy groups (all eight agree), and relatively slightly lower among collective responses from providers (of 92 responding, 76 agree and 11 disagree).

Reasons for agreeing

179. While most agree with the proposal to prevent the use of non-disclosure agreements (NDAs) in cases of HSM, just over one quarter (54, 26%) state that confidentiality is important for the fair resolution of an investigation into allegations. They ask that the OfS confirms its position on the implementation of such 'informal agreements' and whether this specifically prevents providers from asking for confidentiality throughout the investigation process.

> We welcome the proposal to prohibit the use of these provisions, which will ensure students are able to speak their truth without hindrance. Doing so will increase the confidence of survivors to speak out, ensuring that providers have no choice but to prioritise the wellbeing and security of their student body.
> – Student or student representative body

180. Just over one in five (44, 21%) agree but request the OfS offers more clarity or guidance on specific aspects of the proposal. For example, respondents believe there needs to be flexibility on how they disclose information in relation to proof of guilt. Others request clarity on what 'reasonable steps' are. Furthermore, greater guidance and clarity from the OfS is needed on how providers can be supported if the proposal goes ahead, for example guidance on how disclosure of information should be handled in cases of unproven allegations, or how to protect victims from being named.

181. A similar proportion (44, 21%) agree and note they have already signed existing pledges not to use NDAs in these cases. The campaign group 'Can't Buy My Silence', created a pledge to suppress the practice of using NDAs in the sector against those who come forward on complaints of sexual harassment, abuse or misconduct, or other forms of harassment and bullying.

> If universities have already signed up to the NDA pledge, there must not be much resistance to this.
> – Student roundtable

182. Some (26, 13%) believe that NDAs are poor practice and should not be used for HSM cases, and do not believe there is justification for providers to enforce NDAs to prevent disclosure of cases.

> NDA and confidentiality contracts only aim to silence victims and cover up inappropriate behaviour or misconduct. They create a culture of distrust and fear in the workplace and educational environment and discourage people from speaking up or seeking help.
> – Student or student representative body

183. Though they agree with most aspects, nine (4%) – seven of which are higher education providers – query how third parties are integrated within this proposal. They raise concern that providers will be asked to take all reasonable steps to prevent third parties from enforcing NDAs, but note this will be difficult to implement in practice for work placements or employment for degree apprentices, for example.

184. Eight (4%) agree but are concerned about retrospectively applying this regulation, which could open providers to legal cases. Respondents are concerned that knowingly encouraging the breach of contracts is wrong. Such respondents agree with the proposal on the whole but disagree with the retrospective application.

185. One 'other' respondent agrees, noting it is unacceptable for any student to be prevented from discussing experiences of HSM if they wish to do so. They state confidentiality agreements will not be necessary or appropriate in most cases, but may be used on a case-by-case basis, for example when:

- the student asks for a confidentiality agreement because they want the act kept confidential, or

- the provider wants to use a confidentiality agreement in a settlement agreement with a witness to an act of discrimination, where the person who was the victim of harassment has made clear they want the matter to remain confidential.

186. Students at roundtable discussions broadly agreed with the proposal to prohibit the use of NDAs, although it was noted that maintaining confidentiality might be important in some instances (e.g. to protect identities in relation to safeguarding concerns).

Reasons for disagreeing

187. Some (12, 6%) say they agree in principle with the idea behind the proposal but disagree with this aspect being regulated, citing either a lack of evidence of the need for regulatory action, the legal risk of encouraging students to ignore existing NDAs, or believing it inappropriate for the OfS to seek to enact this in light of the Higher Education (Freedom of Speech) Bill.

188. Seven (4%) are concerned over the retroactive application of this condition. Some say it is inappropriate and has the potential to cause legal uncertainty, which would be damaging to the sector and stakeholders, as it would be against the general legal principle that a law can have an effect before it comes into existence.

189. A further seven (4%) disagree as they do not see how providers can control third parties and any NDAs they may attempt to enforce.

Alternative options and further suggestions

Alternative options considered by the OfS in relation to its proposals on NDAs

a) Restricting the scope of the prohibition so that any NDAs should allow disclosures to certain organisations or individuals, including the police, medical professionals, a student's lawyer, and the OfS.

b) Setting out its (the OfS's) regulatory obligations so they refer to compliance with legal requirements, if introduced, in the Higher Education (Freedom of Speech) Bill currently before parliament,[8] to align regulatory requirements with statutory obligations.

c) Making no provision for this type of prohibition, which would mean not imposing enforceable regulatory requirements in relation to this issue.

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190. Respondents were asked if they supported any of the alternative options outlined, or if they had other proposals, and 61 substantive responses were received.

191. Several (23, 38%) suggest the proposal requires more guidance or clarity, for example to include guidance on whether/how this applies to individuals who could be classed as both staff and student (e.g. postgraduate researchers or students on placements). Some suggest the OfS needs to make clear exactly what is prohibited and what is not; for example, to clarify that this ban does not prohibit making procedures confidential (as recommended by the OIA for such procedures), as well as what information the provider

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[8] This Bill was enacted into law on 11 May 2023, shortly after the consultation closed.

can expect to be kept confidential at the conclusion of a procedure. A few (seven, 11%)
ask for case studies or examples that will guide providers through the process.

192. Some (18, 30%) support the alternative option a), that limited disclosures should be
allowed, arguing this is consistent with general legal practice. One respondent suggests
that, if someone found to be a perpetrator leaves the provider, then their new employers
should be informed.

193. A similar proportion (17, 28%) support option b), regarding the Higher Education
(Freedom of Speech) Bill, and are keen for the OfS to align regulatory requirements with
statutory obligations to reduce confusion and burden on providers. In contrast, two (3%)
explicitly state they do not support option b), arguing it to be unnecessary, and
potentially duplicating regulation.

194. Three (5%) mention option c), to not regulate the use of NDAs. One of these said that
the whole sector has not had equal encouragement to demonstrate their commitment to
not using NDAs and regulation should not be introduced based on a misrepresentative
sample of the OfS register. The other two respondents disagree with option c).

195. In line with previous comments about confidentiality, 17 (28%) explicitly suggest the OfS
allows confidentiality within investigation procedures. Several (28, 46%) suggest an
exception for confidentiality agreements for the duration of investigations to ensure the
process goes smoothly and remains fair and sound. Some suggest that if a victim
wishes for the case to remain confidential that their wishes are respected. This can be
an issue for providers with small cohorts of students. Five (8%) also suggest there
needs to be clarity on whether a victim has the right to anonymity.

> We would recommend that during an investigation process all parties
> involved adhere to confidentiality and do not discuss the allegation and
> investigation beyond those supporting them in the process. Confidentiality
> during the investigation is key to support an efficient investigation,
> assessment of credibility of witnesses and not add to the matters being
> investigated by creating rumours on either side.
> – Higher Education Provider – collective, High tariff

> We fully support the banning of NDAs and silencing of students. We are
> just mindful around confidentiality – especially for a small campus. [False]
> allegations can still spread and ruin someone's life. It's a difficult slope but
> universities have a duty of care to protect students.
> – Student roundtable

196. In conjunction with previous comments amongst those who disagree, two respondents
(3%) suggest the prohibition should be limited to after the date of condition takes effect.

197. The following suggestions were each made by one or two respondents.

- Clarify when and where providers can share information on students who are
  upheld with misconduct allegations (two, 3%).
- The proposal is too prescriptive and should be reworded or removed (one, 1%).
- Any policy should be sensitive to the context of individual cases (one, 1%).
- Providers should be allowed to judge the appropriate use of privacy agreements
  (one, 1%).

- Restrictions do not go far enough, as the key is preventing disclosure to media outlets (one, 1%).

