

Citizen Participation and Public Petitions Committee
Wednesday 12 June 2024
11th Meeting, 2024 (Session 6)

PE2022: Introduce national safeguarding guidance on how higher education institutions should handle cases of sexual misconduct

Introduction

Petitioner Ellie Wilson

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to introduce national safeguarding guidance for dealing with cases of sexual misconduct in higher education institutions, which includes clearly defined measures to ensure campus safety where a convicted sex offender, or someone awaiting trial for a serious sexual offence, is enrolled at an institution.

Webpage <https://petitions.parliament.scot/petitions/PE2022>

1. [The Committee last considered this petition at its meeting on 28 June 2023.](#) At that meeting, the Committee agreed to write to Emily Test, Victim Support Scotland, Universities Scotland, Scottish Women's Aid, Rape Crisis Scotland, NUS Scotland and the Glasgow University Students Representative Council.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new written submissions from Rape Crisis Scotland, Universities Scotland, Emily Test, Victim Support Scotland, and Scottish Women's Aid, which are set out in **Annexe C**. NUS Scotland declined to provide a formal response on this occasion.
4. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
5. [The Scottish Government gave its initial position on this petition on 17 May 2023.](#)
6. Every petition collects signatures while it remains under consideration. At the time of writing, 350 signatures have been received on this petition.
7. Members may wish to note that the [Education, Children and Young People Committee have held informal evidence sessions in relation to the Scottish Government's Equally Safe strategy](#), including one in relation to colleges and universities. The Committee expects to take further evidence on this strategy later in 2024.

Action

8. The Committee is invited to consider what action it wishes to take.

Clerks to the Committee
June 2024

Annexe A: Summary of petition

PE2022: Introduce national safeguarding guidance on how higher education institutions should handle cases of sexual misconduct

Petitioner

Ellie Wilson

Date Lodged

13 April 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to introduce national safeguarding guidance for dealing with cases of sexual misconduct in higher education institutions, which includes clearly defined measures to ensure campus safety where a convicted sex offender, or someone awaiting trial for a serious sexual offence, is enrolled at an institution.

Previous action

I have raised the issue with Pam Gosal MSP, [who raised the issue during First Minister's Questions](#).

I have also met with the then Higher Education Minister, Jamie Hepburn, and representatives from Universities Scotland to raise the issue of sexual violence on university campuses and lack of safeguarding measures and guidance.

Background information

I was raped while studying at university and my attacker was charged and found guilty at the High Court.

The attacker was suspended from the university when charged, but while awaiting trial started studying at another university, despite this institution being informed of the charges. This enabled my attacker to have a normal student experience before being sent to prison.

This case brought into sharp focus the lack of safeguarding measures in place at Scottish universities for dealing with cases of sexual misconduct like this.

Women at university are more likely to experience sexual violence than the general population, yet there is no national guidance to ensure students and staff are kept safe when sexual misconduct claims arise. Allowing persons convicted of, or charged with, rape on to campuses with no measures in place to ensure safety is irresponsible and gambles with lives.

Guidance should consider:

- offering online-only classes to individuals awaiting trial;

- appropriate disciplinary action if sexual misconduct is proven.

Annexe B: Extract from Official Report of last consideration of PE2022 on 28 June 2023

The Convener: That brings us to the last of our new petitions this morning, PE2022, lodged by Ellie Wilson, which calls on the Scottish Parliament to urge the Scottish Government to introduce national safeguarding guidance for dealing with cases of sexual misconduct in higher education institutions, including clearly defined measures to ensure campus safety when a convicted sex offender or someone awaiting trial for a serious sexual offence is enrolled at an institution.

In the background to the petition, Ellie Wilson explains that she was raped while studying at university and that her attacker was charged and found guilty. However, while awaiting trial, Ellie's attacker began studying at another university and was, in her view, afforded the opportunity to have a normal student experience before being sent to prison. That, Ellie tells us, brought into sharp focus the lack of safeguarding measures that are in place at Scottish universities for dealing with such cases of sexual misconduct.

