



The Work Couch

Navigating today's tricky people challenges to create tomorrow's sustainable workplaces

RPC

Season 3

Episode 3 – Preventing sexual harassment: Is your business compliant? with Charlotte Reid

Ellie: Hi and welcome to the Work Couch Podcast, your fortnightly deep dive into all things employment. Brought to you by the award-winning employment team at law firm RPC, we discuss the whole spectrum of employment law with the emphasis firmly on people. My name is Ellie Gelder. I'm a senior editor in the employment engagement and equality team here at RPC and I'll be your host as we explore the constantly evolving and consistently challenging world of employment law and all the curveballs that it brings to businesses today. We hope by the end of the podcast that you'll feel better prepared to respond to these people challenges in a practical, commercial and inclusive way.

This week, we're discussing the changes to the law on preventing sexual harassment of employees, which came into force on the 26th of October, 2024 and we'll talk about how these changes are due to be further bolstered by the Employment Rights Bill. We'll also highlight the key steps that every employer should be taking to comply. And joining me today to discuss this topic, I'm delighted to welcome senior associate in our employment team, Charlotte Reid, who is frequently advising and training clients on this area, as well as regularly representing clients in the employment tribunal.

Charlotte, thanks so much for taking some time out to be here.

Charlotte: Great to be here again, Ellie. Thank you for having me.

Ellie: So first of all, Charlotte, before we get onto the law, I think it'd be really helpful to provide a bit of context. So what's the current picture then when it comes to sexual harassment of employees?

Charlotte: Absolutely, I agree. It's really important at the outset to think about the realities of sexual harassment in the employment setting and what that can look like. To give you some particularly stark but compelling stats, there's been some [research by the TUC](#) that happened last year. That research found that two in five, so the equivalent of 43 % of women, have experienced at least three incidents of sexual harassment at work. It's also really important to recognise the intersectional nuances of sexual harassment for example the experiences of the LGBTQ+ community. According to another piece of [TUC research](#) trans women were more likely than other women to experience sexual assault and rape at work.

There's also [research](#) that found that women with disabilities are more likely to experience sexual harassment or assault in the workplace. So that number stands at 48 % than women without disabilities, where that number stands at 32%. And finally, the [Fawcett Society](#) found that ethnic minority workers reported higher rates at 32 % of sexual harassment than white workers at 28%.

Ellie: And we've talked previously on the Work Couch about what that term sexual harassment actually encompasses. But would you mind just briefly reminding us, because I know it is sometimes misunderstood.

Charlotte: Yes, absolutely. The Equality Act defines sexual harassment as unwanted conduct of a sexual nature which has the purpose or effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. I think we often think of unwelcome physical contact when we talk about sexual harassment, but actually the term includes a lot more than that. It could be sexually suggestive comments or gestures persistently asking a colleague to meet up socially, you know, where that person has made it clear they don't want to, as well as sexualised jokes or comments. It could include sharing offensive or pornographic material or even speculating or spreading rumours about a person's gender identity or sexual orientation. And I do think it's also important to flag sexual harassment can occur in the physical walls of a workplace, but it can happen outside of work as well, for example, online or at a work-related social event or function.

Ellie: Thanks, Charlotte. So tell us about the changes that are now in force, which, as I mentioned in my intro, came into force on the 26th of October 2024, which was rather a busy month for new employment law.

Charlotte: It was indeed, yes, the first draft of the Employment Rights Bill was also published on the 10th of October, 24. We will talk about that in a moment. But as you say, 26th of October, 24 was a key date because the Worker Protection (Amendment of Equality Act 2010) Act 2023, bit of a mouthful, came into force. That new Act essentially added a new Section 40A to the Equality Act 2010.

The new duty added by Section 40A imposes a proactive obligation on employers to take reasonable steps to prevent sexual harassment of their employees in the course of their employment. So the onus is now on employers to show that they have reasonable steps in place to prevent sexual harassment from happening in the first place. Really important to note, the new duty doesn't give rise to a standalone employment tribunal claim, but where a worker succeeds in a tribunal claim of sexual harassment and the tribunal finds that the preventative duty has been breached, it can order the employer to pay additional compensation to the claims of up to 25 % of the relevant award. So that could be quite a hefty sum. And also, the Equality and Human Rights Commission can take enforcement action against employers it finds to be in breach of the new duty.

