

Annex A: Condition E6: Harassment and sexual misconduct

General ongoing condition of registration

Scope

E6.1 This condition:

- a. covers subject matter relating to **incidents of harassment and/or sexual misconduct** which affect one or more **students** (including the conduct of **staff** towards **students**, and/or the conduct of **students** towards **students**); and
- b. applies in relation to **students** on higher education courses provided in any manner or form by, or on behalf of, a provider (including, but not limited to, circumstances where a provider is responsible only for granting awards for **students** registered with another provider).

Requirements relating to policies and procedures

E6.2 The provider must maintain a single **comprehensive source of information** which sets out policies and procedures on subject matter relating to **incidents of harassment and sexual misconduct**, including **intimate personal relationships** between **relevant staff members** and **students**.

E6.3 That single **comprehensive source of information** (and any revisions made to it from time to time) must:

- a. comply at all times with the **minimum content requirements** and the **content principles**;
- b. be published and accessible at all times in a manner which complies with the **prominence principles**; and
- c. allow for users to clearly identify the version of a policy that existed at previous times by making historical versions of policies available for an appropriate period, and being transparent about changes made to their content. This should be done in a manner that is in line with the **prominence principles**.

E6.4 Subject to paragraph E6.8 (which takes precedence over any other requirements of this condition), the provider must operate in accordance with and comply with the single **comprehensive source of information** referred to in paragraph E6.2.

Requirements relating to intimate personal relationships between staff and students

E6.5 In addition to any other requirements of this condition, in respect of **intimate personal relationships**, the provider must ensure that the single **comprehensive source of information** referred to in paragraph E6.2 provides for one or more steps which could (individually or in combination) make a significant and credible difference in protecting **students** from any actual or potential conflict of interest and/or **abuse of power**.

E6.6 For the purposes of paragraph E6.5

- a. a **ban on intimate personal relationships** is deemed to be a step which could make a significant and credible difference in protecting **students**; and
- b. a statement made by the provider to the effect that it disapproves of and/or discourages **intimate personal relationships** between **staff** and **students** may contribute to compliance but will not individually be treated as a step which could make a significant and credible difference in protecting **students**.

Requirements relating to capacity and resources

E6.7 The provider must have the **capacity and resources** necessary to facilitate compliance with this condition.

Requirements relating to freedom of speech

E6.8 The provider must comply with the requirements of this condition in a manner which is consistent with the **freedom of speech principles**.

E6.9 For the avoidance of doubt, paragraph E6.8 applies in respect of (but is not limited to) decisions taken by the provider about whether or not its policies and procedures will include (or, as the case may be, continue to include) content on matters relating to **harassment** to the extent that such content:

- a. goes further than its obligations under the Equality Act 2010 or any other legal requirement (for example, by adopting or applying the Equality Act 2010 concepts of harassment to conduct related to speech by a student); and
- b. could reasonably be considered capable of having a negative impact on, or having the object or effect of restricting, freedom of speech within the law and/or academic freedom.

Requirements relating to restricting the disclosure of information

E6.10 The provider must not include any **restricting provisions** in any contract formed or varied on or after the date this condition takes effect.

Definitions (which include substantive requirements)

E6.11 For the purposes of this condition E6:

- a. **'abuse of power'** means a situation where a **relevant staff member** exploits a position of power in relation to a **student** so as to apply pressure in a way which:
 - i. may result in the **student** doing something, or refraining from doing something, that they may not have otherwise done; and
 - ii. that action or inaction could reasonably result in something that falls within the scope of an **intimate personal relationship**.

- b. **'appropriate support'** means the effective deployment of assistance, including but not limited to:
- i. support targeted at the needs of **students** involved in any way in an **incident of harassment** and/or **sexual misconduct**, including but not limited to during an investigatory and decision-making process;
 - ii. personal support, including in the form of counselling where appropriate;
 - iii. academic support, including in relation to decisions about attendance, continuation, suspension or cessation of study.
- c. **'appropriately informed to ensure understanding'** includes, but is not limited to ensuring that:
- i. **students** understand the content of the single **comprehensive source of information** required by paragraph E6.2 when they register at the start of each year of study; and
 - ii. induction sessions for new **students** contain training to ensure they understand behaviour that may constitute **harassment** and/or **sexual misconduct**.
- d. **'appropriately trained'** means **staff** have and maintain:
- i. up-to-date understanding of the content of the single **comprehensive source of information** required by paragraph E6.2 and all the requirements of this condition;
 - ii. up-to-date understanding of behaviour that may constitute **harassment** and/or **sexual misconduct**;
 - iii. the required knowledge and skills to support **students** who:
 - A. wish to make allegations or complaints about **harassment** and/or **sexual misconduct**;
 - B. have alleged and/or experienced **incidents** of **harassment** and/or **sexual misconduct**; and
 - C. are the actual or alleged perpetrators of **incidents** of **harassment** and/or **sexual misconduct**; and
 - iv. the required knowledge and skills to undertake investigations or make decisions in relation to **incidents** of **harassment** and/or **sexual misconduct**.
- e. **'ban on intimate personal relationships'** means a policy or rule which provides for both of the following elements:

