

How to handle alleged student misconduct: case studies

Supplemental note to UUK–Pinsent Masons
guidance

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Context

1. In 2016, Universities UK (UUK) and Pinsent Masons published guidance for higher education institutions on How to handle alleged student misconduct which may also constitute a criminal offence (the 'Guidance'). This was developed by Pinsent Masons in response to the report by UUK's Taskforce, Changing the culture, which examined violence against women, harassment and hate crime affecting university students. The Guidance was intended to replace the 'Zellick report' on student disciplinary procedures.
2. The Guidance constituted a significant move away from the Zellick report, which had concluded that universities did not have the jurisdiction to make decisions about the alleged misconduct of students where that misconduct may constitute a criminal offence because that was a matter for the criminal justice system.
3. UUK and Pinsent Masons explored this in the Guidance and agreed that while universities could not make decisions about whether a criminal offence had been committed, they could make decisions about whether there had been a breach of their own codes of conduct as the codes of conduct were incorporated by contract into the civil law relationship between universities and their students.
4. Since its publication, many universities have made significant use of the Guidance. The Office of the Independent Adjudicator for Higher Education (OIA) in England and Wales points universities towards using this guidance in its own Good practice framework for handling disciplinary procedures.
5. The Guidance sets out key principles and establishes a framework upon which universities could build best practice, while also recognising that institutions would implement the Guidance in different ways. All cases will be different in some respects (including in the type of misconduct involved, the courses being studied, the reporting routes taken and the action taken by the police) and so will need to be assessed and responded to individually. However, institutions have identified eight key focus areas where they would welcome some practical examples of how the Guidance could potentially be applied in certain situations.
6. Nicola Bradfield, who wrote the Guidance, now at Coventry University, has therefore prepared this supplemental note with assistance from a UUK working group consisting of representatives from Pinsent Masons and colleagues from several universities. The case studies have been developed using practical experiences of the sector, although many of the facts and

circumstances have been changed to secure anonymity. Each case study is designed to highlight potential responses to a specific situation and focus on one or two elements of that response. To avoid repetition they do not set out every step that should be taken in relation to each incident. For example, while support should be put in place for students in all situations, that is not specified in every case study – instead, there are 3 case studies (Case Study 1–3) which focus on this element. We hope that the note will assist universities, although it is necessary to clarify that it does not constitute legal advice and that it remains crucial for each matter to be assessed and responded to on a case-by-case basis and in compliance with each institution’s policies and procedures.

7. This note will also provide an opportunity to reflect on other relevant developments in the sector, such as the introduction of the Office for Students’ Statement of expectations for preventing and addressing harassment and sexual misconduct affecting students in higher education (in England), which is expected to lead to further regulation in this area.

1. Careful communication

The issue

Reporting students may have unclear expectations of what is likely to happen during a university investigatory and/or disciplinary process, including in relation to the likely timescales involved and the limitations of the university's powers. This can lead to frustration, disappointment and a feeling of being let down by the institution.

Key considerations

1. Reporting students should be informed of their options (report to the police, report to the university, no formal report) and provided with an outline of each process so that they can make an informed choice at the beginning. Universities should present this information in a neutral manner so that they do not influence the decision made.
2. Key information about the options available should be provided in several formats, including verbal briefings and fact sheets. This should include an outline of the relevant processes, advantages, disadvantages and limitations, and the impact that choosing one option may have on the ability of the student to pursue another option later on (for example, a university investigation could potentially prejudice any subsequent criminal investigation).
3. One individual should be identified as the key contact for the reporting student and a different individual as the key contact for the reported student, and those individuals should be sufficiently independent from the disciplinary/Fitness to Practise (FTP) processes so that they can focus on supporting the students. The individuals should be trained and experienced in supporting survivors of sexual violence and take a trauma-informed approach.
4. The reporting/reported student should be encouraged to express any concerns or issues about the process to the nominated individual, and these concerns or issues should be responded to promptly. Clear communications must be maintained throughout.
5. Any potential limitations on the information that can be disclosed to the reporting student should be made clear. This can be determined in accordance with UUK's 2022 guidance, [Sharing personal data in harassment cases](#). For example, witness statements submitted by others, academic information, and family or personal information are unlikely to be disclosed to the reporting student. In addition, the

reporting student may receive information about whether the allegations have been upheld or not, but may not receive details of any sanctions imposed.

6. Universities should ensure that both the reporting and reported students are provided with an indication of the timescale for each stage of the process and kept updated if those timescales change.
7. Universities should document the information provided to students and the decisions taken.

Case studies

Case study 1

A report is made to the university that a student, Parv, has attacked another student. The reporting student, Vishu, does not wish to make a report to the police. The disciplinary team contacts Parv by phone to explain what allegations have been made, that an investigation will be undertaken and that he will have the opportunity to put forward his case with any supporting evidence and to discuss what precautionary action is going to be put in place. The precautionary action includes restrictions on when Parv can visit the library and sports centre. Parv denies the allegations and is very upset. He says that the allegations are false and that Vishu has been bullying him for months and says the allegations are another form of harassment. Parv is about to sit exams and has a coursework deadline two weeks away.