2.6 Proposal F: Requirements relating to personal relationships between staff and students

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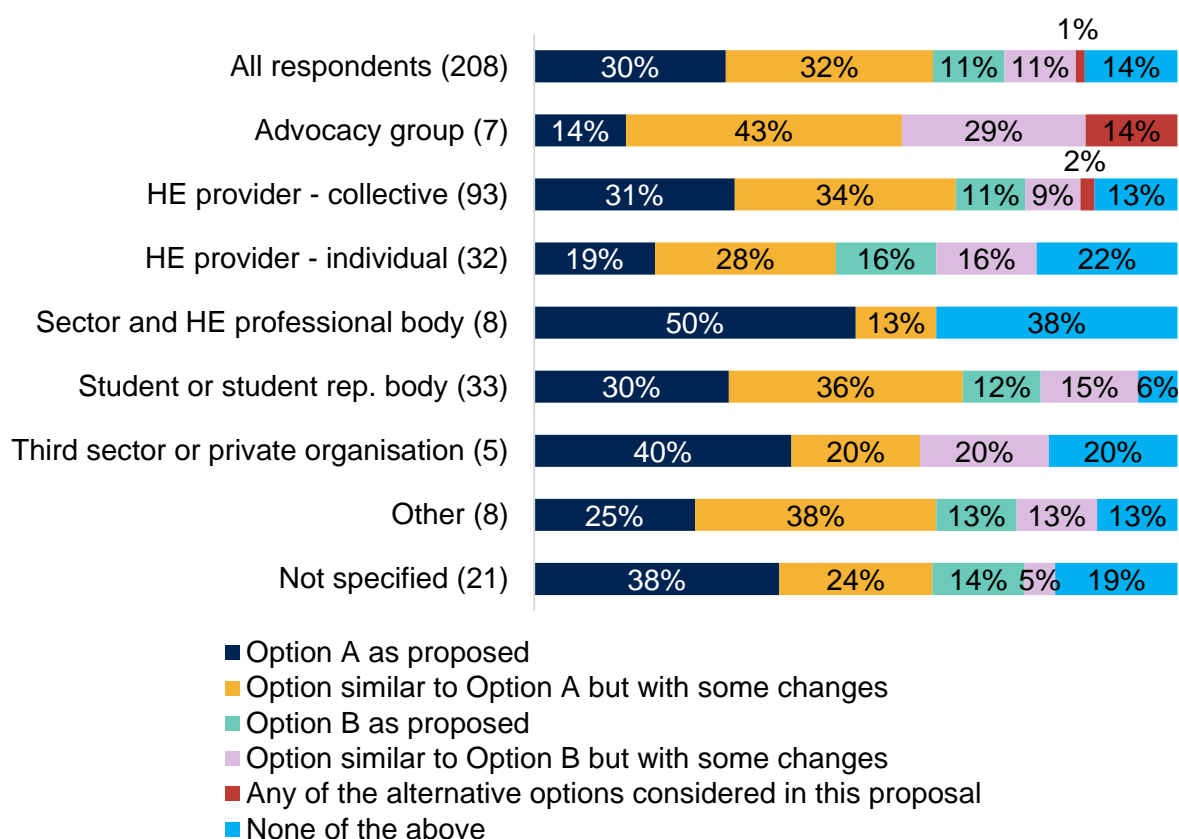**Summary of Proposal F: Requirements relating to personal relationships between staff and students**

➢ The OfS put forward two different options.

Option A (OfS's preferred option): requiring relationships between students and relevant staff (for example, those involved in teaching students of marking their work) to be reported and a register of relationships maintained.

Option B: A ban on relationships between students and relevant staff members.

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198. There is greatest support for Option A to be included in the new condition of registration E6, with around three in five (62%) supporting this option as proposed or an option similar to this but with some changes. Around one in five (22%) support Option B as proposed or an option similar to this but with some changes. A small number (1%) support alternative proposals considered by the OfS in deriving the two options, while one in seven (14%) support none of the options.

199. Responses are broadly similar across different types of respondents. However, compared with all respondents, a greater proportion of individual respondents from higher education providers support Option B or a variant on this (32%), while around half support Option A or a variant thereof (47%).

200. By student typology, responses from higher education providers follow a broadly similar pattern to the overall response. Over 60% of low or unknown tariff, and over 70% of medium tariff providers respondents support Option A or a variant, while under one quarter of such support Option B. Meanwhile, two in five high tariff providers (40%) support Option A or a variant, and 37% support Option B or a variant.

**Figure 2 Views on proposed approach to personal relationships between staff and
students, by respondent type**

Respondent type	Option A as proposed	Option similar to Option A but with some changes	Option B as proposed	Option similar to Option B but with some changes	Any of the alternative options considered in this proposal	None of the above
All respondents (208)	30%	32%	11%	11%	1%	14%
Advocacy group (7)	14%	43%		29%	14%	
HE provider - collective (93)	31%	34%	11%	9%	2%	13%
HE provider - individual (32)	19%	28%	16%	16%		22%
Sector and HE professional body (8)	50%	13%				38%
Student or student rep. body (33)	30%	36%	12%	15%		6%
Third sector or private organisation (5)	40%	20%		20%		20%
Other (8)	25%	38%	13%	13%		13%
Not specified (21)	38%	24%	14%	5%		19%

■ Option A as proposed
■ Option similar to Option A but with some changes
■ Option B as proposed
■ Option similar to Option B but with some changes
■ Any of the alternative options considered in this proposal
■ None of the above

201. Generally speaking, the majority of respondents are against Option B – many responses
of those who choose Option A or an option similar to A list issues they have with a ban
as part of their reasoning. While Option A is actively supported by the majority, albeit
often with suggestions for improvement, some appear to have chosen A as preferable to
B rather than desirable in itself.

202. Respondents were asked to give reasons for their answer, and 198 comments were
received, of which 120 (61%) support Option A or a variant, and 41 (21%) support
Option B or a variant. Twenty-eight (14%) do not support any option, while three (2%)
support an alternative option considered in this proposal. Two did not choose an option
while not obviously indicating which they prefer in their comments.

2.6.1 Option A: Reporting staff/student relationships and maintaining a register

Reasons for agreeing with Option A

203. Several (30, 15%) prefer Option A as it is felt this allows for complexities and a variety of
contexts. Generally, respondents believe that the mandatory disclosure and monitoring
of such relationships would mean that potential risk or conflict of interest could be
judged reasonably. Some (18, 9%) specifically highlight the need to account for pre-
existing relationships which they do not feel should warrant termination; for example,

long-term relationships which are not marriages or civil partnerships, or pre-existing relationships where one has recently progressed from student to member of staff.

> Postgraduate research students may hold multiple and/or changing roles within a provider. Such variation suggests that flexible, case-by-case management will be required.
> – Sector and HE professional body

204. Some students at roundtables agree that Option A would be easier and more sensible to implement on this basis, noting that the mandatory disclosure of familial relationships would ensure fewer complications.

205. An additional 15 (8%) believe that Option A is the most balanced and reasonable approach presented. On balance, they feel Option A is preferable but point out that this proposal risks becoming overly prescriptive. Another feels that Option A represents a good baseline requirement, noting that providers have the option of implementing a ban as they have done.

206. Some providers (16, 8%) specify that they currently have a similar approach to Option A, and one sector and HE professional body notes this is common among its members. Most feel that Option A is the more balanced approach, and that it aligns with established common practice. Two of these further elaborate that this practice has worked well for their institutions.

207. Nine (5%) express that some relationships captured by this proposal are realistically consensual, which Option A would allow or account for. In addition, some (six, 3%) emphasise that a register encourages transparency and honesty.

Reasons for disagreeing with Option A

208. One in six (34, 17%) believe there are privacy concerns relating to keeping a register and the requirement to disclose sensitive and personal information by reporting relationships. Concerns include:

- data handling and access, and how this will align to GDPR requirements (17, 9%),
- interference with Article 8 (Right to a Private Life) (12, 6%),
- potential student concern over providers holding personal information and what it may mean for their future (e.g. job references), and more generally, student consent (four, 2%), and
- potential legal action from trade unions (one, 1%).

