

Sensitive Complaints

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An allegation is made

- Clear information about options
- Signpost to trained support staff
- Support to report to police
- Retain confidentiality



No police involvement

- Keep a record of advice
- No general duty to report crime

- Wish to pursue a complaint
- Risk assessment



Natural Justice

- Ensure both alleged victim and alleged perpetrator are treated fairly and equally.
- Have regard to legal obligations, including HR requirements & to any guidance from e.g. UUK.



Current situation

Universities generally follow the Zellick guidelines (CVCP,1994)

Currently under review by UUK taskforce on violence against women, harassment & hate crime



Looking across the pond

Violence Against Women Act (VAWA)

- Re-authorised 2013
- Imposed new obligations on universities
- (s 304 VAWA) Campus Sexual Violence Act
- Prescribes standards for investigation and conduct of student discipline proceedings in:
 - Domestic violence
 - Dating violence
 - Sexual assault
 - Stalking



Key features of VAWA

- “statement of the **standard of evidence**”
- Personnel **trained** to investigate and conduct hearings in a manner that “**protects the safety of victims**” and “**promotes accountability**”
- Policy must identify “sanctions or protective measures” which may be imposed
- **Accuser & accused are entitled to the same opportunities to have others present** during an institutional proceeding, including the opportunity to be accompanied to any related meeting **by an advisor of their choice**



Key features of VAWA

- Accuser & accused must be informed **simultaneously and in writing** of the outcome and appeal procedures
- Policy must address **how victims' confidentiality will be protected**, including in record-keeping



Additional VAWA obligations

Requirements on universities to educate employees and students about sexual violence.

New students and employees must be offered “primary prevention and awareness programmes” which “promote awareness of rape” (+ a range of other sexual offences).



Content of Training Programmes

Training programmes must include:

- A statement that the institution prohibits those offences
- Definition of the offences
- Definition of consent
- “Safe & positive” options for bystander intervention
- Recognition of signs of abusive behaviour
- Ongoing prevention & awareness campaigns



Canadian Initiatives

- U of Windsor – intervention programme developed by New Hampshire
- Students trained as workshop facilitators to deliver workshops to peers
- Starting to become compulsory for students on some courses – law and business



Canadian Initiatives

York University:

- Working group on sexual assault, prevention & awareness
- Conducted a campus safety audit
- Adopted a safety app (12,000 downloads)
- App provides direct dial to emergency services, campus security , sexual assault support line & other services
- Certification & training programme for campus security
- Developing a bystander programme



UK – Ramey v Oxford

Administrative Court (High Court, QBD) May 2014

Student alleged rape took place in 2011

Police took no action

Referred by to university – harassment policy - n.f.a.

2014 – new harassment policy

Student (after leaving uni) challenged new policy

- public sector equality duty - Equality Act 2010
- Statutory torts of indirect discrimination & harassment
- unreasonable



Ramey v Oxford

- Application failed – not personally affected by 2014 policy, so no standing to take judicial review
- Of interest to universities in the judgement:
 - judge made it very clear that universities must **retain discretion to act (or not)** if police or CPS have decided not to pursue the case.
 - Must NOT have a policy that says “If the police have decided not to act, that’s what we’ll automatically do too”



Between a rock and a hard place.....

- What practical steps can a university reasonably take, bearing in mind the need to satisfy natural justice?
- The alleged victim may wish to put the university in the position of a court – impossible
- Limitations of university investigation must be made clear



Still between a rock and a hard place....

- What standard of proof should be used?
- VAWA does not prescribe one – current “dear Colleague” guidance from Office for Civil Rights says “a preponderance of the evidence”
- But would that withstand judicial review?
- What about other protective evidential rules, aimed at balancing the interests of the parties? (similar fact evidence, hearsay evidence.....)



And finally....

- What about the position of the investigators and decision-makers?
- What support do they need?
- In particular, what legal support do they need?



