Tackling racial harassment:
Universities challenged

Equality and
Human Rights
Commission

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Thank you

We would like to thank all of the students and staff who so openly shared with us their experiences and the changes they would like to see. We would also like to thank the universities and sector representatives who candidly spoke about the challenges they face and the scope for improvement.

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Foreword
from Pavita Cooper

Higher education is a hotbed of innovation and learning that helps to drive Britain's economy at a time of great uncertainty, developing breakthroughs in science and technology and boosting our industries.

We need to support our brightest minds to work collaboratively across disciplines, solve global challenges and find new ways forward, but this innovation and forward thinking has not been used to solve the challenge of racial harassment.

Racism should not be tolerated on campus. Sadly, this report reveals that racial harassment is a common occurrence for many students and staff in British universities.

The effects are seriously damaging to individuals and our society. Students with huge potential are being left behind, with their grades suffering, a negative impact on their mental health and, in some cases, not finishing their course at all.

For ethnic minority staff, being excluded and marginalised, overlooked for professional development, and facing hostile comments and stereotyping are an all-too-common experience. Senior academic staff who are vital to a university's reputation and funding are sometimes seen as untouchable, leaving their behaviour unchallenged. Microaggressions are often shrugged off and harassment brushed under the carpet, forcing some staff to leave their jobs.

A diverse workforce is needed in creating a more tolerant and inclusive study environment, but far more needs to be done. Clear and visible action to prevent and tackle racial harassment will make it easier to attract, grow and retain ethnic minority talent.

Ethnic minority staff and equality leads should not be charged with getting this right by themselves. Instead, we call for greater leadership and ownership on preventing and tackling racial harassment across all institutions because no institution is immune from it.

We have a responsibility to protect all students and staff from feeling unsafe, unwelcome and inferior. While adults in the eyes of the law, students are often living away from home for the first time and shouldn't start their independent lives on such a negative footing. Universities are promoted as places of freedom, open-mindedness and self-discovery; harassment should not be part of that experience.

This is an issue of national importance whether you work or study in higher education or not. If this behaviour isn't stamped out at university, it will perpetuate through our society.

> **We have a responsibility to protect all students and staff from feeling unsafe, unwelcome and inferior.**

Historically, British universities are seen as attractive places to study and work for international students. But we can't afford to be complacent if we want to retain our slice of the global education market. A feeling of belonging and inclusion is important to people deciding whether or not to work and study in Britain. We must therefore do all we can to make sure the university experience is positive for everyone.

That's why we are calling on universities to take greater responsibility to prevent racial harassment before it happens, to ensure they understand the scale of the issue. We want universities to make sure people who are racially harassed can speak up secure in the knowledge that their complaint will be taken seriously and effective redress will be available.

In recent years, the higher education sector has been taking steps to better understand the harassment that goes on. But we now need to come together, listen to the real life experiences of those studying and working at our universities and tackle the issue once and for all.

Let the learning begin.

Pavita Cooper
Commissioner at the Equality and Human Rights Commission

Executive summary

We launched our inquiry into racial harassment in publicly funded universities in Britain to examine staff and students' experiences of racial harassment and the effect they might have on their education, career and wellbeing. We also wanted to look at the extent to which universities have in place available, accessible and effective routes to redress for their staff and students if they experience racial harassment.

This report summarises the findings from our:

- public call for evidence

- university survey

- student survey

- roundtable discussions, and

- interviews with universities, students and staff.[1]

We also make recommendations for change.

Experience and impact of racial harassment

Racial harassment is a common experience for a wide range of students and staff at universities across England, Scotland and Wales.

Around a quarter of students from an ethnic minority background (24%), and 9% of White students, said they had experienced racial harassment since starting their course. This equates to 13% of all students.

20% of students had been physically attacked. 56% of students who had been racially harassed had experienced racist name-calling, insults and jokes. Other common experiences included:

- subtle and nuanced acts, often known as microaggressions

- being ignored or excluded from conversations or group activities, and

- being exposed to racist material or displays.

In most cases students said their harasser was another student, but a large number said it was their tutor or another academic.

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[1] The full findings are available in our research reports: '**Racial harassment inquiry: survey of university students**' (available on request) and '**Racial harassment inquiry: survey of universities**' and '**Racial harassment in British universities: qualitative research findings**'.

Over half of staff who responded to us described incidents of being ignored or excluded because of their race. More than a quarter said they experienced racist name-calling, insults and jokes. Much of this harassment took place in office environments, frequently in plain sight of their colleagues.

International students told us about feeling unwelcome, isolated and vulnerable.

We received examples of anti-Semitic and Islamophobic slurs, and anti-English sentiment at Scottish and Welsh universities, for both staff and students.

We were told that most incidents were part of a pattern of repeated harassment.

Racial harassment can have a profound impact on an individual's mental health, educational outcomes and career.

Racial harassment can cause humiliation, isolation, loss of confidence and serious harm to mental health and wellbeing. Students who experienced racial harassment said they were left feeling angry, upset, depressed, anxious and vulnerable; 8% said they had felt suicidal. Staff reported experiencing similar impacts.

Students and staff disengaged from core activities, to keep themselves safe or to prevent further erosion of their confidence and wellbeing, but at a cost to their studies or careers. Around 1 in 20 students who responded to our call for evidence said racial harassment caused them to leave their studies. Around 3 in 20 staff said racial harassment caused them to leave their jobs, with many more saying they were considering, or had considered, doing so.

Over

1/2 of staff

who responded to us described incidents of being ignored or excluded because of their race.

More than a

1/4 of staff

told us they experienced racist name-calling, insults and jokes.

Transparency and scrutiny

Staff and students are not adequately protected by the law

The main source of legal protection from racial harassment for university staff and students is the Equality Act 2010. There are limits to the protection the Equality Act 2010 provides, particularly regarding harassment of staff or students by third parties, including for student-on-student and student-on-staff harassment.

Publicly funded universities are subject to the public sector equality duty (PSED) which puts a duty on universities to pay due regard to the need to eliminate harassment. It does not place a positive duty on universities to take all reasonable steps to prevent racial harassment. In the absence of this positive duty, the onus falls on individuals to challenge by pursuing legal cases, which can be a daunting and expensive prospect.

Effective redress

The higher education sector does not fully understand racial harassment and university staff lack confidence in dealing with race issues

University staff often lack the understanding, skills and confidence to manage conversations about race effectively. This can lead to anxiety in managing incidents of racial harassment, because of a fear of getting it wrong and possibly facing allegations of discrimination. This in turn undermines fair treatment and the prospect of early resolution. Some staff receiving complaints informally may not act effectively or at all. Students and staff gave examples of how this lack of understanding has led to poorly handled complaints and in some cases, complaints being dismissed altogether.

1 in 20 students said they left their studies due to racial harassment
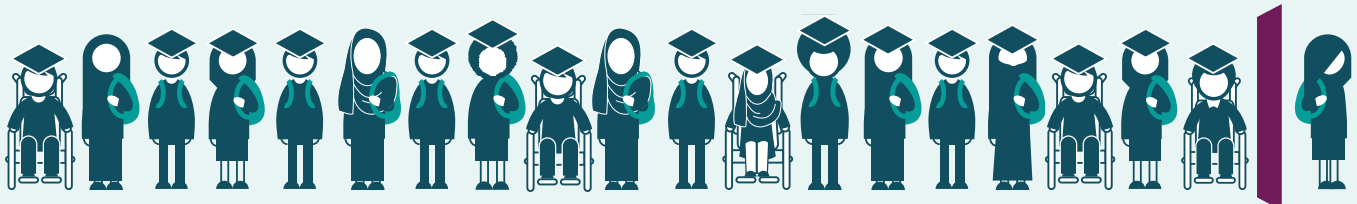
3 in 20 staff said racial harassment caused them to leave their jobs
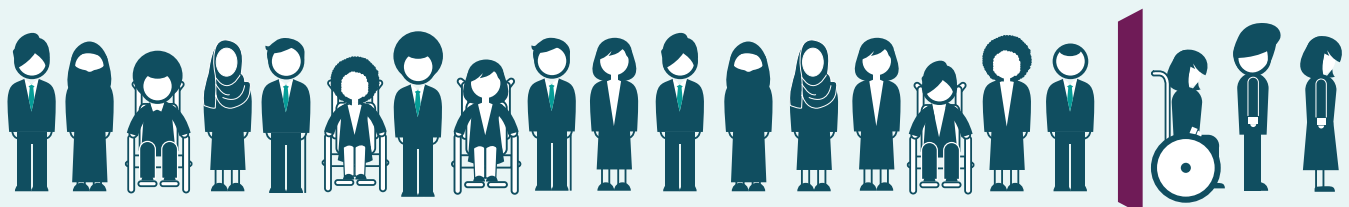
Most students and staff do not report racial harassment

Our student survey found that two-thirds of students who said they had experienced racial harassment during the first half of the 2018/19 academic year did not report it to their university. Fewer than half of all staff respondents to our call for evidence, who had been racially harassed, reported their experiences. They told us this was because they:

- had no confidence that the university would address it

- did not know how to report

- could not judge whether it was serious enough to report, or

- had difficulty proving what occurred.

Others feared the personal consequences that reporting might have on their education, career and wellbeing, or worried they would be seen as a troublemaker. For students, this was most evident where their tutors had the potential to directly affect long-term career prospects, especially for students on medical placements and postgraduates carrying out research working closely with senior academics.

Under-reporting and recording restricts the universities' ability to take action

Many universities significantly underestimate the prevalence of racial harassment and have misplaced confidence in people's willingness to come forward.

In fact, within a six month period in 2018/19, 8% of all respondents to our student survey (an estimated 180,000 if scaled up to the entire student population) said they had experienced racial harassment. One third of these students (equivalent to 60,000) said they reported it to their university. However, our survey of universities found that, across all 159 publicly funded universities in Britain, they had recorded 559 complaints of racial harassment from students over a period of three-and-a-half years. This works out at only around 80 formal complaints every six months.

Although many universities thought that staff and students were likely to raise complaints informally, for example, through their tutor or students' union representative, more than half did not have processes for collecting data on informal complaints.

559 recorded complaints of racial harassment

from students over a three-and-a-half year period across all 159 publicly funded universities in Britain

Universities received an average of just 2.3 total staff complaints of racial harassment, and 3.6 total student complaints of racial harassment, between the start of the 2015/16 academic year and January 2019. Around 4 in 10 institutions in our university survey (38%) reported having received no complaints of racial harassment from staff; around 3 in 10 (29%) received no reports from students. Almost 1 in 5 institutions (18%) received no complaints of racial harassment from either group.

Universities have an incomplete picture of the scale of racial harassment because of underreporting and informal complaints not being recorded routinely. This calls into question the extent to which universities are meeting their PSED obligations which include having regard to the need to eliminate harassment and to foster good relations. To meet these obligations, universities must have reliable evidence when developing and reviewing their policies and procedures. If a university has a poor understanding of the scale of the problem, this can lead to their priority setting, resource deployment and activities being inadequate to tackle the issues.

Universities are overconfident in their complaint handling processes

Universities tended to think they were handling complaints of racial harassment well. However, the majority of universities did not seek feedback on the complaints process. Many students and staff said they had not been told about the support that was available or were given insufficient information.

Nearly all universities we surveyed who had received complaints felt that they had dealt with them fairly. However, our call for evidence found a much higher level of dissatisfaction with investigative processes than university responses would suggest.

A significant concern for many students and staff was that those involved in handling their complaint could lack the independence to do so effectively.

The majority of students and staff we heard from did not get the outcome they wanted.

Our call for evidence found that fewer than 4 in 10 student complaints of racial harassment, and around 1 in 6 staff complaints, were upheld and offered some kind of redress.

Where sanctions were applied against the perpetrator following a disciplinary process, universities often felt unable to tell the person who made the complaint due to concerns about breaching data protection rules. This left the individual feeling unsupported and that

justice had not been served. For universities, it represents a missed opportunity to promote the consequences of unacceptable behaviour more widely and increase confidence in the complaints system.

Universities are not following guidance on how to handle complaints

Staff and students who made complaints told us they:

- did not always know how to do so

- did not know what the possible outcomes might be, and

- were not kept informed of progress and felt unsupported, suggesting that institutions are failing to follow complaints handling guidance.

Several universities acknowledged that complaints handling often took too long and understood how this undermined effective redress.

Some universities are taking steps to improve reporting

When universities were asked about their main priority in addressing racial harassment, they most often talked about building trust, raising awareness of unacceptable behaviour and ensuring that all incidents are reported.

Universities also mentioned improving reporting tools, to provide a central and consistent method for students and staff to report harassment and access support. This includes anonymous reporting to help universities gain a clearer picture of the scale of the issue.

Universities highlighted the need for better guidance on:

- good practice approaches

- dealing with more nuanced and covert instances of racism or harassment, and

- how to explain and deal with racial 'banter'.

Higher education culture

There needs to be leadership to help embed a culture where racial harassment is not tolerated

A lot of recent university action to tackle harassment has focused on sexual harassment. There was not the same confidence in talking about, and tackling, racial harassment.

Students and staff said that policies and leadership commitments were often undermined by a lack of meaningful enforcement. Yet universities saw little need to change their existing policies and rarely, if ever, talked about the need for greater enforcement of those policies.

There was a strong perception that universities too often place their reputation above the safeguarding and welfare of their students and staff. University leaders need to create and maintain environments where racial harassment is not tolerated and where race, and racial inequality, is discussed competently, confidently and constructively. This will create a culture where individuals across the whole institution – both students and staff – are able to work and study in a safe environment, be themselves and fulfil their potential.
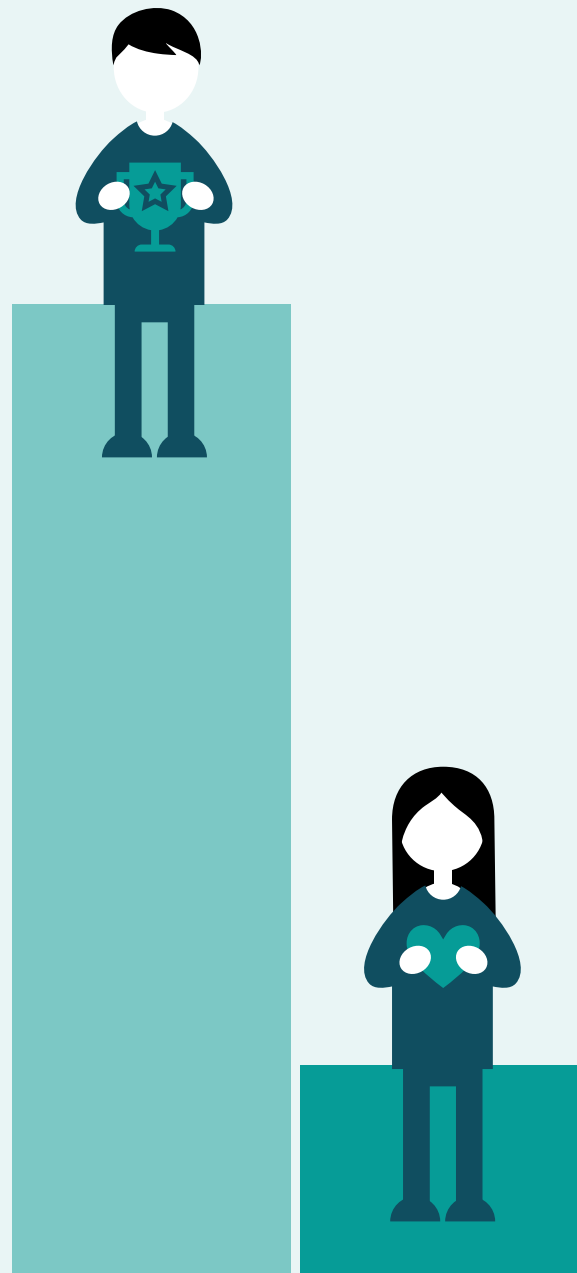
" There was a strong perception that universities too often place their reputation above the safeguarding and welfare of their students and staff. "

Recommendations

Our recommendations centre on the following themes:

1. **Protections, transparency and scrutiny** focuses on increasing university transparency about how they are tackling harassment and creating safe spaces, as well as their progress in building trust in reporting mechanisms.

2. **Effective redress** centres on how available, accessible and effective their routes to redress are, as well as how data is used to build trust and inform a cycle of learning and improvement.

3. **A change in university culture** where leaders understand issues of harassment, set expectations, provide oversight and scrutiny and implement training to embed a culture which is free from harassment and supports good relations.

   University governing boards carry out due diligence and, where appropriate, take action on tackling harassment in line with their PSED duties.

   Higher education institutions (HEIs) take more responsibility for preventing and addressing harassment, drawing on evidence of what works.

Theme 1: Protections, transparency and scrutiny

Recommendation 1: The UK Government must reinstate third party harassment protections and introduce a mandatory duty on employers to increase protections for staff from harassment.

We recommend that:

i.   The UK Government reintroduce the third party harassment provisions in subsection 40(2) to (4) of the Equality Act 2010 and amend them to remove the requirement for the employer to know that the employee has been subjected to two or more instances of harassment before they become liable.

ii. The UK Government introduce a mandatory duty on employers to take reasonable steps to protect workers from harassment (including third party harassment) and victimisation in the workplace. Breach of the mandatory duty should constitute an unlawful act for the purposes of the Equality Act 2006, which would be enforceable by the Equality and Human Rights Commission.

iii. The UK Government deliver its commitment to introduce a statutory code of practice on harassment at work (drafted by the Equality and Human Rights Commission), specifying the steps that employers should take to prevent and respond to harassment, and which can be considered in evidence when determining whether the mandatory duty has been breached.

Recommendation 2: Governments should review regulatory frameworks and court hearing structures within each nation, to determine how best to increase protection from harassment for students.

We recommend that:

i.   Governments across Britain consult on how best to enable the Office for Students (OfS), Higher Education Funding Council for Wales (HEFCW) and Scottish Funding Council (SFC) to effectively:

    a.   assess whether higher education providers have taken sufficient steps to tackle harassment and to impose conditions of funding or registration where they have not (such as withholding or requiring repayment of funding or imposing a fine) by improving their powers or increasing the use of their existing powers, and

    b.   measure higher education provider progress in preventing and tackling harassment.

    Governments and higher education sector bodies, particularly the OfS, HEFCW and SFC, should monitor the progress being made by higher education providers in this regard. Where there has been insufficient action by higher education providers to prevent harassment, we recommend the UK Government amend the Equality Act 2010 to make HEI's liable for acts of harassment committed by students (against students or staff), unless they have taken all reasonable steps to prevent it.

ii. The UK Government reviews which courts or tribunals hear non-employment discrimination claims such as claims by students, and work with devolved governments to ensure that complainants can access an affordable and prompt hearing before an adjudicator with experience in equality cases.

Recommendation 3: Governments should strengthen the PSED specific duties to enable action on sector-wide inequalities to be tackled more quickly and consistently, drawing on evidence from our inquiry and 'Is Britain Fairer?' reports.

We recommend that:

i.   All public bodies should set equality objectives or outcomes, and publish evidence of action and progress on the findings and recommendations relating to their functions in our formal inquiry and 'Is Britain Fairer?' reports.

ii. Governments across Britain should review how PSED specific duties could be amended to focus public bodies on taking action to tackle the challenges in our formal inquiry and 'Is Britain Fairer?' reports.

Theme 2: Effective redress mechanisms

Recommendation 4: Higher education providers must enable students and staff to report harassment and ensure their complaints procedures are fit for purpose and offer effective redress.

We recommend that higher education providers:

i.   Ensure that all students and staff understand the options to report incidents (for example, named or anonymously), the potential limitations of each option and the support available to them.

ii.   Ensure publicised mechanisms are in place to enable students on placements, studying abroad, on joint degrees, or internships in industry, to report harassment. Providers should consider setting clear expectations of the relevant placement provider.

iii. Review their procedures to ensure they consistently follow guidance from Acas, the Office of the Independent Adjudicator / Scottish Public Services Ombudsman, and the Equality and Human Rights Commission[2] on complaint handling and managing harassment, and amend their approach where this is not the case.

iv.   Ensure formal complaints handling procedures:

a)   are led by impartial staff who are trained to understand and investigate harassment, including racial harassment

b)   enable complainants to understand the possible outcomes from the start and receive a clear explanation for complaint decisions, and

c)   when disciplinary action is taken, inform the complainant and alleged perpetrator that the provider may communicate any sanctions imposed, where it is appropriate to do so, subject to the requirements of data protection legislation.