> Condition b (the register) is not necessary and it is not appropriate – there would be issues about updating, privacy issues and worries about confidentiality. Also, putting staff on a register for something that is allowed by law might be seen as very worrying and not within human rights laws. It is very possible that legal action might be taken by trade unions.
> – Higher education provider – collective

209. Some (15, 8%) raise privacy concerns on the basis of protected characteristics. They anticipate complications arising when requiring relationships to be disclosed which subsequently disclose private information relating to an individual's protected characteristics. Respondents underline the issue of a forced 'outing' of one's sexuality,

while others draw attention to potential reactions to the disclosure of a romantic or sexual relationship depending on one's cultural or religious background.

210. Some (28, 14%) criticise clause E6.9 b. ii., in that a blanket dismissal of those who refuse to disclose personal relationships does not comply with employment laws. Six (3%) argue that, being an issue of gross misconduct, this would necessitate an investigation at the very least, and that the clause represents an overreach by determining outcomes for providers' own disciplinary procedures. Three raise concern for the administrative burden of the requirement to change staff contracts.

211. However, students at roundtables mostly agree that consequences ought to be serious for staff who refuse to disclose. While not specifically accounting for employment law, they nonetheless feel that deliberate cases are major causes for concern or "red flags".

212. Others (20, 10%) oppose Option A by suggesting it is difficult or impossible to be able to manage such relationships. Seven (4%) feel that a register will have no effect on the power imbalance and subsequent capacity for abuse or misconduct within certain relationships.

213. While just under two thirds (24, 66%) of students or student representative bodies responding to this consultation support Option A or a variant, past research conducted by one respondent – which other respondents reference – showed that a large majority of students were uncomfortable with staff/student relationships – suggesting to them that students would be in favour of a ban.[9] In addition to this, student views at roundtables are also mixed – while there are several who favour a ban, others question its viability to allow for complexities.

> The reality of personal relationships is complex and establishing a process
> to capture this is far from straightforward and unlikely to prevent
> inappropriate behaviour.
> – Higher education provider – collective, High tariff

214. Additionally, thirteen (7%) believe that reporting and maintaining a register of inappropriate relationships does little to discourage them, and may conversely facilitate their legitimisation instead as they are not prohibited. Three (2%) state that Option A might lead to grey areas in how relationships are defined, leading to potential misinterpretation or misuse of the system. One notes that, as some form of Option A is established practice for many providers, if it were working then there would be no need for this consultation.

215. A few (five, 3%) chose Option A, or an option similar to it, but disagreed with the proposal overall, perceiving it to be too prescriptive and to represent overregulation, with Option A being their preference if the proposal were to proceed against their will.

Alternative suggestions for Option A

216. Some (16, 8%) suggest relationships ought to be differentiated based on whether there exists a responsibility for academic studies or pastoral welfare. They propose that these relationships are prohibited, while other relationships are subject to disclosure and

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[9] National Union of Students, 2018, Power in the academy: staff sexual misconduct in UK higher education

registration. Five of these are collective responses from providers who note this is their current approach which has proven effective.

217. Similarly, some (15, 8%) who support Option A with some changes feel that providers ought to have some level of reasonable discretion over which relationships ought not to be included in the requirement for registration or face the proposed disciplinary consequences, on a case-by-case basis. For instance, nearly half of these (seven) refer to types of pre-existing relationships.

218. Other suggestions relating to the proposed register in Option A are each made by a small number of respondents.

- Serious consideration of the legal basis on which providers are able to collect such information, and subsequent potential objections by staff, students, and trade unions (three, 2%).
    o Relating to this, clear data protection and handling policies (two, 1%).
- Where a relationship is registered, to remove the relevant staff member from all responsibilities that could create a conflict of interest, rather than requiring providers to try to manage this. This is set out in UUK's 'Changing the Culture' guidance (three, 2%).
- Clear guidance relating to the register, including how declarations are made, and how the register is kept up to date (two, 1%).
- Requiring mandatory disclosure of relevant relationships but using standard HR reporting procedures rather than a register (two, 1%).
- A personal relationships policy which requires disclosure and outlines disciplinary consequences for non-compliance, rather than a register (one, 1%).
- Introducing a conflict-of-interest management plan and putting measures in place in response to declarations alongside the register (one, 1%).
- Emphasise the onus being on staff being the ones to disclose relevant relationships – a position supported in student roundtables (one, 1%).
- Put a system in place for providers to reach out to students, check their welfare, and ensure relationships are consensual or unproblematic (one, 1%).

219. Additionally, a few (five, 3%) suggest consideration of the word 'register', as they are uncomfortable with the connection or connotation this may (unintentionally) have with a sex offenders register. Another feels that certain communities historically marginalised on the basis of protected characteristics may hold long-standing concerns about anything that would seek to place them on a register.

220. Twelve (6%) would welcome tightening up of certain terms and definitions, such as 'personal relationships', 'all reasonable steps', and 'relevant staff'. In addition, six (3%) would like clarity regarding the nature of familial relationships: four (2%) note that familial relationships could be included under the terms 'financial dependency' or 'personal relationships'. Three (2%) feel that certain familial relationships could result in conflicts of interest, and these are not addressed sufficiently.

221. Some students at roundtables had similar queries. For instance, clarification on the potential inclusion of family members within these terms would be welcome, as would clarification on whether student union staff are considered 'relevant staff', or whether only romantic/sexual relationships are included. Other suggestions are each mentioned by one or two respondents.

- Focusing the framing of Option A on power imbalances and potential for unfair treatment, rather than type of relationship (one, 1%).
- Emphasising more strongly that relevant relationships are strongly discouraged (one, 1%).
- Emphasis on the education of staff regarding why relevant relationships are problematic (two, 1%).
- Applying a 'direct or indirect' qualifier to 'professional responsibilities in relation to that student', as it currently only includes 'direct' responsibilities (one, 1%).

2.6.2 Option B: Banning staff/student relationships

Reasons for agreeing with Option B

222. Some (20, 10%) of those supporting Option B note an inherent power imbalance in staff/student relationships, especially those where a staff member has some form of responsibility for a student – this is noted particularly by individual respondents from higher education providers. Permitting these kinds of relationships in any capacity is felt to be undesirable given the continued capacity for abuse or misconduct within them. One third sector/private organisation states that many of its partners are successfully operating bans of this nature. In addition, two signpost to a 2018 study which suggested that students then favoured a ban.[10] Nevertheless, some students at roundtables who do agree with a ban feel strongly that the inappropriateness of such relationships warrants one.

> Anything less than a ban is not strong enough or protecting students enough from the power imbalance that there would be with any staff member and student.
> – Student or student representative body

223. Others (19, 10%) believe a ban would create a clearer line that removes the need for interpretation to reduce the risk of abuse or misconduct occurring. It would also, it is argued, be much easier to convey what is and is not acceptable, leaving no room for grey areas.

Reasons for disagreeing with Option B

224. Several (32, 16%) feel Option B is, overall, too restrictive, does not sufficiently account for certain cases and is too heavy-handed in its approach. The majority (18, 9%) outline certain types of relationships which they believe ought to be permissible. Such instances could include relationships which do not feature a power imbalance and are, by all reason, consensual. Pre-existing relationships which are not marriages or civil partnerships are also mentioned by some (six, 3%) in relation to this. One respondent notes that abuse can still happen within legally recognised relationships. Some (eight, 4%) raise the issue of provider context, saying it is unreasonable to expect smaller or local providers to ban all such relationships due to an increased probability for pre-existing relationships.

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[10] National Union of Students, 2018, Power in the academy: staff sexual misconduct in UK higher education

225. Students at roundtables raise similar cases in question of Option B, such as pre-existing longer term relationships, and relationships between students where one is also a member of staff. Two find issue with banning relationships between adults.