Parv is encouraged to contact a case manager by the disciplinary team. He refuses because he thinks that the case manager will 'take Vishu's side'. The disciplinary team therefore refers Parv to the health and wellbeing service for mental health support and to his personal tutor for support with his upcoming coursework and exams and to arrange a deferral if appropriate. The disciplinary team also maintains regular contact with Parv, explaining the process and next steps. As part of this, the disciplinary team reviews the precautionary action that has been put in place when it becomes clear that the limitations placed on Parv's visits to the library are preventing him from studying effectively. A change to the hours is made in consultation with Vishu to ensure that he and Parv will not be in the library at the same time. In addition, the disciplinary team arranges for a mental health advisor to be present during the disciplinary hearing to support Parv. Therefore, although Parv refused to access support from a designated case manager, the university's internal disciplinary team still took steps to assist him to access mental health support and academic support to ensure that he had the assistance that he needed.

Case study 2

Jing makes a report to the police that she has been sexually assaulted by another student, Thomas, in her accommodation. She informs the university's security team, who refer her to a case manager.

The case manager meets with Jing and, although Jing has already made a report to the police, outlines the criminal process and what is likely to happen. She also explains the university process, describing the difference between a police investigation of criminal allegations and a university investigation of a potential breach of its code of conduct, including an explanation of the different burdens of proof required and the difference in investigative powers and sanctions.

With Jing's consent, the case manager informs the university's student disciplinary team of the alleged incident so that they can assess whether precautionary measures are necessary. The disciplinary team decides that, as a precaution, Thomas should be moved to a different accommodation block and be instructed not to have any contact with Jing and they obtain confirmation from the police that they can contact Thomas to inform him of this. The university disciplinary process is then paused while the police conduct their investigation.

The police decide to take no further action and then the university disciplinary process continues. This includes university investigation meetings and a disciplinary hearing. The case manager supports Jing with all of these. The case manager also arranges for Jing to receive support from an independent sexual violence advisor (ISVA).

The disciplinary panel concludes that it does not have sufficient evidence to uphold the allegation that there has been a breach of the code of conduct. The panel takes care to explain to Jing that the decision has been reached based on the weight of evidence presented and that it recognises the emotional impact the proceedings have had on her. This is really important for Jing.

After the disciplinary case has concluded, Jing still sees Thomas at Student Union (SU) events, and this is causing her distress. The case manager therefore contacts the co-ordinator of the events and discusses whether there is any way to keep the two individuals separate. Jing wants the reported student to be removed from a venue if they are both present, but the case manager carefully explains that this is not possible because there have been no adverse findings against him. Instead, a member of staff is identified whom Jing can approach at the venue if there is any misconduct by anyone. Jing finds this very reassuring.

Case study 3

A university has appointed two dedicated case managers – one to support reporting students and one to support reported students.

A student, Casey, submits a report of sexual misconduct using the university's online reporting system. An appointment to see a case manager is made for the next day. In the initial session, Casey presents as shy and uncomfortable and finds it hard to articulate what happened. The case manager explains that she is independent of the complaints/disciplinary processes and other departments of the university and so is able to focus solely on Casey. The case manager notes that Casey doesn't recognise the impact or severity of the alleged sexual misconduct that has taken place, just that she feels uncomfortable and doesn't want to engage in classes where the other student involved is also attending. She also exhibits high levels of fear.

The case manager discusses with Casey the different options available to her (including reporting the matter to the police and/or the university), explains the types of specialist support she can access and reassures her that there is no pressure from anyone to follow any particular path.

During the initial session, Casey says she doesn't want to pursue any of the formal reporting options. The case manager discusses other steps that can be taken, including speaking to Casey's tutor about the situation and her fear of being in the classroom with the other student. The case manager offers to support Casey with that discussion.

After the session, the case manager emails Casey a summary of what has been discussed so that she will have a record and can refer back to it. Casey uses text to communicate and asks the case manager to speak to her tutor and accommodation provider. The case manager takes the following steps: makes the tutor aware of the situation; explains to the tutor that Casey has concerns about an upcoming exam and liaises with the course team, who agree to make arrangements for Casey to sit her exam separately from the rest of the class; liaises with Casey's accommodation providers to provide reassurance in relation to security; encourages Casey to download a university app that links to the university's security services; and refers Casey to a local rape crisis centre for support.

At this stage, Casey decides to make a formal report to the university, and the case manager ensures that she is aware of the process, including what she can expect to happen at each stage. The disciplinary team at the university also goes through the process with Casey verbally and follows with an email setting out the details.

While the allegations are being investigated, the case manager continues to have regular 'check-ins' with Casey. Each time they meet, the case manager provides

information and explanations about the disciplinary process, including the potential outcomes, and discusses how Casey can navigate an outcome that she may not be satisfied with.

This approach enabled Casey to make informed decisions about how the incident should be dealt with. It resulted in informal precautionary measures being put in place quickly and supported Casey to make a formal report to the university shortly afterwards. When doing so, Casey understood the scope and limitations of the disciplinary process, including the potential outcomes. This ensured that Casey felt heard and believed, even though the disciplinary panel ultimately did not have sufficient evidence to conclude that the reported student had breached the university's code of conduct.

2. Deciding which procedure to use

The issue

It may be possible to deal with an allegation of misconduct under different procedures. One example of this is the opportunity to take action under a disciplinary procedure and an FTP procedure, depending on the course being studied. The question then arises as to which procedure should be followed. One or both, and if both, in what order? Another example is where a student is registered at two institutions, for example, a joint medical school, or undertaking a study year abroad. Which university's procedure should be used?

Key considerations

1. Does the alleged act/omission trigger both policies or only one? For example, failure to report an allegation of domestic abuse may constitute an FTP issue but not a disciplinary matter.
2. What are the risks of challenge if one procedure is used in advance of another?
3. Is a decision needed quickly? Can an outcome be achieved quicker or more easily using one procedure rather than another?
4. The welfare of students must be given priority and so an institution's welfare policy will run in parallel.