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[2] Forthcoming in 2019.

Recommendation 5: Higher education providers should ensure effective data collection procedures are in place to enable them to develop a baseline in order to evaluate and improve their prevention and response strategies.

We recommend that higher education providers:

i. Implement centralised reporting and case management systems, which enable universities to review and analyse reported incidents and complaints to inform continuous improvement.

ii. Conduct a periodic and regular survey of staff and students[3] to measure the prevalence of racial harassment and assess their confidence in reporting and complaints procedures.

Recommendation 6: Universities UK (UUK), the Information Commissioners Office (ICO) and higher education providers' data protection officers (DPOs) should work together to increase understanding around data sharing to support effective complaints handling and redress.

We recommend that:

i. UUK should work with the ICO to ensure that universities better understand the requirements of data protection legislation, in particular:

a) the circumstances in which they are able to share the outcome of disciplinary proceedings with complainants and the steps they need to take to do so lawfully, and

b) how anonymous reporting systems can be operated in accordance with the requirements of data protection legislation.

ii. DPOs within universities should take steps to allow their institutions to share the outcomes of disciplinary proceedings with complainants where it is appropriate to do so, including:

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[3] Higher education providers can adapt their existing surveys to include this.

a) reviewing contracts with staff and students, policies and procedures and privacy notices to ensure that they inform staff and students when the outcome of disciplinary proceedings may be shared, and

b) considering, on a case-by-case basis, whether the university has a lawful basis for disclosure under Article 6 of the General Data Protection Regulation (GDPR) and whether disclosure would be proportionate in all of the circumstances.

iii. UUK should form a working group with other DPOs to discuss these data protection issues and create case studies to ensure consistency of practice across universities.

Recommendation 7: The regulator, the funding councils and UUK should provide more guidance to support providers to prevent and tackle harassment.

We recommend that:

i. University ministers, in their next remit letters to HEFCW and SFC, set out their expectations that preventing and tackling racial harassment in higher education is a priority for British higher education providers.[4]

ii. The OfS, HEFCW, SfC and Scottish Government support higher education providers to prevent and tackle harassment by publishing an advice notice / guidance and draw attention to the links between harassment and differential outcomes for students.[5]

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[4] The Minister made this request to the OfS in England on 16 September 2019. See: 'Letter from the Education Secretary: September 2019' (PDF).

[5] OfS may draw attention to Regulatory Advice 6, which advises higher education providers on considering the links between harassment and differential outcomes for students.

iii. UUK Advisory Group[6] develops approaches that will support higher education providers to:

   a. hold inclusive discussions about race in a supportive and appropriate environment, and

   b. understand the different forms of racial harassment and how best to tackle them, including racial microaggressive acts.

Theme 3: A change in higher education culture

Recommendation 8: Ensure that initiatives to support mental health in higher education reflect the impact of harassment on people's mental health and wellbeing, and the needs of people with different protected characteristics, to best support a diverse student and staff population.

We recommend that Universities UK's #StepChange programme on mental health, Student Minds' work on developing a University Mental Health Charter and the Scottish Government's Student Mental Health and Wellbeing Working Group review our findings, alongside other recent academic research on the effects of harassment, and:

i. take into account how student and staff experiences of harassment negatively affect mental health and wellbeing, attainment and career progression, and

ii. encourage higher education providers to review their approach to mental health, particularly:

   a) how it provides access to support and assesses impact for different groups under the Equality Act, and

   b) how effectively it responds to the specific mental health needs of students and staff who experience harassment, including racial harassment.

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6 UUK is developing an advisory group, which draws on this inquiry's findings and recommendations, to support members to prevent and respond effectively to incidents of race-based harassment and hate crime, with a view to supporting continuous improvement for individuals as well as at an institutional and sector-wide level. UUK should draw on learning from their own sector-wide survey to tackle harassment and hate crime and work with Advance HE for this recommendation.

Recommendation 9: Higher education leaders and governing bodies demonstrate leadership and accountability for embedding an inclusive culture across their institution.[7]

We recommend that:

i. Heads of providers and senior leaders:

    a) take steps to better understand issues of harassment, including racial harassment

    b) publish a public commitment to tackling harassment, and

    c) embed the responsibility to eliminate harassment into their institution's culture, knowledge and practices. This includes ensuring that their approach is informed by evidence and that appropriate safeguarding activity is embedded within their existing governance structures, building on UUK's 'Changing the Culture' strategic framework.

ii. Governing bodies of higher education providers have procedures in place to:

    a) satisfy themselves that their institutions identify, reduce and report on harassment as part of their due diligence processes, and

    b) support their obligations under the PSED, where these apply.

iii. To satisfy themselves that higher education providers are identifying and reducing harassment, governing bodies of higher education providers should ask for information and evidence on how the provider has:

    a) reinforced its commitment to tackling harassment among students and staff

    b) allocated responsibility for tackling harassment, particularly racial harassment, and equipped staff for those roles

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[7] Along with guidance from OIA and SPSO, UUK and Advance HE have made recommendations on how higher education providers take practical steps to prevent and tackle harassment and embed a more respectful culture. See, in particular, **Universities UK (2016), 'Changing the Culture'**; Baird H. et al. (June 2019), **'Evaluation of Safeguarding Students Catalyst Fund Projects: Summative Evaluation Report. Report to: The Office for Students'. Advance HE**.

c) identified indicators to assess the effectiveness of its processes to prevent and address harassment, and to review progress annually

d) integrated these insights into informing and measuring progress on its equality objectives / outcomes and into its decision-making, policies and practices, and

e) in England, taken information on harassment into account when preparing information on closing gaps in outcomes, as part of registered providers' progress reports on their access and participation plans.[8]

We support Advance HE's recommendation that OfS, with others, develop and promote a framework of minimum safeguarding practice to help drive change in addressing student safeguarding issues.[9]

Recommendation 10: Higher education providers use the National Student Survey to improve their understanding around student safety and harassment.

If the OfS conducts a review on the National Student Survey, we recommend that the OfS and UK funding bodies propose that the two questions on student safety become core questions rather than optional questions, to provide all survey respondents with the opportunity to respond.[10]

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8 Universities should use the checklist developed by UUK and NUS to support them in closing the attainment gap.

9 Baird, H. et al. (June 2019), **Evaluation of Safeguarding Students Catalyst Fund Projects. Summative Evaluation Report. Advance HE**, pp.9-12.

10 Optional questions in the National Student Survey are: i) I feel safe to be myself at university; ii) My institution takes responsibility for my safety.

Methodology

Our inquiry gathered evidence from a wide range of sources to capture the experiences of staff, students and universities.

1. Online call for evidence

We invited staff and students from universities in England, Scotland and Wales to tell us about their experiences of racial harassment since the start of the 2015/16 academic year. This call for evidence opened on 4 December 2018 and closed on 28 February 2019. It was aimed at people with direct experience of being racially harassed and those who had witnessed racial harassment taking place or supported a victim of it.

We heard from 585 students and 378 staff who personally experienced racial harassment. All details have been anonymised.

We received 845 responses from students and 571 responses from staff which were in the scope of our inquiry. Of these, 585 students and 378 staff personally experienced racial harassment. All details have been anonymised.

2. Roundtable discussions, interviews and desk-based research

To explore people's professional views and experiences, we organised roundtable discussions across England, Scotland and Wales and spoke to some people individually. Participants included those involved in managing student and staff complaints, student and staff unions, third sector organisations, regulators and professional bodies.

We also completed some desk-based online research and drew on previous research and policy documents to compile the report.

89%

response rate from 159 universities

3. Quantitative and qualitative research with universities

IFF Research conducted an online survey of all publicly funded universities in England, Scotland and Wales. The fieldwork took place in January and February 2019.

Of the 159 universities we asked to complete the survey, 141 did so in time: the response rate was 89%. The findings are statistically representative of all publicly funded universities.

The survey asked universities to provide:

• information on the numbers of cases of racial harassment of staff and students they had dealt with since the start of the 2015/16 academic year

• details on the most recently closed case

• information on their policies and procedures, and

• a self-assessment of how successfully they felt they were dealing with racial harassment.

We have anonymised the survey data in this report so that individual institutions cannot be identified. Details of respondents and non-respondents are in Annex A.

IFF Research conducted follow-up qualitative telephone interviews with 30 employees of universities (who had agreed to take part in further research when completing the online survey). Institutions were chosen to represent a range of different types of universities across Britain. Participants reflected on their professional views and experiences and were not acting as formal representatives of their employers.

The full reports for the quantitative and qualitative research are available on our website.

4. Statistical survey of students

To assess the prevalence of racial harassment within the student population, IFF Research conducted an online survey of a random sample of more than 1,000 higher education students across Britain. The findings are statistically representative of all students in Britain. The full research report is available on request.

Online survey of more than

1,000

randomly selected higher education students across Britain

What is racial harassment?

How does the Equality Act 2010 define racial harassment?

The Equality Act 2010[11] says that a person harasses another if they engage in unwanted behaviour related to a relevant protected characteristic and the behaviour has the purpose or effect of:

• violating the other person's dignity, or

• creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

Unwanted behaviour will amount to harassment if it has such an effect, even if that was not the intended purpose of the behaviour. In deciding whether behaviour has that effect each of the following must be taken into account:

• the perception of the person

• the other circumstances of the case, and

• whether it is reasonable for the behaviour to have that effect.[12]

Race is a 'relevant protected characteristic' for these purposes, as are age, disability, gender reassignment, religion or belief, sex, and sexual orientation.[13]

Not all behaviour that is experienced as offensive will be unlawful harassment under the Equality Act 2010. For example, students' learning experiences may include exposure to course material, discussions or speaker's views that they find offensive or unacceptable, and this is unlikely to be considered harassment when balanced against the right to freedom of expression.[14]

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[11] S.26(1) Equality Act 2010.

[12] S.26(4) Equality Act 2010.

[13] S.26(5) Equality Act 2010. 'Pregnancy and maternity' and 'marriage and civil partnership' are not relevant protected characteristics' in relation to harassment. The harassment provisions apply to 'religion or belief' and 'sexual orientation' only in some contexts including employment and education but not in the context of service provision or associations.

[14] Article 10 of the European Convention on Human Rights. See our guidance: **'Freedom of expression: a guide for higher education providers and students' unions in England and Wales'** and **'Freedom of expression: a guide for higher education providers and students' unions in Scotland'**.

Microaggressions

Our evidence refers to the subtle nature of much of the behaviour experienced as harassing. A lot of the evidence related to less obvious everyday forms of racism. These more nuanced forms include behaviours that are commonly referred to as 'microaggressions'.

Microaggressions have been defined as:

> brief, everyday interactions that send denigrating messages to [people of colour][15] because they belong to a racially minoritised group. Compared to more overt forms of racism, racial microaggressions are subtle and insidious, often leaving the victim confused, distressed and frustrated and the perpetrator oblivious of the offense they have caused (Rollock, 2012).

'Microaggressions' is not a legal term and such behaviour will not necessarily amount to harassment under the Equality Act 2010. This will depend on the facts of each case. As the definition of microaggressions suggests, the perpetrator of the microaggression may not have any harassing intent. Therefore, whether their behaviour amounts to harassment is likely to depend on the effect it had on the victim.

However, microaggressions that do not meet the Equality Act 2010 definition of harassment could lead to behaviour which does meet the definition through repetition or escalation of the behaviour.

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[15] While Rollock's definition refers specifically to 'people of colour', people could be subjected to these behaviours because of their colour, nationality or ethnic or national origins. For example, our report found evidence of anti-English sentiment directed at White English staff by White Welsh staff in some universities in Wales.

Through our call for evidence (585 student responses).

365 students

(almost two-thirds)

told us about racial harassment perpetrated by other students

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154 students

(more than a quarter who experienced harassment)

described incidents in which they were racially harassed by their tutor or another academic

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154 students

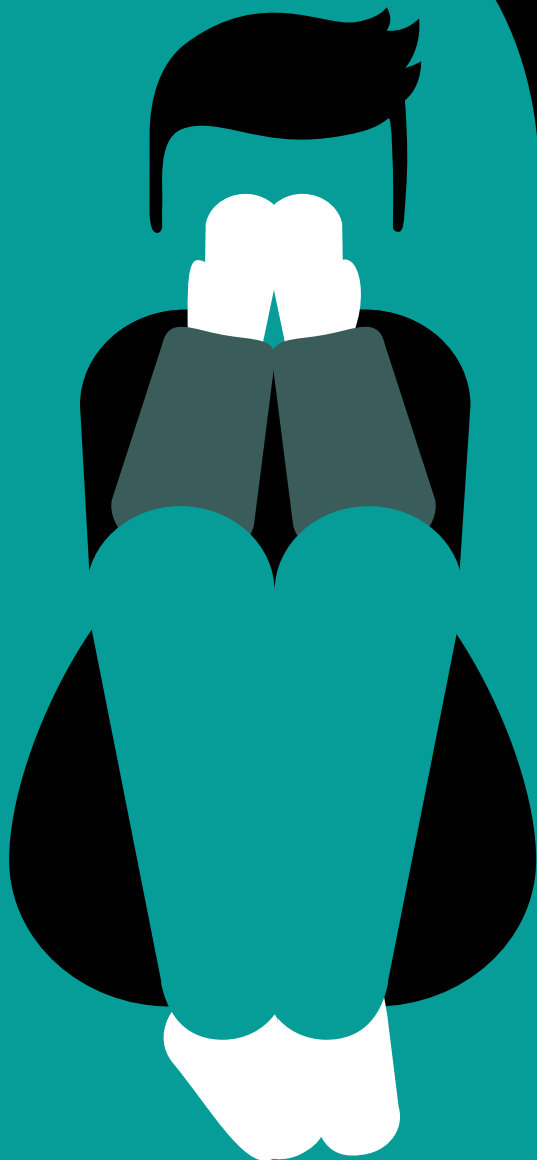(more than a quarter of those who experienced racial harassment)

described incidents perpetrated by members of the public

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107 students

nearly a fifth of those who said they experienced racial harassment

said that incidents were perpetrated by other university staff

Student and staff experiences of racial harassment

- **Racial harassment is a common experience for many students and staff in universities across England, Scotland and Wales, especially those from ethnic minority backgrounds.**

- **Students and staff experience a broad spectrum of racial harassment, including verbal abuse, exposure to racist material, exclusion and less obvious forms such as microaggressions.**

- **Racial harassment can seriously affect an individual's mental health, sense of belonging and progress, as well as their decision to remain in education or employment.**

- **Racial harassment of students doesn't just take place online. It is most likely to happen in teaching settings and on campus and is most commonly from fellow students or academics.**

- **Staff are most likely to experience harassment from their managers or senior staff, either privately in one-to-one meetings or openly in the workplace, with colleagues often witnessing the behaviour.**

Who experiences racial harassment?

Our evidence shows a complex picture of racial harassment experienced by many different groups of university students and staff.

Students

Our survey revealed that around a quarter of students from ethnic minority backgrounds[16] (24%) and 9% of White British students had experienced racial harassment since starting their course. This is equal to 13% of all current students in British universities (EHRC, 2019a).

The figures were highest for Black students (29%) and Asian students (27%).

The incidence of racial harassment was higher among students at English universities (15%) than at Scottish or Welsh institutions (11% and 6% respectively). In part, this is likely to reflect that England has a more ethnically-diverse student population than Scotland and Wales.

Overall, male students (16%) were twice as likely as women (8%) to have experienced racial harassment (EHRC, 2019a).

Racist name-calling, insults and jokes (56%), followed by other forms of verbal abuse (45%), were revealed to be the most commonly experienced forms of racial harassment (EHRC, 2019a). Our call for evidence exposed

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[16] We use the term 'ethnic minority' to mean any ethnic backgrounds other than White British.

the persistence of blatant racial slurs and insults. We heard from students about the use of the 'N' and 'P' words, and other offensive insults, by other students, lecturers, students' union representatives and members of societies and the wider public.

"

On multiple occasions, myself or my friends have had the N word shouted at us [by fellow students], or been told they are "pretty for a black girl" amongst many other situations that have happened over the last few years. **(UK national undergraduate, Welsh university).**

The professor asked my friend where she lives. She said Hounslow. So he said "there weren't many Pakis before year X". **(UK national undergraduate, English university).**

Students were nasty, very nasty. They were White students and they treated me like I were a Black object … and then there were racist comments made by other teachers about Black students. **(Former student, English university).**

"

We were told about the use of racist and inappropriate language between different ethnic minority groups.

"

I witnessed numerous incidents of international students (particularly students from China and Saudi Arabia) using racial slurs, derogatory language and generally being highly prejudiced against Black British students, Afro-Caribbean students and African students. **(UK national postgraduate, English university).**

"

A fifth of students (20%) said they experienced physical attacks, and nearly a third (32%) of students who had experienced harassment told us they had seen racist material and displays during the 2018/19 academic year (EHRC, 2019a). These displays included groups of students wearing white t-shirts showing offensive, racist, misogynistic and homophobic slogans and comments, which are often linked to student society events and 'initiations'.

Racial harassment often goes hand-in-hand with religiously-motivated harassment. One of the most widely reported anti-Semitic issues was harassment experienced by students in and around protest events on campus, including physical intimidation.

"

One student told me "they were baking Jews like cupcakes in Auschwitz" and that they would like to put me in an oven. **(UK national undergraduate, English university).**

"

We also heard from Muslim students who had been subject to offensive references to 'terrorists' and additional security checks at events, and said they felt the need to hide or play down their religious identity.

Our student survey showed that 9% of White British students had also experienced racial harassment since starting their course. We heard about incidents of anti-English sentiment at Scottish and Welsh universities and offensive comments about Gypsy and Irish Traveller students.

"

[I] was asked if my people "shit in the ground" or were we civilised enough to know how to use toilets. **(UK national – Irish Traveller – postgraduate, English university).**

"

From international students there was a strong theme of feeling unwelcome, isolated and vulnerable. Some described feeling like commodities: only wanted by universities for the fees they bring. They wanted to engage with a more diverse group of students but felt 'forced' to stay in their 'own' groups because of negative experiences.

34% of students who reported racial harassment had been racially harassed by being excluded or ignored during the 2018/19 academic year (EHRC, 2019a). Students told us this behaviour made them feel invisible and led them to believe that they needed to work harder to prove themselves.

"

It impacted my academic performance because I didn't enjoy studying or doing group work with students who were so casually racist, sexist and homophobic. I couldn't opt out of group work with these people and it was difficult to challenge their behaviour because we had to collaborate on assignments. **(UK national postgraduate, English university)**

Generally feeling that people would prefer not to talk to me or to sit with me. Leaving me often sat alone. Also the feeling that I need to work extra hard and be extra friendly in order to get on in lessons, especially in group tasks. **(International undergraduate, English university).**

"

Our student survey revealed that almost 3 in 5 students had experienced racial harassment more than once in the few months since the start of the 2018/19 academic year.

The 'subtle and insidious' character of microaggressions

Microaggressive acts featured frequently in our evidence.[17]

We found that these behaviours are often based on stereotypical assumptions made about students and staff because of their race or appearance.

Ethnic minority students told us about their peers and lecturers expressing surprise at them being on a particular course, as though they didn't expect them to be there. They also described how they were given fewer learning opportunities or had their work scrutinised excessively compared to other students.

Staff were more likely to mention dismissive comments about foreign accents and command of English language being used to question the professional competence of ethnic minority staff.

A recurring theme in our evidence was students and staff being dismissed as 'oversensitive' and their experiences of microaggressions viewed as isolated incidents rather than a cumulative and alienating pattern of repeated slights and insults.

