

## **Note of the second scoping meeting to revise the Universities UK/Pinsent Masons Student Misconduct Guidelines. Wednesday 25 April 2019.**

### **Attendees:**

- Dr Adam Bunni, Head of Governance and Regulatory Team, University of Edinburgh.
- Dr Sandra Cairncross, Lead Member for prevention of Gender Based Violence for Universities Scotland and Assistant Principal, Edinburgh Napier University
- Richard Claughton, Global Director of HR, Heriot-Watt University
- Kathryn Dawson, Sexual Violence Prevention Coordinator, Rape Crisis Scotland
- Fiona Droeut, Founder, Emily Test, Campaign
- Ann Gow, President, UCU Scotland
- Saira Kapasi, Head of VAWG & Barnahus Justice Unit, Scottish Government
- Dr Neale Laker, Director, Academic & Corporate Governance, University of Dundee.
- Susannah Lane, Head of Public Affairs and GBV Policy, Universities Scotland
- Roseanna MacDonald, Children's Policy Worker, Women's Aid
- Clare McWilliams, Academic Governance Coordinator, Stirling University.
- Jackie Main, Director of Student Life, Glasgow Caledonian University
- Detective Inspector Julie Marshall, Public Protection Unit –National Rape Task Force, Police Scotland
- Steven Paxton, Advanced Learning and Science Directorate, Scottish Government
- Kay Steven, Policy & Programme Adviser, Advance HE
- Jill Stevenson, AMOSSHE Scotland and Stirling University.

### **Apologies:**

- Shuwanna Aaron, Women's Officer, National Union of Students Scotland.
- Rachel Adamson, Scottish Funding Council
- Anni Donaldson, Knowledge Exchange Fellow and Project Lead, Equally Safe in Colleges and Universities.
- Helen Martin, Scottish Trades Union Congress

### **Background and context:**

This was the second of two scoping meetings to gather information 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. The second meeting saw a larger and wider group of stakeholders represented from both within and outwith the higher education sector but still looking at the project from the perspective of gender based violence (as was the case with the first meeting).

The structure of the second meeting aimed to build on some of the key themes identified during the first scoping meeting.

A summary of points made during the discussion is presented in Sections 1 to 4 below followed by next steps.

## 1. First pivotal point in the process: the first disclosure of GBV and the intersection between HE process & criminal process.

The discussion helped to sketch out some boundary lines for the project:

- The Guidance could indicate that processes need to be trauma-informed and then sign-post to existing sources elsewhere, rather than look to be the source of all information.
- Guidance on handling a disclosure, in a trauma informed way, already exists in the 6-steps in the Equally Safe Toolkit (& GBV Support Cards). The new Guidance could be a hub that cross-refers to other sources.

The discussion also considered other important boundaries when handling issues of student misconduct within a university:

- The disciplinary process and the support system put in place for a student reporting GBV are two separate systems that need to be clearly delineated from one another. The disciplinary process needs to be a supportive process but it is not the source of support.
- The HE staff member offering the support needs to be insulated from the decisions taken on the disciplinary side of the process.
- It was also suggested that they should use different language (support system would use “victim” and “perpetrator”, disciplinary process would use “reporting student” and “reported student”).
- Risk assessment needs GBV specialists, it can be easy to miss the patterns of controlling behaviours involved in domestic violence and stalking.

### Points on risk assessment:

- **Risk assessment stands out as a key issue for consideration within the revision of the guidance.**
- A risk assessment exercise must consider the victim, the perpetrator, the wider university community and risk to institution.
- Whilst reputation risk to the institution is a factor in such cases it was agreed that the primary concern in a risk assessment exercise in such cases would be the individual.
- Some people expressed concern about the potential conflict of interest which could arise where legal advice (from professional counsel) was received regarding institutional risk, relative to the risk posed to individuals.
- The holistic nature of risk assessment is mentioned in UUK’s *Changing the Culture* report but it is not brought into the existing Guidelines sufficiently.
- A case management system, whereby all those with relevant contributions and different perspectives to make, sit and determine the level of risk. Responsibility for risk assessment usually sits on the disciplinary side of the process but it was noted that its good practice to involve practitioners from across the whole process within the university, including the support side, to ensure full access to the facts and the making of a robust decision.
- It would be helpful to develop some guidance for institution on what constitutes a robust risk assessment (against which they can test their processes). Is it possible to do this without being overly prescriptive?

