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8 November 2024

I HEREBY SUMMON YOU to attend the **STAFFING COMMITTEE** Meeting to be held in The Pepperpot, High Street, Godalming on THURSDAY, 14 NOVEMBER 2024 at 7.00pm.

Andy Jeffery

Andy Jeffery
Town Clerk

If you wish to speak at this meeting please contact Godalming Town Council on 01483 523575 or email office@godalming-tc.gov.uk

Committee Members: Councillor S Downey – Vice Chair
Councillor Heagin – Chair
Councillor Holliday
Councillor Kiehl
Councillor Weightman
Chair of Policy & Management (*ex officio*)

A G E N D A

1. MINUTES

   To approve as a correct record the minutes of the meeting held on the 19 September 2024, a copy of which has been circulated previously.

2. APOLOGIES FOR ABSENCE

3. DISCLOSABLE PECUNIARY INTERESTS AND OTHER REGISTERABLE INTERESTS

   To receive from Members any declarations of interests in relation to any items included on the agenda for this meeting required to be disclosed by the Localism Act 2011 and the Godalming Members' Code of Conduct.

4. WORK PROGRAMME

   Members to review the committee's work programme, copy attached for the information of Members.

5. 2024-25 NATIONAL JOINT COUNCIL PAY AWARD – **ITEM FOR DECISION**

   Recommendation:

   a. **Members to resolve to agree to recommend that Full Council approve the NJC negotiated National Salary Award.**
   b. **Members to resolve to agree to recommend to Full Council that Full Council authorise that any settlement reached by the JNC that is equal to or less than that agreed by the NJC may be signed off for payment by the Town Clerk without the**

matter first being brought to a scheduled or Extraordinary meeting of the Full Council.

The National Joint Council for Local Government Services (NJC) has agreed the new pay scales for 2024-25 to be implemented with effect from 1 April 2024. The 2024-25 National Salary Award does not provide for a single across the board percentage increase, but rather provides for an increase of £1,290 (pro rata for part-time employees) to be paid as a consolidated, permanent addition on all NJC pay points 2 to 43 inclusive, and 2.5% above that point, this means that those on the lower pay scales receive the largest percentage increase. For GTC staff this provides a percentage increase range between 2.5% to 5.67%. Additionally, allowances are increased by 2.5%.

Members are asked to note that the pay award outlined above is only for those employed under NJC terms and conditions as set out in the 'Green Book'.

The Council's youth workers are employed under the terms and conditions governed by the JNC as set out in the 'Pink Book', whose annual settlement runs from September to August each year. Currently, settlement for those employed under JNC terms has not been reached.

In order to avoid unnecessary delays in the payment of the pay award agreed for youth staff, and, as the sign-off of a pay award is a reserved matter for the Full Council, Members are requested to resolve to agree to recommend to Full Council that if the settlement for the youth staff is of an equal or lesser amount than that agreed by the NJC, the Town Clerk is authorised to implement the JNC pay award. It should be noted that if the JNC proposes a settlement above that agreed by the NJC the matter must come before Full Council for payment of the award to be approved.

6. WORKER PROTECTION (AMENDMENT OF EQUALITY ACT 2010) ACT 2023

Recommendation: Members to consider the information set out in this agenda item and the attached reports and are recommended to resolve that:

a. The Operations & Compliance Officer conducts a council-wide risk assessment relating to sexual harassment within the workplace.
b. The SHE Advisory Group should review the Councils' Dignity at Work Policy against the guidance set out by the Equality & Human Rights Commission (EHRC) to ensure that staff are content with the existing reporting process or whether changes to the process are required.
c. The SHE Advisory Group should review the Councils' Dignity at Work Policy against the guidance set out by the EHRC and where appropriate consider actions to ensure that contractors working for, and others using the Council's services, are aware of their obligations to the Council to prevent sexual harassment.

With the introduction of the Workers Protection (Amendment of Equality Act 2010) Act 2023, employers must take reasonable steps to prevent sexual harassment of their workers, including by third parties. The Act requires employers to be proactive in assessing risk, identifying action and regularly reviewing their processes.

Following consultation, Britain's equality watchdog, the EHRC, has published updated technical guidance for employers on the steps they can take to prevent sexual harassment in the workplace.

Some of the actions recommended to employers in the guidance include:

- developing and widely communicating a robust anti-harassment policy, which includes third party sexual harassment;

- undertaking regular risk assessments to identify where sexual harassment may occur and the steps that will be taken to prevent it;
- being proactively aware of what is happening in the workplace and any warning signs, by engaging with staff through 1-2-1s, surveys and exit interviews; and
- monitoring and evaluating the effectiveness of actions.

The Act also includes the ability for compensation in sexual harassment claims to be increased. If an employment tribunal finds a worker has been sexually harassed, it must consider whether the preventative duty has been met. If not, the employer can be ordered to pay an additional 25% (maximum) compensation.

The change in legislation also gives the EHRC power to take enforcement action where there is evidence of organisations failing to take reasonable steps to prevent sexual harassment. Enforcement by the EHRC does not depend on an incident of sexual harassment having taken place.

Attached for the information of Members are the following documents that can also be found on the EHRC website:

Sexual Harassment and Harassment at Work: Technical Guidance
Employers' 8-Step Guide: Preventing Sexual Harassment at Work

Preventative Duty
Godalming Town Council (GTC) does have strong policies relating to Equality & Diversity and Dignity at Work, which are required to be read by all employees and councillors. These policies set out the Council's commitment to having a workplace which is free from harassment, including sexual harassment and bullying and ensuring that all employees, contractors and others who come into contact with the Council are treated with dignity and respect. These policies are supported where required by the Council's Grievance and Disciplinary Policies. So, whilst GTC's current policies and procedures provide a framework, including preventative duty relating to bullying, harassment and sexual harassment, it is considered appropriate that they should be reviewed and strengthened with additional safeguards where appropriate and necessary.

The Dignity at Work Policy covers harassment, includes sexual harassment, and sets out the actions an employee can take if they believe they have been harassed, including sexually harassed by a colleague or another person they come into contact with during the course of their work.

Step 1 – As representatives of all work areas, Members may consider it appropriate that the SHE Advisory Group be invited to review the Dignity at Work Policy against Step 1 of the 8-Step guide. Additionally, it may also be appropriate for the SHE Advisory Group to be asked for suggestions relating to issues of third-party harassment and sexual harassment.

Step 2 – It is believed this approach would re-enforce the Council's engagement with staff. The council already encourages an open-door policy for staff to contact the Town Clerk or the Chair of the Staffing Committee as appropriate. This approach, alongside the Staffing Committee's workplace visits, the existence of the SHE Advisory Group, and the invitation for exit interviews extended by the Chair of this committee to staff leavers, meets the guidance suggested at Step-2.

Step 3 – GTC is required to assess and take steps to reduce risk in the workplace. The risk of sexual harassment should be assessed as any other risk would be. As such it is suggested the Operations & Compliance Officer should conduct a risk assessment for all areas of council services to help GTC strengthen its response to its preventative duty.

Step 4 – Reporting. The existing GTC policies set out the mechanism for reporting all forms of bullying and harassment, including sexual harassment and have been shown to be understood and usable. The guidance sets out that consideration should be given to an independent online or telephone-based reporting system. Whilst such a system might be considered suitable for a large organisation with hundreds or even thousands of employees, as an employee with 19.12 FTE when fully established, such a system could be considered disproportionate on resource grounds. Whether such a system is appropriate or the existing processes for reporting are considered suitable to meet the Council's duty should be established as part of the risk assessment.

Step 5 – Training will be undertaken as part of line manager training as previously identified by this committee.

Step 6 – What to do when a harassment complaint is made. GTC's current policies and procedures, supported by guidance from the Council's HR providers or other bodies such as ACAS/EHRC, are used to support the action of managers to deal with a complaint.

Step 7 – This step relates to dealing with harassment by third parties, such as customers, clients, suppliers and contractors etc. Although the GTC's Dignity at Work Policy does state that the Council will take appropriate action if any employees or contractors are bullied or harassed by our stakeholders or suppliers, it may be appropriate for this statement to be reviewed and strengthened.

Step 8 – This step relates to monitoring and evaluating. It is suggested that any evaluation of the effectiveness of steps taken should be done by this Committee, which could include an annual review of complaints data and lessons learnt sessions following the resolution of any future complaint of sexual harassment.

7. EMPLOYEE TRAVEL SEASON TICKET LOAN SCHEME – **ITEM FOR DECISION**

As Members will be aware, it is an aim of this council to encourage sustainable travel wherever possible, which includes rail travel. As Members will also be aware, the cost of travel can be a determining factor as to whether it is a sustainable option. In the case of commuting by rail, the cost sustainability is affected by the number of days of travel per week and the length of the period covered by the ticket, with a yearly season ticket based on 5 days travel per week, being the most cost-effective option. However, for many employees the upfront cost of purchasing a season ticket often means having to fund the purchase on credit, the cost of which increases the overall cost of travel and in some instances negates the savings afforded by a season ticket.

In supporting its staff to adopt sustainable travel, GTC could utilise the arrangements provided by HMRC for the provision of an interest free loan of up to £10,000 within any given tax year to its employees for the purchase of annual season tickets for rail travel, without it becoming a taxable benefit to the employee or an employment cost to the Council.

In considering as to whether to implement this scheme Members may wish to impose a lower limit than allowable by HMRC. Using the current annual season ticket costs for a distance of travel, which the Town Clerk considers to be an acceptable 5-day a week commute for an employee, that has Waterloo Station and Portsmouth & Southsea on one axis, and Reading to Crawley on the other, it is suggested that, allowing for a 15% margin to accommodate any future fare rises without the limit having to be reviewed each time, that a limit of £5,300 is agreed.