Many staff and students reported that racial harassment doesn't only happen overtly. All too often, offensive comments were justified by perpetrators as 'jokes' or 'banter'. The damaging effect of repeated microaggressions is often made worse by a lack of empathy and understanding when individuals decide to speak up about their treatment.

"
All too often, offensive comments were justified by perpetrators as **'jokes'** or **'banter'**.
"

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[17] Microaggressive acts may not always amount to racial harassment in law.

42% of students who experienced racial harassment during the 2018/19 academic year reported being subjected to microaggressive acts. Our call for evidence heard from many students who had experienced microaggressions on at least a monthly basis.

"

Nicknames have to be adopted by lecturers for minority students for whom their names are deemed too difficult. Often this takes place initially when the lecturer screws their face up upon seeing an "ethnic" name on the register. **(UK national undergraduate, English university)**

It's very difficult to have proof of racial harassment because most of the time it's in the way the teachers talk to you, their body language, their demeanour. They'll use certain phrases that they wouldn't use with your other Caucasian peers. There is a change in the attitude when they address you. And you can feel it. **(UK national undergraduate, English university)**

This particular lecturer would constantly divide the group between international and home students and aim all his "racial" questions to the international students. Although I was not an international student but because I was black and dressed in religious garments he would assume I was an international student and often ask me and my fellow students questions like I'm not sure if they have things like this in your country. **(UK national postgraduate, Welsh university).**

"

42%

of students who experienced racial harassment during the 2018/19 academic year reported being subjected to microaggressive acts.

(EHRC, 2019a)

Through our call for evidence (585 staff responses).

171

staff said they experienced harassment from an academic colleague

148

respondents disclosed incidents in which staff were racially harassed by their line manager

134

staff experienced harassment from professional services or support staff

134

involved incidents where a senior manager was implicated

51

staff said they experienced racial harassment from students

Staff

Our call for evidence[18] heard from more than 250 university staff from ethnic minority backgrounds who had been racially harassed. These were people working as academics, in professional services and as support staff.

Nearly 1 in 3 staff (106) experienced racist name-calling, insults and 'jokes'. These often drew upon racial and religious tropes.

We also heard from White British staff about incidents of anti-English sentiment, in Scottish and particularly Welsh universities:

> Comment was made between two Welsh staff while I was in the room. They said basically, "Carmarthen is nicer. Here there are too many 'sais'". This is used as a negative slur for English people. She was speaking in English and changed to Welsh for that word thinking I wouldn't understand. I've never come across so much racism as when I moved to Wales. **(Professional services or support staff, Welsh university).**

More than half of staff (201) told us about incidents of being ignored or excluded because of their race.

> Despite having worked with many colleagues in my department for over a decade, I find that they frequently refer to or address me by other BAME colleagues' names – as if we were interchangeable. This is degrading and depersonalising and I find it highly offensive. **(Academic, English university)**
>
> The team would invite everyone to go for coffee breaks or lunch and even if I was seated with them they would ignore me and simply make sure I was excluded. **(Professional services or support staff, English university).**

Racial harassment was felt to impact on people's careers. Typical behaviours included excluding ethnic minority staff from decision-making meetings, routinely allocating work beneath their roles and abilities, blocking opportunities for learning and development, withholding credit for their insight and innovation, and praising White staff for ideas that were put forward by an ethnic minority colleague.

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[18] 18% of staff who responded to our call for evidence preferred not to disclose their ethnicity.

"
Having work taken away from me to devalue my role in the office. This took place over a long period of time when they were acting manager. I was the only Asian in the team. **(Professional services or support staff, English university)**

This was more subtle by denying the opportunities to progress [my] career by denying [me] training opportunities, attending meetings where I could gain knowledge and experience of how things are done. Certain projects and tasks deemed more important being given to White colleagues. **(Professional services or support staff, English university).**
"

Additionally, several White staff – some British, some with European or other non-British backgrounds – reported examples of being excluded and their professional and academic expertise being dismissed or undermined.

"
I am a university in-house lawyer and a solicitor with the same pay grade and job description as my other solicitor colleagues. A couple of lower grade staff confided in me that it took them time to process that I was actually a solicitor (despite my job title and qualification being clearly stated in my email signature) and thought that I was just admin support. **(Professional services or support staff, English university).**
"

Staff who are European nationals described being racially harassed at events, such as university open days, in the aftermath of the EU referendum.

"
Brexit [has] introduced a cold wind into universities that has reduced civility and increased harassment. **(Professional services or support staff, English university).**
"

These experiences echo academic analyses of race and leadership in higher education in which ethnic minority academics experience:

> Difficulties in trying to gain promotion to senior leadership roles, normally punctuated against a backdrop of racism, discrimination, racist micro-aggressive cultures and inequitable levels of hyper-surveillance, which often results in a questioning of professional capabilities **(Arday, 2018).**

A recent study of the career experiences of the UK's Black female professors (Rollock, 2019) also found that 'a culture of explicit and passive bullying persists across higher education along with racial stereotyping and racial microaggressions'. The study described how Black academics were 'ostracised by colleagues' and felt the need to 'go out of their way to demonstrate their competence, experience and knowledge'.

"

As a member of faculty whose difference is visible, I have been positioned as an outsider and made to feel invisible in the school. Insults in the White [university] are often replaced with a 'politics of exclusion' which situates BAME people firmly on the outside. This is a defining characteristic of institutional racism. **(Academic, English university).**

"

Some behaviours experienced by those who provided evidence to the inquiry, such as exclusionary behaviour, might be direct discrimination[19] rather than harassment. Direct discrimination is when a person treats someone less favourably because of a protected characteristic.[20] It is unlawful no matter the motive or intention and regardless of whether it is done consciously or not. The discriminator may have prejudices that they don't even admit to themselves, may act out of good intentions, or might not be aware that they are treating the person differently because of a protected characteristic.

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[19] As defined at section 13 of the Equality Act 2010.

[20] For these purposes 'protected characteristics' are defined in section 4 of the Equality Act 2010.

Responses to our call for evidence found few differences in the experiences of academic staff compared with those of professional services or support staff.

More than 7 in 10 staff (266) who said they had experienced racial harassment told us they experienced microaggressive acts and demeaning behaviours. Most reported experiencing these behaviours on at least a monthly basis, while many said they did so on a daily basis.

More than
7 in 10
staff

who told us they had experienced racial harassment said they experienced microaggressive acts and demeaning behaviours.

"

A former colleague would always comment on my race which made me realise she was acutely aware of my heritage even though she assumed what it was and got it completely wrong despite being corrected several times. **(Professional services or support staff, English university).**

Automatic assumption that you are cleaning staff, reluctance to share the same lift, excluded from important emails, the list goes on. **(Academic, English university).**

The day-to-day impact of systemic racism and racial microaggressions is much harder to express, partly because each act, in and of itself, can seem small, but it is the repeated and sustained accumulation of these acts (and non-acts, i.e. being a bystander to racism) which amount to being made to feel unwelcome, by virtue of your race. **(Professional services or support staff, English university).**

"

More than 4 in 5 staff (314) told us about incidents that were part of a pattern of repeated harassment.

Who is legally responsible for racial harassment?

The Equality Act 2010 offers protection from harassment when it is committed by certain people in certain situations. Under section 26 of the Equality Act 2010, a university is liable (legally responsible) for racial harassment in the following contexts:

• As an employer it must not harass its employees, workers or job applicants.

• As an education provider it must not harass its students or applicants.

• As a service provider it must not discriminate against those using or requiring its services.

• If a university owns or manages premises, it must not harass those who occupy the premises or apply for them.[21]

A university is liable for harassment, discrimination or victimisation in breach of the Equality Act 2010 committed by its employees, or agents acting on its behalf, unless it has taken all reasonable steps to prevent such harassment happening (the 'reasonable steps defence').[22] Agents are people who act on the university's behalf. A university will be liable for the acts of their agents if the agent acts with their authority. Examples of agent relationships might be an external occupational health adviser engaged by a university to provide an occupational health report on a member of staff, or a firm of management consultants appointed to deliver a project.

A university is not liable for student-on-student harassment, student-on-staff harassment or harassment against students or staff committed by other third parties, including members of the public, unless any failure by the university to take action in response to that harassment was itself related to race. For example, if the complaint investigator was inclined to disbelieve the complainant and to believe the alleged perpetrator because of stereotypical assumptions made about their race.

We have called for the reinstatement of sections 40(2)-(4) of the Equality Act 2010 which (before they were repealed) made an employer liable for third party harassment of its employees if certain conditions were met.[23] That would make universities liable for student-on-staff harassment (but not for student-on-student harassment).

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[21] Parts 5, 6, 3 and 4 Equality Act 2010 respectively.

[22] Section 109(4), Equality Act 2010.

[23] Equality and Human Rights Commission, **'Turning the tables: ending sexual harassment at work'.**

Who commits racial harassment?

Students

For many students, during term-time at least, their whole lives are linked to their university and the communities in which they study, socialise and share accommodation.

Students told us the most common perpetrator of harassment was other students. Others were members of the public, their tutor or another academic, or other university staff. Postgraduate students were much more likely to tell us about racial harassment perpetrated by university staff.

> [A senior academic] had a pattern of abusive, racist and Islamophobic attacks directed at a student she was supervising … The student was verbally threatened with statements like, "if you don't do xyz, I'm sending you back to Saudi / taking away your visa". **(International postgraduate researcher, English university).**

Staff

Staff told us the most common perpetrator of harassment was an academic colleague. Others were professional services or support staff, line managers, senior managers and students. Academic staff told us they tended to be harassed by their academic peers, while professional services or support staff said it tended to be perpetrated by their colleagues.

Some staff were shocked by the attitudes of certain line managers and senior managers and at how discriminatory cultures were perpetuated.

> [The person] doing the abuse was very senior and well regarded by colleagues – and so it is also an abuse of power. Their seniority rendered me helpless. **(Academic, English university).**

Some staff raised concerns that the competition for students, and the funding they attract, has led universities to be more tolerant of unacceptable student behaviours.

Where does racial harassment happen?

Universities are only liable for incidents of harassment by students and staff as an employer, an education provider, a service provider (for example, as the operator of a student bar) or the owner or manager of premises to those who occupy such premises (for example, as the owner of student accommodation).

This means that a university would be liable, for example, for harassment of students by a lecturer in a teaching context. However, for harassment by a lecturer towards a student in other contexts, such as in social situations, the position is not as clear.

Universities should still address complaints about forms of harassment for which they may not be liable under section 26 of the Equality Act 2010, as they may be liable in other ways.[24]

"
Despite the rise of online harassment, students reported that harassment was happening in person, in teaching settings and other areas of the campus..
"

Several students referred to the toxic 'lad culture' of some students' unions, when they were expecting support and safe spaces to report racial harassment.

Some students shared experiences of being harassed outside their university campus. International students were much more likely than other students to share incidents happening off-campus. This was frequently reported as being perpetrated by members of the public.

Some students highlighted the vicious nature of online harassment, often in anonymous and unregulated platforms.

Most staff described incidents happening in workplace meetings and one-to-one discussions with managers. Much of this racial harassment took place in open plan office environments, frequently in plain sight.

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[24] See Annex B for examples of other sources of legal protection.

Through our call for evidence (585 student responses).

161 students

described experiencing racial harassment in teaching settings: lectures; study and research groups; laboratories; and one-to-one discussions with tutors

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128 students

told us about incidents in other areas of the campus: university cafés; bars and clubs; libraries; offices, conferences; and outdoor areas of the campus

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79 students

told us about being racially harassed beyond the campus; in bars, clubs and when using public transport

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69 students

told us of harassment happening in their accommodation, mainly in student halls, but also privately-rented student houses

What effect does racial harassment have on the behaviour of those who experience it?

Our evidence shows that for many students and staff in our universities, especially those from ethnic minority backgrounds, racial harassment is a distressing and all-too-familiar experience.

We heard how students and staff disengaged from core activities at a cost to their studies or careers, to keep themselves safe or to prevent further erosion of their confidence and wellbeing.

"

My confidence was completely knocked, so I just hid away and tried to focus on my courses. **(UK national undergraduate, Scottish university)**

I do not trust anyone at university – I have PTSD because of this all. It is also still on-going. I just want to finish and go, I do not feel safe here, I have no liberty or safety at university – I just want an education and I feel psychologically abused. I am trying to be strong and brave – and keep going. **(UK national postgraduate, English university)**

I don't interact with colleagues as much as I used [to]. Worried about my personal safety. **(Academic, English university)**

It also results in avoiding drawing attention to yourself or speaking up, for example voicing an opinion on a work matter, contributing to a discussion or a meeting because both confidence is shaken and the wish to avoid being at the receiving end of condescending behaviour. **(Professional services or support staff, English university).**

"

This sense of being made to feel that you do not belong restricts ethnic minority students' attainment and progression into postgraduate study (Universities UK and National Union of Students, 2019) and restricts the career development of Black female academics (Rollock, 2019).

For some students and staff, their experiences became so damaging that they felt they had no option but to leave their studies or employment.

Some students told us they had left their course and many more told us they had actively considered doing so. The UK Government has recognised the negative impact of students leaving their courses. It has made it a priority for the Office for Students – through access and participation plans for universities in England – to tackle the gap in retention rates for some groups of students. This includes considering the effect of harassment on students' willingness and ability to complete their courses and reach their potential (Office for Students, 2018).

We heard from many staff who said they had left their jobs, at least in part, because of the racial harassment they experienced.

"

I work in an environment where staff are leaving because of race issues and the reaction from the University is to protect themselves against grievances and not change the culture. It's been a shocking and eye opening experience. **(Professional services or support staff, English university).**

"

Students and staff told us how they felt unable to be themselves and used a variety of strategies to hide their true identity.

"

I often tried to act more "White" and I used to conceal the fact I speak Cantonese and was embarrassed by my ethnicity. I now have mostly international friends at university who are all very accepting and have helped me again be proud of my identity. **(UK national undergraduate, Scottish university).**

"

Students and staff described how their experience of racial harassment eroded trust in their peers and institutions. This discouraged them from complaining about any further incidents of racial harassment. Women, in particular, were more likely to say they avoided certain people and became distrustful of others.

Our call for evidence found that being subjected to racial harassment had limited many students' university experience: nearly two-thirds told us they avoided certain people, almost half avoided certain areas and nearly a third told us they stopped going out at night (almost two-thirds of those were female students).

Similar narratives emerged from staff responses about a loss of trust in their colleagues as a result of their experiences.

What is the impact of racial harassment on the mental health and wellbeing of students and staff?

Our evidence shows that, for many students and staff in our universities, racial harassment results in humiliation, isolation, loss of confidence and serious harm to their mental health. Our call for evidence heard how harassment both caused and worsened existing mental health conditions.

"

As someone with a pre-existing mental illness, it's difficult to express how much these incidents contributed to a relapse which I had that later that year. It was easier for me to isolate myself and not interact with others, even when I really needed support, because of how close I was to my perpetrators … I withdrew a few months after those incidents and returned to my home city. **(UK national undergraduate, Scottish university)**

There are incidents and micro-aggressions on a daily basis I am so tired of it and know that the incidents have a mental, emotional and physical impact which I have no-one to share with or receive meaningful support from. **(Professional services or support staff, English university).**

"

Women were more likely than men to say they found the experience upsetting (65% and 42% respectively). They were also more likely than men to say that the experience had left them feeling vulnerable (44% compared with 19% for men) (EHRC, 2019a).

Students' experiences of racial harassment left them feeling angry (55%), upset (48%), depressed (36%), anxious (31%) and vulnerable (25%). It was so serious for some that 8% of students had felt suicidal (EHRC, 2019a).

"

I started to feel frightened and anxious at university and lost a lot of confidence I had to take a year out to recover I had to pay for a counsellor to process it all, but I'm still not as confident as I was before I started university and it will take me some time to recover from the trauma. **(UK national undergraduate, English university).**

I just don't want to be brown anymore. I wish I could boil my skin off or bleach it entirely so people can stop looking at me like I'm dirt. **(International postgraduate (taught), English university).**

I was left feeling depressed and lost belief in the so-called values the university was telling the outside world it upholds. **(Professional services or support staff, English university)**

As a Muslim, suicide is never an option, but I feel incredibly isolated and alone. This institution is the first time in my life I have felt the target of racism. **(Academic, Welsh university).**

"

Reporting incidents of racial harassment and making a complaint

- **There is a large discrepancy between the number of racial harassment incidents taking place and the number of complaints recorded by universities.**

- **Informal complaints are often unrecorded, therefore only certain complaints are routinely captured and analysed.**

- **Some universities do not have a true sense of the scale of racial harassment and are over-confident in reporting rates.**

- **Over a three-and-a-half year period, almost 4 in 10 universities received no racial harassment complaints from staff and 3 in 10 received no racial harassment complaints from students.**

- **Over the same period, there was approximately one complaint for every 1,850 university employees and one complaint for every 4,100 students.**

The discrepancy between incidents of racial harassment and complaints to universities

Our inquiry found large discrepancies between the numbers of students who experience racial harassment, the numbers who report those incidents to their university, and the number of complaints recorded by universities:

- British universities teach around 2.3 million students.

- In approximately six months since the start of the 2018/19 academic year, our student survey found that 8% of students had experienced racial harassment (EHRC, 2019a). Applied to the entire student population, this equates to approximately 180,000 students in six months.

- One-third of those students reported incidents to their university (EHRC, 2019a). This equates to about 60,000 students.

- However, our survey of universities found that, across all 159 publicly-funded universities in Britain, there had been an estimated 560 complaints of racial harassment from students since the start of the 2015/16 academic year – a period of three-and-a-half years (EHRC, 2019b). This works out at only 80 formal complaints every six months.

The responses to our call for evidence from staff and our university survey indicate similarly large disparities between what staff experience, what they report and the number of recorded complaints received by universities.

What is the difference between reporting an incident and making a complaint?

Reporting

Reporting, or 'speaking up', is the process through which students or staff inform their university that they have experienced or witnessed behaviour that they consider unacceptable. A report may trigger a complaint, either informally or formally. Equally, it may be something a student or staff member chooses not to pursue further having brought the issue to their university's attention.

Reporting doesn't always need to be a completely separate process to making a complaint. For example, if a student has been upset by racist language used by their tutor, and has confidence and trust in them, they may simply report how they feel to that tutor and seek assurance that they will not use racist language in future. If the tutor accepts the concerns and apologises, then the incident has been reported and the complaint made and resolved informally through a short discussion.

Making a complaint

Student complaints handling frameworks are provided by the Office of the Independent Adjudicator for Higher Education (OIA) in England and Wales, and the Scottish Public Services Ombudsman (SPSO) in Scotland.

Ombudsman guidance defines a complaint as 'an expression of dissatisfaction by one or more students about a providers' action or lack of action, or about the standard of service provided, by or on behalf of the [university]'. Both frameworks highlight the importance of universities identifying what outcome students are looking for in raising their complaint.

As employers, universities should follow the Advisory, Conciliation and Arbitration Service (Acas) Codes of Practice on good employment relations practice, particularly the code of practice on disciplinary and grievance procedures and the accompanying non-statutory guidance.

Acas defines grievances as concerns, problems or complaints. Employers should invite employees to explain how they think their grievance should be resolved.

For this inquiry, we have interpreted a complaint to mean when students or staff bring an allegation of racial harassment to the attention of their university and are seeking some form of redress. The forms of redress,

or outcomes, which might be sought in harassment cases are varied, including:

- recognition from the alleged perpetrator that the behaviour caused offence

- an apology from the alleged perpetrator

- action by the university to prevent similar incidents in the future – for the individual or at institution level

- disciplinary action against the alleged perpetrator

- criminal action by the police, or

- legal remedy through the courts or an Employment Tribunal.

Perception versus reality: university confidence in racial harassment reporting rates

Our university survey findings indicate a significant under-estimation of the scale of the challenge facing a number of universities and a large degree of over-confidence in the willingness of their students and staff to report their experiences (EHRC, 2019b).

43% of universities believed that all incidents of racial harassment of students were reported (see figure 1). They were more confident (56%) that all staff incidents that took place were reported (EHRC, 2019b).