Ellie: And how does that compare then to the legal provisions that were in place before these reforms came in?

Charlotte: I would describe the change as being previously the availability of a defence to now an obligation to prevent in the first place. So previously, if you were an employer and you took all reasonable steps to prevent sexual harassment, but it happened anyway during the course of someone's employment, then you as the employer could run a defence to a sexual harassment claim in the employment tribunal. Now that defence would be on the basis that you, the employer, did everything you could have done to prevent it. The individual who harassed the claimant did it anyway and there wasn't anything else that you the employer could reasonably have done. So in effect, before the new law came into force, this was the kind of defence that an employer could run, although important to note it was quite a high hurdle to meet and tribunals are often hesitant to accept that employers have met that hurdle. How is the new duty different? Well, taking reasonable steps isn't just a potential shield to a claim like it was previously. When you say, well, hang on a minute, we did everything we could. It is now a positive obligation on the employer to take those proactive steps to prevent sexual harassment from happening in the first place. And that's a really important shift in emphasis actually, which I think essentially reflects the increased need for employers to ensure they are fostering safe working environments, both in terms of physical safety, but also psychological safety into stamp out toxic workplace cultures of which harassment is undoubtedly one element.

Ellie: And I mentioned in my intro that the Employment Rights Bill gives some real teeth to these new obligations that you've just outlined. Can you summarise for us how the Bill is looking to boost the new duty?

Charlotte: That's absolutely right, Ellie. As currently drafted, the Employment Rights Bill amends the word **reasonable steps to all** reasonable steps. Now, that's a really small word with big consequences because it means there will be a far more onerous duty on employers. We are obviously going to have to wait for further regulations to be published and to clarify exactly what is going to be required to comply with such steps.

Another big enhancement that the Bill introduces is an obligation on employers not to permit harassment, so any kind of harassment, including sexual harassment, of their employees by third parties. So for example, customers, clients, suppliers, members of the public. At the moment, under the Equality Act, third party harassment is not dealt with. So this is a hugely significant proposed reform.

Ellie: Yeah, two really fundamental reforms on the horizon there, which, as you say, will have a big impact on employers. Are there any proposals in the Bill on how workers who call out and speak up about harassment, how they are protected?

Charlotte: Yes, there are, there's some important crossover between the new obligations in respect of harassment and whistleblowing. So to put it very simply, for a worker to qualify for legal protection from less favourable treatment for whistleblowing, they have to have made what's known as a protected disclosure. Now, a protected disclosure, as we all know, is broadly a disclosure of information that in a worker's reasonable belief is made in the public interest and the information shows a relevant failure on the part of the organisation. And when we talk about a relevant failure, the Employment Rights Act lists a number of relevant failures, for example, criminal offence or failure to comply with any sort of legal obligation or health and safety obligation, think health and safety often comes to mind when we think of whistleblowing. The Bill proposes adding sexual harassment to the list of relevant failures, that statutory list. So to put it very simply, this means that if a worker blows the whistle about an instance of sexual harassment, they will be making what is known as a qualifying protected disclosure. And if they are subjected to a detriment or treated less favourably in retaliation because of that disclosure, then they have legal protection.

Ellie: And you quite rightly say that we'll need to wait for forthcoming regulations to understand exactly what employers are expected to do to comply with the duty to take all reasonable steps, which is proposed under the Employment Rights Bill.

But for now, the duty to take reasonable steps to prevent sexual harassment is very much in force. So how do employers determine what reasonable steps are?

Charlotte: Well, the first thing to say here is that whether or not an employer has taken reasonable steps is very much an objective test, and it will really depend on the facts and circumstances of each situation. In making this assessment in terms of what it should be doing, the employer is going to need to weigh up various factors, including size and resources, nature of the working environment, and the sector in which it operates. But I do think there are a few common threads here that employers should be picking up.

First one, establishing a workplace culture. You know, establishing a respectful workplace culture really requires education to ensure that all employees understand what is and what is not acceptable behaviour. And alongside that, you can't underestimate the importance of fostering a psychologically safe environment, as I mentioned before. That kind of environment means workers feel comfortable to speak up and call out harassment. So employers should be ensuring that those who are subjected to harassment and those who witnessed it are supported to speak up or call out without the fear of adverse repercussions or retaliation.

Ellie: So what does that look like in reality then? What kinds of practical measures can employers take?