Case studies

Case study 4

The university receives an anonymous report that a student on a social work course has been involved in a car accident, arrested for drink-driving and has refused to provide a breath test. This may not fall within the scope of a disciplinary policy but it is potentially an FTP matter, so the university follows its FTP procedure.

As a first step, the university contacts the police to ask for information about the alleged offence and considers whether precautionary action should be taken.

In undertaking a risk assessment to determine whether precautionary action is appropriate, the university has regard to the nature and source of the information. As it was an anonymous report, the university treats it with caution, giving it less weight. When balancing the potential risks against the interests of the student, the university contacts the placement provider and checks that the student will not be driving while performing their duties and that there are no concerns about their performance that could be related to alcohol abuse. It is confirmed that they will not be driving and there are no performance concerns. The university therefore decides that the anonymous report does not constitute grounds for taking precautionary action.

The police refuse to provide information, and the student denies the allegation, so the university does not take the matter forward. Note that the police may not be willing to provide information due to their data protection obligations. In this situation, it is important that the university explains the reasons for requesting the information (to determine professional suitability) and how it will be used (in an FTP procedure) as this should give the police lawful grounds to disclose the information.

Case study 5

Reports are received about a student, Sarah, behaving in an aggressive manner towards staff and students on a number of different occasions. Sarah is receiving support from the university's welfare team due to mental health concerns. The university needs to take action to protect others, but the question arises as to whether the fitness to study procedure or disciplinary procedure should be followed.

One factor to take into account is whether Sarah needs emergency support and, if so, to put that in place immediately. In that situation, the university would follow the fitness to study procedure because Sarah is unlikely to have the capacity to make decisions for herself.

Where students do have mental capacity, it will usually be appropriate to take action under the disciplinary procedure to protect other students and staff, with reasonable adjustments being made to the process as required for the student's mental health, such as extending deadlines and arranging for a mental health advisor to be present during interviews to support the student.

Case study 6

Jack attends a collegiate university where the colleges are separate legal entities. Jack is seriously injured in a physical brawl with Liam, another student in the same college.

Jack initially does not report the matter to the college or the university. The matter is referred to the police, but no further action is taken. Jack later reports the matter under the college's own complaints policy. The outcomes available through the college process are limited because decisions only relate to membership of the college, so, for example, a college cannot make a decision to remove students from the university. This makes it important that Jack is informed about the different routes available under both the college and the university processes, so that he can make the right choice for him.

Upon receiving the complaint, a member of the college's complaints team meets with Jack to explain the process and outline his options. As Jack does not feel safe on campus and wants Liam to be permanently removed from the university, he needs to make a report under the university's disciplinary procedure. After discussing this with the college's complaints team, Jack decides to withdraw his complaint and make a report under the university's disciplinary procedure instead. Jack should be able to use the same information to avoid duplication and/or more trauma.

3. Precautionary action while investigating

The issue

What factors should be considered when determining whether precautionary action should be taken while investigating allegations of misconduct? What are the forms of precautionary action and when should each be taken?

Key considerations

1. When the police are involved, the university may have very little information about the alleged misconduct. Universities should therefore contact the police for more information, explaining why the information is needed. Given that the university may not have sufficient information to make an assessment of risk itself, consider asking the police to inform the university if the police believe that, were the student to continue with their studies, they would constitute a risk to others. Explain that if no such concerns are raised, the student is likely to be permitted to continue to study.
2. Be prepared to consider a range of actions, not just suspension. The action to be taken should mitigate risk to the reporting student and others while having the least detrimental impact on the reported student, such as limiting access to the campus and facilities to certain times of the day. Also consider whether options such as studying online rather than in person are viable.
3. When making a decision about the type of precautionary action that should be imposed, be prepared to explain why precautionary action that would have less impact on the reported student has been rejected or why precautionary action that would fully reduce risk to the reporting student has not been taken.
4. Ensure that both reporting and reported students understand the reason why precautionary action is being taken (i.e. to mitigate risk), what precautionary action will be taken and when it will be reviewed. Precautionary action is not a penalty.
5. Note that processes should provide that universities can review a decision to take precautionary action and/or what action should be taken at any stage.

This is because the decision will be based on the information provided and that will often change.

Case studies

Case study 7

A university receives a request for information about a student, Kai, from the police (a WA170 form). The form indicates that the information is needed in relation to a serious criminal offence, but no further details are provided. The university asks the police for further information so that the risk can be assessed, but the police refuse to provide more details. In these circumstances, the university decides that it has insufficient evidence to take any action. A factor that is relied upon when making this decision is that the police also have a duty to protect the public and so, knowing that the information is needed by the university to take action, it is reasonable to believe that the police have made an assessment that the risk is not sufficiently high to require them to disclose the information.

A month passes and the university contacts the police again to ask if there have been any developments. The police explain that the allegations relate to a serious sexual assault involving a third party and that they believe that the student is a risk to others. Although the details of the offence have not been disclosed, the university does now have information about risk and so undertakes a risk assessment. Given the severity of the risk (as assessed by the police), the university implements precautionary action to mitigate it. The university suspends Kai from campus and checks whether it is possible for him to study online to mitigate the detrimental impact on his studies. The course is not run online and so he is unable to continue his studies while the investigation is ongoing. The university informs Kai of the reason for the decision and explains that, in accordance with its procedures, the decision will be reviewed when more information is disclosed.

