

# How to respond to complaints of sexual violence: The Zellick report

This briefing paper analyses the 'Zellick report' – a key piece of guidance for higher education institutions (HEIs) on student disciplinary procedures and how to report and respond to sexual assault and rape. We are asking students – is this guidance fit for purpose in 2015?

## What is the Zellick report?

The Zellick report was produced in 1994 by a task force made up of members of the Committee of Vice Chancellors and Principals (CVCP) and headed by Graham Zellick, the then president of Queen Mary and Westfield College. It provides guidance on student disciplinary procedures, including in cases where a student's disciplinary breach may also constitute a criminal offence. The proposals and advice outlined still operate in many universities to this day.

The report was primarily created as a response to the high profile case where a student, Austen Donellan, was suspended from university following an accusation of rape in 1992 by another student. The case was taken to court but Donellan was subsequently found not guilty. Donellan was then able to successfully bring a legal challenge against Kings College London for their decision to suspend him and resulted in the university having to pay significant damages. Such a case brought to light the confusion surrounding how universities should respond to cases of sexual harassment and violence and arguably heightened fears around what the financial and reputational repercussions could be if the wrong decisions

were made. In other words, affirmative action by universities in cases of sexual violence could be seen as a risk, rather than an opportunity to challenge such behaviour and create a safe and equal environment for both staff and students.

The Zellick report was an attempt to give clear advice to universities in cases of sexual violence in order to protect HEIs from legal challenges and loss of reputation that followed in the case of Donellan.

## What does the Zellick report advise?

### 1. Rape and sexual assault should never be investigated via internal disciplinary procedures

*'Internal action for rape and sexual assault is out of the question, regardless of whether or not the victim has any intention of reporting to the police or the preference for either party of an internal investigation'. s.12-14*

The Zellick report advises that any internal investigation made by the university for complaints of sexual assault or rape is 'out of the question' (s.12). Only when a case is reported to the police and the outcomes of the

trial are known, can full disciplinary procedures be undertaken.

It is stated that even if the victim has a preference for the matter to be dealt with internally, the university should not use its internal procedures. It recommends that codes of conduct should make this clear and that in no circumstances should internal procedures be invoked:

*'In short, we believe it not for the victim complainant to determine that the matter should be handled internally rather than externally.'* (s.14)

## **2. Universities should not report to the police without the consent of the victim**

*'only in exceptional circumstances should the university report an alleged crime to the police contrary to the wishes of the victim.'* (s.22)

The report recommends that the university should always get the consent of the victim before reporting to the police about a case of sexual violence, including rape. They outline how this is important to ensure students continue to come forward and are signposted to the support and care available. Only in exceptional circumstances would the decision not rest with the victim. Exceptional circumstances are defined as 'when it appears significant violence has been used which exposes others to danger, or where there have been similar allegations in the past which likewise suggest a risk to other persons.' (s.22)

The report also acknowledges the difficulties for victims to report sexual violence to the police while nevertheless strongly recommending that the university should 'encourage students who are victims of serious crimes to report the incidents to the police.' (s.23)

In most other instances where the student has committed a criminal offence, the report recommends that the university should report

this to the police directly, regardless of whether there has been consent given by those concerned. The end decision of whether to do so ultimately falls to the university and the Vice Chancellor (s.18). This recommendation would similarly hold for cases of sexual violence and the decision of what constitutes an 'exceptional circumstance.'

The report also describes that it is the view of a number of people within the higher education sector that the university *should* always make a report to the police in cases of sexual violence as failure to do so may expose the university to possible criticism subsequently if there are further allegations made against that individual. The report further highlights that this view was supported by Judge Marcus Edwards in his report for Kings' College London in the Donellan case.

## **3. Pending prosecution, universities are permitted to suspend or exclude a student**

*'Most universities' statutes, other instruments of government or disciplinary codes permit suspension of a student where disciplinary or criminal proceedings are pending'* (s.27)

If a matter is under investigation by the police or awaiting trial the report outlines how most university disciplinary codes permit suspension of a student. Suspension is defined as complete exclusion from the university, not merely exclusion from certain facilities or activities. The Zelic report recommends that universities should also have a policy to impose restrictions to a student's use of or access to the university, as an alternative to full suspension. Within the model clause (Appendix IV) it is written that suspension should be used only where exclusion is inadequate. An order of suspension or exclusion may include a requirement that the student has no contact of any kind with a named person or persons.

