



Briefing note no.4: Why higher education institutions should join the Misconduct Disclosure Scheme (January 2024)

This briefing note is authored by The 1752 Group with Clarissa DiSantis from Durham University and Elena Bezzolato and Gareth Price-Jones from the Misconduct Disclosure Scheme.

The Misconduct Disclosure Scheme was launched in January 2019 to address the specific problem of known sexual abusers moving between organisations undetected. The Scheme complements other vetting processes, such as police checks, as it picks up perpetrators who have had disciplinary processes completed against them, or who are subject to ongoing investigation, but who may not have committed crimes or been investigated by the police.

The Scheme is currently implemented by [over 240 organisations](#) worldwide. Organisations that have signed up to the Scheme include two UN agencies, several of the most renowned organisations operating in the humanitarian and development sectors (Oxfam, CARE, Save the Children, Islamic Relief, the British Red Cross, to name a few), as well as a growing number of private sector organisations such as Tetra Tech and M&C Saatchi. Between 2019-2022, 60,900 checks were carried out via the scheme, with 230 hiring processes affected by the scheme.

Higher education institutions (HEIs) internationally have long faced problems with staff moving institution during investigations into gender-based violence or harassment. **The Misconduct Disclosure Scheme will help to address the problem of ‘pass-the-perpetrator’.**

By joining the Misconduct Disclosure Scheme, HEIs will:

- 1) **demonstrate a public commitment** to address the specific issue of repeat perpetrators of gender-based violence and harassment moving between organisations;
- 2) **reduce the risk of gender-based violence and harassment** in the institution, by supporting safer hiring decisions by reducing employing abusers; and
- 3) **demonstrate the preventative duty to prevent sexual harassment of employees in the workplace** in line with the Worker Protection (Amendment of Equality Act 2010) Act 2023¹.

In the sections below, this briefing note addresses key questions for the higher education sector internationally in relation to joining the Scheme.

What’s the problem?

There doesn’t exist any large-scale data on how big the problem is of staff sexual abusers moving between HEIs. However, in a qualitative study of higher education institutional responses to reports of gender-based violence and harassment, the most common outcome was the responding party leaving the

¹ See [Worker Protection \(Amendment of Equality Act 2010\) Act 2023 \(legislation.gov.uk\)](#)



institution during the investigation process.² Indeed, as higher education (HE) law firm Eversheds Sutherland have noted:

In the context of sexual harassment and sexual misconduct in HE, there are concerns that established practices in relation to references, particularly in relation to academic staff, are inadequate and may not lead to a new or prospective employer being made aware of previous findings of harassment or sexual misconduct or that the staff member resigned during an investigation into allegations of such misconduct. These risks may arise, for example, where the focus is on academic references and a reference is not obtained from the current or former employer, i.e. an institutional reference.³ (our emphasis)

Where whistleblowers have tried to alert hiring institutions to ongoing disciplinary cases, they have faced defamation legal threats; for example, internationally renowned physicist Professor Carole Mundell faced libel action after she alerted a potential employer to an ongoing disciplinary case relating to sexual harassment.⁴ Postdoctoral researchers Syksy Räsänen and Till Sawala had to defend themselves against criminal defamation charges when they shared information about University of Turku's decision to hire a faculty member who had upheld findings in a disciplinary case relating to sexual harassment at the California Institute of Technology (Caltech). Such cases can be prohibitively expensive for those defending them and can lead to significant reputational damage for institutions involved.⁵ They demonstrate that a common standard and process for sharing information relating to sexual harassment and misconduct is urgently needed.

How does the Scheme work?

The Scheme consists of two main commitments:

- a commitment to systematically check with previous employers about any sexual harassment issues relating to potential new hires
- a commitment to respond systematically to such checks from others

The Scheme holds no information on specific cases of abuse. Rather, it facilitates the systematic bilateral sharing of misconduct data between recruiting organisations and previous employers.

As such, it simply gives employers a common framework to share the relevant information they need to make better hiring decisions, in this way reducing organisational risk.