- i. with the exception of **excluded relationships**, any **relevant staff member** is prohibited from having an **intimate personal relationship** with one or more **students**; and
 - ii. any breach of such prohibition by a **relevant staff member** would result in the provider taking appropriate steps in line with its usual disciplinary process, including the possibility of the breach resulting in dismissal of the **relevant staff member**.
- f. **'capacity and resources'** includes, but is not limited to:
- i. the financial resources of the provider;
 - ii. the number, expertise, and experience of the **staff** employed or contracted by the provider; and
 - iii. the resources deployed by the provider to undertake investigations or make decisions in relation to **incidents of harassment** and/or **sexual misconduct**.
- g. **'comprehensive source of information'** means:
- i. a single document or webpage that comprehensively sets out all the information required in order to comply with E6.2 and E6.3; or
 - ii. a single document or webpage that gives a clear summary of the information required by E6.2, complies with E6.3, and links to additional documents that comprehensively set out the remaining relevant detail as required by E6.2 and E6.3. If the provider adopts this approach, the single document or webpage must include a summary of the content to be found by following these links.
- h. **'content principles'** means the following requirements:
- i. the provider may include other additional information and provisions in the single **comprehensive source of information** in addition to the **minimum content requirements**, but such other information and provisions must:
 - A. not contradict, undermine or conflict with the **minimum content requirements**; and
 - B. be subject to a provision which makes it expressly clear that the **minimum content requirements** take precedence over any other information and provisions;
 - ii. the provider must not include information and provisions on subject matter relating to **harassment** and/or **sexual misconduct** (and/or any subject matter of a similar nature to matters covered by those defined terms) in any other documents which could reasonably be considered to contradict, undermine or conflict with the **minimum content requirements**.
- i. **'excluded relationships'** means any ongoing **intimate personal relationship** that:

- i. existed before the date this condition comes into force and that remains in existence; or
 - ii. existed before the date that the **staff** member became a **relevant staff member** in relation to that **student**.
- j. **'freedom of speech principles'** means the following requirements:
- i. irrespective of the scope and extent of any other legal requirements that may apply to the provider, the need for the provider to have particular regard to, and place significant weight on, the importance of freedom of speech within the law, academic freedom and tolerance for controversial views in an educational context or environment, including in premises and situations where educational services, events and debates take place;
 - ii. the need for the provider to apply a rebuttable presumption to the effect that **students** being exposed to any of the following is unlikely to amount to **harassment**:
 - A. the content of higher education course materials, including but not limited to books, videos, sound recordings, and pictures;
 - B. statements made and views expressed by a person as part of teaching, research or discussions about any subject matter which is connected with the content of a higher education course.
- k. **'harassment'** has the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997 (in its entirety, and as interpreted by section 7 of the Act).
- l. **'incidents'** includes, but is not limited to, circumstances where:
- i. allegations or complaints are made to the provider about **harassment** and/or **sexual misconduct**; and
 - ii. the provider could reasonably be considered to have grounds for suspecting that **harassment** and/or **sexual misconduct** has taken place or is taking place.
- m. **'intimate personal relationship'** means a relationship that involves one or more of the following elements:
- i. physical intimacy including isolated or repeated sexual activity; or
 - ii. romantic or emotional intimacy.
- n. **'minimum content requirements'** means comprehensive and easy to understand provisions in respect of:
- i. in addition to any other steps required by virtue of the condition, multiple steps which could (individually or in combination) make a significant and credible difference in protecting **students** from behaviour that may amount to

- harassment** and/or **sexual misconduct**, including, but not limited to, steps that may reduce the likelihood of **harassment** and/or **sexual misconduct** taking place;
- ii. 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;
 - iii. how information received or obtained in connection with **incidents of harassment** and/or **sexual misconduct** will be handled sensitively and used fairly;
 - iv. how the provider ensures that **students** are **appropriately informed to ensure understanding**;
 - v. the **appropriate support** that will be provided to **students** in response to **incidents of harassment** and/or **sexual misconduct**. This includes, but is not limited to, **students** who have alleged and/or experienced **incidents of harassment** and/or **sexual misconduct** and actual or alleged perpetrators;
 - vi. 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**;
 - vii. how the provider ensures that investigations undertaken and decisions made in respect of **incidents of harassment** and/or **sexual misconduct** are credible, fair and otherwise reflect established principles of natural justice;
 - viii. 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. This includes, but is not limited to, persons who have alleged and/or experienced **incidents of harassment** and/or **sexual misconduct** and actual or alleged perpetrators.
- o. '**prominence principles**' means the following requirements in respect of the single **comprehensive source of information** required by paragraph E6.2:
- i. the single **comprehensive source of information** is published in a prominent position in an area of the provider's website which is easily accessible by **students** and those considering applying to be **students** without the need for any form of password or security check;
 - ii. a clear and easy to understand statement about the existence of the single **comprehensive source of information**, the nature of its content, and how to access it is:
 - A. communicated directly to all **students** and **staff** in writing at least once each calendar year; and

- B. set out in the main documents designed to promote the higher education services available from the provider (for example, any document that is commonly known as a prospectus);
 - C. set out in any documents that are designed to provide a collection of useful information about rules, policies and procedures for **students** and **staff** (for example, any documents that are commonly known as student handbooks and staff handbooks).
- p. **‘relevant staff member’** means a member of **staff** who has direct academic responsibilities, or other direct professional responsibilities, in relation to that **student**.
- q. **‘restricting provisions’** means any provisions that have the object or effect of preventing or restricting any **student** from disclosing information about an allegation of **harassment** and/or **sexual misconduct**, which in any way involves or affects one or more **students**, to any other person.
- r. **‘staff’** includes but is not limited to employees and contractors.
- s. **‘sexual misconduct’** means any unwanted or attempted unwanted conduct of a sexual nature and includes, but is not limited to:
- i. sexual harassment;
 - ii. sexual assault; and
 - iii. rape.
- t. **‘students’** includes, but is not limited to, persons who are registered on a higher education course and, at any point in time within the overall duration of that higher education course, are employed by, or otherwise providing services to, a higher education provider.