Approval of Loan
It is suggested that in applying for a season ticket loan the following information is required:

Name of employee

Departure station
Destination station – Godalming
Days per week office working
Annual cost of season ticket £
Advance requested £
Monthly repayment amount (10-month repayment) £
Employees monthly net pay £
Requested payment date
First repayment date
Final repayment date

Approval sign-off
RFO verification – Ticket cost verified/net monthly salary verified
Town Clerk
Staffing Chair } Approval of commute route (travel time) and number of days travel

Payment of Season Ticket Loan
The cost of the season ticket would be paid in advance with the payment date coinciding with the upcoming payroll pay-run following the date of approval. The employee would then be required to purchase the season ticket and provide proof of purchase to the RFO, who would retain an evidence copy. Evidence of purchase must be provided within 28 days of the advance, failure to provide such evidence or provide a reason for a delay in purchase (for example strike action or major engineering shutting the route) will result in recovery action being instigated and the forfeiting of future access to the Employee Annual Travel Season Ticket Scheme.

Members may wish to note that season tickets can generally only be purchased up to 2 weeks in advance, if the staff member is trying to take out this loan with the intention of waiting until the season ticket becomes available for their required start date, this should be communicated to the council, and the loan payment should therefore be held until the window for purchasing the ticket opens.

Loan Recovery
National Rail recommends recovering the loan by 10 months of equal deductions to be taken from the employee's salary, thus leaving the remaining 2 months as effectively free travel. They recommend this as annual season tickets do not have any refund value past 10 months and 12 days. Deductions should start from the first monthly payday following payment of loan advance.

Deductions should be made from net pay, so after normal taxations, employee pension contributions, other deductibles (Student Loan), etc. Repayment should not be deducted from gross salaries as this would result in both employee and employer taxation and pension contributions' deductions being improperly reduced.

8. YOUTH SERVICE REVIEW – **ITEM FOR DECISION**

Members received the report relating to the review of Youth Service activities, structure and staffing from Kapasun Training & Development on 19 September and prioritised recommendation three for immediate implementation with the other recommendations to be reviewed at future meetings (Min No 245-24 refers).

The Committee Chair to update Members on actions in relation to recommendation 3, the dividing of the Youth Services Officer's role into two dedicated, separate positions: Head of Youth Services and Youth Services Manager.

Members to consider reviewing remaining actions.

9. REVIEW OF APPRAISAL & PERFORMANCE REVIEW SCHEME – **ITEM FOR DECISION**

Recommendation: Members to consider a new draft Appraisal Policy and Appraisal Form, and if minded are requested to recommend them for adoption by Full Council.

Having previously reviewed GTC's existing appraisal scheme, Members considered alternative options based on the ACAS advisory booklet and agreed that a revised scheme based on the ACAS guidance should be brought to the committee for consideration (Min No. 239-24 refers).

Members to consider a new draft Appraisal Policy and Appraisal Form (attached for the information of Members), and if minded are requested to recommend them for adoption by Full Council.

10. REVIEW OF POLICY DOCUMENTS – **ITEM FOR DECISION**

Recommendation: Members to resolve to approve to retain the extant DBS Data Handling Policy

At its meeting of 19 September 2024, the committee nominated Cllr Weighman to review the documents listed below, with any proposals for amendments to the Town Clerk no later than 31 October 2024.

DBS Data Handling Policy

There were no recommendations for amendments to the DBS Data Handling Policy received.

11. SALARY BUDGET 2025/26 - **ITEM FOR DECISION**

Financial regulations require that the salary budgets are to be reviewed at least annually as part of the budget preparation process for the following financial year and such review shall be evidenced by a hard copy schedule signed by the Clerk and the Chair of Council or relevant committee. The RFO will inform committees of any changes impacting on their budget requirement for the coming year in good time.

With the budget-setting process underway and as the Staffing Committee is responsible for ensuring the staffing structures are sufficient to deliver the aims of the council, the Chair of the Staffing Committee is the relevant person to countersign the hard copy schedule. The hard copy of the salary budget schedule will be tabled at the meeting.

Members are requested to agree that the Chair should sign the proposed 2025/26 salary budget schedule.

12. SERVICE AREA SITE VISITS – **ITEM FOR DECISION**

Members to agree dates for Service Area visits:

Executive & Support Services	Tuesday, 21 January 2025	13.00
Grounds & Maintenance Department	Tuesday, 14 February 2025	13.00
Youth Services	Tuesday, 14 March 2025	13.00
Museum Service	TBC	

13. COMMUNICATIONS ARISING FROM THIS MEETING

Members to identify which matters (if any), discussed at this meeting, are to be publicised.

14. DATE OF NEXT MEETING

The next meeting of the Staffing Committee is scheduled to be held in the Council Chamber on Thursday, 13 February 2025 at 7.00pm or at the conclusion of the preceding Full Council meeting, whichever is later.

15. ANNOUNCEMENTS

Brought forward by permission of the Chair. Requests to be submitted prior to commencement of the meeting.

4. STAFFING COMMITTEE – WORK PROGRAMME

TASK	**PROGRESS**	**COMMENT**	
Staff Meeting	Service area site visits.	Dates TBC	

POLICY REVIEWS *to be updated following review on this agenda*	**PERSON UNDERTAKING REVIEW**	**DATE ADOPTED/ LAST REVIEWED**	**REVIEW DATE**
Lone & Flexible Working Policy	**Deferred until adoption of updated HSE Policy & Statement**	15 November 2018/ Reviewed September 2021	Q3 2023
First Aid Policy	**Deferred until adoption of updated HSE Policy & Statement**	28 April 2022	Q2 2024
Fire Safety Precautions & Emergency Procedures	**Deferred until adoption of updated HSE Policy & Statement**	Adopted 21 July 2022	Q3 2024
Appraisal Scheme	Cllr Heagin	28 March 2019/ Reviewed September 2021 **On this agenda**	Q3 2024
DBS Data Handling Policy	Cllr Weightman	15 November 2018/ Reviewed November 2022 **On this agenda**	Q4 2024
Modern Day Slavery Statement		1 April 2021	Q2 2025
Recruitment of Ex-Offenders Policy		15 November 2018/ Reviewed September 2023	Q3 2025
Recruitment of Ex-Offenders Policy Statement		15 November 2018/ Reviewed September 2023	Q3 2025

POLICY REVIEWS *to be updated following review on this agenda*	**PERSON UNDERTAKING REVIEW**	**DATE ADOPTED/ LAST REVIEWED**	**REVIEW DATE**
A Guide to Term Time Contracts		23 September 2021/ September 2023	Q4 2025
Leave Policy		4 July 2019/ Reviewed November 2023	Q4 2025
Disciplinary Procedure		13 January 2022 Reviewed 13 May 2024	Q1 2026
Grievance Policy		13 January 2022 Reviewed 13 May 2024	Q1 2026
Code of Conduct – IT Facilities		22 March 2018/ Reviewed 13 May 2024	Q1 2026
Social Media Policy		22 March 2018/ Reviewed 13 May 2024	Q2 2026
Training Statement of Intent		13 January 2022 Reviewed 13 May 2024	Q2 2026
Dignity at Work Policy		19 December 2019/ Reviewed 13 May 2024	Q2 2026
Employee Code of Conduct		13 September 2018/ Reviewed Feb 2023	Q1 2027
Absence & Sick Pay Policy and Procedure	Cllr Follows	4 July 2019/ Reviewed September 2024	Q3 2027

Equality And Human Rights Commission - Sexual Harassment and Harassment At Work: Technical Guidance- Updated 26 September 2024

Scope of this guidance - Who is this guidance for?

- employers
- workers
- their representatives

What this guidance covers

This guidance covers sexual harassment, harassment and victimisation in employment under the work provisions in the Equality Act 2010 ('the Act'). The work provisions are based on the principle that workers should not be harassed, discriminated or victimised at work **(Part 5 of the Act).**

This guidance also covers an employer's positive legal duty to take reasonable steps to prevent sexual harassment of its workers (the 'preventative duty').
This guidance will:

- help employers to understand their legal responsibilities in relation to harassment and victimisation, the steps they should take to prevent harassment and victimisation at work and what they should do if harassment or victimisation occurs
- help employers to understand their positive legal obligations in relation to the preventative duty, the steps they must take to prevent sexual harassment at work and what they should do if harassment occurs
- help workers to understand the law and what their employer should do to prevent harassment and victimisation, or to respond to their complaint of harassment or victimisation
- help lawyers and other advisers to advise workers and employers about these issues
- give employment tribunals and courts clear guidance on the law on harassment and victimisation, the legal scope of the preventative duty and best practice on the steps that employers could take to prevent and deal with harassment and victimisation
- use examples to illustrate some of the practical steps employers of different sizes and types can take to eliminate harassment in the workplace

In this guide, we use the following terms:

'must': where the person or organisation referred to has a legal duty
'can': where the person or organisation has a power (not a duty) under statutory or common law
'should' or 'could': for guidance on good practice
'worker': refers to all employment relationships that are protected by the provisions of the Equality Act 2010 (the Act), unless indicated otherwise

Chapter 1. What is harassment?

In any workforce there will be a range of attitudes about what conduct is considered to be offensive, humiliating, intimidating, hostile, or degrading. What one worker – or even a majority of workers – might see as harmless fun or 'banter', another may find unacceptable. A worker complaining about conduct may be considered by others to be overly sensitive or prudish. However, it is important to understand that conduct can amount to harassment or sexual harassment even if that is not how it was intended. This chapter explains what types of behaviour amount to harassment under the Act. These include harassment related to a relevant protected characteristic, sexual harassment, and less favourable treatment for rejecting or submitting to harassment. No form of harassment can ever be justified.

Unlike direct discrimination, harassment does not take a comparative approach. That is, it is not necessary for the worker to show that another person without the protected characteristic was, or would have been, treated more favourably. For an explanation of direct discrimination, read Chapter 4 of the Employment Statutory Code of Practice.

