

# New higher education harassment and sexual misconduct condition

31 July 2025  Trish D'Souza and Kate Gallagher

In a significant move to combat harassment and sexual misconduct, the Office for Students (OfS) has issued a new ongoing registration condition (E6) for higher education providers (HEPs) from 1 August 2025.

This follows a survey that indicated 20% of students had faced unwanted sexual behaviour, with the majority of these incidents occurring within a higher education setting.

## Single comprehensive source of information

At the heart of condition, E6 is the requirement for each provider to maintain a single comprehensive source of information that outlines clear policies and procedures on handling incidents of harassment and sexual misconduct (condition E6.2).

This document must be easily accessible, include documented changes, and comply with defined content (such as how to report, seek support or be informed) and be published in a way which promotes transparency and accessibility.

Many HEPs have taken the approach of setting up intranet webpages which include links to reporting mechanisms and clear information on the support available.

## All forms of harassment to be covered

Harassment, under the terms of the Equality Act 2010 (EqA), occurs when there is unwanted conduct (relating to a protected characteristic) which has the purpose or effect of either violating an individual's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

The scope of condition E6 includes both staff-to-student and student-to-student interactions. Policies will need to address sexual misconduct and harassment complaints, as well as harassment under EqA more broadly.

## Relationship between staff and students

Of particular note is the OfS' stance on intimate personal relationships between staff and students.

HEPs must outline steps in their policies that effectively prevent any potential conflicts of interest or abuse of power. The OfS is suggesting that a complete ban on such relationships could make a significant and credible difference in student protection, but ultimately stopping short of making this a mandatory requirement – rather leaving it as a decision for the individual HEP (condition E6.5).

In either event, HEPs should be clear on their position in staff and student policies and communications, mindful that the OfS has moved from its previously preferred option when consulting on this condition in 2023 – which was for a reporting mechanism and a register of relationships to be maintained – to a stricter approach.

The changes make higher education align more closely with the professional and safeguarding standards of the primary or secondary education sector, where personal or intimate relationships with any pupils are prohibited. However, the modifications take into account the differences in setting and age groups.

# Freedom of speech

HEPs will be all too aware of the tie-in with freedom of speech (FoS), and the fact that a number of the key provisions of the Higher Education (Freedom of Speech) Act 2023 come into force on the same day.

This includes a stronger obligation for HEPs to secure FoS and academic freedom and they must also establish effective codes of practice; the regulator will promote FoS, with this specific part of the duty yet to come into force for HEPs

Condition E6.8 seeks to ensure the measures to combat harassment do not impede lawful speech or academic freedom, but it is widely recognised that it may be a delicate balance in practice to satisfy expectations on both sides.

The respective duties require HEPs to foster an environment where discourse can thrive, including the sharing of unpopular or controversial views and information (within the law), while having effective measures in place to protect individuals from harassment. The EqA Public Sector Equality Duty equally requires HEPs to foster good relations between people who share a relevant protected characteristic and those who do not share it.

The OfS anticipates that providing support for students during a harassment allegation, along with conducting a prompt investigation and taking appropriate action, would likely reduce the negative impact on FoS.

Conducting prompt investigations in complex and emotive circumstances, while ensuring the process is also adequately thorough and fair, is likely to add to the challenge, however.

## Non-prohibition on reporting

The OfS is also taking a stand against barriers to reporting harassment and sexual misconduct.

Condition E6.10 prevents the use or enforcement of any contractual clauses that restrict students from reporting incidents. This amounts to a prohibition on non-disclosure agreements (includes a relevant confidentiality or non-disclosure clause in a settlement agreement), which would prevent the reporting of previous or future incidents.

Where they are used, they will be void. Many HEPs will have already signed up to the 'pledge' introduced by the previous government, which sought to introduce these changes on a voluntary basis.

## OfS monitoring or enforcement?

The OfS will monitor compliance with the E6 condition through a risk-based approach and is ready to engage its investigatory powers if necessary, in relation to providers at greatest risk of breaching condition E6.

While HEPs will be hoping that any engagement with the regulator will be on a collaborative basis, they will remain mindful of the OfS' ability to impose significant monetary penalties, or to suspend an element of a HEP's registration (such as access to student support funding), if it considers there has been a serious breach of condition E6. It will therefore be in HEPs' interests to be able to actively demonstrate compliance.

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