

Written submission from Dr Rachel Fenton (SPP0109)

Accountability of Universities and the OFS for combatting sexual harassment and other forms of violence against women and girls (VAWG).

- The Universities UK Report *Changing the Culture* has been a welcome step. However, there are no duties on universities to implement recommendations and no sanctions for non-implementation
- Responses from individual universities have been piecemeal and inconsistent across the sector
- Universities and the Office for Students (OFS) should be accountable for their implementation of measures to prevent and respond to VAWG
- The current legal framework does allow universities to be held to account but depends mainly on individuals bringing cases to court
- The Women and Equalities Committee should consider a statutory framework which imposes mandatory duties on Universities to prevent and respond effectively to VAWG and which ensures the accountability of the OFS to government in this regard.
- A mandatory duty should include as a minimum:
 - Provision of evidence-based effective prevention for all students and staff
 - Data collection and reporting including climate surveys.
 - Provision of specialist support for survivors
 - Provision of transparent investigative disciplinary processes (students and staff) conducted by properly trained staff
 - Sanctions for non-compliance
- US legislation – the Clery Act 1990 (as amended 2013 (Campus SaVE Act)) is potentially useful as an example of a statutory framework for accountability
- The Women and Equalities Committee should consider commissioning a review into legislative frameworks in other jurisdictions to examine how legislation might best be drafted and problems encountered elsewhere avoided.
- Experts in Law and VAWG must be consulted in any drafting process
- Mandatory duties on Universities can only be one part of a comprehensive strategy for combatting VAWG in Universities

The Universities UK Taskforce Report *Changing the Culture* is a welcome step forward in highlighting the issue of VAWG and in making recommendations for Universities. However, the report has no ‘teeth’: there are no obligations or duties on universities to implement any of the recommendations, and no sanctions for non-implementation. The recommendations are couched in the ambivalent language of “universities should” and “universities should consider”. Consequently, whilst there are pockets of good practice, efforts have been piecemeal, “highly uneven” across the sector, with a fifth making “very limited progress” (Universities UK, 2018, p.8). Some universities have almost completely ignored this agenda. The provision of HEFCE (now OFS) catalyst funding is also welcome in assisting universities to implement some of the recommendations, but questions arise as to sustainability and commitment as the funding expires.

As public bodies, educational institutions and well-recognised sites for VAWG there are good reasons for imposing accountability on universities and the OFS for preventing and responding to VAWG.

At the current time the law does allow for the holding of universities to account through the Human Rights Act 1998 and the public sector equality duty under the Equality Act 2010 but these are largely dependent on individuals bring cases to court (e.g. *R (Ramey) v Oxford* [2015]; Whitfield, 2018; Whitfield and Dustin, 2015). Placing the enforceability burden on individuals is unsatisfactory. A starting point might be to impose a mandatory duty enforceable by the Equalities and Human Rights Commission (EHRC) akin to that currently proposed by the EHRC for protecting workers from harassment and victimisation in the workplace (EHRC, 2018). Better would be the provision of a specific statutory framework of accountability for universities with direct accountability to government.

Mandatory duties are used in other jurisdictions such as the US to hold universities to account (detailed below), with sanctions for non-compliance. Whilst mandatory duties can only be one part of a comprehensive strategy for combatting VAWG in universities, their imposition could ensure a baseline consistency across the sector which is currently absent (e.g. different standards of proof being used in disciplinary processes, Baynes, 2018) and likely to remain so: duties would force uncommitted universities to act and would not deter already committed universities from best practice. The Women and Equalities Select Committee should consider commissioning a review of other jurisdictions to explore best statutory frameworks and obviate problems encountered elsewhere. Experts in both VAWG and legal responses to VAWG must be involved in any drafting process.

The Women and Equalities Select Committee should consider mechanisms to make both universities and the Office For Students accountable to government for their policies and procedures for combatting VAWG. Sanctions should be imposed by government for non-compliance.

A mandatory duty should include:

- Provision of evidence- based effective prevention for all staff and students. The word 'effective' should be used to ensure that prevention programming is theoretically driven and evaluated by research for effectiveness (Fenton, Mott, McCartan and Rumney, 2016)
- Data collection and reporting. All reported incidents should be collected and reported publicly. However, we know that only a very small number of survivors will formally report and climate surveys using recognised and uniform measures should be implemented by universities to identify the real scale of the problem (see Klein, 2018)
- Provision of specialist support by specialist services for survivors including ISVA/IDVA models
- Clear and transparent disciplinary processes must be provided for, for both student and staff misconduct. Staff who conduct investigations or who sit on panel hearings must have specific specialist training in the issues that arise in VAWG. The current legal guidance for universities (Universities UK/Pinsent Masons, 2016) is unsatisfactory in this regard (Fenton, 2016). A mandatory duty must set out the basic minimum requirements for disciplinary processes in the specific context of VAWG

- Sanctions such as significant fines or withdrawal of funding should be imposed for non-compliance.