What the act says about harassment

1.1 The Act makes three types of harassment unlawful. These are:

- harassment related to a 'relevant protected characteristic' **(s.26(1))**
- sexual harassment **(s.26(2))**, and
- less favourable treatment of a worker because they submit to, or reject, sexual harassment or harassment related to sex or gender reassignment **(s.26(3))**

1.2 'Relevant protected characteristics' are:

- age
- disability
- gender reassignment
- race
- religion or belief
- sex
- sexual orientation **(s.26(5))**

1.3 Unlike other forms of discrimination, pregnancy and maternity and marriage and civil partnership are not protected under the harassment provisions. However, harassing someone because of pregnancy or maternity would be harassment related to sex.

1.4 It is unlawful for an employer to harass a worker, or anyone who has applied to them for employment **(s.40)**.

1.5 It is also unlawful if an employer fails to take reasonable steps to prevent sexual harassment of workers **(s.40A(1))**.

Harassment related to a protected characteristic

1.6 This type of harassment arises when a worker is subject to unwanted conduct that is related to a protected characteristic and has the purpose or the effect of:

- violating the worker's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker **(s.26 (1))**

1.7 Conduct that has one of these effects can be harassment even if the effect was not intended.

Meaning of 'unwanted conduct'

1.8 Unwanted conduct covers a wide range of behaviour. It can include:

- spoken words
- written words
- banter
- posts or contact on social media
- imagery
- graffiti
- physical gestures
- facial expressions
- mimicry
- jokes or pranks
- acts affecting a person's surroundings

- aggression
- physical behaviour towards a person or their property

1.9 The word ‘unwanted’ means essentially the same as ‘unwelcome’ or ‘uninvited’.

1.10 Unwanted means ‘unwanted by the worker’ and should be considered from the worker’s subjective point of view. However, external factors may be considered by a tribunal or court in deciding whether it accepts that, subjectively, the conduct was unwanted.

1.11 It is not necessary for the worker to say that they object to the conduct for it to be unwanted. However, in deciding whether a claimant has established that the conduct was unwanted, a tribunal or court may take into account whether or not the worker objected to the conduct, among other things.

1.12 In some cases, it will be obvious that conduct is unwanted because it would plainly violate a person’s dignity.

Example
A male line manager is to interview a female worker for a promotion. The manager says that the interviewee is the favourite for the job because she is the best-looking candidate.
The manager’s statement is self-evidently unwanted, and the worker need not object to it for a tribunal or court to find it is unwanted.

1.13 At the opposite end of the spectrum are cases in which many people would not like the behaviour, but the actions of the particular worker concerned make it clear that in their case, the conduct was not unwanted.

Example
A male worker is called several homophobic names by his colleagues who know that he is heterosexual. Many workers would not welcome this sort of behaviour. However, an employment tribunal finds that this worker did not object to the conduct, which continued for several years. He willingly joined in, making equally offensive comments to his colleagues. There is also evidence of genuine friendships with the colleagues, such as going on holiday with one of them.

The tribunal finds that in the circumstances, the worker’s actions do not indicate that the conduct was unwanted.

1.14 There may be circumstances in which a course of conduct is not unwanted in the earlier stages, but at some point 'oversteps the mark' and becomes unwanted.

Example
In the previous example, the colleagues use very offensive homophobic terms about the worker in an in-house magazine, which is read by a much wider group than the immediate group of colleagues. In the circumstances, the tribunal accepts that this article goes beyond what the worker has previously deemed acceptable and was therefore unwanted.

Meaning of 'related to'

1.15 Unwanted conduct ‘related to’ a protected characteristic has a broad meaning. The conduct does not have to be because of the protected characteristic. It includes the following situations:

a) Where conduct is related to the worker’s own protected characteristic

Example
If a worker with a hearing impairment is verbally abused because he wears a hearing aid, this could amount to harassment related to disability.

1.16 Protection from harassment also applies where a person is generally offensive to other workers but, in relation to a particular worker, the conduct is unwanted because of that worker's protected characteristic.

Example
During a training session attended by both male and female workers, a male trainer directs several sexist remarks to the group as a whole. A female worker finds the comments offensive and humiliating to her as a woman. She would be able to make a claim for harassment related to sex, even though the remarks were not specifically directed at her.

b) When there is any connection with a protected characteristic

Workers are also protected where the unwanted conduct is connected to a protected characteristic, even if the worker does not have the relevant protected characteristic. This includes where the employer knows that the worker does not have the relevant characteristic. Connection with a protected characteristic may arise in several situations:
The worker may be associated with someone who has a protected characteristic.

Example
A worker has a son who is a trans man. His work colleagues make jokes about his son's transition. The worker could have a claim for harassment related to gender reassignment.

The harasser may wrongly believe the worker to have a particular protected characteristic.

Example
A Sikh worker wears a turban to work. His manager wrongly assumes he is Muslim and subjects him to Islamophobic abuse. The worker could have a claim for harassment related to religion or belief because of his manager's perception of his religion.

The worker is known not to have the protected characteristic but nevertheless is subjected to harassment related to that characteristic.

Example
A worker is subjected to homophobic banter and name calling. She is not gay. Because the abuse relates to sexual orientation, this could amount to harassment related to sexual orientation.

The unwanted conduct related to a protected characteristic is not directed at the particular worker, but at another person or no one in particular.

Example
A manager racially abuses a Black worker in front of a White colleague. The Black worker has a clear claim for harassment related to race. In addition, the Black worker's White colleague is offended and could also bring a claim of harassment related to race.

The unwanted conduct is because of something related to the protected characteristic but does not take place because of the protected characteristic itself.

Example

A female worker has a relationship with her male manager. On seeing her with another male colleague, the manager suspects she is having an affair. As a result of his suspicion, the manager makes her working life difficult by continually criticising her work in an offensive manner.

The behaviour is not because of the sex of the female worker, but because of the suspected affair which is related to her sex. This could amount to harassment related to sex.

1.17 In all of the circumstances listed, there is a connection between the unwanted conduct and the protected characteristic. The worker could therefore succeed in a claim of harassment if the unwanted conduct has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

1.18 However, in deciding whether conduct was related to the protected characteristic, an employment tribunal may take account of the context in which the conduct takes place.

Example

A Muslim worker has a conversation with a colleague about Islamist militants in the Middle East. The worker tells the colleague about a journalist's positive comments about these militants. Later that month the colleague approaches the worker and asks, 'Are you still promoting Islamist militants?' The worker is upset by this allegation and brings a claim of harassment related to religion or belief. The tribunal finds that the colleague asked that question because of the worker's previous comments, not because the worker is a Muslim or because of anything related to the worker's religion.

The question was therefore not harassment.

Sexual harassment

1.19 Sexual harassment occurs when a worker is subjected to unwanted conduct as defined in paragraphs 1.8 to 1.14 and which is of a sexual nature. The conduct need not be sexually motivated, only sexual in nature **(s.26(2))**.

Example

A male worker alters a pornographic image by pasting an image of his female colleague's face on to it. He then sends it to their other colleagues, causing them to ridicule her.

There was no sexual motivation behind this act, but the use of the image is sexual in nature.

1.20 Conduct 'of a sexual nature' includes a wide range of behaviour, such as:

- sexual comments or jokes
- displaying sexually graphic pictures, posters or photographs
- suggestive looks, staring or leering
- propositions and sexual advances
- making promises in return for sexual favours
- sexual gestures
- intrusive questions about a person's private or sex life or a person discussing their own sex life
- sexual posts or contact on social media
- spreading sexual rumours about a person
- sending sexually explicit emails or text messages
- unwelcome touching, hugging, massaging or kissing

1.21 An individual can experience unwanted conduct from someone of the same or a different sex.

1.22 Sexual interaction that is invited, mutual or consensual is not sexual harassment because it is not unwanted. However, sexual conduct that has been welcomed in the past can become unwanted.

Example
A female worker has a brief sexual relationship with her supervisor. The worker tells her supervisor that she thinks it was a mistake and does not want the relationship to continue. The next day, the supervisor grabs the worker's bottom, saying 'Come on, stop playing hard to get'.

Although the original sexual relationship was consensual, the supervisor's conduct after the relationship ended is unwanted conduct of a sexual nature.

1.23 The Act states that employers have a legal obligation to prevent sexual harassment of workers **(s.40A(1))**. For further information, read paragraphs 3.16 to 3.43.

Less favourable treatment for rejecting or submitting to unwanted conduct

1.24 The third type of harassment occurs when:

- a worker is subjected to unwanted conduct
    1. of a sexual nature
    2. related to sex, or
    3. related to gender reassignment
- the unwanted conduct has the purpose or effect of
    1. violating the worker's dignity, or
    2. creating an intimidating, hostile degrading, humiliating or offensive environment for the worker, and
    3. the worker is treated less favourably because they submitted to or rejected the unwanted conduct **(s.26(3))**

Example
In the previous example, the worker responds to the supervisor's behaviour by saying, 'Get off me, I'm not playing hard to get!' After that, the supervisor starts to make things more difficult for the worker, giving her more work to do than others and being more critical of her work.

The supervisor is treating the worker less favourably because she rejected his unwanted conduct.

1.25 Under this type of harassment, it may be the same person who is responsible for the initial unwanted conduct and the subsequent less favourable treatment, or it may be two (or more) different people **(s.26(3)(a))**.

Example
Continuing with the previous example, the supervisor informs his line manager, who he is friendly with, about his rejection by the worker.

The line manager feels sorry for the supervisor, thinking that the worker 'led him on'. When the worker applies for a promotion, the line manager rejects her application, saying that 'she can't be trusted'. This opinion is based on her rejection of the supervisor. The line manager's actions also amount to less favourable treatment because of the worker's rejection of the supervisor's unwanted conduct.

Meaning of 'purpose' or 'effect'

1.26 For all three types of harassment, if the harasser's purpose is to violate the worker's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment for

them, this will be sufficient to establish harassment. It will not be necessary to look at the effect that conduct has had on the worker.
1.27 Unwanted conduct will also amount to harassment if it has the effect of violating the worker's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them, even if that was not the intended purpose.

Example
Male workers download pornographic images to their computers in an office where a woman works. She may make a claim for sexual harassment if she is aware that the images are being downloaded and the effect of this is to create a hostile and humiliating environment for her.