- It was suggested that the DASH toolkit is a useful risk assessment tool in relation to the victim but it was acknowledged that it doesn't cover risk to the perpetrator (where this is also a student at the same institution) nor risk to the wider university community or institution.
- It was suggested there was a need to reflect coercion and control (i.e. non-physical forms of abuse) within universities' risk assessment process.

It was noted that disclosures of GBV can happen at any point, to any member of staff. An emerging model of good practice in HEIs is to have specially trained staff to deal with reports of GBV. Staff receiving a report should refer the student to those specially trained staff. This ensures that students receive specialist support needed and guards against actions being taken which could compromise any future criminal trials.

In addition it was pointed out that there needs to be clear signposting to the right source of support for the member of staff who can experience trauma themselves from their involvement in the incident. This is not currently in the 2016 Guidance.

## **2. Consideration of the second pivotal point: an HEI's disciplinary hearing.**

The main themes in the discussion were:

### **Communication**

- Good practice suggests that ongoing communication to keep the victim/reporting student informed of the process is helpful. Experience suggests that reporting students can often feel like they are just a witness and peripheral to the process.
- Women's organisations encouraged telling and retelling with sensitivity.
- There was a request from HEIs for more guidance (including case studies of good practice) on:
  - how to manage the expectations of the reporting student as to what they will hear of the outcome, given the need to be compliant with GDPR.
  - How to get the balance right between engaging them in the process without applying pressure to be involved? It can really make a difference to the outcome of the process.

### **The role and potential imbalance of information**

- It was highlighted that the criminal justice system can create an imbalance in information held by the perpetrator/victim which could then cause issues for HEIs if/where the incident becomes subject of a disciplinary hearing. In a criminal trial, the accused will have had legal advice/representation and will have had access to the case and evidence against him (her). The reporting student is unlikely to have had the same access (even if they attended trial). If the process then goes to university disciplinary process, there is an imbalance in the information held by the reporting and reported student which can be unfair. This is an area to unpack in more detail given that a reported student does need to see the evidence against them and have the right to challenge. Perhaps the reporting student needs more resources available than an advocacy worker.
- Follow the lead on practice re. cross examination from police Scotland (i.e. no longer happens). The trend is away from cross-examination of the reporting student/victim by HEIs. There are ways that the reported student can challenge the evidence without causing additional distress.

### **The role of supporter/advocate for reporting student**

- It is understood that some HEIs have provision for an advocate for the reporting students going through the disciplinary process, this is not dissimilar to the role of advocacy worker in criminal procedures and such a person would normally have some training.
- In other instances student may be accompanied by as supporter who hasn't had any specific training.
- In addition it would also be helpful to establish what is the connection to the Students Association here, if any? For example can support be provided from advisors?
- To investigate the potential role of advocacy support in regards to institutions' disciplinary processes which can include rules who can support the victim and in what capacity during the disciplinary process.
  
- It was suggested that survivors' experiences of the criminal justice system would be useful evidence to help informed universities' approaches to disciplinary hearings.
- The challenging issue of how to deal with incidents when a student is also a member of HE staff was raised. This gives rise to questions about which procedure would apply. It was suggested that the Guidelines might offer ways to help HEIs to consider that question, without necessarily determining the answer. It was also noted that Universities UK's parallel work on staff-to-student sexual misconduct was considering this question and it would be helpful to stay informed of the decisions reached on this.

### **3. Discussion of the structure of the new guidance:**

**Summary:** The discussion heard strong arguments for both i) the suggestion of creating stand-alone guidance for responding to incidents of GBV where students are the victims/perpetrators/both, and ii) of producing one complete set of guidance for responding to student misconduct (akin to the existing Guidelines

- i) HEI attendees, and UCU Scotland, felt that one set of guidance was preferable on the basis that: it would offer less room for confusion; it would support HEIs better where incidents involved a complex set of misconduct which involved GBV and other incidents and/or where an incident doesn't immediately involve GBV; offer a holistic approach; from a risk perspective, if there are multiple different processes in place in an HEI it gives rise to the risk that one is less robust than the others which would heighten the likelihood that a university be exposed to judicial review of a disciplinary outcome (as an alternative processes might have been applied); there are close parallels with universities' student codes of conduct which cover everything and need to be tightly framed for legal reasons but can then refer on to additional and more specific policies.
- ii) Other views were of the belief that: the prevalence of GBV amongst the 16-25 age group is likely to mean that a high percentage of the student misconduct that universities respond to is likely to sit in the territory of GBV thus separate guidance would give it due recognition; a separate set of guidance for GBV would help to raise the profile of HEIs' response to this type of behaviour and indicate zero tolerance; a concern that if GBV sits alongside responses to bullying and harassment that it risks being "lost" and that this has been seen to happen in other sectors or projects.