Universities' confidence that all incidents of racial harassment of staff and students were reported

Students: 7% / 35% / 30% / 13% / 14%

Staff: 13% / 43% / 26% / 8% / 10%

Legend:
- Very confident
- Quite confident
- Not very confident
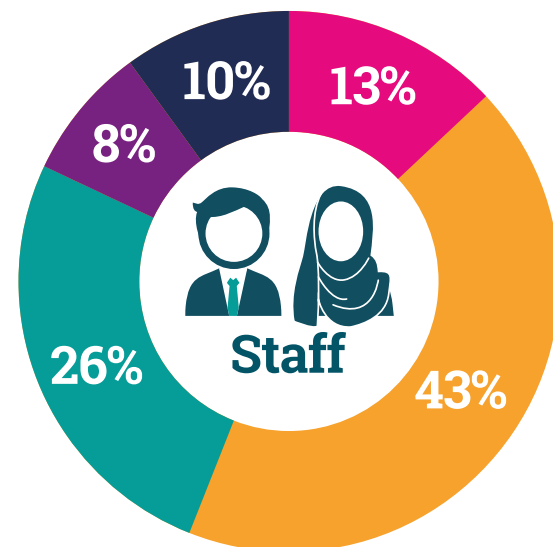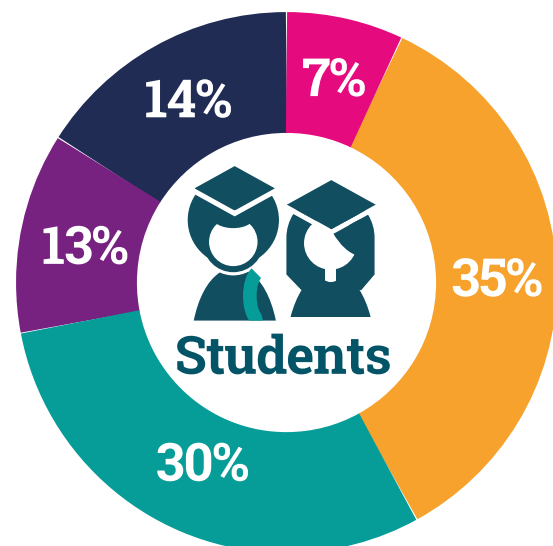- Not at all confident
- Don't know

Figure 1

Universities that had no recorded complaints of racial harassment of staff or students since the start of the 2015/16 academic year were more likely to express confidence that every incident of racial harassment was reported to university authorities compared to those that had received complaints (EHRC, 2019b).

Institutions with low levels of ethnic minority staff were also more likely to be confident that all incidents of racial harassment of students were reported to them. Conversely, those with high levels of ethnic minority staff were less likely to be confident (EHRC, 2019b).

However, just 1 in 3 students (33%) who had experienced racial harassment during the 2018/19 academic year reported it to their university. Students from an Asian background were less likely to report racial harassment than other ethnic groups (EHRC, 2019a).

Less than a quarter of student respondents to our call for evidence (137) told us they had reported the incidents they shared with us. Fewer than half of staff reporting racial harassment (174) to us said they had reported these incidents to anyone.

It is important to acknowledge that some universities, particularly those who were much less confident that every incident of racial harassment was brought to their attention, are taking steps to enable students and staff to report, or to speak up, about their experiences and be supported to pursue a complaint.

A growing number of universities have invested in improved reporting mechanisms. Many of these allow students and staff to choose how they want their university to respond by including:

- **an option to report incidents anonymously,** which helps their university to build a more accurate picture of the scale and nature of harassment across their institution but means individuals may not be able to pursue a complaint and seek personal redress

- **an option to report in their own name,** which also builds the university's understanding of the scale and nature of harassment across their institution but critically enables individuals to make informed and supported decisions to pursue a complaint and seek personal redress, and

- **advice and guidance** to help individuals to understand harassment and access tailored, or more general, support.

"
Low reporting rates prevent individuals from getting redress and stop universities from understanding the scale, nature and impact of racial harassment.
"

Racial harassment: how effective reporting and complaints handling supports prevention strategies and redress for individuals

Level of reporting

Outcome

Racial harassment incident is **not reported**	Universities have **no evidence**
Racial harassment incident is **reported but anonymously**	Universities have **some evidence** but **can't offer redress**
Racial harassment incident is **reported in own name**	Universities have **some evidence** and **can offer redress**
Racial harassment is pursued as an **informal complaint**	Universities gather **little evidence** and are **unclear whether redress was made**
Racial harassment is pursued as a **formal complaint**	Universities have **good evidence** and **can provide redress**

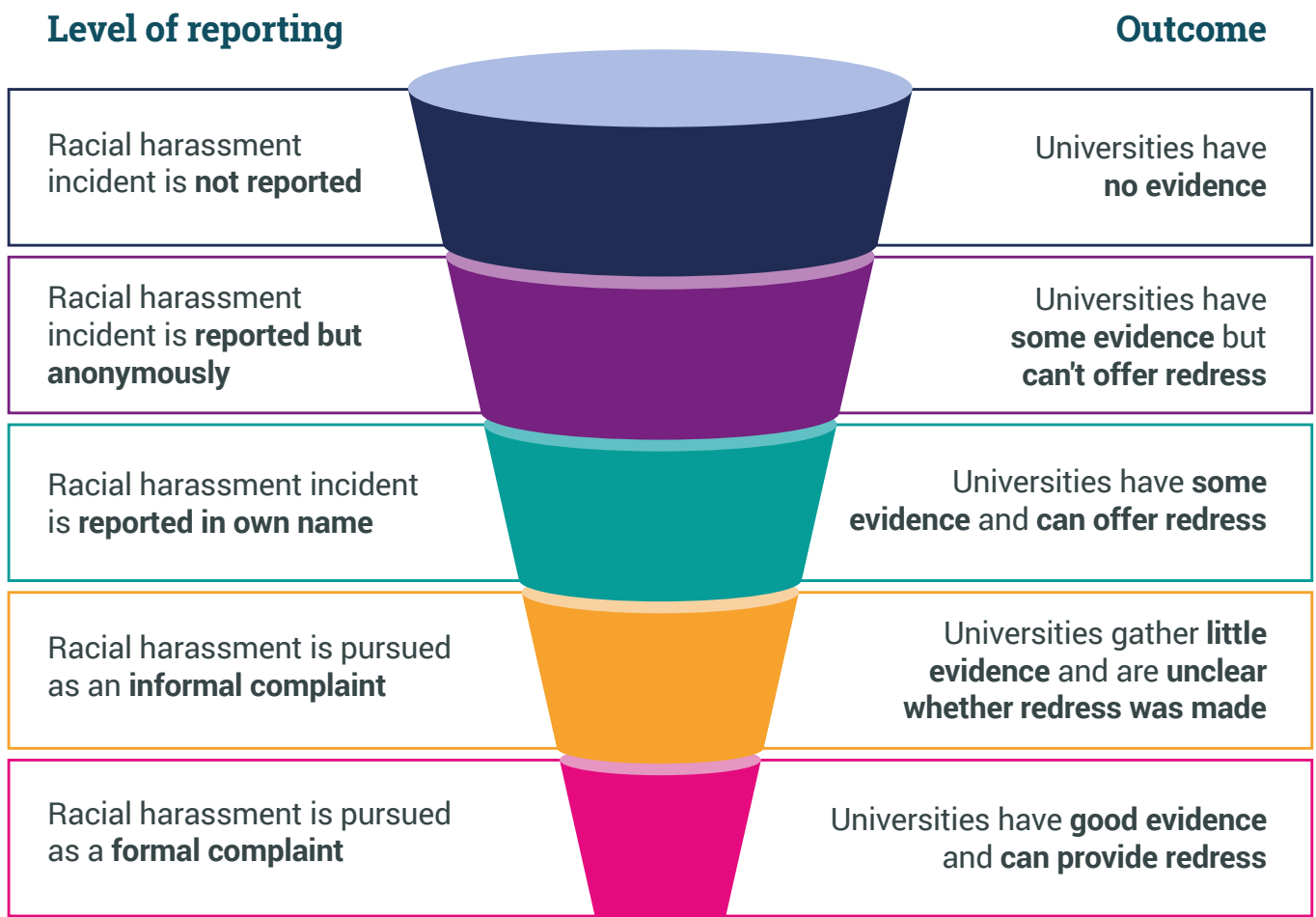Figure 2

How many complaints of racial harassment do universities receive from students and staff?

As noted earlier, over the three-and-a-half year period for which universities were asked to provide information, a total of around 559 complaints had been received from students and around 360 from staff. British universities employ 670,000 staff and teach 2.3 million students. Across Britain, based on 2017/18 population figures, this equates to approximately one complaint for every 1,850 university employees and one complaint for every 4,100 students since the start of the 2015/16 academic year (EHRC, 2019a).

In our student survey, 8% said they had experienced racial harassment in the 2018/19 academic year but only 33% of them reported it to their university (EHRC, 2019a). If each of those students who spoke up about being racially harassed had made a complaint, it would represent a ratio of approximately one complaint for every 40 students.[25]

Almost

4 in 10
institutions

said they received no complaints of racial harassment from staff

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[25] This hypothetical scenario does not consider whether any reported incidents would merit a complaint but is purely for illustrative purposes.

Almost 4 in 10 institutions (38%) said they received no complaints of racial harassment from staff. The figure was a little lower for students, with 3 in 10 (29%) saying no students had reported racial harassment. Almost 1 in 5 institutions (18%) said they received no complaints of racial harassment from either staff or students. The highest number of student complaints recorded by a single university over the survey period was 22, compared with 20 for staff complaints (EHRC, 2019b).

Universities with fewer ethnic minority staff were more likely to have received no complaints. Over 4 in 10 (44%) of those universities reported no racial harassment complaints from students, with 60% reporting no racial harassment complaints from staff. A similar trend was found for institutions with smaller ethnic minority student populations. Almost two-thirds of these (63%) received no complaints of racial harassment from staff and 44% received no complaints of racial harassment from students (EHRC, 2019b).

Just over a quarter of universities were able to identify other student complaints (28%) which included race as an alleged factor but were not dealt with as racial harassment complaints. The corresponding figure for staff was just under a third (EHRC, 2019b).

For example, most support requests, with race as a factor, received by staff unions in Scotland involved junior ethnic minority staff facing disciplinary action related to their performance. These were not seen as racial harassment complaints by universities, despite staff unions' concerns that performance capability decisions were often strongly informed by student evaluation scores with little, if any, attention on measures to support improved performance or to assess whether racial bias was at play (staff union roundtable).

This is particularly important as the OIA told us that students, in England and Wales, rarely raise a complaint with them that is only concerned with bullying or harassment; it is more common for students to raise complaints about bullying or harassment in conjunction with other matters (OIA submission).

Paradoxically, while some universities saw low numbers of racial harassment complaints as evidence of their success, others viewed those same low numbers as evidence that further work was needed as incidents were not being brought to their attention (EHRC, 2019b).

"

In England and Wales, students rarely raise a complaint with the Office of the Independent Adjudicator that is only concerned with bullying or harassment.

"

The main reasons for not reporting harassment was a lack of confidence in incidents being addressed by their university.

Source: Student survey, EHRC, 2019a

Routes and barriers to reporting incidents and pursuing complaints

- **Students and staff do not trust universities to respond appropriately to reports of harassment and some fear repercussions in speaking up and pursuing a complaint.**

- **Harassment protections are poorly understood and insufficient weight is given to the effect of racial harassment on students and staff when incidents occur.**

- **This lack of knowledge means that many universities struggle to understand the extent to which racial harassment is harming the mental health and wellbeing of their students and staff, undermining student retention and attainment and affecting the career development and progression of their staff.**

Frameworks to handle complaints made to universities

The OIA framework (OIA, 2016) sets out important principles and operational good practice about handling complaints but is not prescriptive. Universities are free to produce their own complaints policies and procedures. Scottish universities must comply with the SPSO framework (SPSO, 2011) but can include additional information in their procedures.

Sector ombudsmen and Acas guidance requires that complaints processes are clear, easy to navigate and well signposted.

The Equality Act 2010 protects staff and students against victimisation. For example, an employee or student must not be disadvantaged because they have made an allegation of harassment in good faith. In addition, OIA guidance makes clear that universities need to ensure students are not disadvantaged as a result of making a complaint.

OIA and Acas guidance advise that complaints procedures should give importance to recipients' perceptions of the alleged harassment, regardless of whether the behaviour was intended or not.

Universities' harassment policies explain how an individual can make a complaint about a racial harassment incident. They should also set the expectations of students and staff in relation to unacceptable conduct, explain how universities will deal with alleged misconduct and set out the likely sanctions.

Why do some students and staff pursue racial harassment complaints?

The most common reason for students and staff to make a complaint was to get their university to take action to prevent future racial harassment, either for themselves or others. For many, an acknowledgement that the perpetrator understood the impact of their behaviour and made an apology was important too.

"

I wanted an apology which I received. I also wanted deeper learning outcomes to inform all future decisions relating to the supervision processes being made for BAME students and staff **(Academic, English university).**

"

Some staff and students were looking for harsher sanctions, such as disciplinary action, with a small number hoping for a police warning, criminal prosecution or redress through the courts or an employment tribunal.

How are students and staff able to report incidents and raise complaints of racial harassment?

Universities offer a range of channels for students and staff to report incidents and complain about racial harassment. Universities believe that informal channels are the most commonly used routes (EHRC, 2019b).

Students

Many universities enable students to report incidents, and make complaints, through different points across the university: through teaching staff, personal tutors, student support services and student representative bodies such as the students' union. Some universities we interviewed felt this meant students could approach a range of people depending on who they felt most comfortable with.

> "
> We also have a network of bullying and harassment advisers. These staff members don't investigate; they provide impartial advice for someone who doesn't want to yet go to HR or student welfare **(English university, EHRC, 2019c).**
> "

Almost half of the students (66) who told our call for evidence that they had reported racial harassment, said that they reported it to a tutor or other academic.

Universities frequently highlighted the role of dignity or racial harassment advisors in establishing a more open culture for raising concerns. They felt that these roles offered a neutral point of contact. Several universities said that these services, along with student support services, students' unions and more informal volunteer-run overnight support and listening services, provided important channels for students to report concerns (EHRC, 2019b).

One university has adopted a proactive approach to tackle cultural misunderstandings and the risk of them leading to racial harassment in university-managed student accommodation. In addition to existing channels for students to report incidents, residential life advisers and behavioural coordinators work with student residents, when problems are identified, through a short, structured programme to help rebuild relationships and tackle unacceptable behaviour.

Students' unions also provide support, frequently offering a safe place for students to discuss their experience and get advice. Our call for evidence heard from several students who had reported racial harassment to their students' union. However, some students felt that students' unions could do more to provide genuinely safe and supportive spaces for ethnic minority students.

Despite the breadth of reporting methods, all institutions that took part in our qualitative research had a single process once a formal complaint was made. This was typically managed by dedicated student casework teams.

Staff

The universities we interviewed tended to offer three main routes for staff to report incidents and make complaints: through line managers, directly to a central HR function or through an appointed equality and diversity representative, sometimes a volunteer dignity at work advisor.

"
The Dignity Advisors are there as a listening ear, they are there to guide individuals in the approach they might take, we would always encourage people to first of all raise something informally, before they go down a formal route. But we can also direct them to information around the formal route **(English university, EHRC, 2019c).**
"

Our call for evidence responses show that more than half the staff we heard from reported their experiences to their line manager, and many others to a senior manager. The responses they received were mixed. Some reported a lot of understanding and practical support from managers while others were ignored, disbelieved, threatened and / or victimised.

Complaints received through line managers or equality and diversity representatives can be resolved informally but are sometimes escalated to HR. If a complaint cannot be resolved informally, staff can proceed to a formal investigation.

> I told [my] line manager about this young woman's behaviour. She took it as an informal report, gaslighted me, and did not formalise the report. In any case, I know that a formal report would result in retaliation against me and wish to avoid going through a painful exhausting process that I believe will result in no justice. **(Academic, English university).**

Some universities were also exploring greater use of specialist advisors and training for senior managers, including tackling defensive attitudes towards staff reporting racialised behaviours (EHRC, 2019c).

> My plan is to establish a network of Dignity Advisors that would be the first port of call for staff and students about … what support there is in the institution if they want take it forward. **(English university, EHRC, 2019c).**

Similarly, we heard from staff who reported taking their concerns to their HR team. This was sometimes done to avoid managers who were part of the problem.

> I reported it to HR (and many similar instances). This is because time and time again my manager and senior managers and head of department have seemed to be a part of this micro aggression. **(Professional services or support staff, English university).**

Generally, complaints received by HR teams were considered formal grievances (EHRC, 2019c). The experience of taking problems to HR was not always positive.

> "
> I think it is fairly easy to report these things. What is difficult, is for them to be met with respect, impartiality and the credence they deserve. One colleague reported an incident to HR and was met with "You need to be very careful before reporting someone for racial harassment, it's very hard to prove." How can someone be confident reporting harassment when met with that response from HR? **(Professional services or support staff, English university).**
> "

We heard that most staff complaints were made formally as individuals rarely raised incidents when they first occurred. Some universities 'triage' incoming reports and complaints, so they can direct them for early resolution or process them as formal grievances. One university told us they had recently restructured their staff discipline and grievance processes to centrally manage them. While formal harassment complaints have since increased, the institution views this as positive as it reflects greater faith in their procedures (HR roundtable).

Several told us they had reported their experiences to a staff union representative.

Understanding the barriers to reporting and complaining for students and staff who experience racial harassment

Our evidence found that students and staff are motivated to report incidents of racial harassment to stop the harassment and to right an injustice. Many of those students (50) and staff (75) who had reported told us they only did so because the harassment they experienced had escalated.

The presence of witnesses can encourage victims to come forward and report incidents. Witnesses can also report incidents themselves. However, few who told us they had witnessed racial harassment had actually reported it. Some university staff who took part in our roundtable discussions believed there is a big challenge in encouraging the silent majority of staff to speak up about unacceptable behaviour.

Universities and individuals highlighted a complex mix of barriers for students and staff who want to report confidently and safely. These included:

- a lack of confidence in institutions to act effectively and, in some cases,

- a lack of clarity and confidence about what is and isn't acceptable behaviour

- a lack of awareness of reporting routes, and

- dissuasion by university staff.

Lacking trust and confidence in universities to act in the right way

Student concerns

For students who had experienced racial harassment, the biggest barrier to reporting and pursuing a complaint was a lack of confidence in their university.