Another month passes, and the university is informed that the police have decided to take no further action because the Crown Prosecution Service does not believe that there is enough evidence to provide a realistic prospect of conviction based on the criminal test of proving the allegations beyond reasonable doubt. However, the police still regard Kai as a serious risk to others. This being the case, although the alleged victim is a third party who has not been in contact with the university, the university asks for further details about the allegations from the police so it can decide whether there is sufficient evidence of a breach of its code of conduct. While the university's investigation continues, the university decides to continue with the suspension, given the level of risk that has been identified by the police.

Case study 8

Beth is living in university accommodation and makes an allegation that another student has kicked and punched her and caused injury.

The university undertakes a risk assessment, and it becomes clear that two flatmates have argued over some food that one alleges was taken by the other. After undertaking a risk assessment to identify any precautionary action that needs to be taken, the university determines that the risk to anyone else is minimal, but that the two individuals involved need to be kept apart while an investigation is undertaken. In this situation, the university decides to move both students to different rooms in separate accommodation and to instruct them to stay away from each other.

The university must check that this action is permitted in the licence to occupy: most licences will allow for immediate relocation where there has been a breach of the licence conditions or where it is necessary to mitigate a risk.

Case study 9

Emma is a student who is living in university accommodation. She alleges that another student living in the accommodation, Carter, entered her room when she was asleep, got into her bed and had sexual intercourse with her without consent. The incident has been reported to the police, and Carter is arrested and released on bail.

The university undertakes a risk assessment and concludes that Carter could pose a serious risk to other students. A decision is made to suspend him from his course and from campus and to remove him from the accommodation as a precaution while the allegation is being investigated.

In relation to accommodation, the university will need to check the terms of the licence to occupy, but most will allow for termination of the licence and removal from the property if a student is suspended from their studies (legal advice should be obtained on this). Note that where there is a notice period, the university could move the reported student to another room, flat or building while the notice runs out, but the university would need to consider whether that would be placing other students at risk. One potential option would be for the university to consider moving the reported student to a self-contained flat or even a hotel off campus during the notice period.

The situation is further complicated if the reported student is a care leaver as they will not have anywhere to go. In this situation, the university should assist the

reported student to contact the responsible local authority so that alternative arrangements can be made urgently.

If the incident occurred in private accommodation, both the university and private accommodation provider will need to consider whether there is a lawful basis for disclosing information to each other. This analysis has to be undertaken on a case-by-case basis, but the required tests are likely to be met in these circumstances. While the university can suspend the reported student from their studies, it cannot compel the accommodation provider to remove the reported student from their room. The options available to the accommodation provider will depend upon the terms of the licence. However, the university can make recommendations to the provider, based on its experience. For example, the university could recommend removing the reported student completely, or, if that is not possible, moving the reported student to a separate block (if available), or, if the reporting student wishes to move, releasing that individual from their contractual obligations to facilitate this. If the accommodation provider is not co-operating, the university could offer alternative accommodation to the reporting student to ensure that they are supported.

4. Students on placement

The issue

How should universities respond to alleged misconduct that occurs while a student is on placement? In this situation, the allegations may be investigated by the police, by the placement provider and/or by the university (or a combination of these). Note that the focus of each investigation may be different, so, in some cases, it may be necessary for three investigations to take place.

Key considerations

Precautionary action

1. The immediate focus will be on considering whether the student can continue on placement while the allegation is being investigated. The issues to be considered when making that determination will be the same as those where the allegations are made while the student is studying at the university, for example the application of a risk assessment when considering whether precautionary action is necessary.
2. If the placement provider is unwilling to continue with the placement, then the university will have to undertake a risk assessment to consider whether the student should return to their studies while an investigation is ongoing. Note that it may not be immediately possible for a student to return to their studies if there are no academic modules being delivered at the time.
3. If the placement provider is willing to allow the student to continue with the placement, the university should still undertake its own risk assessment and consider whether the student should continue with the placement and/or their studies while an investigation is ongoing as different factors may apply.

Investigation (refer to the placement agreement to identify any agreed processes)

1. A police investigation will take priority, and internal disciplinary investigations should generally be paused until the police have concluded the criminal process.

2. If the incident occurred when the student was on placement, the student (and university) should co-operate with any internal investigation by the placement provider and seek to obtain a copy of the information and any evidence gathered.
3. The university should obtain as much information as possible from any investigation undertaken by the police and/or the placement provider. Note that in these circumstances, it is likely that there would be a lawful basis for a university and placement provider to share information about a serious disciplinary matter. The university will then need to consider whether there has been a breach of the university's regulations and, if so, decide what action (if any) is necessary. Note that while the facts may be the same, the university may have different concerns and remedies to those of the police and placement provider. For example, the police may be considering whether there has been a criminal offence, the placement provider may be considering whether there has been a breach of health and safety regulations, and the university may be considering whether there has been a breach of its code of conduct.

Placement agreement

1. As best practice, it is recommended that an agreement setting out responsibilities for investigating such matters, sharing information, mitigating risks and enforcing decisions is put in place when placements are entered into.

5. Information gathering and sharing

The issue

How much information can be shared with others about alleged student misconduct?