226. Some (10, 5%) feel Option B impinges on the right to a private life and believe that a total ban is the more drastic or draconian of the two options presented in this regard.

> For a university which is a community, and is part of the wider local community, personal relationships are inevitable and natural, and there are concerns that a full ban would have a negative impact on the right to a private life.
> – Higher education provider – collective, Low or unknown tariff

227. Several (34, 17%) oppose a ban as they believe it would have the unwanted consequence of driving them 'underground', which might result in students in relationships where there is a power differential being more at risk of harm, and therefore instead support Option A. Five (2%) additionally highlight that prohibiting such relationships would make it more difficult for potential victims to feel they could disclose their relationship safely. Students at roundtables also acknowledge a ban creating this potential unintended consequence and the risk of such underground relationships.

> A sensible and pragmatic approach that encourages disclosure and management of any risk is preferred to simply prohibiting relationships which may result in non-disclosure and covert relationships.
> – Higher education provider – collective, Low or unknown tariff

Alternative suggestions for Option B

228. Asked if Option B or other presented options should allow for exemptions, 141 comments were received. Alternative suggestions for Option B predominantly focused on exemptions.

229. Just over half (72, 51%) feel that, if a ban were to go ahead, it should allow for additional exemptions to those listed. Several (43, 30%) suggest additional pre-existing relationships are considered for exemption, arguing it is not uncommon for circumstances in a relationship to change from what would be considered acceptable to what would be prohibited, e.g.:

- a relationship between two students, one of which subsequently becomes employed by their provider, or
- a relationship between a member of staff and someone who becomes a student at the same provider (with the staff member having no responsibility for the student).

230. As there are viewed to be many situations in which pre-existing relationships could be affected by a total ban, these respondents assert the necessity for exemptions.

231. Some (22, 16%) refer to long-term relationships which are not legally recognised in marriage or civil partnership. They feel it would not be fair or reasonable to prohibit otherwise healthy and unproblematic relationships simply because they are not legally binding. Two of these additionally imply that only recognising marriages or civil partnerships would disproportionally affect LGBT+ communities and other minority groups.

232. Additional exemptions suggested include:

- familial relationships (12, 9%) – some ask for clarity regarding familial relationships, as they could be interpreted to be included within the parameters of 'financial dependency' or 'emotional intimacy', and
- relationships in which a member of staff has no pastoral, academic, or other form of responsibility for a student (14, 10%).

233. One highlights that it is already standard practice in both academic and industry employment that one cannot have a reporting relationship as well as a personal relationship with another colleague or superior. They feel that this justifies such a ban of related student/staff relationships against arguments relating to Article 8 (Right to a Private Life).

234. Just over one in ten (15, 11%) feel Option B should generally not allow for additional exemptions. Five (4%) feel it is unfeasible to produce a definitive list of exemptions, rather that exemptions are considered on a case-by-case basis.

235. A few (six, 4%) believe that exemptions both currently proposed and additional ought to be registered and monitored. Two point to common practice in universities in the United States, which has allegedly been found to be successful, where pre-existing relationships are exempt as long as there exists no judgement of conflict of interest, coercion, or favouritism, and a Vice Chancellor or relevant delegate retains discretion and authority to grant discretions based on professional judgement.

236. An additional six (4%) feel that exemptions may be problematic to clearly define or implement. Four of these use this as rationale for not supporting a ban, while one recommends exemptions to be considered on a case-by-case basis.

237. Students at roundtables discussed exemptions, with some agreeing with Option B on the basis that further exemptions or case-by-case considerations are applied. Some did not agree with Option B based on the lack of currently included exemptions. One student notes common practice in the United States, where a ban with built-in exceptions is typical.

2.6.3 Alternative suggestions

238. Respondents were asked if they had alternative suggestions to the options presented, and 65 substantive comments were received.

239. One in seven (18, 28%) – of which eight are collective responses from providers – believe that both Options A and B represent overregulation, and thus do not, or are reluctant to, support either. Seven (8%) of these feel that providers should be able to self-regulate, while a further seven (8%) of these outline that these are relationships between adults, and ought to be treated as such.

240. Similarly, some (13, 20%) – of which most (11) are collective responses from providers – emphasise the importance of provider autonomy to determine the process and/or outcomes of HSM management. Four (6%) of these suggest a code of practice or conduct based on agreed principles rather than a deterministic regulatory approach to enable providers to manage risk, and to avoid the regulatory and administrative burden and time taken to change contracts and resulting union involvement. In addition, three (4%) feel providers should be given the choice of Option A or Option B.

241. Some (nine, 14%) give suggestions relating to training. Six (10%) recommend that alongside this proposal, staff and students are provided training on topics such as abuse of power, recognising signs of coercive control, cumulative patterns of harassment and abuse, and stalking/cyberstalking. However, four (6%) believe that initiatives to implement such training and further policies would be more effective at dealing with HSM than the proposed regulation.

242. Five (8%) believe this proposal should be removed, as they feel it impinges too greatly on provider autonomy (two), has no legal basis (two), and/or because they feel there are more effective ways to manage HSM (two).

243. Some (12, 18%) would like to see additional guidance leading to enacting this proposal, whichever approach is chosen. Examples of guidance requested include:

- if a register is considered, clear guidance on the principles of the storage and handling of data and declarations (four, 6%),
- providing detail on educating staff and students about appropriate professional boundaries (three, 4%),
- where exemptions in the case of a total ban are considered, outlining situations where disclosure is not required (one, 2%),
- consideration of staff protection, for instance if a student attempts to exploit or blackmail a staff member following a personal relationship (one, 2%), and
- the OfS committing to publishing good practice guidance setting out a range of reasonable responses from providers (one, 2%).

2.7 Proposal G: Proposed implementation

Summary of Proposal G: Proposed implementation

➢ The OfS proposes to implement any new condition as soon as possible after a final decision is taken.

➢ The OfS proposes that any new ongoing condition would be published with its final decisions and come into force on a date not less than three months from the date it publishes its final decisions.

244. Respondents were asked for their view on the proposed implementation, and 176 respondents commented, of which three in ten (53, 30%) agree with some aspect(s), while about two thirds (112, 64%) disagree with some aspect(s).

245. Students and student representative body respondents, and individuals from providers, are both split equally in agreement and disagreement. In contrast, most (71 of 88) collective provider respondents disagree, as do all (seven) sector and HE professional bodies commenting on this proposal.

246. Overall, the majority of respondents are concerned with the proposed timeframe for implementation, with many doubtful that it is feasible or possible for providers to implement all proposed regulation in three months. Suggestions for Proposal G are dominated by those calling for a longer flat timeframe to integrate any new condition of registration, and to a lesser extent, staggered or phased timeframes.

Reasons for agreeing

247. Several (19, 11%) feel that the proposed timeframe is reasonable. Some (10, 6%) of these believe it is necessary to follow this timeframe due to the importance of the issue of managing HSM in the sector. In their view, it is vital that regulation is implemented as soon as is reasonably practicable, and for providers to take the responsibility of protecting their students seriously. Half of these are responses from higher education providers (four collective, one individual), with two student or student representative bodies.

> We agree. It is a robust way to ensure that institutions will take their responsibilities seriously and be held accountable.
> – Higher education provider – collective, Medium tariff

248. Ten (6%) agree with the proposal as they believe consistency is needed across the sector. They feel that providers must demonstrate accountability in tackling the issues raised by this consultation, and that adhering to the proposed timeframe ensures this. Of these, three (2%) believe that the timeline should not be phased or staggered, as it may lead to mistakes or complications.

249. Eight (5%) agree with the urgency of action, but with the caveat that consideration should be given to how implementation coincides with the academic year. Five of these are collective responses from higher education providers.

Reasons for disagreeing

250. Many disagree (97, 55%) as they believe the proposed timeframe for implementation of three months is too short. This is raised by all (seven) sector and HE professional bodies, as well as in many (62) providers' collective response. This is raised frequently by providers of all student typologies, although to a slightly lesser extent by high tariff providers.