Almost half of the students (46%) who did not report their experiences said this was because they had no confidence that incidents would be addressed by their universities (see figure 3). This was the single most important reason for a quarter (24%) of these students (EHRC, 2019a).
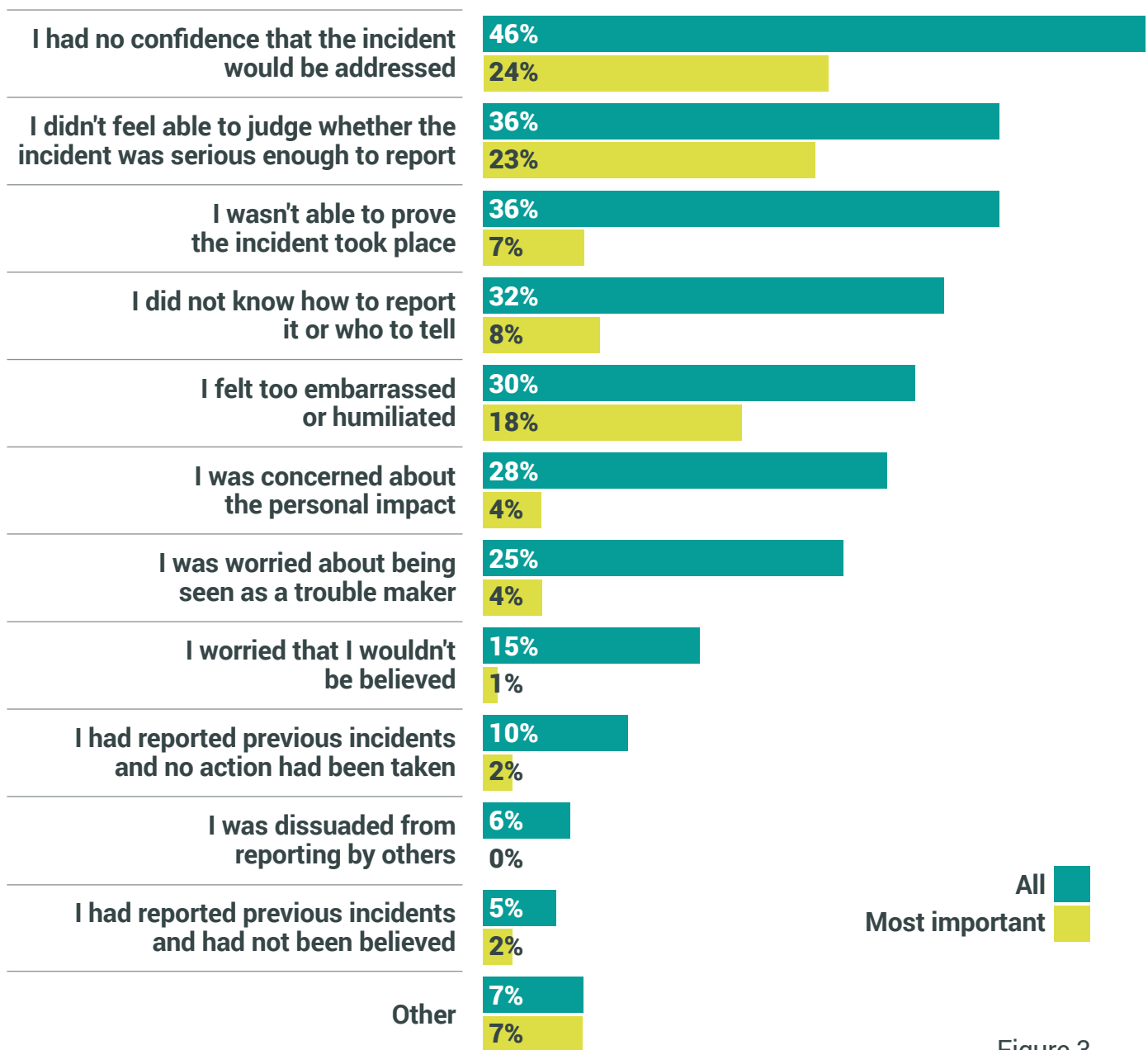
Reason	All	Most important
I had no confidence that the incident would be addressed	46%	24%
I didn't feel able to judge whether the incident was serious enough to report	36%	23%
I wasn't able to prove the incident took place	36%	7%
I did not know how to report it or who to tell	32%	8%
I felt too embarrassed or humiliated	30%	18%
I was concerned about the personal impact	28%	4%
I was worried about being seen as a trouble maker	25%	4%
I worried that I wouldn't be believed	15%	1%
I had reported previous incidents and no action had been taken	10%	2%
I was dissuaded from reporting by others	6%	0%
I had reported previous incidents and had not been believed	5%	2%
Other	7%	7%

Figure 3

> Many students do not report about their experiences because they know [that] nothing would be done and that things would be a lot worse for them if they complained. **(International postgraduate, English university).**

Staff concerns

University staff who responded to our call for evidence shared many of the students' concerns in speaking up about their experiences of racial harassment, especially a lack of confidence in their university taking effective action. Nearly three-quarters of staff (150) told us that this was the main reason for not reporting their experience. This lack of confidence often stemmed from the perceived mistreatment of colleagues who had tried to seek redress for racial harassment.

> I have observed how these incidents (even more obvious harassment) is dealt with and I do not feel subtle harassment is going to be effectively dealt with. So making an effort to report these is futile, a waste of time and effort. **(Academic, English university).**

Judging the seriousness of incidents and the likelihood of a positive response

Student concerns

More than a third of students (36%) who experienced racial harassment had difficulty judging whether their experience was serious enough to report (see figure 3 on page 59) (EHRC, 2019a). We heard demands from many students, through our call for evidence, for universities to do more to help them understand racial harassment, including microaggressive behaviours, and to feel empowered to report it. This included workshops that look at the subtleties of racism and understanding microaggressions, as well as abusive language and actions. They often felt that racial harassment was not understood and not taken seriously (EHRC, 2019a).

"

Small offences like microaggression and passive aggressive racism cannot even be reported because nobody will take you seriously. And people try to put you down by repeatedly saying you're using the "race card". **(UK national undergraduate, English university).**

I didn't feel I had anyone (tutors, pastoral staff at college, etc.) that I could report to that would understand properly. Past experience of reporting to non BAME staff at school influenced me. **(UK national postgraduate researcher, English university).**

"

32%

of students did not report racial harassment because they did not know how to

Knowing how to report incidents and raise a complaint

Student and staff concerns

Through our call for evidence, students and staff consistently raised the need for clearer information on how to report incidents and make a complaint. A third of students (32%) - who experienced racial harassment but did not report it - said it was because they did not know how to (see figure 3 on page 59) (EHRC, 2019a). More than two-thirds of staff (114) said it had been difficult to find information on reporting.

Most students and staff who complained about being racially harassed said the process was not easy to navigate or was not clearly explained. Nearly two-thirds of students (326) and more than half (200) of staff - who experienced racial harassment - told us that better information from their university would have made it easier for them to raise concerns.

"

Where harassment happens to those close to me, I feel I have the confidence and support to resolve the situation locally (i.e., in my department, college). Where it happens more broadly, by those I don't know, it's impossible to know where or how to report it. **(Professional services or support staff, English university).**

"

Source: Student survey, EHRC, 2019a

Dismissing and denying individuals' experiences

Student and staff concerns

Our call for evidence found that complaints being dismissed was a common experience. There was a lack of understanding that behaviour is harassment under the Equality Act 2010 if it violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them, regardless of whether that was intended or not.

Several students and staff reported that their complaint was dismissed because the alleged perpetrator said they had not 'meant it, or it was dismissed as 'banter' without understanding the effect of the behaviour. An investigation by the Guardian also found that ethnic minority students and lecturers reported that White staff treated racial slurs as 'banter' (Batty, 2019).

> "
> The student verbally abused me. The academic staff member made it worse by saying the student 'had not meant to be racist'. **(UK national postgraduate, English university).**
> "

Roundtable discussions with university staff highlighted that student complaints investigations often focused on the 'intent' of the behaviour at the expense of its 'effect'.

> "
> I felt that when I submitted my grievance in 2018, there was a lack of empathy and understanding of the effects of bullying. **(Professional services or support staff, English university).**
> "

Even where universities understood that effect, rather than intent, was important, staff and students were not confident that universities understood the potential effect of behaviours less obviously related to race. The perception was that when deciding whether behaviour had a harassing effect, and whether it was 'reasonable' for it to be viewed as harassment, too often the view of the majority is applied. Universities did not display enough understanding of the perspective of a minority group and why it would be reasonable for a member of that group to view behaviour as offensive.

> "
> Everyone I reported this issue to was white and from every single person, I was told that I was overreacting and that I should take it as banter. **(Professional services or support staff, English university).**
> "

Universities must ensure that they fully understand the Equality Act 2010 definition of harassment so they understand what steps they can take to prevent it. This is because they:

- must comply with the PSED, and

- will be legally responsible for harassment committed by their staff and agents unless they have taken all reasonable steps to prevent it, such as having appropriate policies, procedures and training in place.[26] Agents are people who act on the university's behalf. A university will be liable for the acts of their agents if the agent acts with their authority.

Also, universities must not ignore microaggressions that do not meet the definition of harassment in the Equality Act 2010. Microaggressions that do not meet the Equality Act 2010 definition could lead to behaviour which does meet the definition through repetition or escalation. Microaggressions could also have an impact on equality of opportunity and good relations between different groups – universities must consciously consider these matters to comply with the PSED.

Through our call for evidence, many students explained the difficulty of proving their experience, especially when incidents were not witnessed or involved less obvious forms of harassment.

> "
> I didn't report it because I feared that it would be dismissed as it was subtle, dealing with it was very frustrating because it made me feel very small and no one had my back. There wasn't an Afro-Caribbean society for a long time at my university so I had to navigate microaggressions and subtle racist comments on my own. **(Model Westminster submission).**[27]
> "

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[26] See 10.45 to 10.52 of the Employment Statutory Code of Practice for more information on the reasonable steps defence.

[27] 2019 Model Westminster and Get IN Westminster survey of 40 ethnic minority students and graduates on racism in higher education.

Our evidence showed that this is a particular issue for students and staff where there is little, if any, tangible evidence of the alleged racial harassment.

> "
> They also wanted "evidence". How are they defining evidence? When they are subtle behaviours, how on earth do you go about proving that? **(Professional services or support staff, English university).**
> "

A small proportion of universities acknowledged that complaints had not always been handled properly, especially those involving microaggressions, and understood how this undermined confidence in universities demonstrating that they take racial harassment seriously. Universities generally felt that it was easier to address microaggressions where staff were involved, as they were able to require them to attend training sessions (EHRC, 2019c).

A few universities spoke about how the deployment of dignity or racial harassment advisors reassured students and staff that their complaint would be taken seriously (EHRC, 2019b). However, our call for evidence highlighted disappointment from some students with the lack of ethnic diversity in these roles, which they felt undermined their effectiveness.

Fearing the consequences of speaking up and raising complaints

Student concerns

A quarter of students chose not to report their experiences because they thought they would experience negative consequences if they did (28%) or worried about being considered a trouble maker (25%) (see figure 3 on page 59) (EHRC, 2019a).

Students felt that they needed to carefully weigh up speaking out about being racially harassed against any negative effects they thought this might have on their studies. This is particularly evident where relationships have the potential to affect long term career prospects, such as students on medical placements and postgraduates carrying out research work.

Medical students mentioned examples of racial harassment from patients and hospital staff during their placements. Racial harassment was also perpetrated by senior clinicians they were shadowing. They described how isolating these experiences could be but felt they were unable to report them because:

- they did not know who they could reliably turn to during their placement

- they worried if they did report, they might have to repeat the placement elsewhere costing them time and money

- the medical professional was, in most cases, the person appraising their work and they had concerns about the lasting influence of senior medical professionals' and academics' assessments on their futures

- they felt unable to challenge the behaviours of patients, particularly when conducting home visits, and feared that supervisors may not understand or believe their experience, and

- they knew that the university needed to maintain positive links with the hospital to facilitate future teaching placements, so they were unsure whether the university would support them if they made a complaint (British Medical Association roundtable).

Postgraduate research students may study in a very narrow field and are dependent on their tutor and a small academic network to complete their studies and future employment. Some students didn't report concerns because they were afraid of the impact this would have on their futures. This was particularly pertinent if they were international students, whose visa was dependent on them fulfilling their qualifications.

> The student was verbally threatened [by a senior academic] with statements like, "If you don't do xyz, I'm sending you back to [the student's home country] and taking away your visa". The student in question didn't report, because she feared that she would be forced to leave her programme, lose her visa, and have to go back to unsafe family conditions. **(International postgraduate researcher, English university).**

Both the student survey and our call for evidence found that some students had been accused of overreacting and, in some cases, were actively dissuaded from reporting their experience.

> There were other instances that made it clear that it would do me more harm than good making a fuss about it. A friend had reported an incident some time before that and was encouraged by staff to keep quiet. **(International undergraduate, Scottish university).**

These experiences can have a chilling effect on students coming forward and reporting their experience. A quarter of students (25%) who had been harassed but did not report it were worried about being seen as a trouble maker (see figure 3 on page 59) (EHRC, 2019a).

Reporting or even acknowledging racism is a very easy way for a black person to be ostracised, dismissed as a trouble maker and victimised. It all too often leads to damaging consequences. **(UK national undergraduate, English university).**

Our call for evidence found that nearly half the students (237) – who told us they had experienced racial harassment – felt that better protection from personal repercussions would have made it easier to complain.

Some universities acknowledged this concern and recognised that those seeking redress worried they would be viewed as trouble makers. Students sometimes worried about having to face their harasser on campus while they continue their studies.

A culture of blaming and "silence" shouldn't exist, whereas the person experiencing harassment is made to feel like a "trouble maker". **(UK national postgraduate, English university).**

One institution offered those who had been racially harassed the opportunity to pursue a complaint in their own name or to have the university take it forward on their behalf (EHRC, 2019c).

One barrier is that people don't like to be seen as "that person". One way we overcome this is by taking this on as an institution – we become the complainant … the [higher education institution] taking on complaints is removing a barrier but we need to make students and staff aware of this **(English university, EHRC, 2019c).**

Staff concerns

Some staff described how they had weighed up how serious they thought the incident was, and the likelihood of being believed, against the potential repercussions of speaking out. They worried that speaking out would make things worse by being branded a trouble maker.

"

I did not report the incident as being racial harassment as this, in my view, would be difficult to establish and prove and I felt could have negative personal consequences for me within the workplace. **(Academic, Scottish university).**

"

Some universities also felt that a significant barrier for their staff was the fear that it would affect future relationships with other staff members (EHRC, 2019b). Some staff reported that they had been actively dissuaded from reporting their experience or pursuing a complaint.

"

The University has harassment officers who do not belong to minority groups and when you raise these issues they try to persuade you that you are making the issues up and there is not a real problem. **(Professional services or support staff, English university)**

I have a line manager who threatened to jeopardise my career if I continue with my complaints. **(Academic, English university).**

"

Our call for evidence found that two-thirds of staff (248) – who told us they had experienced racial harassment – felt that better protection from personal repercussions would have made it easier to complain.

2/3 of staff

who had told us they had experienced racial harassment felt that better protection from personal repercussions would have made it easier to complain

Complaints handling and redress for students and staff

- **A clear barrier to effective redress is a lack of staff knowledge, skills and confidence in understanding racial inequality and racial harassment.**

- **Students and staff are often unclear about what will happen when they make a complaint and are afraid of the personal consequences in doing so.**

- **Long complaints procedures prolong student and staff anxiety and further undermine confidence in the fairness of complaints handling.**

- **Inconsistent implementation of policies and procedures can leave those who complain feeling confused, unsupported and without effective redress.**

- **Too few universities seek to understand student and staff experience of their complaints procedures and, as a result, do not know how effective they are.**

- **The lack of student and staff confidence in their universities to tackle racial harassment effectively is harming their mental health and wellbeing, undermining student retention and attainment, and affecting the career development and progression of staff.**

Early and informal resolution of complaints

Ombudsman guidance promotes early or informal resolution, wherever possible, to address straightforward student concerns. Acas guidance also recognises that some harassment complaints can be successfully resolved informally but may need support for the employee to do so.

Our qualitative research found that universities are generally positive about the potential for early and informal resolution to provide a quick and non-bureaucratic response to racial harassment complaints. However, others are concerned that it could lead to inconsistency in how well complaints are handled.

Management training on handling complaints and delivering early resolution

Office of the Independent Adjudicator (OIA) and Scottish Public Services Ombudsman (SPSO) guidance encourages staff to be empowered, trained and supported to deliver early resolution and fair decision making. Similarly, Acas guidance promotes training for managers as part of any workplace policy on bullying and harassment.

However, we heard managers were often uncomfortable talking about race with ethnic minority staff and struggled to understand and empathise with experiences of everyday racism. When asked to manage complaints and seek early resolution, they worried about getting it wrong, situations becoming adversarial and about opening themselves up to allegations of discrimination.

Some universities said their staff knew how to tackle harassment related to other protected characteristics, such as sex, but were less confident when it came to race issues. Other universities felt that staff who had received specific training related to racial harassment, for example bystander or unconscious bias training, were in a much better position to ensure that cases were considered with the necessary level of seriousness.

The recent Guardian investigation found that very few universities provided more specific training on issues such as bullying and harassment or dignity at work (Batty, 2019). More than two-thirds of staff who responded to our call for evidence felt better training is needed for all staff to understand racial harassment and to give support to their colleagues.

University ombudsmen and Acas all acknowledge the value of mediation and conciliation in helping parties understand the reasons behind a complaint. Mediation and conciliation can be offered at any stage of a complaint, including early or informal resolution.

However, it was relatively uncommon for racial harassment complaints to be resolved in this way. HR professionals and staff unions told us that, by the time a formal complaint has been raised, relationships have often broken down so badly that a mediated or conciliated resolution is no longer a viable option.

Formal complaints, internal reviews and external appeals

Ombudsman guidance and Acas codes and guidance promote formal stages to investigate and resolve complaints and grievances where they are complex, high risk or serious, or could not be resolved informally.

Support for students and staff to pursue a complaint

OIA, SPSO and Acas guidance all acknowledge the importance of supporting students to pursue a complaint. OIA advise that students are directed to advice and support from appropriately trained staff.

Almost 90% of universities made support available to staff and students throughout the complaints process (EHRC, 2019b).

A variety of support was available to students: case workers regularly check in with students to discuss and review their support requirements; some universities brief tutors to provide support; and others have removed this responsibility and created dedicated roles to provide support throughout the complaints process.

"

We then invested in one wellbeing officer in each of the schools … people who are trained as their day job instead of as an add-on. That is how we manage to ensure the consistency and also the capacity of individuals to provide support to the victims or the person who has been accused. **(English university, EHRC, 2019c).**

"

Some of the universities using the 'Report + Support' tool described how it helps them offer support as soon as incidents are raised and assess whether the student wants to take the complaint forward.

Overall, our call for evidence heard from far more students who said they had not been given information about the available advice and support. Despite the support that universities said they offered, more than three-quarters of students (105 out of 137) who told us they reported racial harassment said that they felt unsupported.

"

I only came to realise we had a specialist staff member who acted as a counsellor in my third year of studies and she supported me through two moments of stress and panic attacks at the end of my degree. If I was aware of her position sooner … perhaps the racist behaviour could have been spotted sooner. **(UK national undergraduate, English university).**

"

We also heard examples of the positive impact of dedicated student service teams and counselling services.

"

My department's student support service have been and still are helping me. I am eternally grateful that [they] listened to me because I have contemplated suicide. **(International postgraduate, English university).**

"

Universities provide support for their staff through individuals' line managers and HR. They also described the support offered through employee assistance programmes, such as a 24-hour helpline and professional counselling support, and occupational health services. However, many staff told us they did not feel they had been given enough information about the available advice and support.

Another important part of support was minimising contact, during any investigation, between students or staff who complained about serious racial harassment and their alleged perpetrators. Several universities separated students by moving them to alternative accommodation or restricting their movements on campus. This can be challenging for universities, especially when considering whether to suspend students pending investigation (EHRC, 2019c).

> " You don't do things like that lightly and you try and think of other ways of say trying to keep students apart while an investigation is on-going. **(English university, EHRC, 2019c).** "

Our call for evidence also heard from a small number of staff who had been moved after complaining of racial harassment – sometimes without being consulted – with a mix of positive and negative views on this approach.

Independence, power and equality knowledge in the handling of complaints

OIA, SPSO and Acas guidance all emphasise the need for complaints handling and investigations to be fair, independent and objective.

Nearly all universities who had received complaints felt they had dealt with them fairly and without bias – 92% in relation to student complaints and 89% in relation to staff complaints (EHRC, 2019b).

However, many more students and staff – who complained about racial harassment – told us they were dissatisfied with the thoroughness of the investigation process than those who were satisfied.

Students' responses to our call for evidence highlighted concerns about independence and power dynamics in the handling of their complaint. Several were particularly concerned that tutors and lecturers whose behaviour was complained about, and their colleagues, had undue influence over the handling of the complaint. Some students also felt there was a lack of independence in complaints about students' unions.

> " It was clear from the start that it wouldn't be taken [seriously]. If your judge and jury are the same then what's the point. **(UK national postgraduate, English university).** "

Evidence from staff responses included concerns that issues were not being addressed properly because the investigating staff were influential friends of the alleged perpetrator. This power dynamic also played out in reported experiences of participation in complaint hearings.