Key considerations

1. The test for disclosure is set out in UUK's 2022 guidance, [Sharing personal data in harassment cases](#). In summary, information can only be disclosed if a lawful basis for sharing has been identified, and that has to be assessed on a case-by-case basis.
2. When dealing with the police, the same test of disclosure is relevant. Applying that test, in the majority of cases, it will be lawful, necessary and appropriate to provide the police with any information they need in order to investigate an alleged criminal offence. In the same way, in the majority of cases, it is reasonable for a university to ask the police for details about the alleged offence, whether the individual being investigated may be a risk to others and the progress of the investigation. The police will decide what to disclose using the same legal tests. Note that when receiving information from the police, universities should check what can and cannot be disclosed to others in order to ensure that the criminal investigation is not prejudiced.
3. Universities should ensure that internal staff understand that data protection requirements do not prevent them reporting incidents or allegations to the relevant areas, for example welfare services, student disciplinary teams or case managers. This can be encouraged by a 'report-and-support' tool that allows both staff and students to make reports.

Case studies

Case study 10

Hana informs her tutor that she is being harassed by another tenant in her (privately owned) accommodation. The tenant has just graduated from the university and so is no longer subject to the university's processes. With Hana's consent, the case

manager liaises with the police and accommodation provider to inform them of the allegation. The police and private landlord speak to the tenant who is the subject of the allegations and there are no further issues.

Case study 11

The university is investigating an allegation of physical violence, and, as a precautionary measure, has told both students involved that they must not speak to each other or contact each other during the investigation. The students are on the same course and so, in order to ensure that the precautionary measures are supported, the student disciplinary team informs the academic staff who teach the students about the precautionary action. This type of disclosure to staff is reasonable and proportionate and is highly likely to comply with data protection obligations.

Case study 12

The mother of a student has made an allegation about a serious sexual incident involving another student. They contact the case manager and ask for details of the disciplinary procedure. The case manager cannot disclose any information about the case without the student's express consent, but does outline the procedure in a generic way. After the call, the case manager contacts the student to ask whether they wish to consent to information being disclosed to their mother. The student provides consent, and a note is added to the case manager's file so that if the mother calls again, information can be disclosed.

6. Investigations

The issue

There is a wide variation within the sector in relation to how investigations are conducted. Universities must ensure that any investigation complies with basic requirements of procedural fairness. The aim is to obtain the facts in a fair and unbiased manner and to present those facts to the decision-maker(s).

Key considerations

1. It is essential to frame the issue as a breach of contract and not a criminal offence, as universities do not have jurisdiction to make determinations about criminal matters.
2. The investigator who is appointed must not have been involved in the incident or know any of the parties involved. This ensures independence and avoids conflicts of interest arising.
3. The scope of the investigation needs to be defined. This will ensure that only relevant information is obtained and recorded and irrelevant information is disregarded. The scope can be widened if further relevant information that is obtained during the investigation indicates that this is necessary.
4. The investigator should plan who they want to speak to, what other information is required and where they can obtain that information before commencing enquiries. It will be necessary to review this plan frequently during the evidence-collecting stage because the new information may indicate a need to make additional enquiries (or even to revisit evidence that has already been obtained).
5. When collecting the evidence, the investigator should consider the impact the investigation will have on those involved. This is called a trauma-informed approach. As part of this, investigators should seek to obtain information in a private manner and consider what can be obtained without speaking to anyone else.
6. Investigators should ensure that they keep an accurate record of the evidence obtained, including how and when it was obtained, and should store it in an appropriate manner.

7. The investigator must review the information obtained on an objective basis, omit anything that is irrelevant or may be prejudicial, and prepare a report outlining what information was obtained and how it was obtained.

Case studies

Case study 13

The university receives an anonymous allegation that one student, Riley, is being verbally abusive to other students on her course. The university's disciplinary team speaks to the lecturers on the course and the welfare team to see whether anything has been reported to them. Neither is aware of any issues and so the university decides to take no further action, given the lack of evidence.

Three months later, the university receives a number of emails that appear to have been sent by Riley to another student, but the recipient's name is redacted. The emails are abusive and threatening. The university starts an investigation but is unable to identify the recipient of the emails. In this situation, the investigator may decide to put these emails to Riley and get her account of events. If there is no reasonable justification for the comments made in the emails, then the university may decide that there is sufficient evidence to progress to a disciplinary panel without a statement from the alleged victim.

Case study 14

The university receives an informal report from a student, Grace, that over 12 months ago, she was subjected to a sexual assault by another student, Luca.

Grace is referred to a case manager, who explains the options available to Grace including reporting the incident to the police, asking the university to investigate the incident under the disciplinary procedure or taking no action. The case manager explains the key differences between a police investigation and a university investigation, including setting out the limitations of a university investigation.

Grace is made aware that the university cannot investigate or reach a conclusion on whether a 'sexual assault' has taken place, but that it can investigate the alleged incident as a possible breach of its student code of conduct. Grace is told what information she is likely to receive by way of an outcome, which in this case is expected to be whether or not the student code of conduct has been breached and, if it has, details of what the outcome would mean for her. She is also provided with details of how her information will be used and retained. Following this explanation, Grace confirms that she doesn't want to make a report to the police and wants the

incident to be investigated under the university's disciplinary procedure. The case manager assists Grace to make a formal report to the student disciplinary team and also provides support to Grace by assisting her to liaise with academic staff to seek details of the course requirements and any extensions or deferrals that could be put in place for Grace.

An initial consideration of the case is undertaken by the disciplinary team in accordance with the university's student disciplinary procedure. A risk assessment is undertaken on the basis of the known information, and precautionary action is identified as being required to mitigate the risks identified. Luca is contacted, informed of the allegation that has been made, the code of conduct/regulation that has allegedly been breached, the procedure being followed and the precautionary action that is being put in place.