It is recommended that the decision to suspend a student should 'not be taken lightly' and only if it is thought essential to do so. The decision

should be taken only at a very senior level (such as by the Vice Chancellor) and should also be subject to periodic review (the model clause recommends that the decision should be subject to review every 4 weeks).

#### **4. Any disciplinary actions taken after the trial must take into account the verdict.**

*'If a student has been acquitted of rape, the university should not proceed with a complaint of rape or even of indecent assault or sexual harassment closely related to the rape allegation.'*

The report does not suggest that universities cannot proceed to take internal disciplinary action once a trial has concluded. However, the report does advise that any penalty imposed by the university should take into consideration the outcome of the trial and the penalty (or lack of penalty) already imposed by the court. This is in line with the outcome of the Donellan case where the Judge Edward said the university must be particularly careful about proceeding after a trial has ended and must not "seek to look behind the verdict" '.

## **What are the issues?**

### **1. The report is out of date**

There is a strong case to be made that the Zellick report is out of date and needs to be revised in light of our increased understanding of sexual harassment and sexual violence and in order to take into account new pieces of legislation in force. Most notably, the Equality Act 2010 places a number of requirements on universities to:

- Eliminate discrimination, harassment and victimisation.
- Advance equality of opportunity.
- Foster good relations

There have also been a number of other developments within the higher education sector to deal with complaints. Most

significantly, in 2005, the Office of Independent Adjudicator (OIA) became responsible for reviewing complaints made by students on higher education courses in England and Wales.

In light of new legislation and the establishment of new organizations to handle complaints, the question is whether the recommendations in the Zellick report are still appropriate, relevant and lawful?

In particular, is the advice not to invoke internal disciplinary proceedings, in line with universities' obligations under the Equality Act or indeed, the Human Rights Act?<sup>i</sup> There are also questions around what role does the OIA have to play in terms of addressing reports of sexual violence, including how reports of harassment and assault fit into OIA guidance on [good practice](#)?

### **2. Universities' response to acts of sexual violence**

The most worrying piece of advice from the Zellick report is its recommendation that no internal disciplinary procedures should be invoked when a victim of sexual violence comes forward until the complaint is reported to the police and criminal prosecutions have concluded. The university can exclude or suspend a student, but only when the accused is under investigation by the police or awaiting trial. Both of these recommendations mean the only option for the victim in order to get a response from the university is to report the incident to the police.

This is concerning as it demonstrates a lack of understanding as to the nature of sexual violence and assault cases within the criminal justice system. Evidence shows that 82% of rapes are never reported to the police and of these, only 1 in 5 results in court proceedings<sup>ii</sup>. For the few cases which do enter the court system, the average length of the court process is 1 year and 4 months from report to verdict – at which point many victims may no longer be studying at the university. This means in practice, the majority of victims of sexual

violence would see no action taken by their university.

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The report is also unclear as to why internal disciplinary action cannot be taken. The only information we are given is that undertaking an internal disciplinary review would lead to ‘inescapable’ dangers (s.13) related to issues of conflict that would happen as a result of any penalties carried out. It is also stated that ‘it is worth repeating that wholly different considerations arise in connection with employees and our advice has no application to or implications for that area.’ (s.13) However, it is not clear why access to disciplinary processes should be any different for students compared to employees?

### **3. Balancing the rights of the accused versus the rights of the victim**

The Zellick report’s guidance is ultimately an attempt to ensure that a HEI is not subject to prosecution for an unfair decision made to a student who is subsequently acquitted of a criminal offence (as in the Donellan case where the student was suspended but not convicted of rape). However, to what extent does this ignore the rights of the victim and the universities’ duty of care towards a student who has been subject to any form of harassment or violence?

In the Zellick report there is little focus on the rights of the victim or the universities’ accountability to survivors (including information on how victims can access support- see below).

There is also an emphasis on universities to act cautiously and ‘with great care’ when implementing any internal disciplinary actions for students who have behaved unacceptably and/ or breached the university code of conduct. For instance, any decision to suspend a student must be subject to regular review to ensure the decision is fair and appropriate.