> [Human resources] arranged for me to have a meeting with the people that I had reported on my own without any representation. The meeting was like walking into a lion's den with the people who I had reported and their friends. **(Academic staff, English university).**
>
> [Human resources] wanted to arrange a meeting where I would be sat in the same room as the perpetrator... [someone] in a more senior position to me. I felt extremely uncomfortable and vulnerable to do this and refused. They threatened on more than one occasion that they would have to drop the investigation if I did not participate. [After contacting] Acas I finally agreed upon having the interview over telecoms in separate room, on my own, with no support. [Human resources] treated me as though I was a spoiled child rather than someone who had experienced racial abuse. **(Professional services or support staff, English university).**

Our evidence indicates that training for staff on complaints and disciplinary panels rarely included equality considerations. Some universities did require panel members to have undergone 'unconscious bias' training but acknowledged that this is not always checked. However, our survey found that just 1 in 5 (43%) universities provided regular training for staff investigating student complaints of racial harassment and just 2 in 5 (43%) for investigators of staff complaints (EHRC, 2019b). In roundtable discussions with university staff, we were told that one university had recently invested in sexual harassment training for some of its panel members and plans to extend training to other forms of harassment too.

Timely outcomes and being kept informed of progress when delays happen

Guidance emphasises the prompt handling of complaints and grievances. For the OIA, a student complaint should be resolved within 90 days, while the SPSO requires students to receive a definitive response within 20 working days following a thorough investigation. Acas' Code of Practice requires prompt action and requires employers to keep staff informed of progress during long investigations.

Evidence from our survey of universities showed that institutions generally believed both student complaints (75%) and staff complaints (68%) to have been dealt with promptly. However, based on universities' own data, more than 1 in 10 student complaints (13%) and around a fifth of staff complaints (19%) took over six months to resolve, thereby breaching the ombudsmen guidelines.

Formal complaints, internal reviews and external appeals

Several universities in our qualitative research acknowledged that the time taken to resolve complaints needs to be improved. They felt that the fragmented nature of reporting routes often contributed to delays and sometimes meant that student casework and HR teams
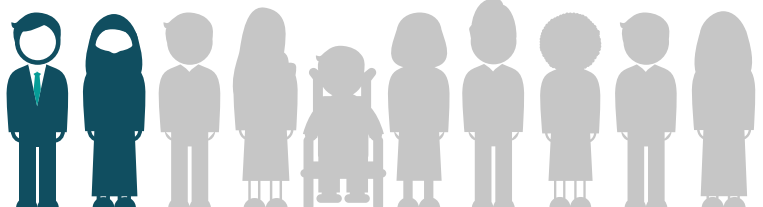
More than

1 in 10
student complaints
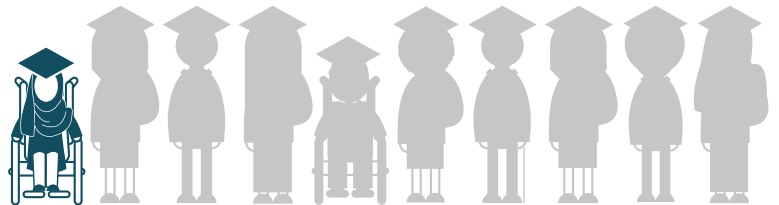
and around

2 in 10
staff complaints

took over six months to resolve

were not always made aware of complaints until much later in the process. Some highlighted that the rigidity of structures and the number of different parties involved in complaints handling potentially contributed to delays. This was particularly the case when complaints needed to be addressed outside of term time (EHRC, 2019c).

Many students and staff told our call for evidence that the timescale for dealing with their complaint was either not made clear at the outset or was not met. The majority felt that their complaint was not dealt with promptly and that the process took too long.

"

The complaint remains ongoing after nine months. Most aspects of the complaint have not yet been investigated. No outcome has been proposed. **(Professional services or support staff, English university).**

"

We heard how lengthy complaints processes can affect students' studies and wellbeing.

"

The time it has taken for the university to address this issue is shameful (over a year of a formal investigation and three years of verbal attacks and intimidation). We now have a mere two months till we finish our undergrad degree, as a result no serious punishments will be given to the perpetrators. **(UK national undergraduate, English university).**

"

Many students and staff told us they had not been kept informed of progress. Some students suggested they should be able to track a complaint via the reporting app or through their online university account.

"

I never heard from the university again. It's been a year since the complaint was submitted. They confirmed they received the official complaint form and haven't been in contact since. My lecturers have been trying to help find out why it has gone nowhere but none of us have been told anything. **(International undergraduate, Welsh university).**

"

We heard from several students and staff that they gave up their complaint because of the delays. Some felt that the university used delaying tactics to make it harder to complain.

> "
> The university kept stalling so that my complaint was never dealt with. The [Human Resources] officer involved would just not turn up to meetings and no one informed me that they would not be attending. This happened so many times that in the end I gave up. **(Academic staff, English university).**
> "

Effective and meaningful redress

We asked universities for details of their most recently closed racial harassment complaints from students and staff (EHRC, 2019b).

In 1 in 5 (22%) student cases, the alleged perpetrator was reprimanded and / or given a formal warning, and in 4% of cases they were removed from the university. In 6% of student cases, the matter was referred to the police.

An outcome was achieved through conciliation or mediation in around 1 in 10 staff cases of harassment.

Around 3 in 10 universities' most recent student complaints concerning racial harassment (30%) had been investigated and not upheld; 9% were unresolved due to a lack of evidence and 6% of cases were withdrawn.

In a third of reported cases of staff harassment (33%), action was taken against the alleged perpetrator. The most common outcome, where action was taken, was that the alleged perpetrator was disciplined by the institution (18%). For universities with higher levels of ethnic minority students, this was a less common outcome (8% of alleged perpetrators were disciplined). In only 1% of staff cases, matters were referred to the police.

Around 1 in 3 universities' most recent staff complaints concerning racial harassment (38%) had been investigated and not upheld; 5% were unresolved due to a lack of evidence and 8% were withdrawn.

Satisfaction with outcomes

OIA and SPSO guidance encourages universities to identify what students want to achieve from making a complaint, at the outset, and to inform them whether their expectations are reasonable. It also advises universities to give clear reasons for the decisions they reach.

Guidance developed by Pinsent Masons on student misconduct (Universities UK and Pinsent Masons, 2016) recommends that universities publish a code of conduct and disciplinary procedures which define unacceptable behaviours and set out the likely sanctions that could be imposed on students.

The Acas Code of Practice requires employers to allow an employee raising a grievance to explain how they think it should be resolved. Employees should also communicate a decision to the employee in writing.

Our call for evidence heard from 96 students who did not get the outcome they wanted, compared with 8 who felt that the outcome they received was reasonable (fewer than 1 in 10). Most students, who told us their university had acted upon their complaint, said they didn't understand the reason for the decision that was made.

We heard from over 100 staff who were dissatisfied with the outcome they received, compared with just seven who were satisfied.

> "
> No action was taken as the member of staff was going through a tough time so this apparently excuses racism. **(Professional services or support staff, English university).**
> "

Data sharing and disclosure of disciplinary outcomes

Complaints from students or staff, alleging racial harassment by another student and / or staff member, may lead to disciplinary action against the alleged perpetrators.

Disciplinary procedures are separate from complaints or grievance procedures. Students or staff who made the initial complaint often become a witness in the disciplinary proceedings – either giving oral evidence or making a written statement. However, the disciplinary process is between the university and the alleged perpetrator. At the end of the process, universities make a decision about what has happened and what action should be taken, if any, against the alleged perpetrator.

University ombudsman guidance does not mention disclosing the outcome of the disciplinary process to the complainant. However, the OIA is clear that the student making the complaint should be given some resolution to their complaint and Acas says that disciplinary procedures must be fair to both the complainant and the person accused.

Most universities said they did not inform students or staff of the outcome of disciplinary action taken in these circumstances. This was because universities were concerned about data protection legislation and feared breaching the data rights of perpetrators. The specific concerns we found were:

- whether a complainant can be told about the outcome of disciplinary cases and any sanction imposed by the university on a perpetrator, and

- in which circumstances, and to what extent, can a university publish the outcomes of disciplinary cases, or other action, on an anonymised basis where harassment has been found, for example, to influence the behaviour of others by showing the consequences of harassing behaviour.

Universities recognised the need to meet data protection obligations but were concerned that this restricted their ability to deal with harassment and to inspire confidence that they were doing so.

> **"**
> I know it's tough with data protection, but the complainant needs to know that the university has done something about it. **(Professional services or support staff, English university).**
> **"**

While ICO guidance advocates a risk-based approach, universities said they struggle to understand how to apply this to their complaints and disciplinary handling.[28]

Universities recognised that a lack of disclosure could leave students and staff dissatisfied, and unconvinced they had achieved anything by pursuing their complaint, even when their complaint is upheld (EHRC, 2019c).

> **"**
> Disciplinary action was taken against the individual but I do not know what that action entailed. **(Professional services or support staff, English university).**
> **"**

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[28] Information Commissioners Office, 'Some basic concepts'.

Some institutions we interviewed did provide complainants and witnesses with information about sanctions imposed on the perpetrator, but this was not common practice EHRC, 2019c). Overall, our evidence showed many universities were taking a risk-averse approach, preventing them from addressing harassment in individual cases and at a broader, institutional level. This highlights the need for better and more consistent guidance from the sector and the ICO on this issue.

Consequences for students and staff who complain – retribution and victimisation

The Equality Act 2010 makes it unlawful for universities to victimise staff or students by treating them badly if they do a 'protected act'. This includes complaining about harassment by the university or its staff.[29] Complaints of harassment by students (which is not prohibited by the Equality Act) would not normally be protected, even though the person may be entitled to complain under the university's internal procedures.[30]

In our call for evidence, students were much more likely to say they had experienced negative repercussions from making a complaint (70 said this, 23 did not).

"

Upon reporting one incident involving a senior staff member to the university she turned my life at the university into a living hell. Her abuse following my making the report became so intolerable that I stopped attending lectures at university. I became fearful of reporting further abuses to the university. I was afraid that I would suffer worse consequences. I learned to accept the abuse and stay quiet and despite staying quiet to the abuse I wound up suffering worse consequences. **(UK national undergraduate, English university).**

"

[29] S.27, Equality Act 2010.

[30] See 'third party harassment' in the Experiences chapter.

One student who witnessed the racial harassment of a fellow student described the consequences of making their complaint.

> "
>
> I have no doubt that some of us (including me) suffered serious personal repercussions as a result of making those complaints against the lecturer. [He] affected them to the extent they were considering quitting their studies at best, and [suicide] at worst. **(UK national postgraduate, Welsh university).**
>
> "

More than 100 staff told us they felt that they had been disadvantaged in making a complaint and gave compelling accounts of being victimised and their reputations being undermined. This was more than four times the number of staff (24) who told us that they had not been disadvantaged.

> "
>
> I have a line manager who threatened to jeopardise my career if I continue with my complaints. **(Academic staff, English university).**
>
> "

Appeals – ombudsmen

In England, Scotland and Wales, once the university's complaints procedures have been completed, students have the right to ask the OIA or SPSO to review their case. The Acas Code of Practice requires staff to be able to appeal decisions and, wherever possible, for their appeal to be heard by a manager who has not previously been involved in the case.

Just one in twenty student complaints were appealed compared with 1 in 8 cases for staff (EHRC, 2019b).

We heard of few examples of students and staff pursuing their complaints through the ombudsman. Evidence from the OIA shows that 108, of over 5,000 complaints it received in the last three years, were categorised as primarily about bullying or harassment. It was not possible to identify how many related specifically to racial harassment (OIA submission).

Legal challenges

A university will be legally responsible for an act of harassment committed by an employee or agent, unless it took all reasonable steps to prevent harassment. However, this 'reasonable steps defence' falls short of being a proactive duty to prevent harassment.

The public sector equality duty (PSED) says universities must have due regard to (consciously consider) the equality aims. It is not a duty that requires specific outcomes. While the specific duties in England, Scotland and Wales require more specific steps to be taken, these relate to assessing and reviewing policies and publishing information and objectives aimed at ensuring compliance with the general duty.

Therefore, a university may be able to comply with the PSED by having due regard to the need to prevent harassment but then deciding that factors such as cost and disruption outweigh the potential positive effect of the measure under consideration.

Apart from the PSED, there is no proactive duty or other specific regulatory duties placed on universities to take steps to prevent harassment. This means that the onus for challenging harassment falls on the individual who has experienced it. That can be challenging, even for those who are legally qualified:

"

Current law makes it extremely difficult for an employee to use the ultimate sanction of taking a university to an Industrial Tribunal for racial harassment. Though I am a barrister and academic by occupation, I found the process extremely daunting, time-consuming and complex. I am informed that despite numerous reports of bullying and harassment at my former employment, I was the only person to proceed with legal proceedings. **(Academic, English university).**

"

These issues are likely to be compounded, in the case of students seeking to make a legal challenge, by the imbalance of power between the student and the university. The cost of making such a claim in the county court or sheriff court is likely to be prohibitive, whereas the cost of defending the claim will be affordable to the university. The student may face difficulties in establishing that the university is legally responsible (for example, if there is no documented evidence of the harassment) and they face the risk of being ordered to pay the university's costs if they lose the claim. When weighed against the potential benefits of making a claim, it may not seem worthwhile to the student.

Another effect of placing the onus on individuals to challenge harassment is that this system is less effective in achieving cultural change. The remedies for harassment are aimed at addressing the wrongdoing to the claimant only.

In relation to claims by employees in the employment tribunal, a tribunal has the power to make recommendations to the employer aimed at reducing any adverse effect of the harassment on the claimant.[31] However, the power of tribunals to make recommendations aimed at preventing harassment in the wider workforce, previously contained within the Equality Act 2010, has been removed.

Through our follow-up interviews with universities, we heard one candid account of the challenges staff face in seeking redress through employment tribunals:

> Recently every race case that went to court was turned down … when they pre-assess it they think it's not worth hearing. Institutions are becoming very clever at hiding these things … it's very difficult to evidence racial harassment in higher education … they close ranks. **(English university, EHRC, 2019c).**

[31] S.124, Equality Act 2010.

Our evidence showed that, in employment tribunal claims involving multiple allegations of breaches of the Equality Act 2010, some universities seek to have specific allegations of racial harassment 'struck out' at preliminary hearings. While this action may be appropriate in some cases, claimants told us that this made them doubt the strength of their claim and feel that it was less likely to satisfy the tribunal's evidential threshold. Complainants felt they were left with little choice other than to accept whatever settlement was offered, without any admission of liability from the university.

Universities' perceptions of their success in dealing with complaints

Evidence from our university survey showed that institutions felt they were handling racial harassment complaints well. Only a small minority felt they were definitely not doing so. However, only 38% of universities who had received complaints had sought feedback about complainants' satisfaction with the process (EHRC, 2019b).

This means most universities will have difficulty understanding how successfully they handle complaints.

Institutional learning and improvement

- **Universities across England, Scotland and Wales don't have a clear picture of much of the racial harassment that is taking place and are uninformed about the impact of their policies. This can cloud their assessment of the scale of the problem and how well they are responding to it.**

- **Failure to gather the correct information restricts universities' abilities to learn from people's experiences, effectively evaluate their response and improve confidence in their redress mechanisms. It also puts them at risk of legal challenge, ombudsman scrutiny and reputational damage.**

- **Some universities are taking steps to increase their awareness of the types of staff and student harassment taking place. They have introduced mechanisms to improve consistency in how they handle reports and complaints of harassment and to support their understanding of the nature and scale of the problem.**

Effective data collection: why it matters

Collecting and analysing data helps universities to understand the effectiveness of their complaints policies and procedures and how they contribute to tackling racial harassment. It is also an important way to check and challenge assumptions about the scale of the problem and how well they are responding to it. University governing bodies should use the evidence to evaluate risks to staff, students and the university as part of their due diligence processes and, for publicly-funded universities, their obligations under the public sector equality duty.

Ombudsmen for the higher education sector in England, Wales and Scotland, highlight the importance of analysis to identify and address complaints trends or wider issues. The SPSO model requires that analyses are reported quarterly to senior management and annually to the governing body. The OIA also promotes reporting to staff and students (including students' unions) on actions taken by the university in response to concerns and complaints. This helps to raise awareness and build the confidence of students and staff in their transparency and effectiveness of complaints procedures.

Data gathering and usage: reporting, complaints management and awareness

Incident reporting and intelligence

Our inquiry evidence shows there is significant under-reporting of student and staff experiences of racial harassment.

Universities need to supplement their complaints data with information that helps them to understand how much of the racial harassment experienced by staff and students is reported and to develop an accurate picture of the quality, consistency and effectiveness of redress mechanisms.

Evaluating awareness and effectiveness of policies and procedures

Universities generally felt that their harassment policies were working well, although they often had limited evidence of their impact (EHRC, 2019c).

Just over a quarter of universities (26%) said they used student surveys to evaluate their student harassment policy, while 12% took steps to assess students' awareness and understanding of their policies. A greater proportion used surveys to evaluate their staff harassment policies (66%) and staff awareness and understanding of them (37%).

Several universities talked about how they used surveys to identify and inform improvements in formal policies and processes and measure awareness of related training (EHRC, 2019c).

Our evidence showed that students and staff felt disillusioned because policies and leadership commitments were often undermined by a lack of meaningful enforcement. Overall, universities saw little need to change their existing policies and procedures and rarely, if ever, raised the need for greater enforcement of those policies (EHRC, 2019c).

Quantifying informal complaints.

For universities without centralised complaints systems, the different reporting points available to students can often mean that complaints are 'resolved' informally without there being any institutional record of the complaint. This makes it difficult to accurately monitor the volume and nature of complaints.

Fewer than half the universities in our survey said they had processes for collecting data on informal complaints (43% for students and 44% for staff). Some said that all complaints brought to their attention were treated as formal:

> "
> There is no mechanism for informal reporting, all reports are recorded formally, but both staff and student reports would receive advice on options, e.g. informal resolution, mediation, formal complaint, according to the seriousness of the incident. Data are used to monitor and identify particular trends or problems which may require attention, **(English university, EHRC, 2019b).**
>
> For staff, informal reports are not captured systematically. **(English university, EHRC, 2019b).**
> "

Others had instructed staff to log all complaints of racial harassment that were brought to their attention, even if raised informally. In a few cases, line managers were encouraged to record numbers of informal complaints, although, in general, these records were not shared more widely and were not included alongside formally reported figures (EHRC, 2019b).

Informed understanding of the prevalence and nature of racial harassment

Our call for evidence found that many students and staff wanted their universities to do more to help them to come forward and report their concerns confidently and safely.

When universities were asked about their main priority in addressing racial harassment, they most often talked about building trust, awareness of unacceptable conduct and ensuring that all incidents were reported (EHRC, 2019b).

We heard that some universities were seeking to capture all types of reports, and improve their understanding of the types of harassment taking place, through centralised online reporting mechanisms such as the 'Report + Support' system. As well as allowing students and staff to report openly or anonymously, they also provide guidance and direct the individual to tailored, or more general, support.

These mechanisms can help an institution to identify behaviour that might be considered harassment and extract information and tailored reports – detailing types of harassment, the perceived motivation, and staff and student characteristics – to monitor trends and take action. Alongside reported incidents, the use of web analytics allows universities to assess emerging concerns and consider the need for awareness raising or targeted interventions.

Following on from these reporting mechanisms, it is important for institutions to be aware of how the complaint is taken forward by those who wish to do so (formally or informally) and how well the university offers resolution to those involved.

Case study – Manchester University: Report + Support

Following work to promote zero tolerance of sexual harassment and violence, Manchester University developed an online reporting mechanism for staff and students who were reluctant to report incidents of sexual misconduct. Its focus has been broadened to capture all bullying, harassment and discrimination.

The reporting tool provides students and staff with a route to raise concerns, with the option to speak to an advisor about the complaint informally, in line with the university's dignity at work / harassment policies, or to report anonymously.

Where an individual wants to receive support, their report is referred to a harassment support advisor who then approaches them to explain their options, including access to mediation or how to make a formal complaint. Formal complaints are dealt with by the relevant student and staff complaints management teams. The system also provides students and staff with online information and advice, from the university and external sources.

