

Universities Scotland submission of 11 August 2023

PE2022/C: Introduce national safeguarding guidance on how higher education institutions should handle cases of sexual misconduct

We welcome the opportunity to respond to Petition [PE2022](#).

Universities Scotland met with the petitioner, Ms Wilson, in November 2022 to discuss her concerns directly. We commend Ms Wilson's bravery in speaking out as a survivor of gender-based violence and sharing her lived experience to protect students at university or college.

Universities are deeply committed to the prevention of gender-based violence, hate crimes and other acts of violence within a university environment. The safety of the university community is a priority for every institution. The petition relates to a few different aspects of policy and procedure in the higher education sector and a very active area of current work.

Cases where students are convicted of sexual offences or awaiting trial for serious sexual offences.

This element of the petition looks to universities to take action to limit the risk posed to students and members of the university community, from students who are charged with or convicted of these specific offences in the criminal justice system.

For universities to be able to assess risk and take action where this applies, universities need to access student data on unspent relevant criminal convictions and relevant criminal charges. Institutions have taken an individual approach to the collection and use of these data since 2018 and many already collect student data on relevant convictions from entrants and at matriculation. However, there hasn't been a consistent sector-wide approach to data collection on relevant unspent criminal convictions since 2018, when new data protection legislation in the form of the GDPR forced a move away from an all-sector approach as led by UCAS. Scotland's universities have responded to Ms Wilson's campaign, started in summer 2022, and have been working collectively to explore the robust legal bases on which to deliver a consistent nationwide approach to the collection of data relating to relevant criminal convictions and criminal charges from students. We intend to set out best practice,

working within legal advice which balances the key variables of natural justice, safeguarding and GDPR, thereby addressing a key part of the petition.

Extending current practice to request data on criminal charges from all students, consistently, would address situations similar to Ms Wilson's lived experience, whereby a university student has not yet been convicted of a serious sexual offence but has been charged, and is awaiting trial.

The collection of these data, from new and returning students on an annual basis, gives institutions sufficient means to run an internal risk management process. The institution would then apply any mitigations deemed necessary following the risk assessment. This could vary from modifications to the person's mode of study, through to suspension or expulsion of that student in cases where the level of risk warranted it. Making the data declaration mandatory for all students would also allow any institution to take action, including expulsion, if it later became apparent that an applicant or matriculated student had not disclosed relevant information about themselves.

In addition to universities' deep commitment to the safety of their communities, universities also believe in the fundamental principle of a right to a fair trial and a right to rehabilitation. Education can play an immensely important role in rehabilitation. We do not want to deter applications from ex-offenders who have completed their sentence, as determined by the justice system, who could purposefully benefit from accessing higher education and who pose no threat to other students. This connects closely to the principles of widening access and accessibility and is the reason the data collection would be separate from the admissions process, collected only once an offer is made and accepted.

It is important to note that it is for the justice system to make the wider determination of the risk an individual poses to society as a whole and make decisions to hold someone in custody, set bail conditions or conditions of licence on an individual that would limit a person's rights and activity in proportion to the level of risk identified.

Next steps

This work has progressed over the course of 2023, with the support of university Principals and the guidance and expertise of relevant sector networks including: the Scottish HE Information Practitioners (SHEIP), University Secretaries, university admissions teams, heads of student wellbeing and multiple external stakeholders. At this point in the process the legal advice is provisional but looks favourable.

Universities Scotland is a member of the Scottish Government's Equally Safe Core Leadership Group (ES-CLG) for further and higher education, and of the data-sub-group that reports into ES-CLG. We have been working closely with the stakeholders in this group in the development of this policy. There will be an opportunity to further update the Group later in August.

We should be in a position, by October 2024, to share a full account of the detail of this approach with the certainty that universities have a robust legal basis for implementation. We would be happy to write to the Committee again in due course.

Sexual misconduct which is not reported to the police and does not become a criminal matter.

The petition also refers to sexual misconduct in a university context. Depending on the victim/survivor's wishes this might be reported to, and investigated by, the university as student-on-student sexual misconduct within the context of student disciplinary regulations.

The [2016 Universities UK and Pinsent Masons guidance](#) is the sector-wide guidance for the handling of sexual misconduct between students which may or may not constitute a criminal offence. It offers a set of principles to inform university processes and additional recommendations for cases of sexual misconduct. Principle number eight relates to precautionary action that an institution may take in relation to a student reported for sexual misconduct, before an institution has reached a decision on the report. Precautionary action does not indicate a presumption of misconduct. It should be reasonable and proportionate and can be taken on a spectrum from attaching conditions and limitations to the reported student's study and/or movements, through to suspension.