

UK Government Consultation
Sexual Harassment in the Workplace:
Legal Protections under the Equality Act 2010
October 2019

The Consultation

The UK Government are looking at whether the current laws on this issue provide the protections they're supposed to; considering whether there are any gaps and thinking about what more can be done at a practical level to ensure people are properly protected at work.

To help understand people's experiences, particular issues that might be tackled through changes to the law include:

- How best to make sure employers take all the steps they can to prevent harassment from happening
- Strengthening and clarifying the law so it's clear employers should protect their staff from being harassed by clients, customers, or other people from outside their organisation
- Whether interns and volunteers are adequately protected by current laws and
- Whether people should be given longer to take a harassment, discrimination or victimisation claim to an Employment Tribunal

The Scottish Women's Convention (SWC)

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. The SWC uses the views of women to respond to a variety of Parliamentary, Governmental and organisational consultation papers at both a Scottish and UK level.

The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission provides the views of women and reflects their opinions and experiences in a number of key areas relevant to the issues around sexual harassment in the workplace and women's equality at all levels within society.

If a preventative duty were introduced, do you agree with our proposed approach?

Yes. Setting out an overall standard code of practice for employers that is enforced by the Equality and Human Rights Commission (EHRC) is imperative to ensuring robust procedures are adopted within workplaces throughout the country. The proposal to introduce a preventative duty in order to challenge continued behaviour of this kind is commendable and conducive to the eradication of gendered inequality.

Preventative steps to be exercised under the duty should be laid out in standard guidance for employers. These should be complemented by the input of all other relevant stakeholders who can contribute guidance to organisations. This should include trade unions, employees themselves and others with a stake in such guidance.

Would a new duty to prevent harassment prompt employers to prioritise prevention?

Yes. Establishing a preventative duty would force employers to put protocols in place and raise awareness around sexual harassment. This has the added benefit of showing to workers that employers are taking a robust approach to implementation of standards within the workplace. Failure to act and ensure robust frameworks that not only seek a preventative agenda but ensure processes are in place for victims severely impedes women's equality.

Do you agree that dual-enforcement by the EHRC and individuals would be appropriate?

Yes. Individuals should be afforded the appropriate means and mechanisms to exercise their rights under the Equality Act 2010, including reporting of any breaches. This should include awareness by organisations – as specifically laid out in standard guidelines and procedures around a new duty – that employees are all aware of their rights.

Do you agree that employer liability for third party harassment should be triggered without the need for an incident?

Yes. As in the case set out above regarding a new preventative duty, employer liability for third party harassment without cause for an incident should be taken forward. Allowing liability without the need for an incident is a preventative mechanism where the utmost concern is to keep employees safe and secure within their workplace.

Do you agree that the defence of having taken ‘all reasonable steps’ to prevent harassment should apply to cases of third party harassment?

Yes. The defence of “all reasonable steps” in cases of third party harassment should be legislated for in the same way as other forms of workplace harassment. At present, many organisations may not prioritise this by persons outwith their own workforce such as customers. Placing this on the same legislative footing as other forms of legislation is key to ensuring a cohesive foundation upon which to build guidance and keep employees safe.

Do you agree that sexual harassment should be treated the same as other unlawful behaviours under the Equality Act, when considering protections for volunteers and interns?

Yes. Volunteers and interns tend to be made up of women – usually young women – who are seen as easy prey. Gaps in legislation should be significantly padded out to ensure all employees are adequately covered.

All individuals should be treated the same when bringing complaints. Failure to do so singles out certain people and may lead to a potential target for further inducements to harassment.

Would you foresee any negative consequences to expanding the Equality Act’s workplace protections to cover all volunteers, e.g. for charity employers, volunteer-led organisations, or businesses?

No. Protection from sexual harassment within the workplace is one of the most fundamental steps forward in eradicating women’s inequality, both in employment and beyond at a wider societal level. Such behaviour results not only in loss of economic and personal provisions for women affected but can also lead to low productivity, high absenteeism and cultural issues within an organisational workforce. It is therefore imperative the workplace protections set in place within the Equality Act are expanded to protect all.

If the Equality Act’s workplace protections are expanded to cover volunteers, should all volunteers be included?

Yes.

Is a three-month time limit sufficient for bringing an Equality Act claim to an Employment Tribunal?

No. For reasons expanded on in the document, three months is not a suitable time limit. Many women may feel emotionally too insecure to come forth after such behaviour as legislated for within the 2010 Act has taken place.

Are there grounds for establishing a different time limit for particular types of claim under the Equality Act, such as sexual harassment or pregnancy and maternity discrimination?

Yes. For reasons captured above, establishing a different, longer process for claims under the Equality Act is beneficial. For many who have been a victim of such behaviour, delayed reporting's are common.

It should also be relayed to all organisations regardless of size that whilst a time limit for tribunal escalation may have expired, all complaints should still be dealt with appropriately and accordingly.

Are there any further interventions the Government should consider to address the problem of workplace sexual harassment?

Yes, Government should situate themselves at the forefront of measures to eradicate sexual harassment and further gender equality within the workplace and beyond. The Government should do all it can to illustrate harassment for being exploitative and controlling, leaving many women's job security and wellbeing at risk.

The Government could also take further steps to encourage workplaces of their duties under the Equality Act, 2010, including:

- Providing grants for smaller workforces who may not have the economic capacity for professional training provision.
- Ensuring robust anti-harassment policies are in place and that organisations have suitable mechanisms to not only prevent but report sexual harassment.
- Establishing clear formats and templates for the carrying out of Equality Impact Assessments within workplaces.
- Putting pressure on businesses to include information through induction and further training to ensure employees know their rights. This should also include clear definitions complimenting legislation as to what constitutes harassment and intimidation by third parties.
- Information through Government funded campaigns to make people aware of the new changes to legislation proposed here.
- Encouraging recordings of all sexual harassment and inappropriate conduct to be kept within workplaces. This should detail events, including third party reporting,

the number of complaints raised against a specific individual and the frequency of these complaints. These could then be analysed on a routine basis to ensure correct procedures are being adhered to.

Conclusion:

Establishing robust legislative protocols which encapsulates the many forms that harassment may take within the workplace is fundamental to progressing women's equality. Failure to act and put in place robust and effective frameworks that not only seek to prevent this occurring but also ensure successful processes for the victim are in place severely impedes women's equality at all levels.

For further information, please contact

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The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission paper provides the views of women and reflects their opinions and experiences in a number of key areas relevant to employment and the National Living Wage.

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