In this situation, it is irrelevant that the male workers did not intend to upset the woman, and that they considered the downloading of images to be 'having a laugh'.

1.28 In deciding whether conduct had that effect, each of the following must be taken into account:

a) The perception of the worker, that is, whether they feel that it violated their dignity or created an offensive environment for them **(s.26(4)(a)).** This part of the test is a subjective question and depends on how the worker regards the treatment.

b) The other circumstances of the case **(s.26(4)(b))**. Circumstances that may be relevant include:

- the personal circumstances of the worker experiencing the conduct (for example, the worker's health, including mental health, mental capacity, or previous experience of harassment)
- whether the harasser is in a position of trust or seniority to the worker, or holds any other form of power over them
- the race or cultural background of those involved, for example, a particular term may be offensive to people of one race because historically it has been used as a derogatory term in relation to that race, whereas people of other races may not generally understand it to be offensive
- the environment in which the conduct takes place
- whether the harasser was exercising any of their convention rights protected under the Human Rights Act 1998 such as freedom of expression

b) While the worker's perception of the conduct is key to whether something amounts to sexual harassment, consideration must also be given to whether it is reasonable for the conduct to have that effect. This is an objective test. A tribunal or court is unlikely to find unwanted conduct has the effect, for example, of offending a worker, if it considers the worker to be hypersensitive and that any other reasonable person subjected to the same conduct would not have been offended **(s.26(4)(c))**.

1.29 Sometimes the harasser may put forward evidence to suggest that their conduct could not have had the relevant effect on the worker. Where they do so, an employer must not rely on irrelevant information about the conduct of the individual.

Example
A worker's manager makes comments to her about her breasts. The worker brings a claim of sexual harassment against her employer.

The manager informs the employer that the worker previously posed topless on page 3 of a national newspaper. The employer tries to produce this information to the tribunal as evidence that the worker could not have been offended by her boss's comments. The tribunal would be

right to find that the information is irrelevant. The worker could be offended by her boss's comments regardless of the fact that she had posed topless for a newspaper.

Meaning of violation of dignity or creation of an intimidating, hostile, degrading, humiliating or offensive environment

1.30 To amount to harassment, the unwanted conduct must have had the purpose or effect of violating the worker's dignity, or creating a hostile, degrading, humiliating or offensive environment for them. It is not necessary to show both.

1.31 Many acts of unwanted conduct will have the effect of both violating the worker's dignity and creating the relevant environment for them. However, it is possible that an act may do one but not the other.

1.32 'Environment' in this context means a state of affairs. An environment may be created by a single act of unwanted conduct, but the effects of that single act must be longer in duration to do so. Whereas a single act of unwanted conduct which does not have an enduring effect could well violate a person's dignity in the moment.

Example
A Black worker's colleague says that he is a member of a far-right activist group and joined because he thinks there are too many 'coloured' people in the UK taking jobs away from 'indigenous' people. He only makes the comment once but it creates an intimidating environment for the worker every time she sees him in the office.

Chapter 2. What is victimisation?

2.1 It is important that employers recognise the significant role that fear of victimisation plays in relation to how they approach and deal with harassment and sexual harassment at work. This will be a key factor in their ability to fulfil their duty to prevent and protect employees from harassment. This chapter explains what the Act says about victimisation in the context of harassment at work. For consideration of victimisation in the wider context, read Chapter 9 of the Employment Statutory Code of Practice.

What the Act says about victimisation

2.2 Victimisation means treating a worker badly (subjecting them to a detriment) because they have done a protected act- for example making a complaint of harassment (read paragraphs 2.6 to 2.15 for the full definition). Victimisation also means subjecting a worker to a detriment because it is believed they have done or are going to do a protected act. The worker does not actually need to have done the protected act **(s.27(1)).**

Example
A bar owner hears a rumour that one of his workers may make a grievance about harassment related to race by a colleague. As the worker has only been in his employment for a few weeks, the owner dismisses the worker to avoid dealing with the grievance. The worker, in fact, had no intention of raising a grievance. Nevertheless, the bar owner has subjected her to a detriment because he believed that she would. Her dismissal is therefore an act of victimisation.

2.3 The worker does not need to compare their treatment with the treatment of another worker who has not done a protected act, and show that this comparable worker would not have been subjected to the same detrimental treatment. The worker only has to show that they have experienced detrimental treatment because they have done a protected act or because the employer believes (rightly or wrongly) that they have done or intend to do a protected act **(s.27(2)(c) and (d))**.

2.4 The detrimental treatment does not need to be connected to a protected characteristic. However, there does need to be a protected act (read paragraphs 2.6 to 2.15 for the definition of a protected act).

Example
A worker gives evidence to the employment tribunal which supports his colleague's claim of sexual orientation discrimination. As a result, the worker is denied a promotion. The worker has been subjected to a detriment because he did a protected act – giving evidence in connection with a claim under the Equality Act. This is victimisation. The worker's sexual orientation is irrelevant to whether he has been victimised or not.

2.5 Former workers are also protected against victimisation.

Example
A grocery shop worker resigns after making a sexual harassment complaint against the owner. Several weeks later, she tries to make a purchase at the shop but is refused service by the owner because of her complaint. This could amount to victimisation.

What is a 'protected act'?

2.6 Doing a protected act means:

1. making a claim or complaint under the Act (for example, for discrimination or harassment)
2. helping someone else to make a claim by giving evidence or information
3. making an allegation that someone has breached the Act, or
4. doing anything else in connection with the Act **(s.27(2)(a)-(d))**

2.7 This protection will apply to anyone making a claim or allegation that the Act has been breached or assisting someone (like a colleague) in doing so. It is irrelevant whether the Act was breached or not, as long as the person doing the protected act genuinely believes that the information or evidence they are giving is true.

2.8 Protected acts include claims or allegations of discrimination and harassment under both the Act and any of the legislation that the Act replaced.

Example
In 2009, a worker brought an employment tribunal claim under the Sex Discrimination Act 1975 against her employer. In 2019, she applies for a job with another company. Upon checking her employment history, the company feels that her reason for leaving her previous employment is vague and calls the previous employer to find out more. The previous employer says several bad things about the worker. Although the worker brought proceedings under the Sex Discrimination Act 1975 and not the Act, she has still done a protected act and her previous employer's comments may still therefore amount to victimisation.

2.9 As this example suggests, there is no limit on how much time may elapse between the protected act and the detriment, provided that the worker is subjected to the detriment because of the protected act and not because of some other reason.

2.10 The protected act may relate to any part of the Act, not just the employment provisions. The act of victimisation may relate to the provision of services, goods or education or the exercise of a public function, for example.

Example

A worker leaves her employment at her local village shop and brings a claim against the owner for harassment related to age. The worker applies for a job at another local shop. The owner of the second shop knows about the claim and turns down the worker's application, saying that he can't afford it if she were to bring a claim against him. Although the protected act relates to her employment with the first shop, she still has the right not to be subjected to a detriment by the second shop, because of that protected act.

2.11 While a claim of victimisation will often be brought against the person or employer who carried out the discrimination or harassment, this will not always be the case. The behaviour which is the subject of the protected act can be committed by any person.

Example
A nurse is employed by an NHS Trust. She is being treated at the hospital where she works. She brings a claim under the services provisions of the Act against the Trust, relating to sexual harassment that she was subjected to while undergoing treatment. She is subsequently denied a promotion by her manager who says that she is not a 'team player', a view based on her bringing a claim against her employer. Although her claim is brought under the services provisions of the Act, she is still protected against being subjected to a detriment in her employment and can accordingly bring a claim for victimisation.

2.12 An act will not be a protected act where the worker gives false evidence or information or makes a false allegation in bad faith. This is a two-stage test.

2.13 First, a tribunal or court must decide whether the evidence, information, or allegation is false. This is an objective exercise that involves weighing up the evidence for and against. If a tribunal or court decides that on balance the evidence, information or allegation is more likely to be true than false, then the act is protected.

2.14 If a tribunal or court decides that the evidence, information or allegation is more likely to be false, then it must decide whether it was given or made in bad faith. The focus here is on whether the individual acted honestly or not.

2.15 If a worker has an ulterior motive for providing the evidence or information, or making the allegation, this does not necessarily mean that the worker does not honestly believe it is true. An ulterior motive will not of itself mean the worker acted in bad faith. However, it may be a relevant piece of information for a tribunal or court to consider in deciding whether the worker acted honestly. Other factors such as the length of time it took the worker to raise the matter may also be relevant.

Example
A worker is going through a performance management process. During the process, the worker raises an allegation that the manager conducting it racially harassed him three years ago. The worker is subsequently dismissed for poor performance. He brings a claim for victimisation, alleging that he was actually dismissed because he made an allegation of racial harassment, not because of his poor performance. The tribunal finds that the worker's allegation is not true and then considers whether it was made in bad faith. The tribunal finds that the worker primarily made the allegation to disrupt the poor performance proceedings but had an honest belief in it.
The allegation was therefore not made in bad faith and is a protected act. The tribunal must then go on to consider whether the worker has been subjected to a detriment.

What is a 'detriment'?

2.16 'Detriment' is not defined by the Act and could take many forms. Generally, a detriment is being treated badly. This could include:

- being rejected for promotion
- being denied an opportunity to represent the employer at external events
- being excluded from opportunities to undertake training
- not being given a discretionary bonus or performance-related award

Example
A senior manager hears a worker's grievance about harassment. He finds that the worker has been harassed, offers a formal apology and directs that the harassers be disciplined and required to undertake diversity training. The senior manager's director thinks that the harassment did take place, but that the manager should have rejected the worker's grievance to protect the company's reputation. As a result, he doesn't put the senior manager forward to attend an important conference. This is a detriment.

2.17 A detriment might also include a threat made to the complainant that they take seriously, and which is reasonable for them to take seriously. There is no need to demonstrate physical or financial consequences. However, an unjustified grievance alone would not be enough.