Summary

Applies to: all registered providers

Initial or general ongoing condition: general ongoing condition

Legal basis: section 5 of HERA

Guidance

Condition E6.1

1. The reference to higher education courses provided ‘in any manner or form’ includes any higher education course (whether or not that course is recognised for OfS funding purposes, or any other purpose), at any level, and with any volume of learning. This means, for example,

any research courses, the study of modules or courses leading to microcredentials, and apprenticeships are included within the scope of this condition. It also includes courses provided face-to-face, by distance learning, or a combination of delivery approaches.

2. This condition applies to any higher education course provided 'by, or on behalf of, a provider'. This includes higher education provided to all of the students who are registered with a registered provider, taught by a registered provider or studying for an award of a registered provider (or where these services are provided on a registered provider's behalf). This includes UK-based and non-UK-based students, and courses delivered through partnership arrangements both within the UK and internationally.
3. The reference to 'including, but not limited to, circumstances where a provider is responsible only for granting awards for students registered with another provider' means that a provider is required to comply with the provisions of this condition where it is the awarding body for a course, whether or not that provider has any other role in the design or delivery of that course.
4. Where a provider is not the awarding body for a course, this condition applies to a course the provider itself delivers, or which is delivered on its behalf, regardless of the identity of the awarding body, whether or not that awarding body is registered with the OfS, or the nature of any partnership agreement. For the avoidance of doubt, this means for example, that a provider delivering, or allowing another provider to deliver, courses leading to a qualification awarded by Pearson is responsible for compliance with this condition in relation to those courses. Similarly, a provider delivering, or allowing another provider to deliver, courses leading to a qualification awarded by another higher education provider, whether that awarding provider is located in England or elsewhere, is responsible for compliance with this condition in relation to those courses.
5. In practice, these provisions may result in more than one registered provider being responsible for compliance with this condition in relation to the same students.
6. 'Harassment' has the meaning given in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997. Section 1 of the Protection from Harassment Act 1997 is interpreted in accordance with section 7 of that Act. This does not create a requirement for a provider to use a criminal standard of proof in its own internal investigations. A provider should make clear to students and staff that any judgements reached as part of an investigation do not constitute a legal ruling on whether or not criminal activity has taken place.
7. These definitions of 'harassment' in section 26 of the Equality Act 2010 and section 1 of the Protection from Harassment Act 1997 include 'objective' and 'reasonableness' tests:
 - a. In the context of section 26 of the Equality Act 2010, in deciding whether conduct has the effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment towards that person, it is necessary to take into account: the perception of the person who is at the receiving end of the conduct; the other circumstances of the case; and whether it is reasonable for the conduct to have that effect. The last point is important because it introduces an element of objectivity into the test. The perception of the person who is at the receiving end of the conduct is not the only relevant consideration in determining whether the conduct amounts to unlawful harassment.

- b. In the context of section 1 of the Protection from Harassment Act 1997, an offence is committed only if the person knows the conduct amounts to harassment of the other, or a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person.
8. These objective tests are of particular importance in a higher education context where a provider may face pressure from students or staff, or pressure from external groups, to curtail speech that is lawful but which is perceived as offensive towards a particular person or group of persons.
9. A provider should provide support to students who report harassment and sexual misconduct regardless of whether the provider considers that the incident meets the objective tests.
10. This condition contains a definition of harassment that mirrors the definitions in section 1 of the Protection from Harassment Act 1997 and section 26 of the Equality Act 2010, and extends this to capture harassment by one student of another student. This does not affect a provider's obligations under the Equality Act 2010 and its compliance with those obligations. Instead the wording of section 26 of the Equality Act 2010 is used as a basis for defining the scope of harassment for the purposes of this condition of registration.
11. 'Sexual misconduct' means any unwanted or attempted unwanted conduct of a sexual nature and includes, but is not limited to:
 - a. sexual harassment;
 - b. sexual assault; and
 - c. rape.
12. Where conduct does not fall squarely within the examples in the paragraph above, that conduct may still amount to sexual misconduct under this definition where it is unwanted or attempted unwanted conduct of a sexual nature. The definition therefore includes the most serious behaviour of sexual assault and rape but this is not intended to be an exhaustive list.
13. Harassment and sexual misconduct that is conducted online should be included in a provider's policies. A provider may wish to include further examples of conduct covered by this definition in its policies, provided this does not conflict with the definitions set out in E6.11.
14. An 'incident' of harassment and/or sexual misconduct includes a wide range of circumstances. For example, it includes, but is not limited to, allegations, complaints, suspected behaviour, and formal findings of harassment and/or sexual misconduct. This means that it also includes instances where a formal complaint is not made, or where there is insufficient evidence to progress to disciplinary proceedings.
15. Addressing harassment and sexual misconduct of students carried out by individuals who are neither staff nor students would be consistent with compliance with the condition. A provider may have less influence over harassment and sexual misconduct by individuals who are not students or staff of the provider. Providers should consider what sort of action is appropriate for addressing harassment and sexual misconduct in different contexts. For instance, an incident may occur outside of the provider context where the provider has no, or limited, ability

to prevent this. However, the provider should still be able to take significant and credible steps to protect students through supporting those who experience harassment or sexual misconduct even if this takes place outside of the provider context.

16. In order to support good governance and to help demonstrate compliance with this condition, a provider should keep appropriate records of its decisions about the steps it will take to protect students. This should include factors a provider has taken into account when making its decisions.