An investigation is then undertaken, with the investigator identifying the scope of the investigation based on the allegation made and in accordance with the timescales set out in the disciplinary procedure. In order to collect the evidence, the investigator contacts Grace to arrange a meeting, explaining the purpose of the meeting and how the information gathered will be used. The investigator meets with Grace to gather her account using a conversational model that enables Grace to give her account in a safe and controlled way. The investigator is sensitive to the impact trauma might have had and uses appropriate techniques to counter this.

The investigator then contacts Luca to arrange a meeting, explaining the purpose of the meeting and how the information gathered will be used. The investigator meets with Luca to gather his account using a conversational model that enables Luca to give his account in a safe and controlled way. His account is gathered in detail before the investigator shares details of Grace's account.

Both students may identify some named witnesses and the investigator may contact those individuals to ask them to provide a statement. If any new information is obtained, the investigator should consider whether it is necessary to provide that to the reporting and reported students and/or the witnesses who have already been interviewed and to get a response from them.

The investigator writes a report that summarises the evidence obtained. The determination of whether or not the case proceeds to a panel hearing will depend upon the provisions of the disciplinary procedure. For example, it may provide that the investigator will consider whether there is sufficient evidence of a potential breach of the university's code of conduct/regulations to proceed to a panel. In this case, the investigator considers that there is sufficient evidence to proceed (noting that the panel's decision will be made on the balance of probabilities) and the case is therefore referred to a student disciplinary panel hearing.

The report and all documents are shared with Luca, along with a letter detailing the specifics of the allegation, which stipulates what he is reported to have done, when, and where, and why, if proven, this would be a breach of the university's code of conduct/regulations, and notifying him that the case is progressing to a student disciplinary panel to consider the case.

Case study 15

A university receives a report of serious and persistent harassment from Ethan. In his report, Ethan states that he has heard of two other students who have also experienced recent harassment from the same person. Ethan shares the details of these other students. Once an investigation is under way, the investigator considers whether to approach the other named people who may have been affected. In doing so, the investigator is mindful that any approach they make must maintain the integrity of the possible evidence the students can give by being non-leading and being fair and balanced. The investigator decides to approach the students directly and justifies this decision because the nature of the reported behaviour is the same (harassment) and is reported to have occurred in the same timeframe.

The investigator provides some neutral and carefully worded text to each student separately, explaining that they are investigating a case of student-on-student harassment and that they have been told that the student may have experienced behaviours that may be considered harassment under the university's rules. The investigator provides the students with details of how to access appropriate support and provides the students with the opportunity to either formally report any behaviours they have experienced or to meet with the investigator to provide their account.

One of the students responds that they wish to make a formal report and to meet with the investigator. The nature of the harassment this student is reporting is very similar in the method, delivery and pattern of the behaviours reported by Ethan. The investigator decides that both cases will be handled concurrently and investigated together because of their similar nature. The investigator contacts the reported student to inform them that another student has reported them to the university for behaviours that they have reported as harassment, and that neither reporting student is aware of the specific details of the other's case.

The investigator considers the evidence gathered for each case and determines that there is sufficient evidence of a potential breach of the university's code of conduct/regulations to proceed to a panel hearing. The investigator also considers that each case provides additional evidence of alleged behaviours of the reported student that are similar in their nature and therefore recommends that they be considered at the same student disciplinary panel hearing.

7. Representation at hearings

The issue

Disciplinary investigations and hearings are internal processes that are founded on the contractual relationship between students and universities. It is therefore expected that legal representation will not be required for either the students or the university and that the only third party to attend will usually be someone to act in a support role to the students. However, if a reported student requests permission to be represented by a solicitor or barrister at the disciplinary hearing, legal representation should be permitted where it is necessary to ensure fairness and natural justice.

Key considerations

1. A university should consider the following factors when deciding about whether to permit a reported student to have legal representation in a disciplinary hearing:
 - a. the seriousness of the allegations against the reported student and potential penalty
 - b. whether any points of law are likely to arise
 - c. the capacity of the reported student to understand the case against him or her
 - d. any procedural difficulties
 - e. the need to avoid delay
 - f. the need for fairness between the reported and the reporting party
2. If legal representation is permitted, it is important to consider whether any controls need to be put in place or mitigating actions need to be taken to safeguard the other participants. These may include requiring questions for witnesses to be put to the chair of the panel and then the chair will filter those questions before putting them to the witnesses. Additionally, if it is anticipated that the legal representative may seek to make complex legal submissions, the university should consider whether it wants to engage a solicitor or barrister to advise the panel and potentially engage another

solicitor or barrister to advise the person presenting the case (this could be an in-house lawyer).

Case studies

Case study 16

Serious allegations relating to the falsification of records are made against Jane, a fifth-year medical student, and the university's FTP procedure commences. The university's FTP procedure does not expressly allow for students to have legal representation at FTP hearings, but students are ordinarily allowed to be accompanied by a 'friend' or 'supporter'.

When the university is deciding whether or not to permit Jane to bring a lawyer to the hearing, it considers the seriousness of the allegations against her, the potential exclusion from the medical course if the allegations are upheld and the likelihood that this would prevent her from ever having a career in medicine. Taking these points into account, the university decides in favour of allowing Jane to bring a lawyer to represent her at the hearing.

At the hearing, the chair of the panel still asks Jane to provide her witness evidence directly to the panel, and Jane is asked to respond to questions about the evidence herself, not through her lawyer. Any questions to witnesses from Jane's lawyer are addressed to the chair, who then asks the witnesses. The university also takes the decision to instruct its own in-house lawyer to advise the investigator/presenter, as well as engaging an independent lawyer to advise the panel.