Example
An employer threatens to dismiss a worker because he thinks she intends to support a colleague's sexual harassment claim. This threat could amount to victimisation, even though the employer has not actually taken any action to dismiss the worker and may not really intend to do so.

2.18 Detrimental treatment amounts to victimisation if a 'protected act' is one of the reasons for the treatment, but it need not be the only reason.

Chapter 3. Obligations and liabilities under the Act

3.1 The Act makes discrimination, harassment and victimisation in the work relationship unlawful **(Part 5)**.

3.2 This chapter explains:

- who is protected against harassment and victimisation
- an employer's positive legal duty to take reasonable steps to prevent sexual harassment of its workers (the 'preventative duty')
- whose conduct an employer may be liable for
- the grounds on which an employer may raise a defence to a claim of harassment
-

Who is protected against harassment and victimisation?

3.3 A wide range of people are protected from harassment and victimisation at work under the EA2010 **(s.83)**.

What 'employment' means

3.4 The Act protects all those who are in 'employment'. This has a wide meaning and covers:

1. employees: those who have a contract of employment
2. workers: those who contract to do the work personally and cannot send someone to do the work in their place (refer to the list of key terms at the beginning of this guidance to see how we use this term throughout the rest of the guidance)
3. apprentices: those who have a contract of apprenticeship
4. crown employees: those employed by a government department or other officers or bodies carrying out the functions of the crown, and
5. House of Commons staff and House of Lords staff

Other work relationships covered by the Act

3.5 In addition to those listed in paragraph 3.4, protection from harassment under the Act also applies to a wide range of relationships that constitute work. Employers are also responsible for preventing harassment against:

- job applicants
- contract workers (including agency workers and those who contract to provide work personally such as consultants)
- police officers
- partners in a firm
- members in a limited liability partnership
- personal and public office holders, and
- those who undertake vocational training

3.6 Work relationships that are given other names not specifically mentioned in the Act may nevertheless be covered by the Act if, in practice, the reality of the situation is that the individual falls into one of the categories that is covered. For example, an employer takes an individual on as an unpaid 'intern', but the circumstances suggest that in fact the individual has a contract of employment with the employer, and is therefore an employee. Volunteers are not protected under the work provisions of the Act but may be protected under the services provisions of the Act if the organisation providing the volunteering opportunity is providing a service to the volunteer. This has not yet been tested in the courts.

3.7 Guidance as to who falls into the categories listed in paragraph 3.4 is provided in paragraphs 3.8 to 3.14. We only differentiate between the terms 'employee', 'worker' and other relationships covered by the Act at 3.4 to 3.14.

Who is an employee and who is a worker?

3.8 In UK employment legislation, there is an overlap between who is an employee and who is a worker. All employees contract to do work for their employer personally, and so do workers. But not all workers have a contract of employment, so they are not all employees.

3.9 Employees and workers are both protected against harassment and victimisation by the Act. The difference between an employee and a worker is not covered at length in this guidance.

3.10 However, it might be necessary to clarify whether a person is an employee or a worker if that person wants to bring other claims under legislation outside the Act, which can only be made by employees. For example, the right not to be unfairly dismissed under the Employment Rights Act 1996 applies to employees, but not to workers. A more detailed overview of the different types of employment status and the employment rights that each category have beyond the Act can be found on the gov.uk website.

Who is self-employed?

3.11 Sometimes, an employer may say that an individual is a self-employed contractor who is not protected by the Act, but the individual may believe they are an employee or worker who is protected.

3.12 In resolving such a dispute, a tribunal or court must look at what the employer and the individual intended and what any contract between them says. However, what the contract says does not dictate whether a person is genuinely self-employed or not. A tribunal must look carefully at what actually happens between the employer and individual in practice. If in practice the relationship is one that is protected by the Act, then the individual will be protected despite having a contract that says they are self-employed. Case law sets out a number of factors that a tribunal or court must weigh up when deciding whether an individual is self-

employed and not protected by the Act, or an employee or worker who is protected by the Act. The following are indicators that the individual is an employee or worker:

- the employer is required to provide work to the individual
- the individual is required to do work offered to them by the employer
- the employer has a lot of control over the way the individual does the work
- the individual is required to do the work personally (read paragraph 3.13)
- the individual is well integrated into the employer's workplace
- they look like an employee or worker of the employer to the outside world, rather than a self-employed person running their own business
- the individual is not free to do work for others as well as the employer
- the employer deducts tax from their pay
- the individual is not required to have their own insurance in place
- they are covered by the employer's liability insurance
- the individual receives a wage
- they do not take a share of profits and losses made by the employer
- the contract between the individual and the employer says that they are an employee or worker

The meaning of 'personal servie'

3.13 A key issue in deciding whether someone is self-employed is often whether they provide personal service or not. That is, do they always do the work themselves and have no right to ask another person to do the work for them (a substitute). If they are required to do the work personally, they are likely to be an employee or worker. Conversely, if they have an unlimited right to use a substitute, then they are not required to provide personal service to the employer and are likely to be self-employed.

3.14 Between these two extremes there will be cases where someone has a right to appoint a substitute but on certain conditions. For example, requirements that the substitute used is from a limited group of people, that the individual gets consent from the employer before using a substitute, or that the substitute has certain qualifications. The courts have not yet provided clear guidance as to how free an individual must be for the individual to be self-employed. They have taken a case-by-case approach to whether the particular circumstances of each case indicate that personal service is required.

Example
An electrician has a right under his contract to ask other electricians to do a job for him. However, the wording of the contract suggests that he will perform the work personally, and the right to use a substitute is significantly restricted to using other electricians who already have a similar contract with the company. The electrician's contract with the company suggests he has an obligation to provide personal service and therefore, he is protected by the Act.

The effect of illegal contracts on harassment claims

3.15 The fact that a contract of employment is illegal will not normally prevent a worker pursuing their harassment claim. It will only prevent them doing so if there is an inextricable link between the conduct and the harassment (that is, the harassment is so tangled up with the illegal conduct that the two are impossible to separate). If the two things are impossible to separate, a tribunal or court may not be able to hear the claim because making an award of compensation in these circumstances would give the appearance that the tribunal or court condones the illegal conduct.

Example

A migrant worker without a valid work permit is harassed by her colleague while working for a company. The contract of employment is illegal because the worker does not have a work permit. However, the tribunal can hear the worker's claim for harassment. While her employment with the company may have created an opportunity for the colleague to harass the worker, the harassment was not dependent on her employment. She could have been subjected to the harassment even if she had not been in employment with the company.
This can be contrasted with a case where the harassment is dependent on there being a contract of employment.

For example:
A migrant worker obtains a job with a school without a valid work permit, by lying about his entitlement to work in the UK. He complains that he was repeatedly subjected to unwanted conduct related to his race, including being passed over for promotion and being denied access to various benefits and facilities. The alleged acts of harassment were all dependent on there being a contract of employment. The migrant worker is therefore unable to pursue his claim.

The Preventative Duty

Duty on employers to prevent sexual harassment of workers

3.16 Employers have a positive legal duty to prevent sexual harassment of their workers. They must take reasonable steps to prevent sexual harassment of workers in the course of their employment (the 'preventative duty') **(s.40A(1))**.

3.17 Sexual harassment means harassment of the kind described in section 26(2) of the Act (unwanted conduct of a sexual nature) **(s.40A(2))**.

3.18 The preventative duty is an anticipatory duty. It is designed to transform workplace cultures by requiring employers to take positive and proactive reasonable steps to prevent sexual harassment of their workers. Employers should not wait until a complaint of sexual harassment has been raised before they take any action. The duty requires that employers should anticipate scenarios when its workers may be subject to sexual harassment in the course of employment and take action to prevent such harassment taking place. However, if sexual harassment has taken place, the preventative duty means an employer should take action to stop sexual harassment from happening again. If an employer fails to take reasonable steps to comply with the preventative duty, there are consequences.
3.19 Firstly we (the Equality and Human Rights Commission) have the power to take enforcement action against the employer **(s.40A(3))**.

3.20 Secondly, if an individual succeeds in a claim for sexual harassment and is awarded compensation, an employment tribunal must consider whether the employer has complied with the preventative duty. If it considers the preventative duty has been breached, an employment tribunal can increase compensation by up to 25% **(s.124A)**. However, an individual cannot bring a claim for a breach of the preventative duty alone. For further information about the consequences of failing to comply with the preventative duty read paragraphs 3.36 to 3.43.

3.21 The preventative duty only applies to sexual harassment. It does not cover harassment related to a protected characteristic (including sex), nor does it apply to less favourable treatment for rejecting or submitting to unwanted conduct. However, these types of harassment are unlawful and employers should take steps to prevent all types of harassment at work.

3.22 The preventative duty requires employers to take reasonable steps to prevent sexual harassment by their own workers. It also requires employers to take reasonable steps to prevent sexual harassment of workers by third parties, such as clients and customers. Although the preventative duty includes third party harassment, a worker cannot bring a stand alone claim in the employment tribunal for third party harassment. For further detail please read paragraphs 3.33 to 3.34 and paragraphs 3.65 to 3.86.

Sexual harassment of workers

3.23 Employers must take steps to prevent sexual harassment of workers. Sexual harassment is unwanted conduct of a sexual nature which has the purpose or effect of:

- violating a worker's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker

It is explained in further detail in paragraphs 1.19 to 1.22.

3.24 The preventative duty only applies to sexual harassment that takes place in the course of employment. For further information about this, read paragraphs 3.47 to 3.48.

3.25 Sexual harassment of a worker can be committed by:

- another worker
- an agent acting on behalf of the employer
- a third party

3.26 The preventative duty includes prevention of sexual harassment by third parties. Therefore, if an employer does not take reasonable steps to prevent sexual harassment of their workers by third parties, the preventative duty will be breached. The consequences of breaching the preventative duty are explained further in paragraphs 3.62 to 3.68.

Example

An employer is updating its anti-harassment policies and planning training for all staff. It is a large distribution centre with most staff working in a warehouse environment. It is not open to the public, but customers can order products and attend the warehouse to pick them up from a customer collection point.