Where individuals want to make an anonymous report, they are told in advance that the university is unable to progress their report through a formal complaints process. However, their report is considered by a member of the equality, diversity and inclusion team and an appropriate HR partner who decide what further action (if any) is appropriate. The report is also recorded to help the university understand the source, scale and nature of allegations of bullying, harassment and discrimination. There had been initial concern that the ability to report anonymously might encourage vexatious complaints but very few have been identified.

Whichever choice students and staff make, they are asked for details of the incident and invited to say what they believe caused it. This helps the university to identify prejudice factors within the incident. Students and staff are also asked for details of their ethnicity, sex, etc. but have the option to withhold this information.

The equality, diversity and inclusion team raise serious or repeat concerns with HR or the relevant heads of department. Analysis of incident data is regularly provided to the university's equality, diversity and inclusion leadership group. For example, microaggressive acts are a common feature of the incidents reported on the system. This sort of analysis has shaped the content of the training provided to harassment support advisors and 'student ambassadors'.

Manchester University is working with its staff unions to provide effective reporting routes for ancillary staff who do not have access to a computer, such as cleaning operatives and maintenance staff. Approximately 10% of the university's staff are in this position.

Anonymous reporting

Many students and staff who responded to our call for evidence felt that universities should adopt anonymous reporting to allow them to raise concerns safely. Several universities told us that they now offer – or are planning to adopt – dedicated anonymous reporting tools to enable students and staff to report their experiences (EHRC, 2019b). For students and staff, it was not always clear that they understood the constraints of anonymous reporting, particularly in enabling universities to carry out meaningful investigations and hold perpetrators to account for their behaviour. Anonymous reporting may reduce the prospect of personal redress for an individual, but it can provide the institution with intelligence to inform their understanding of the type and scale of harassment and enable them to implement targeted preventative measures. This also provides students and staff with clear evidence that it is worth reporting all incidents, even anonymously.

However, some universities were concerned that records of anonymous reports, which held identifiable details of alleged perpetrators, exposed them to the risk of legal challenge from the alleged perpetrators. This would happen where individuals were able to access anonymous reports about them by making a 'subject access request'.

The concern is a fear of breaching the data rights of perpetrators, and alleged perpetrators, and the extent to which universities are able to collect or keep data about alleged harassment without disclosing it to the alleged perpetrator. The specific concerns we heard about were:

- whether it is ever permissible for allegations of harassment about an individual to be retained without putting those allegations to them, for example, where the allegation has been made by someone who explicitly says they do not want action taken, and

- whether it is ever permissible, or required, to put these allegations to an alleged perpetrator when the person making the allegation has explicitly asked that action not be taken and / or asked to remain anonymous.

The Information Commissioner's Office (ICO) has said that:

> Every organisation is different and there is no one-size-fits-all answer. Data protection law doesn't set many absolute rules. Instead it takes a risk-based approach, based on some key principles.[32]

This highlights the need for better and more consistent guidance from the sector and the ICO on this issue.

Ensuring consistency of data collection – early resolution and formal complaints

Roundtable discussions with staff showed that several universities have centralised their complaint processes. This has enabled better understanding and consistency in responding to issues that were previously handled by individual schools or departments. Online reporting systems ensure that all incidents are recorded and enable universities to 'triage' complaints and make informed decisions about how to manage them: directing the level at which resolution is sought and, in the case of formal complaints, who investigates.

Analysing and using data to improve complaint handling

Almost 9 in 10 universities (87%), told our survey that they analysed and reported data from their complaints systems. As so many universities are unable to analyse data about informal complaints, their analyses can only provide a partial assessment. It was not always clear from our survey evidence whether data was captured across the whole process: reporting the incident, the outcome of the complaint and how satisfied complainants were with the process and the decision.

Some universities explained how information gathered from complaints is reported to equality and diversity staff or 'student experience teams' to identify improvements.

> All bullying and harassment complaints data is analysed annually and reported in the Diversity and Equality Annual Report and reported through the committee system. The Diversity and Equality Team may recommend specific actions to address trends more generally or make recommendations to specific departments. (English university, EHRC, 2019b)

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[32] **https://ico.org.uk/for-organisations/guide-to-data-protection/introduction-to-data-protection/**some-basic-concepts/

"

Some told us how they were acting on this sort of analysis with plans for tailored training programmes on managing complaints of racial harassment, including microaggressions.

We have just held a session delivered by Advance HE on student microaggressions, and we wish to roll this out over the next few months. **(English university, EHRC, 2019b).**

"

Rigorous enforcement and effective redress

We found that fewer than half the universities had data on student and staff satisfaction with complaints handling (EHRC, 2019b). Without this data, universities cannot determine whether or not their processes are fit for purpose and improving over time. In our call for evidence, students and staff raised concern that universities protected senior staff, and those who brought prestige and funding, meaning that action was not taken against them.

Cardiff University has developed a promising approach that supports individuals experiencing racial harassment, across the university, and looks to ensure institutional learning and action.

Case study – Cardiff University's Race Equality Support Panel

The Race Equality Support Panel has been set up to facilitate awareness raising, encourage the reporting of racial harassment across the university and ensure students and staff are effectively supported when they do so. It recognises that universities cannot afford to deny, ignore or put the responsibility onto those who suffer inequalities; the responsibility lies with the institution.

When complaints are received, it brings together academic and professional service staff with knowledge of such cases, and of the university's processes, to offer students and staff:

• a professional sounding board

• access to specialist staff with expertise of racial harassment within the university

• tailored support and guidance in more complex cases, and

• assurance that effective measures are in place to deal with race hate crimes and incidents.

When a referral is made, the panel uses a restorative framework focusing on maintaining good relationships. In all cases, the panel considers:

• what happened

• what those involved are thinking and feeling

• who else has, or may have been, affected by the incident, and

• what those involved need to feel supported and to move forward.

The panel gathers and reports on emerging themes to the university's equality, diversity and inclusion committee. Its purpose is to ensure consistent practice and increase knowledge and learning across the institution. Its longer term aims are to narrow attainment gaps, improve student and staff retention, build trust in the institution and enhance its local and national reputation.

This offers a promising approach in helping universities to respect and understand the effect of racial harassment on those affected, provide meaningful redress and enable individuals and institutions to learn and improve.

Working with others to support continuous improvement

In 2016, Universities UK (UUK)[33] published 'Changing the Culture: Report of the Universities UK Taskforce examining violence against women, harassment and hate crime affecting university students'. This encouraged UK universities to adopt a strategic approach to preventing and tackling all forms of harassment. It highlighted the need for effective data collection, appropriate governance, robust risk management and regular impact assessments (Universities UK, 2016).

Following the UUK report, the Office for Students (OfS) supported universities in England to develop and implement projects to tackle harassment by providing nearly £5 million in match funding for more than 100 Catalyst projects. Many of the projects sought to improve reporting systems and offer support for students and staff.

A recent evaluation of the Catalyst funded projects found a range of views on the merits of single versus multiple reporting channels. Whatever approach is followed, it must enable students to tell their story and get advice about next steps and the support options relevant to their circumstances.

Many of the universities involved in the Catalyst funded projects experienced an increase in reporting rates.[34] Surveys asking students whether they knew how to report incidents, and about their level of confidence in their university to tackle hate incidents, found that ethnic minority students had significantly lower levels of confidence than white students. The evaluation report calls on universities and sector bodies to do more to understand the reasons for this (Advance HE, 2019a).

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[33] Universities UK (UUK) is the collective voice of 136 universities across Britain and Northern Ireland.

[34] Hate incidents are described in the report as 'everyday harassment' or 'micro-aggressions', often related to students' race, ethnicity, nationality or other protected characteristics.

Universities UK plans to develop guidance on tackling and investigating racial harassment. This will build upon the 'Changing the Culture' framework, the evaluation of the Catalyst fund and this inquiry and will explain what an effective response looks like, drawing on 'real life' case studies. It will also provide guidance on measuring impact and reducing risk by improving reporting procedures. Many of the Catalyst projects funded by OfS have produced resources to improve universities' responses to hate crime and harassment that are openly available on the advice and guidance section of the OfS website.[35]

In our survey, we asked universities what else would make it easier for them to tackle harassment (EHRC, 2019b). Most commonly, they said guidance on:

- how to deal with microaggressions and less obvious instances of racism or harassment

- understanding 'banter' in the context of racial harassment and how to deal with it (for student caseworkers and HR professionals), and

- understanding racial harassment and the concepts of 'purpose', 'effect', 'violating dignity' and 'creating a hostile, degrading, humiliating or offensive environment' set out in the Equality Act 2010.

Some universities thought there was already enough guidance but valued good practice case studies and advice on how to interpret and apply the available guidance (EHRC, 2019b).

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[35] **Advice and guidance section of the Office for Students website**

Leadership and culture

- **Universities are failing to create environments where racial harassment is not tolerated and where race, and racial inequality, is discussed competently, confidently and constructively.**

- **While some universities are taking action to improve their response to harassment, all universities need to recognise that harassment takes place in their institutions and focus on how they will understand the issues, learn from them and take action.**

University leadership

The importance and value a university places on the safety and wellbeing of its staff and students is set by its senior leadership. In committing to creating an inclusive environment, senior leaders must set expectations about student and staff behaviour and be clear that acts of harassment and racism will be dealt with effectively and promptly. They must take responsibility for making sure that positive change happens.

Three years ago, the 'Changing the Culture' report concluded that:

> The absence of a firm and sustained commitment from senior leadership poses a serious risk to the effectiveness of both prevention and response activities. In turn, this is likely to impact the student experience, retention rates, academic outcomes, reputation and the institution's capacity to meet its duty of care to students' (Universities UK, 2016).

The most recent evaluation of Catalyst safeguarding projects calls upon English universities to ensure that safeguarding activities for students are embedded in their institutional governance structures, monitored and regularly reported to their governing bodies (Advance HE, 2019a).

Commitment to safeguarding or tackling harassment should be demonstrated through senior leader ownership, sponsorship, scrutiny and accountability. University boards must regularly assess comprehensive information about harassment within their institution. This will ensure they can identify and reduce any risks to students and staff, as well as to their own reputation. Leaders in publicly-funded universities should use their specific equality duties[36] to reinforce their commitment, by setting an equality objective (or outcome in Scotland) to tackle racial harassment and publishing equality information on their baseline position and annual progress.

An important part of the framework, alongside senior leadership commitment, is enough resourcing for commitments to be effective (Universities UK, 2016). Around half of the English universities that have improved their reporting arrangements have faced challenges in responding to the increased number of reported incidents (Advance HE, 2019a). This highlights an important consideration for other universities planning improvements to their reporting arrangements. A stronger leadership focus, combined with effective data, will help direct the resources needed, including effective training, in line with the 'Changing the Culture' strategic framework.

Some human resources professionals we spoke to argued strongly that equality, diversity and inclusion teams need to sit with vice chancellors' offices.

> "
> Ensure that each university has a pro-vice chancellor who is dedicated to equality and diversity. Key leadership in a position of power is what is going to catalyse change in universities. **(Professional services or support staff, English university).**
> "

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[36] S.124, Equality Act 2010.

Fearing for the institution's reputation

Despite evidence on the prevalence of racial harassment within British universities, some senior leaders are reluctant to acknowledge it. Evaluation of Catalyst projects found that the sustainability of approaches to tackle harassment was at risk in some universities in England. This is because competition for students has created a climate in which people think that openly promoting activities to tackle racial harassment will portray universities negatively to potential applicants (Advance HE, 2019b).

Prejudice-based harassment is not unique to universities. Nevertheless, universities are a formative experience for society and the economy and, as such, should be places where harassment is not tolerated.

Students and staff need to have confidence that their university is taking effective action to prevent and tackle racial harassment. Universities UK's President has described harassment against students and staff as an abuse of power (Universities UK submission).[37]

"

The safety and wellbeing of staff and students is vital. I encourage universities to think carefully about how they can make their institutions safer places to live, work and study so that no student or member of staff is subject to any form of harassment, intimidation or threatening or violent behaviour in our universities. Such an abuse of power is categorically at odds with our values and the standards of behaviour expected in the sector **(Professor Dame Janet Beer, former Universities UK President).**

"

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[37] Universities UK submitted evidence which drew on their 'Changing the Culture' programme, in England, Scotland and Wales, alongside input from: the Universities and Colleges Employers Association (UCEA), Advance HE, AMOSSHE (the student services organisation), Academic Registrars Council (ARC), and the Association of Universities Legal Practitioners.

Our call for evidence highlighted a strong perception that, too often, British universities put their reputation above protecting their students and workforce against harassment.

> [The university's response] shows that [this] university was more bothered about covering the incident up to maintain a "spotless" reputation, than it was about tackling racism / sexism / homophobia – hence a delayed investigation, and the unfair sacking of [a whistle blower] **(UK national postgraduate, English university)**
>
> Racism needs to be taken seriously; nobody in senior management cares until it affects the university's "reputation" **(Professional services or support staff, English university).**

Creating an inclusive culture

University staff and students said creating a university culture where they could be themselves was an important part of preventing and tackling harassment. Our call for evidence heard from 302 students and 265 staff, who had been racially harassed, about the importance of feeling safe to be themselves. Many respondents talked about universities increased confidence in discussing gender inequalities. But this was not being replicated through open and constructive discussions of race and racial inequality. Our evidence has shown that a lack of staff confidence and competence in talking about race can get in the way of effective remedy for students and staff who experience harassment. Many universities need to do more to improve understanding, and the increased confidence in gender inequalities shows that this change is achievable.

> Talk more about race and make cultural competence or racial awareness training a university essential. Staff at our university are keen to talk about gender equality but not about race equality. There is a seeming fear or sudden lack of interest when it comes to talking about race. **(Professional services or support staff, English university).**

Around four-fifths of universities said that they collected data on how far ethnic minority students and staff felt included and engaged in university life (EHRC, 2019b). Our call for evidence heard from students about the need for universities to do more to create and facilitate opportunities for students from different ethnic, racial and national backgrounds to live and learn together. The Catalyst project evaluation also highlighted

concern for the safety of international students because their levels of reporting harassment were found to be very low. The report recommended that universities in England do more to understand the harassment experiences and safeguarding needs of international students, and ethnic minority students more generally. Both groups reported significantly lower confidence in speaking up about harassment than white students (Advance HE, 2019a).

Institutional culture is widely recognised as an important influence on ethnic minority students' sense of belonging and an important factor in their attainment. But the 'Closing the Gap' report also acknowledges resistance to the problem from some in British universities (Universities UK and NUS, 2019).[38] The report calls for universities to focus on:

- developing racially diverse and inclusive environments: a greater focus is needed from universities, working with their students, to understand how a poor sense of belonging contributes to poorer outcomes, and

- facilitating conversations about race and changing the culture: universities and students need to create more opportunities to talk directly about race, racism and the attainment gap.

Universities UK has made clear that a culture promoting a 'sense of belonging', and zero tolerance to all forms of harassment, will be critical in encouraging staff and students to raise complaints (Universities UK submission). One respondent to our call for evidence, who supported a racially harassed colleague, illustrates this particularly well:

> "
> Seeing someone clearly talented and amazing undermined has been upsetting. She was sent on a dealing with stress course instead of senior management tackling the problem directly (the head of that school was known for his bullying behaviour). **(Academic, English university).**
> "

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[38] The report highlights the importance of understanding the student deficit model. This concept attributes student characteristics as the main factor for explaining differences in attainment. It assumes students lack skills, knowledge or experience rather than prompt an examination of university structures and the discrimination that exists within them. It follows in the deficit model that ownership, accountability and responsibility for inequalities do not reside with the institution but the individual.

Enabling managers and staff to implement harassment policy

Case study – Equally Safe in Higher Education, Scotland

The Scottish Government funded Strathclyde University to develop Equally Safe in Higher Education, to implement Equally Safe, Scotland's wider strategy to eradicate violence against women, across Scottish campuses.

This project produced a toolkit to help universities to develop an effective, evidence-based and collaborative method of preventing gender-based violence on campus. Its components included:

- a theoretical framework and strategic governance

- trauma-informed support and a wellbeing approach to survivors of gender-based violence

- a whole campus method aimed at students and staff, informed by the views of survivors and their advocates

- partnership working with internal and external public and third sector parties

- guidance on developing a robust, evidence-based understanding of harassment within the institution

- guidance on developing research to produce high quality longitudinal data on the prevalence and nature of the problem, and

- a model prevention strategy and implementation plan.

The Scottish Funding Council, the funding body for all publicly-funded colleges and universities in Scotland, sets outcomes for institutions as a condition of funding. These outcome agreements now include a requirement to embed Equally Safe using the toolkit.

The collaborative nature of the project, and the resources, are helping to ensure concerted action to implement the approach in each institution. Universities are supported to develop their own bespoke plan to prevent all forms of gender-based violence affecting their campus communities.

The consistent and transparent application of this approach across the sector provides reassurance to students and staff. It is visible in education and training for students and staff in primary prevention, for example, as well as effective signposting for those affected to appropriate support.

Several universities told us that targeted training was not always delivered to support effective implementation of their policies (EHRC, 2019c).

> Policies and zero tolerance are in place, however we do not currently have targeted programmes to prevent race-related or other equality-related harassment, for example, other HEIs have local harassment advisers, bystander programmes, anonymous reporting, etc. **(English university, EHRC, 2019b).**

This matters because our call for evidence received many examples of student and staff experiences of racial harassment being disbelieved and dismissed by university staff. More than half the students and over two-thirds of staff, who had been racially harassed, told us that better, and possibly mandatory, training was needed. However, our university survey found that:

- just a third of universities provided regular training for teaching staff, and others in student-facing roles, on the racial harassment of students, while 3 in 10 provided this for staff in non-student-facing roles

- just over half of universities provided regular training for managers and senior staff on the racial harassment of staff, and slightly fewer did so for staff in non-managerial roles, and

- just a quarter of universities had provided 'bystander' training for their staff in relation to student harassment, with slightly fewer having provided such training in relation to staff harassment.

As mentioned previously, a Guardian investigation found that most universities across the UK provided general equality training but very few provided more specific training on bullying and harassment (Batty, 2019). A few universities acknowledged that their staff knew how to tackle harassment related to certain protected characteristics in the Equality Act, such as sex. However, they were less confident when it came to race issues (EHRC, 2019b). It would be good to see more universities providing specific training on the understanding and effective management of racial harassment.

> When we started the journey on the [Race Equality] Charter, we found huge gaps in the knowledge of staff and students around the theme of race. In comparison, the gap is non-existent in relation to gender and disability. **(English university, EHRC, 2019b).**

We heard from HR professionals and trade union representatives that university managers are often uncomfortable talking to ethnic minority staff about race matters. While universities emphasise the importance of resolving racial harassment complaints early and informally, managers often lack the skills and confidence to do so competently.

" Have the confidence to have conversations about race. Most the managers I work with find race-related conversations difficult and avoid the topic. **(Professional services or support staff, English university).** "

This is largely driven by an inability to understand or empathise with their ethnic minority colleagues' experiences, and fear of getting complaint handling wrong leading to accusations of unlawful discrimination (HR and staff union roundtables). Professional development of managers needs to include a focus on racial equality and the concept and impact of white privilege.

" I find people hate addressing race or even considering how they may be racially biased but instead of avoiding these people, we should always bring up the topic to make them confront this fear. **(UK national undergraduate, English university)**

Staff need to be trained to be better equipped for dealing with difficult situations. My line manager was unsure of how to take disciplinary action and was left in quite a difficult position, dealing with a situation they weren't trained for. None of my managers dealt with my situation appropriately and I felt totally ignored. **(UK national postgraduate researcher, Scottish university).** "

Creating a more ethnically diverse workforce

Students and staff frequently mentioned that universities' workforces need to become more reflective of wider society and their student populations, as part of tackling racial harassment. They also highlighted how the widespread use of temporary and casual appointments creates insecurity and contributes to a reluctance to challenge racial harassment in all its forms. Clear and visible action to prevent and tackle racial harassment provides an opportunity for a virtuous circle in which it becomes easier to attract and retain ethnic minority talent.