Charlotte: In terms of practical steps, these will include things like carrying out enhanced training, which is tailored to reflect different job roles, conducting risk assessments on sexual harassment, updating and reviewing policies which cover sexual harassment, and also creating standalone policies on the topic independent reporting lines, creating independent reporting lines for instances of sexual harassment, keeping a thorough record of steps taken to prevent sexual harassment, you know, which should be reviewed on an ongoing basis. And circulating anonymous surveys, that's a great way to understand the protection that's actually required in your specific organisation. But these are just some suggestions, I do think it's important to note, it's not really a tick box exercise, everything will need to be carefully assessed and subject to detailed review and that review will be ongoing and carried out on a regular basis.

Ellie: Absolutely. And how do the legislative changes around sexual harassment align with the broader regulatory landscape? So for example, in the financial services sector.

Charlotte: Yeah, so these new legislative provisions, which we're currently discussing, they do sit alongside increasing regulatory scrutiny into instances of non-financial misconduct. That's going to include sexual misconduct and harassment. And you mentioned early the financial services sector. So looking at that as an example, recent consultations by the FCA and the Prudential Regulation Authority have signalled a much tougher stance proposing that non-financial misconduct should be considered when assessing, for example, an individual's fitness and propriety. Another thing to mention here is where an organisation celebrates their societal impact initiatives, for example, as part of their ESG credentials, they need to take great care in identifying and removing any gaps between what's said on the one hand and what is actually done on the other hand, because there's a real risk of being accused of what's known as social washing here.

If you, the organisation, make statements celebrating your inclusivity in your diversity, but actually in reality, non-financial misconduct, including things like harassment and sexual misconduct, are tolerated in your organisation, those statements are simply not going to ring true and they'll cause serious reputational damage and undermine your credibility.

Ellie: Yeah, and on that point, for anyone who'd like to hear more about how to avoid the pitfalls of social washing, we'll include a link in the show notes to a [previous episode](#) on that topic with partner and ESG strategy lead, Kelly Thomson. So Charlotte, what's your key takeaway then for our listeners who are currently grappling with these reforms?

Charlotte: I would say to employers who are currently navigating this evolving landscape, it's obviously fundamental to comply with regulatory standards and legislative requirements, but central to all of this, you know, what really underpins it is fostering inclusive and respectful working environments and workplace cultures where employees can thrive. We know that this generates commercial gains too. So better employee engagement, better retention, better productivity, morale and innovation, which is ultimately going to boost a business's profit and market share.

Ellie: Yeah, some really wise words to bear in mind there. And when we have more detail on those provisions relating to preventing sexual harassment that are proposed under the Employment Rights Bill, we will explore this again in a future episode. Finally, Charlotte, you've mentioned the importance of inclusive workplace cultures. And I wondered how you think the pushback against diversity, equity and inclusion initiatives that we are now seeing in other parts of the world how that may affect UK employers and their DEI efforts.

- Charlotte:** That is a big question, Ellie, and a really important one. I think if we look to the US, just to take an example, the pushback in DEI efforts. I think without getting too political about it, we have to hope that all the good work that has been done in relation to DEI initiatives stays in place and continues to evolve for the betterment of businesses and the people who work there. It's really difficult to tell whether businesses are going to double down on their efforts or be intimidated into making changes or regressing back to the way things were and have been. But it's definitely going to be at the forefront of people's minds.
- Ellie:** Absolutely. And I guess it feeds into your point just now about the commercial gains of an inclusive workplace culture.
- Charlotte:** It does and I think we really have to hope that common sense prevails in the sense that we know that businesses which are more inclusive and diverse and follow such initiatives make commercial gains and that that shouldn't be ignored.
- Ellie:** Quite. Well, that brings us to the end of this episode. Thank you so much, Charlotte. Really interesting and as always, really insightful. Thank you.
- Ellie:** If you'd like to revisit anything we discussed today, you can access transcripts of every episode of the Work Couch podcast by going to our website www.rpclegal.com/theworkcouch. Or if you have questions for me or any of our guests, or suggestions of topics you'd like us to cover in future, please get in touch. We'd love to hear from you, our email address is theworkcouch@rpclegal.com.
- Thank you all for listening and we hope you'll join us again in two weeks' time and to make sure that you don't miss our fortnightly episodes, please do hit the like and follow button and share with a colleague.



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