In response to the petition, the Scottish Government states that Scotland's colleges and universities should be places where students can live, study and research safe from gender-based violence. The Scottish Government has recognised the concerns that Ellie Wilson has raised and says that it is working in partnership with the higher education sector and gender-based violence experts to facilitate the adoption of a consistent approach to data collection and safeguarding that will help to protect students.

The response also notes that, last year, the petitioner met the former minister for higher and further education, and it makes reference to the working group that was established by the equally safe in colleges and universities core leadership group to review the collection and use of student data in relation to relevant unspent criminal convictions and extant criminal charges.

The petition raises a serious issue. Do members have any comments or suggestions?

Alexander Stewart: As you indicate, convener, this is a serious issue and one that we require to get more information on. We have the opportunity to write to a number of organisations, and I suggest that we write to EmilyTest, Victim Support Scotland, Universities Scotland, Scottish Women's Aid, Rape Crisis Scotland and the National Union of Students to seek their views on the action that is called for in the petition, including the suggestion that students who are awaiting trial for sexual offences should have access to online classes only and that anyone who is convicted of such an offence should face disciplinary action.

As I have said, this is a serious issue, and I think that getting up-to-date information from those organisations will provide the committee with a much more structured way to take the petition forward, which is important because I think that there is merit in it progressing.

Paul Sweeney: I agree with the proposed actions, and I have some familiarity with the petitioner's case from press coverage—I think that it has had quite a high profile in recent months.

I will make one additional point. The university in question—the University of Glasgow—is not affiliated to NUS Scotland, so it would be appropriate to also ask that university's student representative council to make a submission, simply because the institution is not under the ambit of the NUS.

The Convener: Thank you. Do members agree to the suggested action?

Members *indicated agreement.*

Annexe C: Written submissions

Rape Crisis Scotland submission of 10 August 2023

PE2022/B: Introduce national safeguarding guidance on how higher education institutions should handle cases of sexual misconduct

Thank you for the opportunity to submit evidence in relation to this petition.

Rape Crisis Scotland would strongly support appropriate action to strengthen measures to ensure the safety of students affected by sexual violence. We are aware of instances where current measures have been insufficient, and where systems calibrated to balance rights of different parties have failed to uphold survivors' right to safety and access to education.

We are involved in the Equally Safe in Colleges and Universities Core Leadership group, and the review of collection and use of data it is carrying out will be necessary to inform sector-wide guidance. We agree that sector-wide guidance would be helpful in ensuring this issue is treated as a priority, and that measures taken are more consistent and more effective. Providing clarity on relevant legal considerations is likely to be of particular value. The petition's call for specific measures in relation to those convicted of a sexual offence, or awaiting trial for a serious sexual offence, is compelling. In addition, we believe the guidance should address misconduct which may not have been reported to the police and should support institutions to assess risk and identify appropriate measures in relation to a range of forms of sexual and gender-based violence.

In addition, we would advocate that the guidance:

- takes into account all the ways that students engage in higher education including life on campus and in halls of residence, and the ways that those perpetrating violence may come into contact with survivors/those who have reported sexual misconduct.
- ensures that survivors are involved in discussions in relation to risk and safety measures, and that processes and those carrying them out are trauma-informed and centre survivors' safety.
- provides for a clear and transparent process so that survivors understand what to expect, the options available to them and potential duration of any process. This should take into account different stages of any criminal justice or internal process, and different potential outcomes.
- takes into account the different needs within Scotland's diverse student population and acts to reduce barriers to reporting and accessing safety and support.

Universities Scotland submission of 11 August 2023

PE2022/C: Introduce national safeguarding guidance on how higher education institutions should handle cases of sexual misconduct

We welcome the opportunity to respond to Petition [PE2022](#).