There is an established body of academic research that shows how everyday racism erodes belonging and constrains the potential and progress of ethnic minority staff. The 'Staying Power' report describes the experiences of UK Black female professors and how a pervasive and racist bullying culture limits opportunities and progression (Rollock, 2019). In 2015, the Equality Challenge Unit highlighted the need for universities to tackle microaggressions and subtle forms of racism to encourage ethnic minority academics to stay in UK higher education (Equality Challenge Unit, 2015). A recent Guardian investigation found that ineffective handling of racial harassment complaints is driving ethnic minority academics to pursue their careers in other countries (Batty, 2019).

"
I work in an environment where staff are leaving because of race issues and the reaction from the university is to protect themselves against grievances and not change the culture. It's been a shocking and eye opening experience. **(Professional services or support staff, English university).**
"

In February 2019, the Government launched measures to tackle race inequalities in higher education in England, including encouraging universities to address race disparities in their workforce (UK Government, 2019).

We heard from some universities that thought greater ethnic diversity in university workforces was needed to consolidate progress in preventing racial harassment (EHRC, 2019c). Roundtable discussions with university staff highlighted how a lack of cultural diversity makes it much harder for institutions to recognise the nature, scale and impact of racial harassment.

Human resources professionals also cautioned that greater senior representation should not be seen as the total solution. They noted how senior ethnic minority appointees are exposed to far greater scrutiny than their white peers. They are also at risk of being asked to bear the burden of delivering change. This could marginalise the problem as a race issue rather than an institutional one.

"

The only way to ensure fair treatment is to ensure that there is representation … Failure to do this means universities are simply offering lip service, which doesn't help anyone and we can certainly see through it. If you want to ensure change, put yourself in a position of disadvantage to understand what other people may experience and how it might make them feel. **(International postgraduate researcher, English university).**

"

Universities UK has highlighted how longitudinal research and initiatives, such as the Diversifying Leadership programme for staff, are helping to inform and shape Advance HE's work to support ethnic minority staff progression into more senior leadership roles (Universities UK submission).

"

Universities need to engage with the groups who are most likely to be affected by race related harassment and bullying and not just rely on reports from HR or management. BME staff in higher education are more likely to be in lower status roles and with less favourable tenure, particularly BME females. BME people need to be in the room reporting their experiences safely and influencing actions to change the paradigm. **(Academic, English university).**

"

Universities cannot leave staff who experience racial harassment to feel it is their responsibility to find coping strategies. They must enforce their dignity at work policy commitments and create environments that nurture talent and potential.

Annex A:
Respondents and non-respondents to the university survey

Universities who responded to our survey

Abertay University

Aberystwyth University

Anglia Ruskin University

Arts University Bournemouth

Aston University

Bangor University

Birkbeck College*

Birmingham City University

Bishop Grosseteste University

Bournemouth University

Brunel University London

Buckinghamshire New University

Cardiff Metropolitan University

Cardiff University

City University of London

Conservatoire for Dance and Drama

Coventry University

Cranfield University

De Montfort University

Edge Hill University

Edinburgh Napier University

Falmouth University

Glasgow Caledonian University

Goldsmiths' College

Guildhall School of Music & Drama

Harper Adams University

Heriot-Watt University

Imperial College of Science Technology and Medicine

King's College London

Kingston University

Leeds Arts University

Leeds Beckett University

Leeds College of Music

Leeds Trinity University

Liverpool Hope University

Liverpool Institute for Performing Arts

Liverpool John Moores University

Liverpool School of Tropical Medicine

Universities who responded to our survey

London Business School

London School of Economics and Political Science

London School of Hygiene and Tropical Medicine

Manchester Metropolitan University

Middlesex University

National Film and Television School

Newman University

Norwich University of the Arts

Nottingham Trent University

Open University

Oxford Brookes University

Plymouth College of Art

Queen Margaret University

Queen Mary University of London

Ravensbourne University London

Robert Gordon University

Roehampton University

Rose Bruford College of Theatre and Performance

Royal Academy of Music

Royal Agricultural University

Royal Central School of Speech and Drama

Royal College of Art

Royal College of Music

Royal Conservatoire of Scotland

Royal Holloway and Bedford New College

Royal Northern College of Music

School of Oriental and African Studies

Sheffield Hallam University

Solent University

Scotland's Rural College (SRUC)

St Mary's University Twickenham

St. George's Hospital Medical School

Staffordshire University

Swansea University

Teesside University

University College Birmingham

University College London

University College of Osteopathy

Universities who responded to our survey

University for the Creative Arts	University of Glasgow
University of Aberdeen	University of Gloucestershire
University of Bath	University of Greenwich
University of Birmingham	University of Hertfordshire
University of Bolton	University of Hull
University of Bradford	University of Keele
University of Brighton	University of Kent
University of Bristol	University of Lancaster
University of Cambridge	University of Leeds
University of Central Lancashire	University of Leicester
University of Chester	University of Lincoln
University of Chichester	University of Liverpool
University of Derby	University of London
University of Dundee	University of Manchester
University of Durham	University of Newcastle upon Tyne
University of East Anglia	University of Northampton
University of East London	University of Northumbria
University of Edinburgh	University of Nottingham
University of Essex	University of Oxford
University of Exeter	University of Plymouth

Universities who responded to our survey

University of Portsmouth

University of Reading

University of Sheffield

University of South Wales

University of Southampton

University of St Andrews

University of St Mark & St John

University of Stirling

University of Strathclyde

University of Suffolk

University of Sunderland

University of Surrey

University of Sussex

University of the Arts London

University of the Highlands and Islands

University of the West of England

University of the West of Scotland

University of Wales Trinity Saint David*

University of West London

University of Westminster

University of Winchester

University of Wolverhampton

University of Worcester

University of York

Wrexham Glyndŵr University

Writtle University College

York St John University

*University's survey submission was received too late to be included in the analysis

Universities who did not respond to our survey

AECC University College

Bath Spa University

Canterbury Christ Church University

Courtauld Institute of Art

Glasgow School of Art

Institute of Cancer Research*

London Metropolitan University

London South Bank University

Loughborough University*

Royal Veterinary College

Trinity Laban Conservatoire of Music and Dance

University of Bedfordshire

University of Cumbria

University of Huddersfield*

University of Salford*

University of Warwick

*University offered to participate in the research but submission could not be accepted beyond the deadline.

Annex B:

Additional legal protections for university staff and students beyond the Equality Act 2010

Universities who responded to our survey

This is a non-exhaustive summary of staff and student legal protections against racial harassment.

Public law and the Human Rights Act

In some contexts where universities exercise public functions relating to staff and students they will also be liable in public law – the law governing the conduct of public bodies – including under the Human Rights Act 1998. The Human Rights Act requires public bodies to respect and protect a set of fundamental rights and freedoms that everyone in the UK is entitled to. This includes, for example, the right to freedom from inhuman or degrading treatment.

The decisions of public bodies can be challenged through a claim for judicial review in the administrative court in England and Wales or the Court of Session in Scotland. The remedy awarded in a successful claim for judicial review will usually be to require the public body to do or not to do something, to overturn the public body's decision or to declare what the law is. Judicial review does not usually result in the award of compensation to the individual who makes the claim.

Protection from Harassment Act 1997

Employers can be legally responsible for breaches of the Protection From Harassment Act 1997[39] by their employees. This act makes it unlawful for a person to pursue a course of behaviour which amounts to harassment.

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[39] Section 1 of the Protection from Harassment Act 1997 provides, in respect of England and Wales, that a person must not pursue a course of behaviour which amounts to harassment of another and which they know, or ought to know, amounts to harassment. Section 8 provides, in respect of Scotland, that a person must not pursue a course of behaviour which amounts to harassment of another and (a) is intended to amount to harassment of that person, or (b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person. By section 7(3) and 8(3) a 'course of conduct' must involve conduct on at least two occasions in relation to that person. By section 7(4) and 8(3), 'conduct' includes speech. There is no requirement that the harassment be on the grounds of a protected characteristic, for example, race.

This would include harassment related to race, although there is no specific requirement for the harassment to be related to any protected characteristic. Unlike the harassment provisions under the Equality Act, there must be a course of behaviour consisting of at least two incidents. A one-off incident will not suffice however serious.

Those who are subjected to harassment can pursue a civil claim for damages in respect of any anxiety or financial loss caused by the harassment. Courts can also grant injunctions in England and Wales, or interdicts or non-harassment orders in Scotland, to prohibit the harasser from engaging in specified behaviour.

Breach of contract

Universities may also be legally responsible in breach of contract. For example, where a university has included its harassment policy as a term of its contract with the student, the student raises a complaint regarding racial harassment and the university acts in breach of the contractual policy when investigating the complaint. If the breach results in loss to the student then the student could pursue a claim for damages in the civil courts.

Summary of legal protection

While there are limits to its protections, the Equality Act 2010 offers greater safeguards to staff and students in comparison to other sources of protection listed above, as it specifically prohibits racial harassment, provides the individual with a legal right of action against the university, and does not require an individual to be harassed on more than one occasion before they can make a claim.

Overview of the regulatory regime

In England, universities are funded by the Office for Students (OfS).[40] It is a condition of registration with the OfS[41] that a university is a member of the student complaints scheme operated by the Office of the Independent Adjudicator (OIA) and makes students aware of their ability to use the scheme.[42] The OIA consider whether the university followed its own procedures and reached a reasonable decision, and can make recommendations to the university regarding its handling of the complaint and its procedures. Universities must also have an access and participation

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[40] Higher Education and Research Act 2017 (HERA 2017).

[41] Conditions of registration are set and published in accordance with sections 5 and 6, HERA 2017.

[42] Condition C2.

plan (APP), approved by the OfS, in which they must set out their objectives relating to the promotion of equality of opportunity.[43] Universities must take all reasonable steps to comply with the provisions of the plan. However, the APP process does not require universities to take specific steps to tackle harassment.

In Wales, the Higher Education Funding Council for Wales (HEFCW) is responsible for distributing some public funding from the Welsh Government to universities.[44] HEFCW regulates areas including student fees and quality of education. Universities must, in relation to full time undergraduate students, submit a fee and access plan to HEFCW for approval which, like APPs, must include provisions relating to equality of opportunity.[45] HEFCW is legally required, along with other specified public bodies in Wales, to set and publish objectives that are designed to maximise its contribution to achieving seven well-being goals.[46] Several of these goals

will require discrimination to be tackled and equality of opportunity advanced to achieve them, most notably 'a more equal Wales'.[47] HEFCW is required to take all reasonable steps to meet its published objectives and report on progress in meeting them. One of HEFCW's published objectives is 'to ensure that higher education in Wales is relevant and accessible to all who could benefit from it, or contribute to it.'[48] HEFCW does not require, by guidance or otherwise, higher education institutions to have a particular form of complaints procedure.

The Welsh Government intends to replace HEFCW with a new body called the Commission for Tertiary Education and Research (CTER) by 2023. CTER will oversee all aspects of post-compulsory education and training and will therefore become the regulator and the primary funder of further education provision.

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[43] Condition A1 and Higher Education (Access and Participation Plans) (England) Regulations 2018 in conjunction with s32 HERA 2017.

[44] Further and Higher Education Act 1992 and the Higher Education (Wales) Act 2015 (HEWA 2015).

[45] Section 6, HEWA 2015.

[46] Part 2, Well-being of Future Generations (Wales) Act 2015 (WFGWA 2015).

[47] The goal description of 'a more equal Wales' under section 4 WFGWA 2015 is 'a society that enables people to fulfil their potential no matter what their background or circumstances (including their socio economic background and circumstances).'

[48] **HEFCW Wellbeing Statement, March 2018.**

Universities in Scotland are funded by the Scottish Funding Council (SFC). The SFC has conditions of funding[49] and can impose sanctions for non-compliance. The SFC's current conditions of funding do not include specific requirements about how complaints of racial harassment should be dealt with. However, universities must negotiate outcome agreements with the SFC and ensure that they deliver them.[50] The SFC will consider taking back funding from a university or reducing future funding if they do not deliver.[51] The guidance on outcome agreements[52] states that equality and diversity should be considered with the highest priority in the development of outcome agreements. In relation to race, the guidance notes that the Scottish Government Race Equality

Framework 2016-30 sets out a number of principles and goals for improving fairness, equal access and participation, tackling barriers and improving all aspects of society, including education.

There is also a legal requirement[53] for universities in Scotland to implement their own complaints handling procedures that comply with the Complaints Standards Authority's model Complaints Handling Procedure.[54]

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[49] Section 9A, Further and Higher Education (Scotland) Act 2005.

[50] **Financial Memorandum with Higher Education Institutions.**

[51] Annex C, Outcome Agreement Funding for Universities - Final Allocations for AY 2019-20.

[52] Scottish Funding Council, Guidance for the development of University Outcome Agreements: 2019-20 to 2021-22.

[53] Section 16C, Scottish Public Services Ombudsman Act 2002.

[54] **Complaints Handling Procedure for the higher education sector in Scotland.**

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Glossary

Advance HE: A registered charity which supports transformative leadership and management, teaching and learning, equality, diversity and inclusion, and effective governance in higher education, including accreditation of the Race Equality Charter. It includes the Equality Challenge Unit.

Advisory, Conciliation and Arbitration Service (Acas): A public body which, among other services, provides free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law.

British Medical Association (BMA): The trade union and professional association for doctors and medical students across the UK.

Catalyst safeguarding fund: A fund established by the Office for Students to support the improvement of student safeguarding in English universities.

Complaint: For the purpose of this inquiry, a complaint is when students or staff bring an allegation of racial harassment to the attention of their university and are seeking some form of redress.

Discipline and misconduct procedures: University procedures used to deal with student and staff behaviour which appears to have breached an institution's standards of behaviour.

Early and informal resolution: Often the first stage in a complaints process and commonly used to address straightforward student and staff complaints at a frontline, school or department level, before problems escalate.

Employee Assistance Programme (EAP): A benefit provided by an employer to its employees which is intended to help employees deal with personal problems that might impact their work performance or health and wellbeing. EAPs often provide access to support and counselling.

Equality Act 2010: An Act of Parliament which protects individuals against discrimination and harassment at work, in the provision of education and in other specified contexts. The act also requires public bodies to give due regard to the need to eliminate discrimination and harassment, to advance equality of opportunity, and to foster good relations between different protected groups.

Equally Safe in Higher Education: The Scottish Government's strategy to eradicate violence against women, implemented by the University of Strathclyde who were funded to create a free toolkit for Scottish universities to use in preventing gender-based violence on campus.

Ethnic minority: For the purpose of this inquiry, we use the term ethnic minority to mean any ethnic backgrounds other than White British.

Formal complaint or grievance: A complaint made by a student or staff member under the formal stages of a complaints process because it has not been resolved through early and informal resolution, or where informal resolution would not be appropriate because, for example, the complaint is more complex, high risk or serious.

Gaslighting: A form of psychological manipulation which leaves the victim doubting themselves, events or their memories. It can be used to undermine legitimate concerns.

General Data Protection Regulation (GDPR): EU legislation which governs how personal information is used, handled and protected by organisations including businesses and governments. Within the UK it is supplemented by the Data Protection Act 2018.

Higher education institution (HEI): For the purpose of this inquiry, a higher education institution is any publicly funded university in England, Scotland and Wales.

Higher Education Funding Council for Wales (HEFCW): A Welsh Government sponsored body which regulates fee levels at universities, ensures a framework is in place for assessing the quality of higher education and scrutinises the performance of universities and other designated providers in Wales.

Information Commissioner's Office (ICO): The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

International student: For the purpose of this inquiry, an international student is any non-UK national student. This includes overseas students from EU and non-EU countries.

Microaggression: A brief, everyday interaction that sends a denigrating message to a person because they belong to a racially minoritised group. Compared to more overt forms of racism, racial microaggressions are subtle and insidious, often leaving the victim confused, distressed and frustrated and the perpetrator potentially oblivious to the offence caused.

National Union of Students (NUS): A confederation of 600 students' unions. It represents the interests of more than seven million students in further and higher education across the UK.

Office for Students (OfS): The independent regulator of higher education in England.

Office of the Independent Adjudicator for Higher Education (OIA): A registered charity set up to review student complaints about higher education providers in England and Wales.

Protected characteristic: A term used in the Equality Act 2010 to describe the characteristics that people have in relation to which they are protected from discrimination and harassment. Under the Act, there are nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Marriage and civil partnership and pregnancy and maternity are not protected under the harassment provisions.

Public sector equality duty (PSED): A duty under section 149 of the Equality Act 2010 which states that a public authority must, when performing its functions, have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different groups.

Race Equality Charter (REC): The Equality Challenge Unit's Race Equality Charter provides a framework through which institutions work to identify and self-reflect on institutional and cultural barriers standing in the way of minority ethnic staff and students.

Race Equality Support Panel: An initiative at Cardiff University to facilitate awareness raising, encourage the reporting of racial harassment and ensure students and staff are effectively supported when they do so.

Race: Race in this inquiry has the same meaning as set out at section 9 of the Equality Act 2010. Race includes colour, nationality and ethnic and national origins.

Racial harassment: Racial harassment in this inquiry has the same meaning as harassment related to race as defined by section 26 of the Equality 2010: when someone engages in unwanted conduct which is related to race, and which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Report + Support: An online platform, in use at several universities, which enables students and staff to report an incident of harassment and get practical help and guidance.

Reporting: Reporting or 'speaking up' is the process through which students or staff inform their university that they have experienced or witnessed behaviour that they consider unacceptable. A report may trigger a complaint, but it may be something a student or staff member chooses not to pursue further having brought the issue to their university's attention.

Redress: The means by which alleged racial harassment is addressed, which may involve an apology, disciplinary action against the alleged perpetrator, improved policies or working practices within the university, or a legal remedy.

Residential life advisers: Advisers employed by universities to support and advise students living in halls. They have extensive knowledge of the support services available at the university.

Scottish Further and Higher Education Funding Council (SFC): The national strategic body for funding teaching and learning, research, innovation and other activities in Scotland's colleges, universities and higher education institutions.

Scottish Public Services Ombudsman (SPSO): An organisation which handles complaints about colleges, universities and other public bodies in Scotland, and provides the final stage for such complaints.

Staff: University employed staff, including academics, those in professional services, and support staff, for example, working in administrative or ancillary roles.

Student: Undergraduates and postgraduates who have been studying (or carrying out research) at a publicly funded university at any time since the start of the 2015/16 academic year.

Students' union: Students' unions (sometimes known as a guild or association) represent the interests of their members at a university. They carry out a range of functions, including: lobbying, campaigning, volunteering opportunities, sport clubs, and providing support through advice centres and helplines.

Subject access request: A request by an individual for a copy of their personal data held by an organisation, exercising their statutory right to such information.

Support: All forms of help at any stage of the complaints process, including practical advice on how to complain, support in pursuing a complaint, and pastoral or mental health support and counselling during and following complaints.

University and College Union (UCU): A trade union representing academics, lecturers, trainers, instructors, researchers, managers, administrators, computer staff, librarians and postgraduates in universities and other adult education establishments across the UK.

Universities UK (UUK): A representative organisation for 136 universities in England, Scotland, Wales and Northern Ireland. Its members are the vice-chancellors or principals (executive heads) of universities in the UK. Universities Scotland and Universities Wales are national councils representing the interest of universities in the respective nations.

Vice-chancellor: The vice-chancellor is the principal academic and administrative officer of a university in England or Wales. The equivalent role in Scotland is a principal.

Victimisation: Is defined by the Equality Act 2010 as subjecting someone to a detriment (treating them badly) because they have done, or because it is believed they have done or may do, a protected act. A 'protected act' includes making a claim or complaint of harassment under the Equality Act.

Contacts

This publication and related equality and human rights resources are available from **our website.**

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EASS

For advice, information or guidance on equality, discrimination or human rights issues, please contact the **Equality Advisory and Support Service**, a free and independent service.

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Textphone   0808 800 0084

Hours   09:00 to 19:00 (Monday to Friday)

                       10:00 to 14:00 (Saturday)

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