251. Several (51, 29%) refer to the time it would take to train staff and/or students sufficiently in accordance with the proposed regulation. For some, training is the primary/sole factor, while for others it is a factor among other considerations. Other factors referred to which render the proposed timeframe unviable include the time required to update contracts or policies (39, 22%) and for necessary consultation with trade unions, committees and students (33, 19%). Collective provider responses constitute a majority for each of these factors in training (32), contracts/policies (26) and consultation (24). The majority of respondent sector and HE professional bodies raise training (six) and contracts/policies (five) as issues.

> Even for an institution that, we believe, is well positioned to meet the proposed registration condition, the notion of creating a coherent set of policy documents (or document) and training all 17,000 students and 4,000 staff members is unimaginable in this timeframe.
> – Higher education provider – collective, Medium tariff

252. Several (31, 18%) feel that the proposed timeframe creates too much burden on provider staff and express concern about capacity of staff at all or some providers to meet the proposed timeframe. Reponses focus on budgetary considerations' competing priorities. Some (12, 7%) specifically highlight the increased difficulties for smaller providers to adhere to the proposed timeframe.

> We consider this timeframe unrealistic. This timeframe will
> disproportionately disadvantage smaller institutions who do not have the
> existing resources available to meet all requirements within three months.
> – Higher education provider – collective, Specialist: other

253. Some (27, 15%) believe that the proposed timeframe runs the risk of rushing implementation, with a focus on speed over accuracy, and believe it is important to make sure regulation is introduced comprehensively and effectively.

Suggestions relating to the proposed timeframe

254. Respondents were asked if they had comments on the proposed timeline and 160 commented.

255. Just over three quarters (121, 76%) suggest a longer timeframe is required. They feel that some or all of the proposals will only be achievable by every provider with an extended timeframe. Specific alternative timeframes are suggested by several (41, 26%). Half of these (20, 13%) suggest a timeframe of 12 months, five (3%) suggest six months, and a further five (3%) suggest implementation from the start of the 2024/25 academic year. Around two in three noting these points are collective provider responses.

> There is significant concern over the proposed three-month timeframe
> owing to the significant burden associated with the revision of existing
> institutional policies, the creation and compilation of the single document,
> contractual changes that would need to be enacted, and the development
> and delivery of staff training. Our members have indicated that a nine to
> 12-month period would be more appropriate.
> – Sector and HE professional body

256. Several (28, 18%) recommend a phased or staggered implementation of any new condition of registration – of which 15 are collective provider responses. They feel that different timelines for implementing different conditions or proposals would be more realistic, given the various needs of providers and the differences in administrative effort necessitated by each part. In line with previous comments, frequently highlighted components which respondents suggest will need more time include staff and student training (46, 29%) updating policies or contracts (35, 22%), and consultation with trade unions, committees, and students (26, 16%).

257. Some (11, 7%) suggest the implementation is timed to align with the academic year, or at least to take into account staff availability. A few (five, 3%) suggest a longer timeframe will enable the co-creation of policy with students, while others (four, 3%) note that a cultural shift takes considerable time.

258. Some (11, 7%) feel the timeframe ought to be discussed and agreed with providers individually, who have considerable differences in capacity and resources, and that a timeframe should be based on the realistic capability of each provider on an individual basis.

2.7.1 Other issues

259. Some 105 commented when asked if they had alternative suggestions. Most comments tend to focus on timeframes for implementation, discussed above, but other matters are raised.

260. Around one in eight (16, 15%) feel that additional guidance is required, explaining how providers are to meet the expectations set out by this proposal. Given the concerns about the proposal – particularly its allotted timeframe for the enaction of regulatory conditions – they feel that providers should be informed as best as possible how they comply with it. Some suggest the OfS facilitates the sharing of best practice in this regard. Most (10) are collective responses from providers.

261. The same number (16, 15%) – 12 of which are collective provider responses and seven from low or unknown tariff providers – believe the approach is too prescriptive. A few of these (four, 4%) feel the proposal contradicts a risk-based approach. Three (3%) believe there is not strong enough evidence for the level of regulatory intervention proposed as yet.

262. Additionally, three (3%) suggest that an alternative to a new registration condition could be that providers are monitored in progress relating to the statement of expectations, with two of these recommending its renewal.

263. Other suggestions or comments are each mentioned by a small number of respondents.

- Recommendation that the OfS wait for the passing of the Higher Education (Freedom of Speech) Bill, making sure regulatory conditions are aligned with it (two, 2%).

- Having the register of relationships open for inspection to HR so that individuals are not hired elsewhere (one, 1%).

- The OfS developing a scheme that aims to encourage HE institutions to improve and deliver excellence within the area of the Student Experience, covering the area of sexual violence and misconduct (one, 1%).

- Concern over introducing a new ongoing condition of registration without waiting to see the impact of already implemented measures, and whether further regulation would have the desired outcomes of supporting students and staff affected by HSM (one, 1%).

- Delaying the implementation of regulation until the OfS or government facilitates the development of shared services such as regional support networks, and best practice guidance is established and shared with the sector (one, 1%).

- That the reluctance from providers to recognise and address the issue – demonstrated by the acknowledgement that less than a third of registered providers have publicly committed to stop using NDAs in the case of HSM – must be seriously addressed (one, 1%).

2.8 General comments

2.8.1 Unintended consequences

264. Respondents were asked if they foresaw any unintended consequences resulting from the proposals, and 158 provided their thoughts, of which 15 (9%) did not have concerns.

265. Two in five (63, 40%) – of which 41 are collective responses from providers – are concerned about potential additional burden or impact for institutions. Several (44, 28%) also discuss the lack of available resources and time to implement the proposals effectively. Other burdens noted include the training of staff needed to apply and understand the proposals (12, 8%), and the relatively larger impact for smaller or specialist providers (10, 6%) – both points raised predominantly by providers.

266. One quarter (39, 25%) feel that there is a lack of support, clarity and/or communication regarding these proposals (e.g., how to meet conditions of registration, how to convey responsibilities to staff and students effectively, what training is suggested), which could negatively impact their implementation. It is suggested (20, 13%) that greater collaboration between providers and students is needed to ensure full understanding and tailored support. Again, it is providers who commonly raise such concerns.

267. Around one quarter (37, 23%) foresee a potential cultural shift as a result of these proposals. They feel the reforms might act as a box-ticking exercise for institutes in such a way that corners may be cut (15, 9%), detract from other important issues such as discrimination, safeguarding and mental health (14, 9%), or provide the wrong impression to students and potential students that a provider has significant HSM problems that need addressing (12, 8%).

268. The use of criminal language throughout the proposals is a concern for about one in five (34, 22%) who believe that the terminology may give the wrong impression to students that providers would be able to take legal action against perpetrators of HSM.

269. Some (18, 11%) believe there is a risk in introducing further regulation as it may lead to confusion about the role of providers and their responsibilities, potential duplication, and potential contradiction between different legislative and regulatory duties.

270. Just over one in ten (17, 11%) additionally feel there may be a differing impact for different groups of students, such as mature, postgraduate, undergraduate and masters' students, that needs to be considered across all proposals.

> The way the publicity for this is currently worded eclipses the existence of mature students. Reword and reconsider relationships that don't have inherent power imbalances in favour of the staff members, and account for this in your proposals.
> – Higher education provider – individual

271. Six (4%) indicate that the OfS should redefine its role in these proposals, in terms of providing guidance, taking providers' opinions into account, and ensuring the OfS remains within its remit (i.e., it is seen by these respondents to be beyond the OfS's remit to impose policies that may risk compromising institutional autonomy; or that the OfS should monitor higher education on the quality of teaching rather than an institution's capability to manage HSM).