Universities Scotland met with the petitioner, Ms Wilson, in November 2022 to discuss her concerns directly. We commend Ms Wilson's bravery in speaking out as a survivor of gender-based violence and sharing her lived experience to protect students at university or college.

Universities are deeply committed to the prevention of gender-based violence, hate crimes and other acts of violence within a university environment. The safety of the university community is a priority for every institution. The petition relates to a few different aspects of policy and procedure in the higher education sector and a very active area of current work.

Cases where students are convicted of sexual offences or awaiting trial for serious sexual offences.

This element of the petition looks to universities to take action to limit the risk posed to students and members of the university community, from students who are charged with or convicted of these specific offences in the criminal justice system.

For universities to be able to assess risk and take action where this applies, universities need to access student data on unspent relevant criminal convictions and relevant criminal charges. Institutions have taken an individual approach to the collection and use of these data since 2018 and many already collect student data on relevant convictions from entrants and at matriculation. However, there hasn't been a consistent sector-wide approach to data collection on relevant unspent criminal convictions since 2018, when new data protection legislation in the form of the GDPR forced a move away from an all-sector approach as led by UCAS. Scotland's universities have responded to Ms Wilson's campaign, started in summer 2022, and have been working collectively to explore the robust legal bases on which to deliver a consistent nationwide approach to the collection of data relating to relevant criminal convictions and criminal charges from students. We intend to set out best practice, working within legal advice which balances the key variables of natural justice, safeguarding and GDPR, thereby addressing a key part of the petition.

Extending current practice to request data on criminal charges from all students, consistently, would address situations similar to Ms Wilson's lived experience, whereby a university student has not yet been convicted of a serious sexual offence but has been charged, and is awaiting trial.

The collection of these data, from new and returning students on an annual basis, gives institutions sufficient means to run an internal risk management process. The institution would then apply any mitigations deemed necessary following the risk assessment. This could vary from modifications to the person's mode of study, through to suspension or expulsion of that student in cases where the level of risk

warranted it. Making the data declaration mandatory for all students would also allow any institution to take action, including expulsion, if it later became apparent that an applicant or matriculated student had not disclosed relevant information about themselves.

In addition to universities' deep commitment to the safety of their communities, universities also believe in the fundamental principle of a right to a fair trial and a right to rehabilitation. Education can play an immensely important role in rehabilitation. We do not want to deter applications from ex-offenders who have completed their sentence, as determined by the justice system, who could purposefully benefit from accessing higher education and who pose no threat to other students. This connects closely to the principles of widening access and accessibility and is the reason the data collection would be separate from the admissions process, collected only once an offer is made and accepted.

It is important to note that it is for the justice system to make the wider determination of the risk an individual poses to society as a whole and make decisions to hold someone in custody, set bail conditions or conditions of licence on an individual that would limit a person's rights and activity in proportion to the level of risk identified.

Next steps

This work has progressed over the course of 2023, with the support of university Principals and the guidance and expertise of relevant sector networks including: the Scottish HE Information Practitioners (SHEIP), University Secretaries, university admissions teams, heads of student wellbeing and multiple external stakeholders. At this point in the process the legal advice is provisional but looks favourable.

Universities Scotland is a member of the Scottish Government's Equally Safe Core Leadership Group (ES-CLG) for further and higher education, and of the data-sub-group that reports into ES-CLG. We have been working closely with the stakeholders in this group in the development of this policy. There will be an opportunity to further update the Group later in August.

We should be in a position, by October 2024, to share a full account of the detail of this approach with the certainty that universities have a robust legal basis for implementation. We would be happy to write to the Committee again in due course.

Sexual misconduct which is not reported to the police and does not become a criminal matter.

The petition also refers to sexual misconduct in a university context. Depending on the victim/survivor's wishes this might be reported to, and investigated by, the university as student-on-student sexual misconduct within the context of student disciplinary regulations.

