

## Note of the scoping meeting to revise the Universities UK/Pinsent Masons Student Misconduct Guidelines. Wednesday 27 February 2019.

### Attendees:

- Shuwanna Aaron, Women's Officer, National Union of Students Scotland
- Dr Sandra Cairncross, Lead Member for prevention of Gender Based Violence for Universities Scotland and Assistant Principal of Edinburgh Napier University
- Anni Donaldson, Knowledge Exchange Fellow and Project Lead, Equally Safe in Colleges and Universities.
- Fiona Droeut, Founder, Emily Test, Campaign
- Jan Hulme, representative for the University Secretaries Group and Secretary at Glasgow Caledonian University.
- Susannah Lane, Head of Public Affairs and GBV Policy, Universities Scotland
- Steven Paxton, Advanced Learning and Science Directorate, Scottish Government
- Jill Stevenson, AMOSSHE Scotland and Stirling University.

### Apologies:

Saira Kapasi, Head of VAWG & Barnahus Justice Unit, Scottish Government

### Background and context:

Dr Sandra Cairncross (Chair) advised that the purpose of this meeting which was to inform the scope of the project to revise the [UUK/Pinsent Masons Guidelines on Student Misconduct](#) (2016) to support HEIs in a devolved context, which includes different higher education and criminal justice systems as well as different policy and legislation in relation to gender based violence.

A major driver of the need to revise the UUK/Pinsent Masons Student Misconduct Guidelines has been the policy and legislative landscape for gender based violence in Scotland. The attendees at the first meeting reflect that policy area.

### Notes:

1. It was confirmed that the approach taken in this meeting would be an information gathering exercise, not a decision-making exercise. Decisions about the project's scope and remit would be taken only when we've had the chance to consult more widely with stakeholders. This note should be understood as a reflection of opinions expressed, and not as decisions collectively agreed (unless otherwise stated).
2. The group **agreed** that it would be helpful to publish a note of the meeting for transparency and to encourage the participation of other interested parties. It was suggested that the Scottish Government could also link to the note's location on Universities Scotland's website from its online presence for Equally Safe.
3. Previous critiques of the UUK/Pinsent Mason's Student Misconduct Guidelines (the Guidelines) had been received from Anni Donaldson and the Crown Officer Procurator Fiscal Scotland (COPFS). These were acknowledged and the contributors thanked.
4. Anni Donaldson shared her thoughts on how the [Equally Safe Toolkit](#) and the Guidelines connect. They were developed in parallel in 2016. She described the three-stage prevention framework in

the Toolkit and advised that the Guidelines were concerned with the space in secondary and tertiary prevention (where “secondary prevention” or intervention happens after the violence has taken place and addresses short-term consequences for both victim and perpetrator and “tertiary prevention” also occurs after the violence has taken place but addresses the longer-term consequences for victim and perpetrator). She believed that the suggested sanctions for GBV misconduct in the existing Guidelines were inappropriate. Anni also shared her view that some people are confused by the suggested sequencing in the “General Principles” of the Guidelines (section 4) whereby criminal process (where relevant) should come before an HEI’s disciplinary procedures.

5. **Project scope.** The existing Guidelines cover all forms of student misconduct, including “sexual misconduct”<sup>1</sup>. Thus far, the motivation to review the guidance in Scotland has been due to the significant differences between England and Scotland’s policy and legislative landscape concerning gender based violence. However, where views were shared, it was generally felt that it was helpful to higher education institutions (HEIs)<sup>2</sup> to keep guidance relating to all forms of misconduct together in one document, and review the whole thing, rather than to separate guidance on gender based violence from a wider document.
6. The group went through the Guidelines page by page commenting on aspects that were helpful and should be retained, as well as areas that might need review and amendment. It was felt that there was lots within the existing guidance that had been very helpful to institutions, and we were talking about revision from the perspective of enhancing or evolving what is already there.
7. Notes specific to sections or pages of the Guidelines have been recorded separately and will feed into the review going forward. Strong themes emerging from that initial review process are recorded here.

#### **Themes of the discussion:**

##### **8. Language and the need for clarity**

- This is key in regards to the gendered perspective Scotland takes to gender based violence (GBV). The position paper produced by the [Equally Safe Colleges and Universities Working Group](#) might be useful in this regard.
- It’s also key that this is captured in the revised guidance in order to support HEIs to meet the GBV requirements of the Letter of Guidance to the Scottish Funding Council.
- Very important to be clear on the language from a legal point of view given that HEIs cannot use legal terms in non-criminal disciplinary procedures. This is key to the sanctions in appendix one of the existing guidance and its key for HEIs to understand. It was suggested there may be a guide for HEIs in translating terms to avoid conflating criminal and non-criminal terms.
- It was noted that not many students understand or relate to the term “gender based violence” and so some HEIs use other terms such as “sexual violence and misconduct” to reflect the spectrum of behaviours and actions.

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<sup>1</sup> The term used by the UUK/Pinsent Masons Guidelines, not a term decided on by the participants at the first meeting.