Returning to the purpose and intended audience of the document, which is for practical use by staff in higher education institutions, it was suggested that one single document might be able to meet some of the expectations expressed if it:

- Clearly acknowledged at certain stages, where additional considerations/alternative approaches are needed in regards to disciplining incidents of GBV, with links provided to additional information. If one set of guidance is to be produced, it should be possible there would be a commitment to highlight or sign-post where additional considerations/alternative approaches are needed in regards to disciplining incidents of GBV within an HEI. It may also be possible to contextualise the prevalence of GBV incidents within all forms of reported student misconduct in order to appropriately framing the Guidance – and shift perceptions – amongst HE staff.
- GBV impact assessments (or similar) at various stages of the Guidance, with reflective questions to determine if an incident is gendered in nature (which could also help with cases where it might not be immediately obvious) might be one way to approach this.
- Offered clear cross-referencing to additional/different steps (or an annex or similar) that would be necessary in cases of GBV (thought would need to be given on how/where to present these to avoid a suggestion of a hierarchy or relative (de)prioritisation of issues.
- Was clear on how to apply the procedure in different contexts.
- The nature of student misconduct, and the prevalence of GBV amongst the student demographic (relative to other incidents if/where there is evidence on this) was highlighted in the introduction of the guidance so that HE staff approach the document with the right frame of mind.

These steps, outlined in the bullets above, would effectively make the guidance a hybrid between route i) and ii).

There was an acknowledgement that processes and policies can't set the culture with an organisation and there's a need to recognise the limits of what can be achieved with this guidance.

Similarly, it was noted that the objective of this project should not be to rewrite all processes that currently exists within a university for handling misconduct, but to support HEIs to optimum processes by guiding them through all relevant steps, acting as a hub towards additional useful resources.

#### **4. General comments not covered at earlier points in the discussion**

- Some discomfort expressed about the existing 2016 Guidance, that the support suggested is symmetrical for reporting student and reported student (the existing General Principles and consideration of risk are mostly focused on the accused person). The revision should really make parallel considerations for survivors/reporting students.
- It was noted that where universities have a legal vulnerability at present it is because of insufficient support for the accused.
- There's a difficulty inherent in institutions which take a survivor-informed response to disclosures but then can't translate the belief in a survivor's disclosure into a presumption of wrong-doing in a disciplinary hearing. Must manage this whilst still leading a survivor-informed process.
- Request for sharing of information/experience of good quality trainers/training that can that support the disciplinary process where it concerns GBV incidents.

- A need to remember the multitude of possible scenarios. We can't always assume that the perpetrator is part of the university community. Ensure that the Guidance and any use of case studies does not fall into one 'type' of incident of response. This wasn't discussed in detail in the meeting but it would be helpful for the project to consider this broadly (e.g. where perpetrator is not in the same institution as the victim but is in another university or where the perpetrator/victim/both live in private accommodation not owned by the university.) This raises difficult questions around information sharing and data privacy.
- The current guidance sometimes conflates sexual violence and gender based violence.

## 5. Next steps

- A note will be shared with attendees for comment and approval. This will be published online when it has been approved by the group.
- Universities Scotland will consider how best to frame the parameters of the project in regards to the single or separate set of Guidelines, and make recommendations on the project's governance and timescale, with a view to receiving sign-off at the June meeting of Universities Scotland members.
- The final project scope would determine the membership of a steering group or similar. We'd look to keep this group informed. Everyone was thanked for their contributions to the information-gathering stage.

Draft v 1.1.

Written by Susannah Lane, Universities Scotland. 30.04.19

Signed-off following deadline for comments 03.06.19.

**All attendees were invited to reflect on the discussion and share additional considerations after the meeting. The following point was received and are recorded here for transparency but also to indicate that they were not part of the group's discussion:**

- Under structure of the new guidance – could the note refer to the likelihood of power and control dynamics which may be present with GBV that may not be prevalent in, for example, fraud or plagiarism, and requirement for early intervention to minimise risk as a reason(s) to support a bespoke document for GBV guidance?