Case study 17

Allegations are made that Asif punched another student and the university's disciplinary procedure commences. Asif struggles with his mental health and has asked for his lawyer to represent him at the disciplinary hearing.

The university's disciplinary procedure does not expressly allow for students to have legal representation at disciplinary hearings, but students are ordinarily allowed to be accompanied by a 'friend' or 'supporter', who is there to provide moral support only.

When the university is deciding whether or not to permit Asif to bring a lawyer to the hearing, it considers a number of factors and keeps in mind that permitting legal representation in disciplinary cases should be the exception and not the norm. Given Asif's history of mental health concerns, it considers that allowing legal representation is a reasonable adjustment in this particular case.

Asif is informed that legal representation is permitted but he will still be required to provide his witness evidence directly to the panel, and to respond to questions about the evidence himself, not through his lawyer. During the hearing, any questions to the reporting student and other witnesses from Asif's lawyer are addressed to the chair, who then asks the relevant individuals. The university does not engage any lawyers to advise the investigator/presenter or the panel in this case as it does not involve complex issues of fact or law.

8. Hearings

The issue

Attending a disciplinary hearing involving an incident of alleged serious misconduct will be challenging and difficult for all students involved. It is therefore necessary to consider whether it is possible and reasonable to make adaptations to seek to support the students while ensuring that there is a fair hearing. In addition, given the limited powers of universities to obtain evidence and the inability to compel witnesses to attend, there are likely to be evidential issues that have to be considered by the student disciplinary panel.

Key considerations

1. Universities should consider whether it is appropriate to make any adjustments to the process for the reporting student, the reported student and any other witnesses. This could include allowing the reporting student to attend the hearing remotely (for example, via video-link) and ensuring that any questions about their evidence from the reported student are addressed to the chair, who will then consider whether the question is relevant/appropriate and, if so, ask it themselves.
2. In making any adjustments, the requirement to ensure a fair hearing is critical. As a matter of natural justice, it is important that the reported student is provided with all the evidence that will be relied upon by the investigator/presenter in advance. The reported student must have the opportunity to be present during the whole hearing so that they can hear the case against them and have an opportunity to respond and put their case.
3. It is also important to recognise that the disciplinary process is one in which the university is taking action against the reported student for a breach of its code of conduct/regulations. The reporting student is a witness in the disciplinary process. On this basis, it would be appropriate for a university to arrange for the reporting student to attend a hearing to present their own evidence only.
4. A panel may be provided with various forms of evidence during the hearing, including oral evidence from witnesses, written evidence from witnesses, CCTV footage, police reports, text messages, social media posts and emails.

5. The panel will first need to determine whether all the available evidence should be considered, i.e. is it admissible? Generally, evidence will be inadmissible if it is not relevant or if it would be unfair or unreasonable to take it into account.
6. Recent case law indicates that, when considering fairness and reasonableness in relation to the admission of witness statements where the witness is not attending the hearing (and therefore cannot be questioned about it), the panel needs to take into account:
 - a. whether the statements are the sole or decisive evidence in respect of the allegations
 - b. the nature and extent of the challenge to the content of the statement
 - c. whether there is any suggestion that the witness had any reason to fabricate the allegations
 - d. the seriousness of the allegations, taking into account any impact of an adverse finding on the reported student
 - e. whether there is good reason for the non-attendance of the witness
 - f. whether the university has taken steps to secure their attendance
 - g. whether the reported student has had notice that the witness is not going to attend and that the written statement would be relied upon.
7. When seeking to determine the facts in the case, the panel needs to consider all of the admissible evidence presented. As part of that process, the panel needs to consider the weight to be attached to each piece of evidence as this may be different depending upon the form of evidence, when it was provided and who provided it. For example, a CCTV image showing a fight is likely to carry the most weight, whereas a written witness statement submitted by someone who states that they had consumed 10 units of alcohol at the time of the incident is likely to carry significantly less weight. However, note that if the account of a witness is also supported by other forms of evidence, that evidence can be assessed as a whole and so may result in a number of weaker sources of evidence ultimately being preferred over a single source of stronger evidence.
8. It is important to recognise that if the university is dealing with a misconduct case where the facts and matters being considered may also constitute a criminal offence, then the reported student may be advised by a lawyer not to attend a disciplinary hearing. In this situation, if the disciplinary procedure permits it, the hearing can continue in their absence and the panel must

determine whether there is sufficient evidence to prove, on the balance of probabilities, that the alleged misconduct took place. The fact that the reported student has not attended the hearing should not in itself be taken as proof that the allegations are true, although it may affect the weight given to their witness statement as they cannot be questioned about it.

Case studies

Case study 18

The university receives a report from Emily that she was touched inappropriately by another student, Leo, during a practical session on a nursing course. She describes that he had stroked her legs when practising how to apply a bandage. The university investigates the allegation under its FTP procedure. Leo explains that it is a misunderstanding and he was just being careful. He apologises if his actions were misinterpreted. The university takes no further action at that time.

Eighteen months later, the university receives a report from Leo's flatmate, Nina, alleging that he touched her inappropriately (stroking her legs) while they were watching TV. She told him that this was not acceptable, but then the following evening, he did it again. The university commences another investigation under its FTP procedure. Leo denies that he touched Nina at all.