272. Other concerns include:

- international campuses that may not adhere to the same core regulations or laws (six, 4%),
- existing policies already covering the proposal content being overlooked/made superfluous (five, 3%), and
- difficulties enforcing content (one, 1%).

273. Some (12, 9%), including five student or student representative bodies, relay various concerns or suggestions relating to legal or criminal definitions.

- Concerns regarding the government changing the definition of 'sex' within the Equality Act, and what this may mean for transgender students (three, 2%).
  - In addition, when considering perpetrators, that many transgender and LGBTQ+ individuals are excluded from the definition of rape in the Sexual Offences Act (2003), and unrepresented by the definition of harassment in the Equality Act (one, 1%).
- The incorporation of legal definitions may make those from certain backgrounds cautious to report, due to an anxiety towards the legal system (one, 1%).

2.8.2 Unclear aspects of the proposals

274. There were 142 responses to the question of whether there were aspects of the proposal found to be unclear. Of these, over one quarter (39, 27%) said that there were no unclear aspects.

275. Several (30, 21%) seek greater clarity in the definitions and terms used throughout the proposals, such as 'enough', 'sufficient', 'recourse', and 'appropriate resource'.

276. Several (20, 14%) – mostly (14) collective responses from providers – are unsure how the monitoring of compliance will occur, with some (six, 4%) unsure how data will be recorded or stored. In some cases, there is confusion over the OfS's precise role in monitoring and compliance.

277. Some (15, 8%) would welcome more clarity regarding the purpose and use of the single document. For example, it was unclear how the condition will be regulated if the single document is not approved by the OfS, or if the document was primarily for regulatory purposes or to communicate with staff and students.

278. Some (14, 10%) discuss the boundaries of the responsibilities that providers would have under the condition, specifically institutions' remit to control situations away from campus, for instance when students visit other countries as part of their learning.

279. Thirteen (9%) raise concerns about student training and whether the condition would compel students who have experienced HSM to undertake training, or what consequences the OfS would expect to see for students who do not engage with training.

280. Eleven (8%) – of which eight are collective provider responses – feel that the specifics around training were unclear. One believes it unclear what evidence suggests mandatory training would be possible or effective. Another asks who should be responsible for organising and running the mandatory training.

281. Ten (7%) believe the proposals are unclear as to whether postgraduate researchers are considered staff or students in the proposals.

282. A further 10 (7%) – of which nine are collective responses from providers – suggest that case studies or clear worked examples would help provide support for providers.

283. An additional 10 (7%) discuss the lack of clarity around third parties, such as communication between providers in the UK, or with international partners.

284. A few (eight, 6%) are concerned about the omission of direct reference or link to the police or the justice system in the proposals.

285. Some (six, 4%) discuss recording data and uncertainties with this aspect of the proposals, for instance relating to how providers will record data on relationships declared.

286. A further six (4%) perceive missing elements from the proposals, such as no explicit mention of bullying or hate crime, and no mention of the specific role of senior leadership or governance in this condition. Additionally, one respondent found it odd there were no mentions of the OIA and interactions with the Good Practice Framework.

287. Five (4%) believe the consultation document is inaccessible by being too long, written in 'policy language', and not being reader friendly.

288. Finally, some (13, 9%) would welcome greater specificity throughout the proposals on various topics:

    • how providers navigate their duty to staff and students, and who takes precedence (one, 1%),
    • more consideration for staff to be protected from students (one, 1%),
    • greater clarity on what timescale is favoured by the OfS (one, 1%),
    • what sanctions are expected for someone not disclosing a relationship and whether there is leeway or timeframe for someone disclosing (one, 1%),
    • what the requirements would be for providers who have already banned all staff/student relationships (one, 1%), and
    • other clarifications that were raised in other questions, and were therefore highlighted in those analyses (eight, 6%).

2.8.3 Delivering more efficiently or effectively

289. Respondents were asked for their views on whether policy objectives outlined in the proposal could be delivered more efficiently or effectively, and 135 comments were received, of which 10 (7%) simply answered 'no' or similarly.

290. Around two in five (50, 37%) would welcome additional guidance to improve the efficiency and effectiveness of policy objectives. Some (16, 12%) believe this will be effective to develop a framework for the sharing of best practice to aid delivery. Several (14, 10%) mention specific areas where they perceive clarity in guidance is needed, including:

    • simplifying or increasing accessibility of the proposals,
    • increased detail and/or better explanation of some definitions, and
    • in relation to how the proposals interact with the statement of expectations.

291. Some (seven, 5%) suggest that specific guidance relating to the processes and tools for reporting HSM incidents is disseminated by the OfS. Clarity on the OfS's level of involvement and support on this matter is welcomed. Two propose additional guidance relating to data gathering, monitoring, and access.

292. Around one third (49, 36%) perceive the proposals as regulatory overreach. Most of these (39) are collective provider respondents, across a range of provider types. Several (26, 19%) – of which 22 are collective provider responses – feel the proposals are too prescriptive and believe it would be more effective to deal with issues relating to HSM based on guidance, support and recommendation rather than regulation. Some (13, 10% including 11 providers) refer to a preference for self-regulation. In addition, some (16, 12%, including 12 providers) highlight the burden faced by administrative staff as a result of introducing extensive regulation.

> The policy objectives discussed in the consultation could be delivered more efficiently and effectively by universities implementing, monitoring and reviewing the requirements themselves, with the OfS providing high-quality guidance. Where the OfS believes the requirements are not being implemented, monitored and reviewed adequately via existing reporting mechanisms, they should work with the individual providers to address any issues.
> – Higher education provider – collective, High tariff

293. Some (17, 13%) refer to the statement of expectations in their suggestions and feel that demonstrable progress has already been made without regulation and that a mandatory condition of registration is premature. Others believe that any new measures and guidance should be clearly linked to the statement of expectations.

294. Sixteen (12%) have suggestions relating to review and compliance, including the following.

- Rather than introducing a new condition of registration, renewing or requiring providers to meet the statement of expectations and being clear that there will be monitoring compliance (three, 2%).
- Highlighting sanctions linked to funding for non-compliance, such as funding sanctions or penalties for specific managers that fail to comply (three, 2%).
- A national prevalence survey every three years for every institution and the requirement to publish necessary data (it is unclear if this refers to the pilot prevalence survey the OfS launched in 2023) (one, 1%).
- The creation of an overarching body across higher education providers which reacts to incidents and scrutinises offending institutions, rather than regulations across the sector (one, 1%).
- Giving providers that feel they have sufficient existing legislation the opportunity to demonstrate compliance without the introduction of further condition of registration (one, 1%).
- A framework or charter model for providers to receive a 'grading' such as bronze, silver, or gold for their work and response (one, 1%).
- The introduction of a bi-annual review period (one, 1%).
- Clarification as to how proposals will be enforced and monitored, and the matter of sanctions for non-compliance (one, 1%).

295. Eight (6%) have suggestions relating to the single document. Five propose that alternative formats to a single document should be considered, with four citing concerns for accessibility and two for administrative burden.

296. Seven (5%) suggestions relate to training. Two feel the mandatory training delivered should be broader than just active bystander training. Two feel there is scope to use external bodies to deliver training resources to providers. One suggests a standardised online training package with checks for compliance, while one advises that face-to-face training risks inefficiency.

297. Additionally, three (2%) raise the importance of collaboration and co-production of policy with students.

2.8.4 Impact for individuals based on their protected characteristics

298. Finally, respondents were asked if they had any comments about the potential impact of these proposals on individuals on the basis of their protected characteristics, and 116 substantive comments were received.

299. Around half (72, 62%) suggest considerations for various groups on the basis of protected characteristics ought to be included or better detailed in the proposals. Specific considerations for such groups include the following.

- Several (20, 17%) – including six students or student representative bodies – mention the need to recognise the disproportionate impact of HSM on individuals on the basis of their protected characteristics, and the disproportionate impact the proposals may have. These respondents often refer to figures showing that (for example) women, LGBT+, and/or neurodivergent people experience HSM to a proportionally greater degree. They suggest that the proposals acknowledge this more, and that additional guidance pertaining to these issues is released.