The employer carries out a risk assessment to assess the risk of its workers being exposed to sexual harassment. It considers what steps it can take to minimise those risks and prevent sexual harassment from taking place and consults with employee representatives about the action it proposes to take. The employer implements a variety of measures including:

- updates to its policies and procedures in relation to sexual harassment to clarify the law, expected behaviours and complaints mechanisms
- training with managers and staff to raise awareness of rights related to sexual harassment and the employer's policies
- specific training for managers to support them in dealing with complaints
- a process for reviewing the effectiveness of the updated policies and training
- a timetable for refresher training for management and staff

However, the employer fails to consider the risk its workers could be sexually harassed by customers attending the premises to collect orders, despite an incident of such harassment occurring only six months ago.

The employer has failed to consider if there are any reasonable steps it can take to prevent the sexual harassment of workers by third parties. It has therefore failed to comply with the preventative duty. We could take enforcement action against the employer if they fail to comply with the preventative duty (read paragraphs 3.37 to 3.39 below for further information).

Reasonable steps

3.27 To comply with the preventative duty, employers must take reasonable steps to prevent sexual harassment of their workers in the course of employment.

3.28 What is reasonable will vary from employer to employer. The law does not list specific steps an employer must take. Different employers may prevent sexual harassment in different ways, but all employers must take action and no employer is exempt from the sexual harassment preventative duty.

3.29 Whether or not an employer has taken reasonable steps is an objective test and will depend on the facts and circumstances of each situation. The examples that we have used to help explain what may be reasonable are illustrative only and do not provide a definitive list of steps an employer should take. Every employer's situation will be different.

3.30 An employer should:

- consider the risks of sexual harassment occurring in the course of employment
- consider what steps it could take to reduce those risks and prevent sexual harassment of their workers
- consider which of those steps it would be reasonable for it to take
- implement those reasonable steps

3.31 An employer is unlikely to be able to comply with the preventative duty unless they carry out a risk assessment. Further information about risk assessments is in paragraphs 4.10 to 4.15.

3.32 In deciding whether a step is reasonable, the factors that may be relevant include (but are not limited to):

- the size and resources of the employer
- the nature of the working environment
- the sector the employer operates in
- the risks present in that workplace
- the nature of any contact with third parties, for example, type of third party, frequency, environment
- the likely effect of taking a particular step and whether an alternative step could be more effective
- the time, cost and potential disruption of taking a particular step, weighed against the benefit it could achieve
- whether concerns have been raised with an employer that sexual harassment has taken place (it would likely be reasonable for the employer to take steps to investigate and ensure it does not happen again)
- compliance with any relevant regulatory standards (for example, standards set by the Financial Conduct Authority or General Medical Council)
- whether steps taken appear to have been effective or ineffective, for example, if a further incident of sexual harassment occurs after steps have taken, this may indicate that additional and / or alternative action should be considered

A step may be reasonable, even if it would not have prevented a particular act of sexual harassment.

Example

A large firm in the construction industry is considering what steps it can take to comply with the preventative duty. A senior human resources manager is tasked with carrying out a risk assessment and identifies a number of risks in the business including (but not limited to):

- a male-dominated workforce, with 80% of senior management roles being occupied by men
- a culture of crude banter at some client construction sites
- regular worker interaction with third party contractors (sometimes workers will attend client sites alone)
- a recent anonymous staff survey revealing that female workers do not feel confident raising concerns about sexual harassment, as they do not believe they will be taken seriously

Overall the manager considers there is a high risk of sexual harassment within the business and urgent action is needed to address this.

Through consultation with the firm's recognised unions and the women's staff network, the manager decides a fresh launch of the organisation's anti-harassment policies and procedure is required and identifies the following key actions:

- Setting up specific training for managers to ensure they understand what sexual harassment is, and that all reports formal and informal must be taken seriously, documented and appropriate action taken. This training includes educating managers on the firm's policies and procedures and where to get support.
- Identifying three senior leaders to engage directly with the women's network to discuss sexual harassment within the organisation. They publicly speak to staff about how sexual harassment will not be tolerated and all reports will be taken seriously.
- Setting up a senior management development programme for women, to try and encourage and support women to enter senior leadership positions.
- Running refresher training for all staff, with particular emphasis on inclusion, respectful behaviour and the importance all staff reporting any sexual harassment they witness.
- Sending a formal letter to all clients and contractors to advise of the firm's refreshed stance on tackling sexual harassment and that it will not be tolerated.
- Instructing managers who manage the firm's relationship with clients / contractors to arrange in-person meetings to discuss the firm's approach and ensure that relevant protocols, responsibilities and reporting mechanisms are established for sexual harassment involving third parties.
- Instructing managers to discuss any initial client site visits with female staff to establish if they are comfortable attending alone or would prefer to attend with a colleague.
- Setting up anonymous reporting channels for sexual harassment to try and encourage staff to speak up if they are fearful of identifying themselves.
- Setting up a new, data protection compliant evidence hub for managers to record details of all reported incidents and evidence of sexual harassment, formal and informal.
- Making a commitment to review the evidence in this data hub every six months to identify trends and appropriate action to tackle them.
- Making a commitment to refresh the staff survey every six months for the next 18 months to evaluate whether the actions taken are effective.
- Making a further commitment to discuss trends and the results of the staff surveys with the women's network.

The firm has likely taken reasonable steps to prevent sexual harassment of its workers. The resource required to complete the above actions would likely be justified given the high risk of sexual harassment in the business. Not all businesses will need to take all of these steps to comply with the preventative duty. It will depend on the different factors explained in paragraph 3.32 such as the size and resources of the employer.

Example
A hospital has committed to the eradication of sexual harassment in the workplace. It has updated and promoted its anti-harassment policies and procedures and management have

received training on handling complaints. Staff receive diversity and inclusion training once a year, which includes training on what sexual harassment is, that it will not be tolerated and how to report it. The hospital considers it has taken reasonable steps to meet the preventative duty.

A junior nurse mentions to her ward manager that a senior consultant keeps asking her out and frequently makes sexually suggestive jokes and comments to her. The consultant is respected worldwide for being a leading expert in his field and complex patients from across the country are sent to the hospital to receive treatment under his care. The nurse says she tries not to engage with his 'banter' and does not want to make a complaint. The ward manager does not take any action on this conversation.

A few months later, the ward manager sees a female student doctor crying in the toilets, being comforted by a nurse. Later that day, the ward manager asks the nurse what happened. The nurse said the senior consultant made sexual advances towards the student, she had declined but now felt the consultant was being rude and dismissive towards her and was not allowing her as many training opportunities with patients.

The ward manager has a confidential discussion with another doctor on the ward about the senior consultant's behaviour. The doctor says he is aware the senior consultant 'flirts' with younger staff. However, he advises the ward manager there is nothing she can do about it because the consultant is so powerful within the organisation. Therefore no action would ever be taken against him.

A few weeks later a junior doctor tells the ward manager she wants to make a complaint about the senior consultant. She says the consultant keeps asking her out, had touched her inappropriately and she is worried about being alone with him. The ward manager said the junior doctor can make a complaint if she wishes, but there is probably no point because the consultant is too powerful for any action to be taken. The ward manager advises the junior doctor to try and not be on her own with the consultant and to come back if she had any further concerns.

The junior doctor decides to raise her concerns with an HR (human resources) manager at the hospital. The HR manager is very concerned about the sexual harassment the doctor says she has experienced and the inaction of the ward manager. The HR manager speaks to the ward manager who mentions the other potential instances of sexual harassment that have arisen.

The HR manager raises these concerns at a confidential meeting with hospital management and the hospital agrees to take action, which includes:

- Taking action to protect staff from the possible risk they may be sexually harassed by the senior consultant. Such action could involve the senior consultant's suspension / exclusion from work or from certain duties, or other alternative action. Any action taken must be compliant with the hospital's policies and procedures and any specific procedures applicable to medical staff.
- Considering, in accordance with relevant hospital procedures, whether the senior consultant should be referred to the medical regulator, the General Medical Council.
- Investigating the allegations of sexual harassment and taking appropriate action in line with hospital policies and procedures.
- Reflecting with the ward manager on their failure to take action and follow hospital policies and procedures when concerns of sexual harassment were raised. It is agreed the ward manager will receive refresher training on handling complaints and their obligations under the hospital's policies, including a reminder of where they can access support. Any further action will be considered in line with hospital policies and procedures.

- Considering and implementing appropriate support for all staff involved.
- Reviewing the effectiveness of its policies, procedures and training and implementing any changes they consider necessary. For example how training is delivered or more frequent reminders to staff of key policy messages. The hospital commits to carry out this review on an annual basis.
- Making a commitment to deliver further targeted training / action for senior staff and management when appropriate, to further promote a culture that does not tolerate inappropriate sexual behaviour.
- Establishing a regular staff 'climate' survey to review staff experiences and identify what further steps it could take.
- Creating a log to record all reported incidents of sexual harassment (formal and informal) and committing to regularly review this log to identify trends and appropriate actions.

In this example the hospital considered it had taken reasonable steps to prevent sexual harassment. However, the reported incidents of sexual harassment on this ward and corresponding failure by management to follow relevant policies and procedures revealed that the duty may not have been met at that time.

The hospital's subsequent actions, are likely sufficient to meet the requirements of the preventative duty. Compliance with the preventative duty is not static. Employers must ensure they review what steps they are taking to meet the duty on a regular basis in the light of their assessment of the risks they face. Further information about the evaluation of the effectiveness of policies is in paragraphs 4.29 to 4.32.

3.33 In addition to the prevention of worker-on-worker sexual harassment, the preventative duty includes a duty to prevent sexual harassment by third parties. There are many different types of third parties that could sexually harass a worker (such as customers, clients, self employed contractors or freelancers, service users, patients, students, friends and family of colleagues, delegates at a conference and members of the public).

3.34 When carrying out a risk assessment, as explained in paragraphs 3.30 to 3.32 employers should consider the risk their workers may be sexually harassed by third parties, and take reasonable steps to prevent such harassment.