The university convenes an FTP panel hearing to consider both allegations. Neither Emily nor Nina is willing to attend the hearing. Emily does not want to take part due to the time that has lapsed, and Nina does not wish to attend the hearing because she has come to the end of her studies, now lives in another part of the country and wants to move on from this incident. As a consequence, their written, signed statements are submitted to the panel.

The panel has to decide whether both alleged incidents should be taken into account, whether the written statements from Emily and/or Nina should be admitted as evidence, and if so, what weight should be attached to that evidence.

The panel decides that Emily's witness statement can be admitted. Although the incident occurred 18 months ago and no further action was taken by the university at that time, Leo did not deny that he had stroked Emily's legs and so the facts were uncontested. The panel attributes significant weight to Emily's witness statement because the facts were accepted by Leo, albeit he denied that he had acted inappropriately.

The panel also decides to admit Nina's witness statement for the following reasons:

- there is other evidence that shows potentially inappropriate behaviour
- although Leo denies the alleged touching, there are some similarities to the first incident that should be taken into account
- there is no reason for Nina to have fabricated the allegations and she does not know Emily and is not aware of the incident involving Emily
- it is important to consider any potential pattern of behaviour when considering whether a student is fit to practise
- there is a reasonable explanation given as to why Nina is unable to attend
- the university has sought to secure Nina's attendance by offering to pay for her travel and/or enabling her to give evidence via video-link
- Leo has been informed that Nina will not be attending the hearing and told that her statement will be relied upon.

However, the panel attributes significantly less weight to Nina's witness statement because the account is contested by Leo and she is not present to answer questions about the circumstances.

Taking both alleged incidents into account, the panel decides that, on the balance of probabilities, there is sufficient evidence to conclude that Leo has behaved inappropriately. He is given a final written warning.

Case study 19

The university receives a report from a student, Amy, that she met another student, George, in a nightclub and they went back to her room. She says that George then forced her to have sexual intercourse despite her repeatedly asking him to stop. George states that Amy consented.

The case goes to a disciplinary hearing. Amy provides a witness statement and is due to attend the hearing. However, the day before, she contacts the university to say that she is unable to attend because she is still traumatised by the incident and is concerned that attendance will further damage her mental health. The university reschedules the hearing and offers to support Amy by arranging for a mental health counsellor to attend with her, giving her the opportunity to provide evidence via video-link and for any questions to be asked through the chair of the panel. However, Amy declines to attend the rescheduled hearing due to continued concerns about her mental health.

The investigator/presenter asks the panel to consider Amy's written witness evidence. The panel decides to admit the evidence because although it is the sole evidence in support of the allegation, the allegation is very serious, there is no suggestion that Amy had any reason to fabricate the allegation, and there is good reason for Amy's non-attendance. The evidence is robustly contested by George, who had been informed that Amy was not going to attend and that the written statement would be relied upon. In weighing up the evidence, the panel acknowledges that it only has the evidence of Amy and George to consider. On balance, the panel prefers the evidence given by George because he provided significant details about the alleged incident during his verbal evidence, which were not matched in Amy's written evidence. The panel therefore concludes that there is insufficient evidence to prove on the balance of probabilities that George committed the alleged act of misconduct.

Case study 20

The university receives a verbal report from a student, Matthew, that another student, Liz, has been harassing him. Matthew provides emails from Liz in which she makes sexual jokes. Matthew also provides text messages in which Liz invites him to meet her and makes sexually explicit comments and attaches a video showing Liz walking behind Matthew on the way to their accommodation, saying that she intends to persuade Matthew "one way or another" to get to know her. Matthew also provides emails in which he told Liz that her actions were causing him distress and asking her to stop. Matthew does not provide a witness statement. He is an international student and returns to his home country before the disciplinary hearing takes place. He stops engaging with the university and it becomes clear that he will not attend the hearing. The hearing continues in his absence.

The investigator/presenter provides the evidence to the panel. The panel notes that Matthew is not present and has not provided a statement and so agrees that this reduces the weight of the evidence he has presented because the context has not been provided. However, Liz fails to produce a reasonable explanation for the emails, text messages and her own conduct, saying that she was joking and thought that Matthew knew that. On balance, although the evidence provided by Matthew is given less weight than it would have had it been supported by a verbal statement to the panel or a written witness statement, the panel concludes that the evidence presented is sufficient to establish, on the balance of probabilities, that Liz had engaged in actions that had caused Matthew alarm and distress, that this conduct had been ongoing over a period of time and that she had not stopped when expressly asked to do so by Matthew. The panel therefore decides that Liz has breached the university's code of conduct.

Case study 21

The university receives reports from a group of three female students saying that the male student, Noah, who is sharing privately-rented accommodation with them is harassing them. The university interviews each student separately. The female students all give slightly different accounts of events, although some words and phrases used when describing the alleged incidents are exactly the same. Noah is shocked and distressed by the allegations and denies any inappropriate behaviour. He thinks that the female students are trying to get him removed from the flat because they don't like him, but he has no independent evidence of this.

The female students decline to attend the disciplinary hearing, saying that it would cause them too much distress. The panel agrees to admit the written statements of these students, but gives them very little weight. Although there are statements from three individuals who make similar allegations against the same person, those statements lack credibility due to the mixture of inconsistencies and use of the same phrases and wording, which suggests an element of collaboration. As the witnesses have declined to attend the hearing, those inconsistencies and the use of the same use of wording cannot be tested by the panel. As a result, the panel decides that there is insufficient evidence to show that there has been any inappropriate behaviour by Noah.

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