While such guidance is understandably justified when such serious consequences face the accused, the question remains as to whether a similar standard needs to be in place for the decision *not* to enact disciplinary procedures. In other words, should the Zellick report recommend similar reviews of a decision to do nothing in light of new evidence? This may go some way to addressing criticism that the report appears to have a double standard with regards to the decision making process- one that unfairly protects the perpetrator of violence rather than the victim.

### **4. Creating a safe environment for students**

A lack of action by the university has serious consequences for the individual student affected. They are potentially exposed to further incidents of sexual violence by the same perpetrator if he/ she is allowed to continue to access universities services (including university accommodation services). Since it is highly likely that the perpetrator is known to the victim,<sup>iii</sup> it is also likely the student will come into contact with them again, either through their course, through friends or through their living arrangements. If the victim is aware no action can be taken by the university, this would undoubtedly be extremely distressing and could result in them leaving their course. NUS’ [‘Hidden Marks’](#) report showed that 13% of the women who had been victims of serious sexual assault reported that they had considered leaving their course.

In addition, if disciplinary procedures are not invoked this may put other students at risk,

particularly as there is evidence that a perpetrator is likely to be a repeat offender.<sup>iv</sup>

More broadly, such a policy may contribute to an environment where students either feel it is pointless to come forward unless they report to the police, or they will not come forward because they feel they will be pressurised to do so. The longer it takes for victims to feel confident to come forward, particularly in cases of sexual assault and rape (where we know it is common for victims not to report because they feel too ashamed or feel that they will not be believed<sup>v</sup>) the more likely it is that if they do decide to go to the police, it may be harder to prove their case in court.

### 5. Support for victims of sexual violence

While the Zellick report provides detailed guidance on when to enact internal disciplinary procedures, it does not provide specific guidance on how universities should respond to complaints of sexual violence or what assistance victims may require during the reporting process.

Sexual violence does not operate like other crimes and sensitivity and training is needed in order for university staff to respond appropriately. For example, staff, need to have an understanding about what violence against women constitutes and how it affects survivors. This means, at the very least, any guidance dealing with disciplinary procedures also needs to give guidance on how universities should support victims of sexual violence.

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### #Standbyme

On **25 November** the Women's Campaign is launching a new project: 'standbyme.'

The campaign aims to raise awareness about the importance of creating valuable partnerships between rape crisis centres, universities and colleges to improve support for student survivors of sexual assault and rape.

As part of this campaign, we are asking students to consider whether they think the Zellick report is fit for purpose to support victims of sexual assault and rape?

Key questions to consider are:

- If the Zellick report isn't fit for purpose, how do we improve the reporting systems in place to support victims of sexual violence?
- What disciplinary procedures should we enact for perpetrators of violence and when?
- Should universities do more or is the problem really located in our criminal justice system which fails to adequately respond and address cases of sexual violence?
- How can the university play a part in supporting the police to carry out its investigations?

If you want to be part of the debate email [pressoffice@nus.org.uk](mailto:pressoffice@nus.org.uk)

### Further information

For more information on support for victims of sexual assault or rape please visit:

[Rape Crisis](#)

For further information about the content of this briefing paper please contact:

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<sup>i</sup> EAW 'Spotted: Obligations to Protect Women Students' Safety and Equality.'

This document argues that if the institution takes no action on a report of rape or other serious criminal offence because it either has not been reported to the police or has been dropped by the police or CPS, this could be in breach of Articles 3 and 8 of the Human Rights Act (the right to freedom from inhuman and degrading treatment and the right to respect for private and family life), as disciplinary procedures should not apply a criminal burden of proof.

<sup>ii</sup> [Rape Crisis](#)

<sup>iii</sup> Ministry of Justice (2013) [An Overview of sexual offending in England and Wales.](#)

<sup>iv</sup> Lisak and Miller (2002) Repeat Rape and Multiple Offending Among Undetected Rapists

<sup>v</sup> Please see NUS (2010) Hidden Marks. The report showed that the most common reason overall for not reporting serious sexual assault was that the victim felt ashamed or embarrassed; 43 per cent also thought they would be blamed for what had happened, and one in three thought they would not be believed.