- Some (16, 14%) raise the issue of adhering tightly to freedom of speech principles and the effect this has on protecting minority groups from harm – five of these are students or student representative bodies. They caution against freedom of speech principles being used to justify hate speech and crimes towards many on the basis of protected characteristics.

- Ten (9%) express accessibility concerns, particularly regarding the proposed single document. They believe that many neurodivergent people or those with learning difficulties would struggle with the proposed format. One states directly that they feel this goes against Public Sector Bodies (Websites and Mobile Applications) Accessibility Regulations 2018.

- Five (4%) feel that potential differences for international students/staff ought to be taken into consideration. One suggests that students from different cultures might need different training. Another believes that the proposals have the potential to negatively impact staff working outside of the UK who are involved in unmarried/same-sex relationships, where they are prohibited by law.

300. Some (12, 10%) believe that an intersectional approach is needed when implementing these proposals, with five considering this has not been done sufficiently. They feel an intersectional framework is a vital component to limit harm and detrimental, unintended consequences for individuals on the basis of their protected characteristics.

301. A few (11, 9%) either expect or insist that the proposals are subject to an Equality Impact Assessment (EIA). They believe that this would provide the clarity needed to address the various issues raised relating to protected characteristics.

302. A few (nine, 8%) point out risks relating to mandatory training for students, arguing that the experience may be triggering for someone who has experienced HSM-related trauma. As a result, they suggest clear trigger warnings where relevant, in addition to making it clear that students who have experienced HSM do not have to attend.

303. Six (5%) believe the proposals protect all as they are.

304. Concerns or suggestions relating to legal or criminal definitions are noted.

- Concern that, while it is stated the new regulatory requirement will help address hate crime, the bulk of the consultation is perceived to address sexual misconduct. It is suggested that limiting the definition of harassment to that provided in the Equality Act 2010 would help ensure that the focus of any regulation is on protecting students from both hate crime and misconduct (one, 1%).

- Making sure that inclusive language is used in all communication – for example, by using the Sexual Offences Act 2003 definitions (one, 1%).

305. The following points were each raised by one respondent (1%).

- Consideration that vulnerable adults (e.g. those with certain developmental disabilities) may be subject to a line of questioning which other individuals are not, or may need different forms of training to understand which behaviours cannot be tolerated.

- The suggestion that the OfS works alongside students, institutions and campaigners to ensure that enough is being done to safeguard those from marginalised communities from sexual misconduct.

- The need for a diverse staff body to assure students in relation to such issues.

- Acknowledgement of the potential impact of conscious or unconscious bias, in terms of people either not being believed or pre-conceptions influencing decisions.

Concluding remarks

306. This report has provided an overview of responses received to the OfS's consultation relating to its proposed new approach to regulating HSM in English higher education.[11]

307. Based on the analysis of all 261 unique responses received to the consultation, and the student roundtable events, this chapter does not seek to cover the detail of all points raised in the consultation but draws together the themes and considerations most commonly raised by respondents, acknowledging instances where there is a range of views on certain topics.

Proposals broadly supported on the whole

308. Almost all the proposals are supported by the majority of respondents. Around three in five (58%) support – to some extent – the introduction of a new condition of registration, and related proposals C, D and E receive support levels of 62%, 56%, and 85%, respectively (although there is slightly lower support for proposal B at 45%). The proposals are perceived to outline an approach that will provide consistency and transparency for the sector, and to increase confidence in the system that incidents will be handled effectively and efficiently.

309. However, a minority do advocate a self-regulatory approach based on the OfS's previously published statement of expectations, which, in their view, allows greater consideration of local context.

Potential burden for providers

310. While there is broad support in principle, concern is raised that there will be a substantial burden for providers to implement the proposals, particularly the resourcing implications to undertake student training. This could be disproportionately large for smaller and specialist providers and negatively impact implementation.

Reporting staff/student relationships has more support than a total ban

311. Most (62%) support the OfS's own preferred option to report staff/student personal relationships and to maintain a register – or a variant thereof – while a minority (22%) support a ban – or a variant of this option. It is argued the former option allows for a variety of contexts and means risk can be judged, and that a ban is too restrictive. Data handling and privacy issues relating to the proposed register are flagged for consideration.

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[11] It should be reiterated at this point that, by its nature, this consultation is self-selecting in its response and cannot be said to be representative of the sector.

Concerns around timeframes for implementation

312. Around two in three (64%) disagree with the OfS's proposal G to enforce the proposals three months after a final decision is published. Six to 12 months is a more realistic timeframe as time will be required to train staff and students, to gain input from relevant stakeholders to co-develop and finalise the single document, while managing implementation with limited resources and against competing priorities.

More guidance welcomed

313. More guidance is welcomed so that providers have a clear understanding of what is required of them and to have clarity of the OfS's planned activities. Additional guidance and detail is therefore requested to cover aspects such as data publishing requirements, training requirements, providing a template for the single document, details of how the OfS plans to undertake monitoring and evaluation activities, and to share expectations around data storage for the proposed register of relationships. Clarification on situations where students could also be classed as staff (e.g. postgraduate researchers, placement students) is also requested.

Consider accessibility

314. The length of the consultation document, and the potential length of the single document, may undermine accessibility. Issues relating to the potential duplication of, or alignment to, material contained within existing policies and procedures is highlighted. Concerns are raised that some language used within the proposals is legalistic and could be simplified to be digestible by laypersons. Consideration should be given to publishing the document in multiple formats to boost accessibility.

Limitations to approach in using NDAs

315. While a ban on NDAs is widely supported, in some instances it will be important to retain confidentiality, for example to ensure a fair resolution or where a victim requests it. Concern is raised that providers' control on this will not realistically be able to extend to third parties. There may also be potential legal ramifications relating to the proposal for retroactive application.

Appendix 1: Respondent profile and grouping for analysis

This section outlines a more detailed respondent profile of consultation respondents. It also contains an explanation of how response categories available to respondents were grouped for subsequent analysis. Grouping available categories into a small number of derived categories means that each derived category has a higher number of responses, making subsequent cross-tabulation analysis more meaningful, particularly in instances where original categories have a very low number of respondents.

Organisation and respondent type

All respondents, including those submitting responses offline, were grouped – in agreement between Pye Tait Consulting and the OfS – and are reported according to the following categories.

Respondent type	Count	Per cent
Higher education provider – collective	97	38%
Higher education provider – individual	44	17%
Student or student representative body	44	17%
Advocacy group	14	5%
Sector and higher education professional body	10	4%
Third sector or private organisation	10	4%
Other	10	4%
Not specified	32	12%

Base: 261 respondents. Source: OfS consultation, 2023.
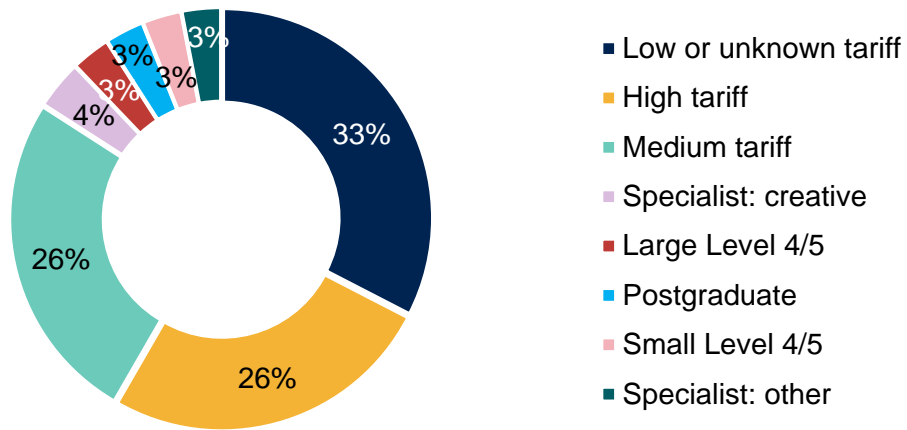
Higher education provider respondent profile: student typology

Higher education provider respondents – both those responding as individuals and those submitting a collective response – were categorised by student typology. Respondents were classified in agreement with the OfS according to the OfS's methodology. It is important to note that student typology has no regulatory status and does not imply any particular regulatory status or judgement of regulatory risk for providers in one group rather than another.