One example of a statutory framework is the US Clery Act 1990ⁱ. The Clery Act as amended 2013 (Campus SaVE Act) requires Institutions of Higher Education (IHE's) to collect and report data on (all) reported criminal offences, including sexual offences, domestic violence, dating violence and stalking to the Department of Education (ED) (McCallion and Feder, 2014). What is particularly interesting about this legislation is that IHE's must include a statement of policies regarding their programs *to prevent* and *procedures following reporting* of domestic violence, dating violence, sexual assault and stalking. These policies must address education programs which must include "primary prevention and awareness programs for all incoming students and new employees" - and these must include bystander intervention - and "ongoing prevention and awareness campaigns for students and faculty" regarding domestic violence, dating violence, sexual assault and stalking. In addition to setting out the procedural requirements for institutional disciplinary action, the Act requires that officials who investigate a complaint or hear proceedings must undergo annual training "on the issues related to domestic violence, dating violence, sexual assault and stalking".

Legal requirements can only ever be a small part of the solution to VAWG in universities and have their limits (e.g. Klein, 2018); however, without accountability at scale, it is clear that universities will not respond effectively and there is no uniformity across the sector, meaning that students and staff will face different environments and different responses depending on which institution they are at.

June 2018

References

Batty, D, and Cherubini, E. (2018) "UK universities accused of failing to tackle sexual misconduct", The Guardian 28 March 2018, available at <https://www.theguardian.com/world/2018/mar/28/uk-universities-accused-failing-tackle-sexual-misconduct>

Baynes, C. (2018) "Cambridge University students demand lower standard of proof for sexual misconduct claims" The Independent, 10 May 2018, available at <https://www.independent.co.uk/news/education/education-news/cambridge-university-sexual-misconduct-proof-evidence-students-a8345416.html>

Equality and Human Rights Commission (2018), "Turning the tables: ending sexual harassment at work" available at <https://www.equalityhumanrights.com/en/publication-download/turning-tables-ending-sexual-harassment-work>

Fenton, R (2016) "Universities need clearer guidelines on how to deal with rape cases" The Guardian 1 November 2016, available at <https://www.theguardian.com/higher-education-network/2016/nov/01/universities-need-clearer-guidelines-on-how-deal-with-cases>

Fenton, R., Mott, H., McCartan, K., and Rumney, P., (2016) "A review of evidence for bystander intervention to prevent sexual and domestic violence in universities", Public Health England, available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/515634/Evidence_review_bystander_intervention_to_prevent_sexual_and_domestic_violence_in_universities_11April2016.pdf

Klein, R., "Sexual Violence on US College Campuses: History and Challenges" in Lewis, R. and Anitha, S. *Gender Based Violence in University Communities*, Policy Press

McCallion and Feder (2014) "Sexual Violence at Institutions of Higher Education", Congressional Research Service

R (Ramey) v Governing Body of the University of Oxford [2015] EWHC 4847 (Admin)

Universities UK (2016) "Changing the Culture", available at <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2016/changing-the-culture.pdf>

Universities UK (2018) "Changing the Culture: One Year On", available at <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2018/changing-the-culture-one-year-on.pdf>

Universities UK / Pinsent Masons "Guidance for Higher education Institutions" available at <https://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/guidance-for-higher-education-institutions.aspx>

Whitfield, L. (2018) "Using the law to challenge gender based violence in university communities" in Lewis, R. and Anitha, S. *Gender Based Violence in University Communities*, Policy Press

Whitfield, L. and Dustin, H. (2015) "Spotted: Obligations to Protect Women Students' Safety and Equality", EVAW legal briefing, available at <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Spotted-Obligations-to-Protect-Women-StudentsEy-Safety-Equality.pdf>

Cambridge – standard of proof

ⁱ Note that Title IX which is a civil rights law which prohibits discrimination on the basis of sex in federally funded education and operates in conjunction with the Clery Act in this domain. Discussion of this legislation is beyond the scope of this brief evidence.