Condition E6.2, E6.3 and E6.4

17. Condition E6.2 requires a provider to maintain and publish a comprehensive source of information which sets out its policies and procedures on subject matter relating to incidents of harassment and/or sexual misconduct, with which the provider must then comply. This can take the form of a single document or webpage which sets out all relevant policies and procedures, or a single document or webpage which comprehensively sets out a provider's approach and also provides a summary of, and links to, additional documents that comprehensively set out policies and procedures on subject matter relating to harassment and sexual misconduct. The comprehensive source of information must comply with minimum content requirements and content principles. It must be accessible and published in a way that is consistent with the prominence principles.
18. A provider must be transparent about changes it has made to the content of its comprehensive source of information and ensure that historical versions are easily accessible in line with the prominence principles. Information must be accessible for as long as it is relevant to a student in order to protect their interests. For example, this would include the need for individuals involved in an investigatory process to access and store the information for the duration of that process. A provider should consider the need for historical versions of some policies to be available to students to access after they leave their course, because, for example, they may be relevant to a complaint. It may also be helpful to students for a provider to make the information in the single comprehensive source of information downloadable. Transparency about changes to policies allows students to understand what they can expect from their provider and the expectations placed on them. For example, students should be clear how a complaint will be handled if a provider's policies have changed between an incident and the complaint being raised.
19. The requirement for a single comprehensive source of information allows a provider to share information in other forms – it may be beneficial to have simpler or more narrowly framed documents targeted at particular audiences. However, students and other users of a provider's policies should be clear that the single comprehensive source is authoritative and should know how to access it. Other sources of information should not contradict it.
20. In relation to the minimum content requirements, the single comprehensive source of information referred to in condition E6.2 must set out 'multiple steps which could (individually or in combination) make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, including, but not limited to, steps that may reduce the likelihood of harassment and/or sexual misconduct taking place'. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information and it is therefore required to take 'multiple steps' as described above in practice.

21. Taking steps that could make a significant and credible difference would lead to a reduction in the prevalence of harassment and/or sexual misconduct and would protect a provider's students from their impact, for example through support for students who have experienced incidents of harassment or sexual misconduct. The steps that may be significant and credible will depend on the context for an individual provider because they will need to be informed by the nature and severity of the issues faced by a provider's students. The minimum content requirements mean that each provider will need to understand its student population and the extent to which its students may be likely to experience harassment or sexual misconduct in order to properly address these issues. A provider with higher prevalence rates of harassment and/or sexual misconduct would be likely to need to take more, and more extensive, steps to make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct. This would include, but not be limited to, steps that may reduce the likelihood of harassment and/or sexual misconduct taking place.
22. The minimum content requirement to take steps to make a significant and credible difference is in addition to the other steps required by the condition. While a provider is required to meet the other minimum content requirements and provisions of the condition, it is also expected to develop and implement one or more steps to meet this particular minimum content requirement.
23. The following is an illustrative non-exhaustive list of examples of activities a provider could undertake to identify steps which could together make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, and/or reducing the likelihood of harassment and/or sexual misconduct taking place:
 - a. Consider the potential needs of different groups of students, including those with needs affected by a student's protected characteristics. This may include, for example, working with students and their representatives when a provider develops its policies and procedures to ensure that they are appropriate for the provider's particular student population. This may include inviting students to provide feedback on the likely significance and credibility of the difference that the steps a provider proposes to take will make in protecting students from behaviour that may amount to harassment and/or sexual misconduct.
 - b. Collect, monitor and publish data where this is likely to inform effective action to protect students from behaviour that may amount to harassment and/or sexual misconduct. This may include data relating to the prevalence of harassment and/or sexual misconduct affecting students. It may also include data about reporting, such as the number and type of incidents reported to the provider, how many of these lead to an investigation, and the outcomes from incidents and investigations. Where data on prevalence and reporting is available a provider should consider whether understanding the relationship between prevalence and reporting rates can improve its understanding of campus culture and the effectiveness of the steps it is taking.
 - c. Undertake credible and evidence-based evaluation of the effectiveness of the steps it is taking to make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, and reviewing and adjusting its approach as appropriate.

- d. Consider how to best prevent the use, enforcement and/or reliance on non-disclosure agreements (NDAs) in matters relating to harassment and/or sexual misconduct by third parties, such as placement providers.
24. The examples listed in paragraphs 23a-d are likely to be steps which could assist a provider in making a significant and credible difference in reducing the likelihood of harassment and/or sexual misconduct taking place, and protecting students from behaviour that may amount to harassment and/or sexual misconduct. This is because they place significant emphasis on the need for a provider to engage with its students and their particular experiences of harassment and sexual misconduct in order to determine the steps that may be needed.
 25. A provider with higher prevalence rates of harassment and/or sexual misconduct would be likely to need to take more extensive steps to make a significant and credible difference in protecting students from behaviour that may amount to harassment and/or sexual misconduct, including, but not limited to, steps that may reduce the likelihood of harassment and/or sexual misconduct taking place. The OfS would not expect a provider to rely only on data measuring reports of incidents (reporting rates) to determine the prevalence of harassment and sexual misconduct. The provider should also consider other relevant evidence about the prevalence of harassment and sexual misconduct. This is because a provider may have lower reporting rates because it has already taken significant and credible steps to effectively tackle and manage harassment and sexual misconduct, or it may have lower reporting rates because its reporting mechanisms are inadequate or ineffective. Condition E6 requires all providers to ensure they have effective reporting mechanisms in place (see paragraph 30 below).
 26. Condition E6.2, and the minimum content requirements, require a provider to set out in a single comprehensive source of information how it will ensure that students are 'appropriately informed to ensure understanding' of their provider's policies and behaviour that may constitute harassment or sexual misconduct. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that students are appropriately informed to ensure understanding in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:
 - a. Mandatory training is delivered for all students.
 - b. Training for potential witnesses of sexual misconduct (often referred to as 'bystander training'), and training on sexual consent, is delivered.
 - c. Training is underpinned by credible evidence, and its effectiveness is evaluated.
 - d. Training is designed and delivered by persons with credible and demonstrable expertise.
 - e. Training (including that delivered by third parties) is consistent with a provider's free speech obligations.
 27. The OfS expects training to be mandatory rather than optional, but a provider should use its judgement in relation to individual students who may have good reasons for not participating, for example, a student who has previously experienced harassment or sexual misconduct. A provider should actively support students' participation in training. For example, if a provider finds that a significant proportion of its students are asking to be exempted from a particular

training session, the provider should consider whether additional support or adjustments to that training would increase participation.

28. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how it will ensure that staff are 'appropriately trained'. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that its staff are appropriately trained in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:

- a. Mandatory specialist training is delivered for staff likely to be involved in receiving disclosures about incidents of harassment and/or sexual misconduct, undertaking investigations, and making decisions about disciplinary cases. This training should ensure that relevant staff have a clear understanding of a provider's relevant policies and procedures, which results in appropriate practical application.
- b. Mandatory training in relation to the freedom of speech principles set out in this condition is delivered to ensure that staff have a proper understanding of relevant free speech rights and responsibilities, the content of the document required by paragraph E6.2 and all the requirements of this condition, including E6.8.
- c. Training is underpinned by credible evidence, and its effectiveness evaluated.
- d. Training is designed and delivered by persons with credible and demonstrable expertise.
- e. Training (including that delivered by third parties) is consistent with a provider's free speech obligations.

29. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how it will ensure that students are provided with 'appropriate support' when they wish to make allegations or complaints, have alleged and/or experienced harassment or sexual misconduct, or are actual or alleged perpetrators. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that 'appropriate support' is provided in practice. A provider may determine the approach it takes to making such support available to students, for example, by delivering its own support services, commissioning support from other organisations, or making appropriate and effective referrals to other service providers. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:

- a. Support is targeted at the needs of students who wish to make allegations or complaints about harassment and/or sexual misconduct, including, but not limited to during any investigatory and decision-making process.
- b. Support is targeted at the needs of students who have alleged and/or experienced incidents of harassment and/or sexual misconduct, including, but not limited to during any investigatory and decision-making process.

- c. Support is targeted at the needs of students who are the actual or alleged perpetrators of incidents of harassment and/or sexual misconduct, including, but not limited to during any investigatory and decision-making process.
 - d. Students who have alleged and/or experienced sexual misconduct are signposted to sources of specialist personal support, such as counselling or to a Sexual Assault Referral Centre, where appropriate.
 - e. Support is available to, and appropriate for, students with different needs, including those with needs affected by a student's protected characteristics.
 - f. Support is provided at all relevant times as appropriate, for example, before any formal investigation, for the duration of an investigation, and following its outcome. This includes for students who have alleged and/or experienced harassment or sexual misconduct, actual or alleged perpetrators and witnesses.
 - g. Students who have alleged and/or experienced harassment or sexual misconduct, witnesses, and/or alleged or actual perpetrators are signposted to a provider's relevant academic support, such as processes for extenuating circumstances or support with assessment.
 - h. Support is provided to ensure the continued academic engagement of any student involved in an investigation, or a disciplinary or similar process, where a student wishes to continue studying. It may be appropriate to make changes to academic and/or assessment arrangements for a student who has alleged and/or experienced harassment or sexual misconduct, an alleged perpetrator or a witness, during or following such a process.
 - i. Support is available to students who have alleged and/or experienced harassment or sexual misconduct, whether or not they decide to make a formal report about an incident
 - j. Support is available to students who have alleged and/or experienced harassment or sexual misconduct, whether or not the incident has occurred on a provider's premises or in connection with a student's registration.
30. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how students, staff and other persons are able to report behaviour that may amount to harassment and/or sexual misconduct to the provider. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that it has appropriate reporting mechanisms in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:
- a. Clear information is published about where and how a report can be made.
 - b. A range of different mechanisms is provided for making a report, including in person and online.
 - c. Reports are accepted on behalf of students who have alleged and/or experienced harassment or sexual misconduct, or on behalf of witnesses, from third parties, for example third party reporting centres.

- d. Any mechanisms intended to support anonymous reporting of allegations of harassment are implemented and explained to students and staff in a way consistent with the freedom of speech principles in condition E6 to ensure that they do not have, and do not risk having, a negative effect on freedom of speech.
- e. Any unnecessary actual or perceived barriers that may make students who have alleged and/or experienced harassment or sexual misconduct, or witnesses to incidents of harassment or sexual misconduct, less likely to make a report are removed.

31. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how information received or obtained in connection with incidents of harassment and/or sexual misconduct will be handled sensitively and used fairly. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that information is handled sensitively and used fairly in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:

- a. Information is collected sensitively and treated with appropriate confidentiality, irrespective of the mechanism used to make a report or disclose information, for example, in person or online.
- b. Information is handled on the basis set out in data protection legislation.
- c. Students understand how information they disclose may be used, for example during a disciplinary process for a student or a member of staff.

32. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how it will ensure that investigations undertaken and decisions made in respect of incidents of harassment and/or sexual misconduct are credible, fair and otherwise reflect established principles of natural justice. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that its investigation and decision-making processes are credible, fair and otherwise reflect established principles of natural justice in practice. The following is an illustrative non-exhaustive list of examples of how a provider may demonstrate that it has complied with these requirements:

- a. The policy which sets out the circumstances in which a provider would initiate an investigatory or decision-making process against a student or a member of staff, is clear and easy to understand. The policy also explains how any process would address allegations that may also constitute a criminal offence.
- b. Information about various matters, including but not limited to the following, is clear, accessible and explicit:
 - i. a provider's investigatory process
 - ii. a provider's decision-making process

- iii. timescales for investigation and decision-making, including factors which may affect timescales
- iv. the range of possible actions that may result from a provider's investigation and decision-making process
- v. any appeal mechanism in relation to a provider's decisions and how this can be triggered.

c. Investigatory and disciplinary processes are free from any reasonable perception of bias.