<sup>2</sup> The term HEI is used throughout this note to make it clear that this project is relevant to all 19 of Universities Scotland’s member institutions, some of which are not universities. The scope of this project does not extend to Scotland’s further education colleges.

- The definition of “domestic violence” as per the forthcoming Domestic Abuse (Scotland) Act (1 April 2019) was very carefully worked out and will soon be a criminal offence.
- Useful to establish and agree a glossary at an early stage in the project (the glossary in UUK’s [Changing the Culture](#) gives us a basis to work from/revise) and work with that consistently throughout.
- There are some sections of the existing guidance that are very clear on the procedures and the steps to go through (add example) but others where this could be improved.

#### **9. The need to give particular consideration to gender based violence.**

- GBV is one issue considered within Guidelines alongside a wider set of student misconduct. If that remains the case for the revised document, the view was certainly that this is an area that needs considerable revision.
- Additionally, given the nature of GBV as distinct from other forms of misconduct, and the high risk of trauma to the individuals involved, there should be additional consideration given to the theme of GBV within the revision work, including greater use of issue-specific examples, case studies and best practice.
- The approach to this aspect of the revision should be framed within a survivor-centered approach as well as one that gives greater consideration to the accused.

#### **10. Inter-relatedness.**

- The discussion frequently referred to other documents, guidance and additional existing processes that are relevant to the effective handling of student misconduct.
- It was suggested that this project be thought of as one piece within a wider jigsaw or framework of existing processes, including institutions’ codes of conduct, disciplinary procedures, the [Equally Safe Toolkit](#), UUK’s live project to produce guidance on staff-to-student misconduct, the Safelives’ [DASH Risk Checklist \(Scotland\)](#) etc.
- This project could support institutions by usefully signposting on to other relevant resources at the relevant point(s) in the misconduct handling process.

#### **11. Risk assessment.**

- It was suggested that the Guidelines could be usefully updated to reflect best practice in risk assessment by HEIs, which should be a live process and regularly returned to throughout a case of student misconduct. This could usefully be highlighted at the various stages in the guidance.
- ASSIST were suggested as an organisation already looking into risk assessment in a criminal case and how that connects to a university.
- It was suggested that HEIs could benefit from additional guidance and case studies in relation to the risk assessment process around the time of referral to the police (section 7 of existing guidance), precautionary action (section 8) and following the outcome of a criminal process (section 12).

#### **12. Information sharing.**

- It would be helpful if the revised guidance could offer further detail on the responsibilities institutions have around data sharing/data privacy in such matters. This links to safeguarding and PVG responsibilities.

- There are issues around confidentiality and information sharing about a disclosure/disciplinary process between a university and (for example) student associations and/or private accommodation providers if/where they are separate organisations from the university. This issue potentially applies in both directions (where disclosures may occur within a students' association).
- This issue is also relevant in regards to the penalties referred to in section 6 on 'provision of information and support' with expulsion from a university noted in the current guidance as being the 'worst sanction' that a university can apply within their disciplinary process. More broadly, this connects to a live issue currently under consideration within Scotland's policy landscape about what is possible and legal in regards to information sharing between institution A (which expels a student for serious misconduct) and institution B (to whom the student then applies) given institution A's information about the student does not relate to a criminal offence.

### **13. Student support**

- The revised guidance could be clearer on the absolute need for an institution to separate out the process for student support available to the survivor and the processes for disciplinary procedures.
- The Guidelines don't currently provide enough guidance for institutions in regards to their legal responsibilities to provide support to the accused.

### **14. Pivotal points in the process**

- Two key stages in the handling of misconduct cases emerged from the initial discussion. It will be useful to see if further discussions confirm, challenge or add to these as key points.
- They were i) the initial disclosure (which relates to section 5 of UUK's guidance) and ii) the disciplinary hearing, held by the university, (relates to section 10 of UUK's guidance).
- In regards to the disclosure stage, it was noted that both further detail and additional options could be added to the list of options available to a survivor, as stated in the current guidance. It was also noted and that the guidance here should be informed by a greater understanding of trauma.
- In regards to the internal disciplinary hearing, it was suggested that the Guidelines could benefit from additional detail and best practice sharing in regards to HEI's handling of hearings, where training was essential. There was potential to inflict additional trauma on the survivor and/or to undo months or potentially years of prior work leading to a hearing (and deter future disclosures) because of the use of inappropriate language/questions or the inexperience of the panel members/process.

### **Additional advice**

- At several sections of the advice, it was noted that it would be helpful to have the direct input of Police Scotland and/or the COPFS.
- It was also noted that it would be necessary to seek professional and legal advice relating to students under the terms of consumer law, data privacy and risk management.

### **Other notes:**

As we ran out of time for discussion, attendees would be asked to send suggestions for relevant resources and to nominate additional individuals/stakeholder organisations who would have something to contribute to this project, in whatever capacity. Suggestions were welcomed by email.

**ENDS.**

Draft v 1.0. Approved by attendees on 24.04.19. Produced by Susannah Lane, Universities Scotland.  
05.03.19