Example
A theatre company is considering what steps it can take to prevent the sexual harassment of its workers. The company is very small and has limited financial resource. It conducts a risk assessment to identify key areas of risk and actions it can take to tackle and prevent sexual harassment.

It considers there is a risk its workers could be sexually harassed by colleagues, freelancers (self-employed workers) who sometimes work with the theatre company and audiences attending its productions. It also considers there is a risk its workers could be sexually harassed by third parties attending opening night parties and awards events. These events are infrequent and take place in various different locations on an ad hoc basis.

The theatre company considers what steps it can take to prevent the sexual harassment of its workers by third parties – self-employed freelancers, audiences and members of the public at opening night parties and awards events. After consultation with staff, it adopts a zero tolerance approach to third party sexual harassment. A zero tolerance approach means recognising that no worker should have to experience sexual harassment at work, taking all concerns raised about sexual harassment seriously and acting promptly to take appropriate action. The theatre company communicates that policy to its staff and encourages them to

report any instances of third party harassment that occur. It develops a protocol for how any reports of third-party sexual harassment will be dealt with.

Self-employed freelancers are informed of the zero tolerance policy by email when they contract to work with the theatre company. Audiences are advised of the policy in an email when they book their tickets.

Notices are displayed in both the public and private areas of the theatre where the company normally runs its productions.

The theatre company considers if there is anything further it can do to protect staff from sexual harassment when at awards ceremonies and launch events. It considers engaging an external provider to deliver sexual harassment awareness training to staff. However, it decides the cost of the training would use a disproportionate amount of its limited budget.

Given the company is small, has limited resource and such events are infrequent, it is likely to have taken reasonable steps to prevent sexual harassment of its workers and therefore complied with the preventative duty.

3.35 Chapter 4 provides detailed guidance on practical steps employers can take to prevent and respond to harassment, including sexual harassment. Please also read our short guide for employers on preventing sexual harassment at work.

Our enforcement

3.36 If an employer does not comply with the preventative duty, we have the power to take enforcement action against the employer. We have enforcement powers under the Equality Act 2006 which include powers to:

- investigate an employer (**s.20 Equality Act 2006**)
- issue an unlawful act notice if the employer is or has been the subject of an investigation under s.20, confirming that we have found an employer has breached the Act and requiring the employer to prepare an action plan setting out how it will remedy any continuing breach of the law and prevent future breaches (**s.21 and s.22 Equality Act 2006**)
- enter into a formal, legally binding agreement with an employer to prevent future unlawful acts (**s.23 Equality Act 2006**)
- ask the court for an injunction to restrain an employer from committing an unlawful act (**s24 Equality Act 2006**)

3.37 We can use one of our enforcement powers to take action if we suspect the preventative duty has not been complied with. The preventative duty does not depend upon an incident of sexual harassment taking place to be enforceable by us.

3.38 Read more about our enforcement powers here.

3.39 Workers can report a concern to us that the preventative duty has been breached. Read about how to report a concern in our guidance. Workers should consider raising their concerns with their employer or trade union before reporting a concern to us.

Increase in compensation for sexual harassment

3.40 If an employment tribunal finds that a worker has been sexually harassed and has ordered the employer to pay compensation to the worker, it must consider if and to what extent the employer has complied with the preventative duty.

3.41 If the employment tribunal is satisfied that the preventative duty has been breached, it may order the employer to pay additional compensation to the worker ('compensation uplift').

3.42 The amount of the compensation uplift must reflect the extent to which the employment tribunal considers the employer has not complied with the preventative duty. It must be no more than 25% of the amount of compensation awarded to the worker under the Equality Act 2010.

3.43 Compensation for sexual harassment can include compensation for both past and future loss of earnings, injury to feelings and personal injury. For further information about compensation for discrimination claims read paragraphs 15.37 to 15.43 of the Employment Statutory Code of Practice.

Example
A worker is successful in a claim of sexual harassment against their employer. The employment tribunal orders the employer to pay £40,000 compensation to the worker for loss of earnings and injury to feelings. The tribunal must therefore consider whether the employer has breached the preventative duty and if so, whether to apply a compensation uplift.

The employment tribunal decides that the employer has breached the preventative duty and the breach is significant. The employer has anti-harassment policies and procedures, but has not delivered any training to management or staff on these policies. When the worker raised a complaint of sexual harassment with their employer, it was not taken seriously, the employer's policies and procedures were not followed and the complaint was not investigated. No action was taken against the perpetrator of the sexual harassment.
The employment tribunal orders the employer to pay a 25% compensation uplift. The total compensation the employer must therefore pay to the worker is £50,000.

When are employers liable for harassment?

3.44 Employers are liable for acts of harassment:

- committed by one worker against another of their workers
- committed by one of their workers against a job applicant or former worker
- committed by an agent acting on their behalf against one of their workers, and
- where a failure to deal with harassment of one of their workers by a third party, or by another worker outside of employment, amounts to direct or indirect discrimination (or breach of other legal obligations) **(s.40)**

3.45 As set out above, a worker cannot bring a claim against their employer about a breach of the preventative duty, but an employment tribunal can increase compensation awarded in a sexual harassment claim if it is not complied with. For further information about the preventative duty read paragraphs 3.16 to 3.43.

3.46 Employers will be liable for harassment committed by their workers in the course of their employment unless they can rely on the 'reasonable steps' defence (read paragraphs 3.49 to 3.58). It does not matter whether or not the employer knows about the harassment **(s.109(1) and s.109(3))**.

Example
An office worker has a mobility impairment and uses a wheelchair. While in the kitchen together, the worker's supervisor makes an inappropriate and offensive comment about the worker's disability. There are no witnesses and, as the harasser is the office worker's supervisor, he feels unable to make a complaint to his employer. The office worker leaves and makes a claim for harassment related to disability. The employment tribunal could find the

employer liable for the actions of the supervisor if it failed to take all reasonable steps to prevent the harassment.

3.47 The phrase 'in the course of employment' has a wide meaning. It includes acts committed in the workplace or in any other place where the worker is working. For example, when the worker is working from home, offsite or attending a training course, conference or external meeting.

3.48 It also includes other circumstances in which the worker is not actually working but that are connected with work. Whether or not acts committed outside of work are committed 'in the course of employment' will depend on the strength of the connection with work in each particular case. An employment tribunal will decide in each case whether the circumstances in which the harassment took place were an extension of the employment, or whether the connection with work is too weak.

Example
A worker is harassed by her colleague on two occasions. The first time is during drinks in the pub with colleagues immediately after work. The second occasion is at a leaving party for another worker, which also takes place in the pub. Although the workers are not working at the time, the tribunal decides that these social gatherings with work colleagues immediately after work or at an organised leaving party are closely connected with employment. Therefore, they fall within the definition of 'in the course of employment'.

Example
A worker receives an unexpected visit to her home from a colleague late at night, who subjects her to unwanted sexual advances. The tribunal finds that the incident is too remote from work to be 'in the course of employment'. Although the two colleagues met through work, they are essentially in the same position they would have been had they merely been social acquaintances. (The employer should nevertheless take appropriate steps to deal with any complaint about this incident for the reasons set out at paragraphs 3.87 to 3.88).

Taking all reasonable steps to prevent harassment

3.49 An employer will not be liable for harassment committed by a worker in the course of employment if they can show that they took all reasonable steps to prevent the harassment (the 'reasonable steps' defence) **(s.109(4))**.

3.50 An employer will have taken all reasonable steps if there are no further steps that they could reasonably have been expected to take.

3.51 In deciding whether a step is reasonable, an employer should consider its likely effect and whether an alternative step could be more effective.

3.52 A tribunal or court may find that it would have been reasonable for an employer to take a certain step, even if that step might not have prevented the act of harassment.

Example
A worker is gay and has not told his work colleagues. One of his colleagues finds out through a mutual friend. The colleague reveals the worker's sexuality to other colleagues and makes offensive jokes about it. The employer has a harassment policy but has not taken steps, such as using the induction process or training to make sure workers follow it. The employment

tribunal believes such steps probably would have made no difference to the outcome: the worker's colleague probably would have broken the rules anyway.
Nevertheless, the employment tribunal finds that it would have been reasonable for the employer to take those steps and they are therefore liable for the harassment.

3.53 However, an employer is entitled to weigh how effective a step might be against other factors such as the time, cost and potential disruption that may be caused in taking the step. A step that is expensive, time consuming and troublesome to implement will not be a reasonable step to take if it will achieve nothing. Conversely, if a step would be effective, then this may outweigh any other negative factors.

Example
A Jewish worker at a large company is offended by antisemitic comments made by her colleague. The worker raises the matter with her line manager, but the line manager does not think the comments are antisemitic. The line manager tells the worker she is being overly sensitive. The worker brings an employment tribunal claim against the company and her colleague. The company has an anti-harassment policy, refers to it on induction and includes reminders about the policy in internal newsletters. The company says that it would not have been reasonable to train managers, because it would have been expensive and time consuming.

However, the employment tribunal finds that training would have been an effective means of preventing this type of harassment. It would have cost money and resulted in the loss of a working day for the company's managers, but it would have been reasonable for the company to incur the cost and disruption, bearing in mind its size and resources.

3.54 The requirement is to take preventative steps. The fact that an employer has taken steps such as an investigation and disciplinary action to deal with the harassment after it has occurred will not be sufficient on its own to avoid liability. However:

- if an employer has taken effective steps to deal with harassment, this may help to prove that the anti-harassment policy in place to prevent harassment is taken seriously by the employer and used effectively when breached by a worker, and
- any remedial action taken may be referred to in relation to future acts of harassment, for example, if an employer improved its reporting and investigation processes after a previous incident, this will help an employer to establish that it has taken preventative steps in relation to the current act of harassment

3.55 What steps were reasonable for an employer to take will depend on the circumstances of each individual case. For example, an employer who knows that a worker has previously committed an act of harassment may be required to take specific steps to ensure that they do not do so in future.