33. Condition E6.2 and the minimum content requirements require a provider to set out in a single comprehensive source of information how it will ensure that persons directly affected by any decisions made in respect of incidents of harassment and/or sexual misconduct (including, but not limited to, those who have alleged and/or experienced incidents of harassment or sexual misconduct and actual or alleged perpetrators) are directly informed about the decisions and the reasons for them. Condition E6.4 requires a provider to operate in accordance with, and comply with, its single comprehensive source of information. A provider is therefore required to ensure that relevant individuals are directly informed in practice. The following is an illustrative non-exhaustive list of how a provider may demonstrate that it has complied with these requirements:

- a. Information about various matters, including but not limited to the following, is clear, accessible and explicit:
 - i. how all relevant parties affected by any decisions made by a provider will be identified
 - ii. the information that will be shared with each relevant party, and the timing of this.
- b. Those directly affected by any decisions made – those who have alleged and/or experienced incidents of harassment or sexual misconduct, witnesses, and/or alleged or actual perpetrators – are in practice provided with sufficient information to understand the provider's decisions and the reasons for them.

34. In relation to all of the content of its single comprehensive source of information, a provider must ensure that its approach is set out in 'comprehensive and easy to understand provisions'. This means, for example, that each provision must be clear in its own right, and not require a detailed knowledge of the provider's other policies or processes.

35. The content principles explain that a provider may include other information and provisions in its single comprehensive source of information. However, any such additions must not contradict, undermine or conflict with the minimum content requirements, and must include a provision which makes it expressly clear that the minimum content requirements take precedence over any other information and provisions. Further, such additions must not include information and provisions on subject matter relating to harassment and/or sexual misconduct (and/or any subject matter of a similar nature to matters covered by those defined terms) which could reasonably be considered to contradict, undermine or conflict with the minimum content requirements. It should be noted that under E6.8 a provider will also need to comply with this requirement in a manner which is consistent with the freedom of speech principles.

36. The nature of a provider's students and courses may mean that it needs to maintain more than one policy relating to harassment and sexual misconduct. If different policies apply to different groups of students this should be clear and individual students should be able to easily identify which policies apply to them. The following is an illustrative non-exhaustive list of examples in this context:
- a. Legal safeguarding obligations that apply to under-18s and 'adults at risk' receiving higher education.
 - b. Students studying on a regulated or accredited course may be subject to additional safeguarding or fitness-to-practice requirements.
 - c. Postgraduate students may have obligations to a research or funding body which may have differing policies or procedures as a condition of funding, support, or access to resources.
37. The prominence principles ensure that a provider's single comprehensive source of information is prominent and accessible for current students and potential future students. They also require a provider to ensure that awareness of its single comprehensive source of information is raised with students and staff through direct communication and by references in other documents, such as a prospectus or student or staff handbook.

Condition E6.5 and E6.6

38. A provider identifying steps it will take to comply with this requirement should consider the different forms of abuse of power that can take place within intimate personal relationships between staff and students and how the steps it introduces will be effective in addressing these. The following is an illustrative and non-exhaustive list of examples of detrimental treatment and favourable treatment of students that may occur in the context of intimate personal relationships between relevant staff members and students:
- a. Not receiving a positive review or reference, or receiving a negative review or reference.
 - b. Unfavourable treatment in academic assessments, for example, less access to support or feedback, less opportunity for extensions, lower grades or marks.
 - c. Not receiving funding for research.
 - d. Restricting access to resources.
 - e. Restricting participation in aspects of a student's education.
 - f. Receiving a positive review or reference.
 - g. Favourable treatment on academic assessments, for example greater access to support or feedback, more opportunity for extensions, higher grades or marks.
 - h. Being promised access to funding and resources.
 - i. Being promised introductions to others who could advance their academic or professional career.

39. The requirements in E6.5 are not intended to prohibit staff from discharging their professional, pastoral or academic responsibilities within appropriate professional boundaries. For example, a staff member may necessarily have physical contact with a student as part of their academic role (e.g. modelling appropriate physiotherapy techniques) or a personal connection with a student as part of their academic or professional role (for example, as a personal tutor or as a counsellor). The definition of 'intimate personal relationship' in E6.11 includes reference to 'emotional intimacy' and this should not prevent a member of staff engaging compassionately and considerately with a student on a professional basis. This may be particularly important when engaging with students in distress. In its policy, a provider should be clear about its expectations in this area. Equally, a provider should be aware that 'emotional intimacy' may be formed through grooming behaviours, which could result in, or constitute, abuse of power.
40. As specified in E6.6, a provider may meet the requirement in E6.5 by prohibiting intimate personal relationships between relevant staff members and students. Alternatively, it may identify other steps to comply with this requirement. The following is an illustrative and non-exhaustive list of steps a provider could take as part of a package of measures to make a significant and credible difference in protecting students from any actual or potential conflict of interest and/or abuse of power:
- a. Explicitly discouraging intimate personal relationships between relevant staff members and students in its messaging to students and staff.
 - b. Raising awareness among students of behaviours which may amount to abuse of power, coercion, or sexual and/or romantic advances in the context of intimate personal relationships.
 - c. Empowering students to refuse and report inappropriate behaviours from staff and providing information about how they can access support.
 - d. Ensuring staff are appropriately trained about appropriate professional boundaries and the likelihood of harassment and sexual misconduct occurring within such relationships.
41. A provider may choose to implement a ban on intimate personal relationships that allows for exemptions, or may choose not to implement a ban at all. In either of these cases, intimate personal relationships between relevant staff and students may be permitted. If so, the provider should seek to manage and address any actual or potential conflict of interest, or abuse of power, as a result of the relationship. The following is an illustrative and non-exhaustive list of examples of the range of steps a provider may take to manage and address any actual or potential conflict of interest or abuse of power in intimate personal relationships:
- a. Requiring staff to disclose intimate personal relationships with students when they occur, and maintaining a record of these.
 - b. Managing the academic and/or professional interaction between a relevant staff member and a student with whom the relevant staff member has an intimate personal relationship, in order to ensure the student's academic, employment and pastoral interests are not compromised. For example:

- i. Ensuring a student can report any harassment or sexual misconduct through a mechanism that does not involve the member of staff with whom they have an intimate personal relationship.
 - ii. Ensuring a student is not at risk of adverse academic results, or negative references due to the actual or potential conflict of interest or abuse of power, by putting in place a mechanism that ensures that the staff member cannot influence these, or appear to influence them.
- c. Managing the academic or professional interaction between a relevant staff member and a student with whom the staff member has an intimate personal relationship, in order to ensure that there is confidence these are being approached fairly for all students. For example:
- i. Ensuring there is no potential or actual unfair advantage to a student, for example in assessment, references or academic opportunities, due to their intimate personal relationship with a staff member.
 - ii. Amending the responsibilities of the staff member so they no longer meet the definition of a 'relevant staff member'.

42. When taking steps to manage actual or potential conflicts of interest and/or abuse of power that arise in an existing intimate personal relationship, a provider should take steps to ensure that a student involved in a relationship is not disadvantaged.

43. The following steps may assist a provider in identifying steps to take to meet the requirements of E6.5:

- a. Gathering and analysing evidence of the prevalence of relationships between staff and students at the provider.
- b. Assessing the volume, seriousness and nature of complaints made about relationships between staff and students.
- c. Assessing the risk of harassment and/or sexual misconduct occurring as a result of the actual or potential abuse of power and conflicts of interest that can arise from relationships between staff and students.
- d. Consulting with students to ensure that their views, interests and needs are taken into account in determining the provider's approach to relationships between staff and students.

44. The OfS expects a provider to regularly review the efficacy and appropriateness of its approach to relationships between staff and students and amend that approach as necessary, in order to comply with condition E6.5. The regularity of such reviews is a matter for each provider, but should take place when circumstances change, for example, if there is an increase in relevant complaints by students.

45. In communicating its policy on relationships between staff and students, a provider should make clear to students that they can report and seek support for harassment or sexual misconduct that occurs within a relationship with a staff member, regardless of whether that relationship is

permitted under the policy. A provider should also make clear to students that they would not be penalised by the provider for participating in a relationship with a relevant staff member, and that they would be protected from retaliation by the staff member if they reported harassment or sexual misconduct.

46. If a provider chooses to ban relationships between staff and students, the condition requires the provider to take appropriate steps in line with its usual disciplinary process if a relevant staff member breaches that ban. This includes the possibility of a breach resulting in dismissal of the relevant staff member. The consequences of breaching any ban are likely to be proportionate to the seriousness of the conduct that has taken place, to guard against the risk of future conflicts of interest or abuse of power that can arise in intimate personal relationships between relevant staff members and students and to discourage such relationships.
47. When implementing its disciplinary and conflict of interest processes, a provider may wish to consider circumstances in which the staff and/or student involved in an intimate personal relationship fear personal persecution, incrimination or other harmful consequences due to culturally taboo or illegal activity.
48. Abuse of power is defined in the condition. For the purposes of that definition, something falls within the scope of an intimate personal relationship, where it amounts to:
 - a. physical intimacy, including isolated or repeated sexual activity; and/or
 - b. romantic or emotional intimacy.
49. In relation to this condition, a 'relevant staff member' is intended to capture any member of staff, employed or contracted by a provider, who has direct academic responsibilities or other direct professional responsibilities, for a student. The reference to 'academic responsibilities' includes, but is not limited to, teaching, supervision and assessment. The reference to 'other direct professional responsibilities' is intended to capture staff with a direct professional or pastoral responsibility for a student, including but not limited to mental health advisers, staff operating student complaint processes and security personnel.
50. Cleaning or catering staff would not normally be captured by the definition of a 'relevant staff member' unless they have direct professional responsibilities for a student. Where an individual is a student at a particular provider and also a staff member at that same provider (for example, a research student who is tutoring or teaching undergraduate students, or acting in a supervisory capacity), that individual is considered to be a student and could also be captured by the definition of a 'relevant staff member' where they have direct academic responsibility or other direct professional responsibility for a student.
51. The following sets out an illustrative and non-exhaustive list of the types of staff members that are expected to be captured by the definition of 'relevant staff member':
 - a. Teaching staff, such as lecturers or graduate teaching assistants.
 - b. Dissertation or project supervisors for taught postgraduate students or research students.
 - c. Personal tutors and pastoral support staff.

- d. Senior members of staff with responsibility or oversight of wider institutional strategy, processes and delivery, for example, vice-chancellors.
- e. Security staff.