The student typology groups providers by student population and study characteristics at each provider. The factors used in defining this typology are:

- proportion of higher education student FTE at Level 4 or 5
- proportion of higher education student FTE at undergraduate level
- specialist indicators
- average tariff points for young entrants to the provider.

Figure 3 Higher education provider respondent profile by student typology

- Low or unknown tariff
- High tariff
- Medium tariff
- Specialist: creative
- Large Level 4/5
- Postgraduate
- Small Level 4/5
- Specialist: other

Base: 132 higher education provider respondents. Source: OfS consultation, 2023.

Further detail on the methodology used to categorise providers is available in the footnote reference.[12]

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[12] Office for Students, 2022, Provider typologies. See
https://www.officeforstudents.org.uk/media/905cacf5-a733-4e21-b49f-67aad785e610/provider-typologies-2022_dec2022-update.pdf

Appendix 2: List of respondents' organisations

Of the 261 respondents, 207 consented to their organisation name being published.

- Abingdon and Witney College
- Advance HE
- AMOSSHE
- Anglia Ruskin University
- Antisemitism Policy Trust
- Apex College
- Askham Bryan College
- Association of Colleges (AoC)
- Association of School and College Leaders (ASCL)
- Aston University (one individual and one collective response)
- Bath Spa University
- Birkbeck, University of London
- Birmingham City University
- Bishop Grosseteste University
- Bournemouth University, University of Suffolk
- Brighton Students' Union
- Brunel University London
- Buckinghamshire New University
- Canterbury Christ Church University
- Cardiff University
- Christ Church Students' Union, in collaboration with other students' unions in the Southern regional area
- Coventry University
- Coventry University Group
- Cranfield University
- Culture Shift
- Domestic Abuse Commissioner for England and Wales
- Durham Students' Union
- Durham University (three individual and one collective response)
- Equality and Human Rights Commission (EHRC)
- Eversheds Sutherland
- Falmouth and Exeter Students' Union
- Free Speech Union (FSU)
- GuildHE
- Harper Adams University
- Imperial College London (two individual and one collective response)
- Imperial College Union
- Independent HE (one individual and one collective response)
- Intersol Global
- Kaplan International Pathways
- Keele Student Union
- Keele University
- King's College London
- Kingston University

- Lancaster University
- Leeds Beckett University; joint response submitted with its students' union, Leeds Beckett Students' Union
- LimeCulture Community Interest Company
- Liverpool Guild of Students
- Liverpool John Moores University
- London Higher
- London School of Business and Finance
- London School of Management Education
- London South Bank University
- Love and Power / Empowered Campus
- Make it Mandatory
- Manchester Metropolitan University
- Middlesex University
- Mishcon de Reya
- Myerscough College
- National Union of Students
- Newcastle University
- Newman University Birmingham
- Northumbria University (four individual responses)
- Not On My Campus UK
- Nottingham Trent University (one individual and one collective response)
- Office of the Independent Adjudicator for Higher Education (OIA)
- Oxford Brookes University
- PUSH – The Preventing University Sexual Harassment (PUSH) group
- Queen Mary Student's Union
- Queen Mary University of London (one individual and one collective response)
- Rambert School of Ballet & Contemporary Dance
- Rape and Sexual Abuse Support Centre
- Reading Students' Union
- Regent's University London
- Royal College of Art
- Royal Holloway, University of London (one individual and one collective response)
- Royal Northern College of Music
- Shakespeare Martineau
- Sheffield Hallam University
- Sheffield Students' Union
- Simon Feegrade Higher Education Consultancy
- Solent University, Southampton
- South Essex College (one individual and one collective response)
- St George's, University of London
- St Mary's Students' Union
- Staffordshire University
- Staffordshire University Student's Union
- Student Minds
- Students' Union UCL
- Study Group Ltd
- Suzy Lamplugh Trust

- Teesside University
- Tender Education & Arts
- The 1752 Group
- The Consent Collective
- The Institute of Cancer Research
- The London School of Architecture
- The Northern School of Art
- The Open University
- The Queen's College (Cambridge)
- The Royal Veterinary College
- The Union, Manchester Metropolitan University
- The University of Law
- The University of Leeds
- The University of Manchester
- The University of Northampton and De Montfort University
- Trinity Laban Conservatoire of Music and Dance
- UK Council for International Student Affairs (UKCISA)
- UK Research and Innovation (UKRI)
- Union of Jewish Students
- Union of Students
- Unite the Union
- Universities UK (UUK)
- University Academy 92
- University Alliance
- University Centre Colchester
- University College Birmingham
- University College London (UCL) (one individual and one collective response)
- University for the Creative Arts (one individual and one collective response)
- University of Bath
- University of Birmingham
- University of Birmingham Guild of Students
- University of Brighton
- University of Bristol (two individual and one collective response)
- University of Bristol Students' Union
- University of Central Lancashire
- University of Central Lancashire Students' Union (UCLan SU)
- University of Chester
- University of Chichester (one individual and one collective response)
- University of Cumbria
- University of Cumbria Students' Union
- University of Derby (one individual and one collective response)
- University of East Anglia
- University of East London (one individual and one collective response)
- University of East London (UEL) Student Union
- University of Essex Students' Union
- University of Exeter
- University of Falmouth
- University of Gloucestershire (one individual and one collective response)

- University of Greenwich
- University of Greenwich Students' Union
- University of Hertfordshire
- University of Huddersfield
- University of Hull
- University of Kent
- University of Leicester
- University of Lincoln (one individual and one collective response)
- University of Lincoln Students' Union
- University of Liverpool
- University of Manchester
- University of Manchester Students' Union
- University of Nottingham (three individual and one collective response)
- University of Oxford (two individual and one collective response)
- University of Plymouth (two individual and one collective response)
- University of Portsmouth
- University of Sheffield
- University of Southampton (one individual and one collective response)
- University of Suffolk
- University of Surrey Students' Union
- University of Sussex
- University of Sussex Students' Union
- University of the Arts London (UAL)
- University of the West of England (UWE) (one individual and one collective response)
- University of Warwick (one individual and one collective response)
- University of Westminster
- University of Winchester
- University of Wolverhampton
- University of Worcester
- University of York
- Weston College/University Centre Weston
- Wiltshire College & University Centre
- Women's Aid
- Wonkhe
- Worcester Students' Union
- Yeovil College and Yeovil College University Centre
- York St John University

Appendix 3: Consultation questions

The full OfS consultation questions and wording are listed below.

The full consultation guidance, including supplementary wording and context provided for respondents, is available here:

https://www.officeforstudents.org.uk/publications/consultation-on-a-new-approach-to-regulating-harassment-and-sexual-misconduct-in-english-higher-education/

List of consultation questions

In responding to the questions in this consultation, we would encourage you to consider the potential for any unintended consequences of the proposals on particular types of provider or students, or on individuals on the basis of their protected characteristics.

Question 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.

Question 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.

Question 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.

Question 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.

Question 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 Offenses Act 2003? Please give reasons for your answer.

Question 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.

Question 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.

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

Question 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.

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

Question 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.

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

Question 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.

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

Question 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.

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

Question 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.

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

Question 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.

Question 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.

Question 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.

Question 11b: Please give reasons for your answer in question 11a above.

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

Question 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.

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

Question 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.

Question 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.

Question 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.

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

Question 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?

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

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