The [2016 Universities UK and Pinsent Masons guidance](#) is the sector-wide guidance for the handling of sexual misconduct between students which may or may not constitute a criminal offence. It offers a set of principles to inform university processes and additional recommendations for cases of sexual misconduct. Principle number eight relates to precautionary action that an institution may take in

relation to a student reported for sexual misconduct, before an institution has reached a decision on the report. Precautionary action does not indicate a presumption of misconduct. It should be reasonable and proportionate and can be taken on a spectrum from attaching conditions and limitations to the reported student's study and/or movements, through to suspension.

Emily Test submission of 12 December 2023

PE2022/D: Introduce national safeguarding guidance on how higher education institutions should handle cases of sexual misconduct

I am writing on behalf of EmilyTest to highlight our unwavering commitment to campus safety and our response to PE2022, calling for the introduction of national safeguarding guidance in higher education institutions.

EmilyTest's Advocacy Efforts in 2018:

Since 2016, following the tragic loss of Emily Drouet, an undergraduate law student aged only 18 years old, who took her own life after being subjected to a sustained campaign of abuse while living in halls of residence, EmilyTest has been committed to ensuring all students can live, work and study free from the harms and threats of Gender Based Violence (GBV). Since then, we have fully committed ourselves to ensuring the safety of all students in relation to GBV prevention, intervention, and support. We work alongside key stakeholders to address critical issues in higher and further education institutions.

In response to UCAS removing the declaration of criminal convictions from application forms, EmilyTest took decisive action to balance campus safety with equal access to tertiary education for ex-offenders. Lobbying for change at a national level, we engaged with Universities Scotland, the Scottish Government Advanced Learning and Science directorate, the Justice directorate, and other key stakeholders. Our concerns were echoed in our letter that was endorsed by Scottish Women's Aid and Rape Crisis Scotland.

Acknowledging the importance of complying with GDPR guidelines while collecting vital data to keep the university and college community safe, we urged the sector to ensure student safety remained paramount and that due consideration be given to the nature of the convictions. Despite significant efforts by and assurances from Universities Scotland, inconsistencies in data collection practices remain across Scotland. Whilst some institutions collect this information, others do not.

The Gender-Based Violence Charter:

In recognition of the fragility of the situation, EmilyTest pioneered the world's first Gender-Based Violence Charter for universities and colleges. This evidence-led charter, based on five principles and comprising 42 minimum standards, sets an evidence-based framework for GBV prevention, intervention, and support. We believe it could have prevented tragedies like that of Emily Drouet in 2016. One of the minimum standards that needs to be met to achieve the charter award is the requirement for institutions to evidence the collection of criminal convictions and pending charges. Given the absence of regulation in the sector, we wholeheartedly

believe the EmilyTest GBV Charter is the most effective way of both ensuring much-needed safe practices and consistent data gathering.

PE2022: Urging National Safeguarding Guidance:

We wholeheartedly support PE2022, urging the Scottish Government to introduce national safeguarding guidance for sexual misconduct cases in higher education. Ellie's personal experience, and that of many other students, underscores the urgent need for such safeguarding measures, and we are disappointed the commitment we gained in 2018 in relation to criminal convictions has not been met.

Guidance Considerations:

We emphasise the importance of comprehensive national guidance in relation to the collection of criminal convictions and pending charges. This should include guidance on appropriate safe measures, such as offering distance learning to individuals awaiting trial and appropriate disciplinary actions if a breach of the student code of conduct has occurred and a guide on safe and responsible risk assessment processes that take the safety of all parties into account. It is, of course, also imperative that institutions consider if they could deliver on their offer to study if the convictions/charges could potentially impact the chosen degree course, for example.

In conclusion, we very much commend Universities Scotland's commitment to comprehensively reviewing these practices. We do urge due caution, however, as there is no regulation of the sector in this regard; therefore, the Gender-Based Violence (GBV) Charter remains crucial for ensuring the adoption and implementation of Universities Scotland guidelines.

We appreciate your attention to these critical matters and are open to further discussions/questions if helpful.