² Bull, A., & Shannon, E. (2023). Higher Education After #MeToo: Institutional responses to reports of gender-based violence and harassment. The 1752 Group/University of York. <https://1752group.com/higher-education-after-metoo/> p.8

³ Eversheds Sutherland. (2022). *Legal Briefing Staff to student sexual misconduct*. Universities UK. <https://www.universitiesuk.ac.uk/sites/default/files/field/downloads/2022-09/uuk-eversheds-sutherland-staff-to-student-sexual-misconduct-legal-briefing.pdf>. P.45

⁴ Weale, S. (2017, March 7). Whistleblower calls on universities to do more to safeguard students. The Guardian. <http://www.theguardian.com/world/2017/mar/07/whistleblower-calls-on-universities-to-do-more-to-safeguard-students>

⁵ Mervis, J. (2022, November 17). Finnish astronomers acquitted in defamation case related to protesting harassment. *Science*. <https://www.science.org/content/article/finnish-astronomers-acquitted-defamation-case-related-protesting-harassment>



The Scheme is not a blacklist nor a centralised database; it does not oblige employers to act in any particular way on receiving information about a disciplinary investigation or finding. As such, candidates who have ongoing or upheld findings against them can still be employed by organisations that are members of the Scheme.

The Scheme can be embedded at the stage of recruitment that organisations choose. **The 1752 Group recommend that checks are carried out at the shortlisting stage, ahead of interviews.** This means that if any findings come up, employers can add an interview question to explore any issues identified.

The Scheme recommendation is that the previous five years of employment is checked. However, in HE, a longer period of time checks is likely to be needed as staff tenure in organisations can be lengthy. As such, **The 1752 Group recommend checks are carried out for the past ten years of employment.** However, ultimately this decision is at the discretion of employers.

How does the Scheme align with existing legal and policy guidance in the UK and in UK HE?

As of January 2024, 75 organisations who use the Misconduct Disclosure Scheme are UK-based or are implementing the Scheme in the UK.

Specific legal advice that aligns with the Scheme already exists for UK HEIs. In 2022, Universities UK commissioned transnational law firm Eversheds Sutherland to write a legal briefing on staff-student sexual misconduct. Their comments on referencing are in line with the requirements of the Scheme:

It would be lawful for a prospective employer to specifically ask an institutional referee whether the person they are considering employing had any live disciplinary warnings at the time their employment ended or was dismissed on the grounds of misconduct. Those questions could also more specifically reference any disciplinary warnings or dismissals for harassment or sexual harassment or misconduct or conduct breaching a dignity or respect procedure (or equivalent). It would also be legitimate for a specific question to be asked as to whether the person was the subject of any such complaint, or of an investigation into such a complaint, at the time when their employment ended or they gave notice to end that employment.⁶

We would also encourage HEIs to be transparent in job adverts that they are members of the scheme, for example by adding clauses to job application information and employment contracts to indicate that this data may be shared.⁷ Informing potential candidates of the engagement in the scheme may act as a deterrent to perpetrators applying for the role. This is especially important given many roles in HE are not subject to Disclosure and Barring Service (DBS) checks and for those that are, DBS checks do not capture sexual misconduct found through internal investigations within organisations.

⁶ Eversheds Sutherland. (2022). *Legal Briefing Staff to student sexual misconduct*. Universities UK. <https://www.universitiesuk.ac.uk/sites/default/files/field/downloads/2022-09/uuk-eversheds-sutherland-staff-to-student-sexual-misconduct-legal-briefing.pdf> p.46

⁷ Eversheds Sutherland (2022, p.59) notes that: 'It is important for a higher education provider to put in place the appropriate privacy and data governance infrastructure to enable data sharing, by identifying in advance the lawful bases for data sharing on which it will rely for the processing of personal data and to reflect these in the wording of its policies and procedures and privacy notices.'



What are the legal risks for organisations in joining the Scheme, in particular relating to GDPR?

The European General Data Protection Regulation (GDPR) has been specifically taken into account in development of the scheme, and from a GDPR standpoint, Participating Organisations consider that the lawful basis for processing personal data in this context is the legitimate interests of the Participating Organisations and, to a certain extent, the public interest of protecting potential victims.

Moreover, many of the Scheme's principles around the processing of personal data and recommended processes to request, transfer and obtain such data are meant to bring the Scheme in line with GDPR requirements by ensuring fair, transparent and proportionate processing of data, protecting the information processed and maintaining the rights of data subjects.

More generally, in joining the Scheme – as with many other organisational decisions – a balance of risks is needed. **We suggest that the biggest risk is not sharing information but hiring abusers.** For example, in 2018 Oxfam suffered severe financial and reputational penalties for its failings, particularly when it was noted that key abusers had been dismissed for misconduct before and had been re-employed by other organisations subsequent to their dismissal from Oxfam. Other organisations also suffered similar consequences only for being associated with the case. This reignited discussion and shifted the relevant risk calculation. In today's environment, we argue that the legal risks of sharing data on abusive staff is less than the multi-million pound impacts of *not* sharing information. Furthermore, the new Worker Protection (Amendment of Equality Act 2010) Act 2023 places a preventative duty on employers to take reasonable steps to prevent sexual harassment of employees in the course of their employment. It seems reasonable to consider previous misconduct in hiring decisions to safeguard employees and for HEIs, students too.