52. A provider may choose to introduce a ban that goes further than set out in the definitions in condition E6, for example by applying its ban to a wider group of staff than those the condition identifies as relevant staff, or by banning relationships even where these are pre-existing. Provided that all relationships prohibited by the definition of a ban set out in the condition remain prohibited by a provider's policy, the OfS would continue to deem it to have satisfied the condition with a more extensive ban.

Condition E6.7

53. Condition E6.7 requires a provider to have the capacity and resources necessary to comply with condition E6.

54. A provider with higher prevalence rates of harassment and/or sexual misconduct would be expected to ensure that it has more capacity, and to deploy more resources, to comply with this condition than a provider with lower prevalence rates.

55. A provider may determine the approach it takes to ensuring it has the capacity and resources to comply with this condition, for example, by sharing services with other organisations and/or providers. Whatever approach a provider decides to take, it remains responsible for ensuring compliance with all of the provisions of this condition.

Condition E6.8 and E6.9

56. The requirement of condition E6.8 and the freedom of speech principles are concerned with the importance of free speech, and ensuring that it is a fundamental consideration when a provider produces policies and processes for dealing with harassment and sexual misconduct and when it takes action under those policies to comply with this condition.

57. The 'freedom of speech principles' in the condition include a 'rebuttable presumption' that requires a provider to assume that the exposure of students to course materials, and statements made and views expressed by a person as part of teaching, research or discussions about any subject matter that is connected with the content of a higher education course, are unlikely to constitute 'harassment', unless otherwise demonstrated that these matters do in fact amount to harassment.

58. A provider is not required to take a step that interferes with lawful speech in order to meet the requirements of the condition:

- a. The OfS recognises that the Equality Act 2010 does not currently give rise to legal obligations for a higher education provider to address conduct by a student that amounts to harassment.
- b. One of the aims of this condition is to create obligations for higher education providers in respect of dealing with harassment that goes further than the existing law, but only in so far as that does not involve doing things that could reasonably be considered to have the object or effect of restricting freedom of speech within the law or academic freedom.

- c. A provider will need to carefully consider its freedom of speech obligations and ensure that it has particular regard to, and places significant weight on, those obligations when creating and applying policies and procedures that are designed to help protect students from harassment by other students.
- d. Freedom of speech obligations should not be considered to be a barrier to creating or applying policies and procedures in respect of types of conduct that may amount to harassment unless such policies and procedures could reasonably be considered to have the object or effect of restricting freedom of speech within the law and/or academic freedom.

59. The following is an illustrative non-exhaustive list of examples of actions a provider could take that are less likely to have a negative impact on free speech within the law:

- a. Graffiti, images or insignia that stir up racial hatred are removed promptly, with support such as access to counselling, mental health or peer support groups provided to students affected. Students are informed of the actions taken and an investigation conducted to identify the perpetrators. The provider's disciplinary process is followed with appropriate consequences imposed at the conclusion of the investigation, in line with relevant policies.
- b. Verbal or physical threats of violence are investigated quickly. Support is provided to students affected and, if appropriate, interim measures are put in place to protect students while an investigation is undertaken. Action is taken to identify the perpetrators with appropriate consequences imposed once disciplinary processes have concluded.

Condition E6.10

60. Condition E6.10 prohibits a provider from restricting the ability of a student to disclose information about an allegation of harassment and/or sexual misconduct. Such restrictions are often written into contractual documents referred to as 'non-disclosure agreements' or 'NDAs'. This provision means that a provider cannot impose any provision that would prevent or restrict any student from disclosing information about an allegation of harassment and/or sexual misconduct which involves or affects one or more students.

61. A provider must not, therefore, include such a restriction in any contract that applies to students and is formed or varied from the date this requirement comes into effect.

62. Although this provision does not apply to other persons, providers should consider the wider requirements of this condition in applying such restrictions to other persons such as staff, and not to inhibit discussion of these issues that might support those who have experienced harassment or sexual misconduct, or allow issues to be aired and properly addressed.

Information gathering, assessment of evidence and enforcement

63. The OfS will use its general risk-based approach to monitoring as set out in the regulatory framework.

64. Where monitoring activity produces intelligence or evidence that suggests there may be compliance concerns for an individual provider, the OfS may adopt one or more of the following approaches in any order:

- a. Engage with a provider to ensure it is aware of the issues.
 - b. Gather further information it considers relevant to the scope of the potential concerns, from a provider or from elsewhere on a voluntary basis, to facilitate an assessment of whether there is, or has been, a breach of one or more conditions.
 - c. Use its investigatory powers where that is considered appropriate for any reason.
65. Where the OfS considers it appropriate to use its investigatory powers it may conduct an investigation itself, or may ask another appropriate body or individual, to gather further information it considers relevant.
66. Having gathered further relevant information as necessary, the OfS will reach a view about a provider's previous and ongoing compliance with the condition. Where the OfS takes the view that there is or has been a breach of the condition it will write to the provider to set out the reasons for its provisional decision and set out the evidence it has used to reach this view. The provider is able to submit any further information it considers relevant in a representations process and the OfS will consider this before reaching a final decision.
67. Where the OfS has decided that there is, or has been, a breach of this condition, it will consider the use of the full range of its enforcement powers. This includes the imposition of a monetary penalty, suspension of elements of a provider's registration, for example its access to student support funding or OfS public grant funding, or deregistration. The OfS will follow any statutory consultation process as it takes enforcement action.
68. Where the OfS considers there to be an increased risk of a breach or a relevant wider regulatory concern, it may impose one or more specific ongoing conditions of registration. This may include, but not be limited to, requiring a provider to conduct a prevalence survey of its whole student population to the OfS's specification and publish the outcomes of that survey. The OfS will also consider whether additional monitoring requirements are appropriate, for example, a requirement to report additional matters as reportable events.