Victim Support Scotland submission of 18 December 2023

PE2022/E: Introduce national safeguarding guidance on how higher education institutions should handle cases of sexual misconduct

Victim Support Scotland believes that higher and further education establishments should have robust and thorough safeguarding policies, and procedures in place, including risk assessments that specifically consider cases where sexual offences and gender-based violence charges have been made.

We support the petitioner Ellie Wilson's view that these should be in place as they serve to safeguard students who would otherwise be unaware of potential risks, through appropriate protocols and procedures.

Victim Support Scotland does not think it is right or appropriate that a person who has been charged with sexual misconduct should be able to attend in-person classes and that online options should be offered instead. We believe this is the case when further action of the justice system is pending, as this can take a considerable length of time.

We maintain that defined measures need to be in place for how to protect other potentially vulnerable students where there have been allegations of sexual misconduct.

Policies and safeguarding processes need to be consistent across further and higher education settings and need to take into account situations in which a student may transfer to a different course or to a different educational establishment.

Organisations such as EmilyTest, www.emilytest.org, have lobbied to ensure adequate provisions be put in place in universities and colleges in relation to:

- Gender-based violence (GBV) prevention
- intervention and support
- how to report suspected GBV

They have created the world's first Gender-Based Violence (GBV) Charter for colleges and universities. For the educational establishments which have signed up to this Charter, this provides a degree of awareness within those institutions of how best to support their students and keep them safe from known risk of sexual misconduct.

Scottish Women's Aid submission of 18 December 2023

PE2022/F: Introduce national safeguarding guidance on how higher education institutions should handle cases of sexual misconduct

We welcome the opportunity to respond to this petition which sets out a compelling case based on a survivor's own experiences of gender-based violence at a Scottish university. Scottish Women's Aid supports calls to strengthen responses to gender-based violence and improve the safety and wellbeing of those affected.

Violence against women and girls is evident across sectors, communities and institutions. Higher education is no different, NUS research found that 75% of students¹ had at least one unwanted sexual experience, 12% had experienced rape. Too often discussions about safety centre on the actions girls and women must take to prevent a harmful experience² or protect themselves from further harm, rather than challenging the conditions within society and the attitudes of boys and men that create the harm. Universities and colleges must be equipped with robust procedures to respond to gender-based violence and support student safety.

We note the Petition's calls to develop national safeguarding guidance to deal with cases of sexual misconduct, as well as clear measures when a convicted sex offender enrolls at a higher education institution. The petitioner proposes online only classes for those awaiting trial for a gender-based violence offence. We would support this, but also suggest that the guidance must address the range of behaviours associated with gender-based violence, including domestic abuse, and

¹ [NUS Sexual Violence in Further Education June 2019 Report](#)

²

<https://static1.squarespace.com/static/6413232bf29ba901ed614415/t/649062e20978d622c4f8d3f3/1687184120539/SYWS-2016.pdf>

includes clear information to aid recognising concerning behaviours, carrying out and maintaining risk assessments, and supporting those affected by offending behaviour.

Domestic abuse is a pattern of behaviour, it is crucial that higher education institutions are aware of the different ways domestic abuse can manifest, including through non-violent coercive behaviours. We also echo the points raised by Rape Crisis Scotland that the guidance should address misconduct that may not have been reported to the Police and include clear processes so that survivors understand what to expect and how they will be supported. To ensure that any guidance developed is cognisant of the impacts of gender-based violence it should be developed in collaboration with victim support organisations whilst being informed by the experiences of survivors.

There are some welcome signs of progress, the charter developed by EmilyTest³ supports colleges and universities to implement a set of minimum standards, strengthening their intervention, prevention and support responses to gender-based violence. As well as this the work of the Equally Safe in Colleges and Universities Core Leadership Group⁴, that is working to implement Equally Safe across higher education institutions.

³ <https://www.emilytest.org/involved-charter/>

⁴ <https://www.gov.scot/groups/equally-safe-in-colleges-and-universities-core-leadership-group/>