Does the Scheme apply to students moving between HEIs as well as staff?

At this stage the Scheme only applies to staff employed by HEIs. There are different legal and procedural considerations for sharing information on students moving between HEIs during and after disciplinary investigations, and we are looking into options for including students in the Scheme.

Is there a heavy administrative burden in joining the Scheme?

There will be some initial administrative work to be done around revising policies and forms within the recruitment process. However, after this initial push, the Scheme is designed so that the requests for data can be integrated into other reference checks and into existing recruitment processes and forms as required by individual signatories. The scheme is not prescriptive on the internal processes and mechanisms which are required to support effective implementation and the Scheme encourages – instead of compelling – Participating Organisations to adopt certain implementing practices.



Will this Scheme negatively impact on those who are under investigation but have not perpetrated harassment or abuse?

We know that sometimes retaliatory complaints are made by perpetrators towards victims, as part of the abuse, as part of the common '[DARVO pattern of behaviour](#)⁸. As such, there may be ongoing investigations into sexual harassment of those who are in fact victims, not perpetrators. This is a particular risk where there has been 'grooming' behaviour or consensual sexual communication prior to the abuse, which means that sexualised messages may exist from the victim to the perpetrator.

As noted above, we recommend employers give candidates the opportunity to explain the circumstances of any ongoing disciplinary investigations. HR staff should have training in staff sexual harassment and DARVO (for example [The 1752 Group's training](#) for HR staff) to enable them to recognise such cases, and expert advice should be sought if in doubt.

Ultimately, the Scheme does not stop a Participating Organisation from hiring a candidate but provides them with additional information to make safe hiring decisions.

What about staff who have perpetrated harassment or abuse, but where there are no formal reports?

Unfortunately, the Scheme does not pick up cases where there have not been any formal reports. As such, joining the Scheme needs to be one action within a wider comprehensive institution-wide approach⁹ for preventing and responding to gender-based violence and harassment.

How do we join the Scheme?

You can join via the website at <https://misconduct-disclosure-scheme.org/>

If you have questions ahead of joining, please first look at the FAQ [on the website](#), or if you can't find what you need, you can email MDS@chsalliance.org

⁸ As Jennifer Freyd outlines, 'DARVO refers to a reaction from perpetrators of wrong doing, particularly sexual offenders, may display in response to being held accountable for their behavior. DARVO stands for "Deny, Attack, and Reverse Victim and Offender." The perpetrator or offender may Deny the behavior, Attack the individual doing the confronting, and Reverse the roles of Victim and Offender such that the perpetrator assumes the victim role and turns the true victim -- or the whistle blower -- into an alleged offender.' See <https://dynamic.uoregon.edu/jjf/defineDARVO.html> (accessed 15 January 2024).

⁹ For detailed explanation and practical advice on embedding a comprehensive institution-wide approach see: Humphreys, C.J. & Towl, G.J. (2020). *Addressing student sexual violence in higher education: A good practice guide*. Emerald.

Humphreys, C.J. & Towl, G.J. (2023). Comprehensive institution-wide approach: What it means to be comprehensive. In C.J. Humphreys & G. J. Towl (Eds.), *Stopping gender-based violence in higher education: Policy, practice, and partnerships* (pp. 171-195). Routledge.



I'm a student or member of staff within an HEI. How can I get my institution to join?

If you're a student or member of staff within an HEI, you can try and get your HEI to sign up.

We suggest that you write to the University Secretary and Head of Human Resources in your institution, copying in the Chair of the Board of Governors/Trustees and any other senior staff in relevant roles, with information on the Scheme including a link to the website, and reasons why you want your HEI to join. If you're a student, we suggest taking a motion to your Students' Union first in order to gain more widespread support.

If you don't receive a response within a couple of weeks, we suggest emailing once more to follow up. If you still don't receive a response, then try using existing institutional mechanisms for raising issues, such as staff-student consultative forums, contacting your Head of Department to ask them to suggest it to the relevant committee, pitching an article to your student newspaper, or asking your union to pass a motion on the issue.

See <https://1752group.com/briefing-notes/> for previous briefings in this series:

- **Briefing Note 1:** In cases of suspected sexual misconduct can a university pro-actively investigate and speak to potential witnesses in the absence of any formal complaint or complainant?
- **Briefing Note 2:** Submitting a Subject Access Request
- **Briefing Note 3:** Precautionary measures on receiving a report of staff sexual misconduct, bullying or discrimination