Example
A worker's colleague uses a term that he finds racially offensive. The colleague says he didn't intend to cause any offence and didn't realise it was a racially offensive term. Nevertheless, he has committed an act of harassment because the effect of his language was to cause offence. He accepts that he should not have used the term and apologises. The worker tells the employer that he accepts his colleague did not intend any harm, he is satisfied with the apology and does not want it taken any further.
The employer, however, reiterates to the worker's colleague that harassment will not be tolerated, ensures that he reads its anti-harassment policy again, and requires him to undertake training on harassment and racial awareness.

3.56 It is important to consider the impact of any steps that have been taken to prevent harassment and whether they have been effective. Case law has found that the fact that

workers have attended anti-harassment training but have not understood it, or have chosen to ignore it, may be relevant in determining whether the reasonable steps defence has been met (Allay (UK) Ltd v Mr S Gehlen: UKEAT/0031/20/AT).

Example
A worker complains to his manager that a colleague has made racist remarks to him during his employment. The manager does not take any action, other than telling the worker to report his concerns to human resources. Another manager overhears some of the racist remarks, but also takes no action.
The employer has an anti-harassment policy in place and provided staff training on the policy. However, the training was very brief and took place two years ago.
The managers should have taken action to address the harassment the employee was experiencing. It appears that the employer's anti-harassment training may have become stale. It also may not have been sufficiently detailed for managers to properly understand their responsibilities. Therefore, while the employer has an anti-harassment policy and has delivered training on it, it is unlikely to have met the reasonable steps defence. There are further reasonable steps the employer could have taken, such as delivering refresher training and ensuring that the training contains sufficient detail for managers to understand their responsibilities.

3.57 The sexual harassment preventative duty is different from the reasonable steps defence. It is a separate positive legal duty that requires employers to take reasonable steps to prevent sexual harassment of their workers **(s.40A(1))**. The preventative duty is explained at paragraphs 3.16 to 3.43.

3.58 Chapter 4 provides detailed explanations of the types of action employers can take to prevent harassment.

Liability for harassment by agents

3.59 Employers are liable for harassment committed by their agents. Agents are those who act on the employer's behalf. Examples of agent relationships might be an external occupational health adviser engaged by an employer to provide an occupational health report on a worker, or a firm of management consultants appointed by an NHS Trust to deliver a project in a hospital **(s.109(2) and s.109(3)).**

3.60 The employer does not need to know about or approve of the acts of its agent to be liable for them. The employer will be liable if it consents to the agent acting on their behalf. The employer does not need to expressly consent to the acts of harassment. Consent could be implied from the employer's actions.

Example
A firm of solicitors uses a recruitment agency to recruit a paralegal. The agency conducts interviews on behalf of the firm. The firm does not oversee the interview process, giving the agency free rein to conduct the interviews as they see fit. During one interview, the agency asks the applicant a series of questions concerning his ability to do the job on the basis of stereotypical assumptions about his disability, which amount to harassment. The firm has not expressly consented to the agency asking the questions. However, it will be liable for the harassment. This is because it allowed the agency to ask whatever questions it wanted and therefore implied that it consented to the agency's actions.

3.61 An employer will not be liable for harassment carried out by its agents where the agent has acted without the employer's authority. For example, where the employer provides instructions for the agent to follow, and the agent acts contrary to those instructions.

Example
A housebuilding company (the employer) uses a recruitment agency to recruit a site supervisor. The employer asks the agency to sift CVs, undertake right to work in the UK checks and do an initial telephone interview. The employer asks the agency to follow its equality and diversity and anti-harassment policies. It also agrees a set of criteria against which candidates are to be judged during the interview. An agency employee checks identity documents and sees that one of the candidates is a trans man. During the interview, the agency asks this candidate a series of questions about his gender identity and questions his ability to 'command the respect of the men' on site. This is contrary to the criteria provided by the employer and the employer's policies. The agency has acted without the employer's authority and the employer would not be liable for the harassment. The agency would, however, be liable.

Harassment of former workers

3.62 Employers must not harass former workers. An employer will be liable for harassment of former workers if the harassment is closely connected to the work relationship **(s.108).**
3.63 The expression 'closely connected to' is not defined in the Act. This has to be judged on a case-by-case basis.

Example
A worker was employed by a sole trader (the employer). The employer found out that the worker was bisexual shortly before she left her job with the employer. The employer answers reference requests untruthfully. The worker finds out and asks the employer why she has been providing her with poor references. The employer says that she believes same-sex relationships are 'immoral' and never would have given the worker a job in the first place if she had known about her sexuality. As the worker was employed by the employer and the harassment is closely connected with the work relationship, the employer will be liable for these acts of harassment.

3.64 If a former worker is treated badly by the employer because they made a complaint about harassment, this will be covered by the victimisation provisions which are detailed in Chapter 2.

Harassment by third parties

Third party harassment and employer liability

3.65 Originally, the Act required employers to prevent third parties such as clients, customers or suppliers harassing their workers. An employer would have been liable if:

- a worker had been harassed by a third party on at least two previous occasions
- the employer was aware of the harassment, and
- the employer failed to take 'reasonably practical steps' to prevent harassment happening again

3.66 This provision was repealed. Subsequent case law stated that employers could be liable where their inaction itself violated the worker's dignity or led to the creation of an intimidating, hostile, degrading, humiliating or offensive environment for them.

3.67 However, this changed following the case of Unite the Union v Nailard. In that case, the Court of Appeal stated that the Act does not make employers liable for failing to protect workers against third party harassment. They will only be liable if they fail to take action because of a protected characteristic (Unite the Union v Nailard [2018] EWCA Civ 1203).

Example
A restaurant worker is sexually harassed by a customer. The worker complains to her manager. The manager sympathises with the worker and decides to serve the customer himself. The manager takes no further action, thinking that he has resolved the problem.

However, the customer touches the worker inappropriately on his way out of the restaurant.

The employer would have dealt with the complaint in the same way, regardless of whether the worker was a man or a woman. Therefore, as the law currently stands following Nailard, the employer will not be liable for harassment, despite not taking sufficient action to prevent the second act of harassment.

The employer may however be in breach of the preventative duty as there may have been other reasonable steps they could have taken to prevent the second incident of sexual harassment. For example, it may have been reasonable for the manager to explain to the customer that their behaviour was unacceptable and, if repeated, would lead to the customer being barred.

The employer's practice of taking no further action against the customer may also amount to indirect sex discrimination. Read paragraphs 3.69 to 3.73 for further information about indirect discrimination related to third party harassment.

Example
A Black shop worker is subjected to a racially offensive term by a customer. When the worker complains to the shop owner, the owner says, 'Sorry mate, but your lot have got to expect a bit of that around here now and again'. The customer returns and continues to use the same term towards the worker. The shop owner may be liable for harassment related to race as his comments to the worker suggest that he thinks Black people should put up with racial abuse. Therefore, his lack of action, which has created an offensive environment for the worker, is motivated by the worker's race.

3.68 The preventative duty provides workers with protection from sexual harassment by third parties. While there is no specific protection from other types of third party harassment under the Act, employers should still take reasonable steps to prevent all types of third party harassment. Harassment by a third party can be just as devastating for a worker as harassment by a fellow worker. Employers who do not take reasonable steps to prevent or respond to third party harassment may be liable under other sections of the Act or other legislation in certain circumstances as set out in the following sections of this guidance.

Third party harassment: indirect discrimination

3.69 It is possible that inaction or a particular way of dealing with complaints of third party harassment could amount to indirect discrimination. This occurs when a provision, criterion or practice (PCP) is applied in the same way, for all workers or a group of workers, but has the effect of putting workers sharing a protected characteristic at a particular disadvantage. It does not matter that the employer did not intend to disadvantage the workers.

3.70 If a PCP is applied and puts workers sharing a characteristic at a disadvantage, then it will be unlawful unless the employer can justify it. That is, prove that they have a legitimate aim in applying the PCP, and that the PCP was a proportionate way to achieve that aim.

3.71 'Provision', 'criterion' or 'practice' can include:

- workplace policies
- the way in which access to any benefit, service or facility is offered or provided
- one-off decisions, and
- directions to do something in a particular way

3.72 'Disadvantage' is a very broad term and can take many different forms. For example, the disadvantage could be not having a complaint of harassment investigated.

3.73 Indirect discrimination is covered in more detail in Chapter 4 of the Employment Statutory Code of Practice.

Example
A hotel worker complains that she has been sexually harassed by a customer. Her employer says she does not take action in response to complaints about sexual harassment by third parties, as she feels that she is not responsible for what third parties do and 'the customer comes first'. The employer would take no action regardless of whether the person harassed is a man or a woman. This practice places women at a particular disadvantage in comparison to men as statistics show that women are more likely to be sexually harassed at work than men. It is unlikely that the employer will be able to justify her practice of taking no action as she does not have a legitimate aim. It is not a legitimate aim to prioritise her customers over the safety of her workers.

In this example, the employer will also be in breach of the preventative duty. The employer has not taken any steps to prevent hotel workers from being sexually harassed by customers. There are likely to be a number of reasonable steps that it could have taken. This might include providing information to customers when they make a booking that sexual harassment of staff will not be tolerated, warning notices, investigating the incident and speaking to the customer to advise that their behaviour is not acceptable.

Third party harassment: indirect discrimination and same disadvantage

3.74 Indirect discrimination may also occur when an individual without the relevant protected characteristic experiences disadvantage alongside persons with the relevant protected characteristic. Provided that the discriminatory PCP puts, or would put, them at substantively the same disadvantage as people who share the relevant protected characteristic, such an individual may bring a claim for 'same disadvantage' indirect discrimination. Same disadvantage indirect discrimination will be unlawful unless the employer can justify the PCP as a proportionate way of achieving a legitimate aim.
3.75 Although this type of indirect discrimination is sometimes referred to 'associative indirect discrimination', it is not necessary for there to be any relationship or association between the group with the relevant protected characteristic and the individual who does not share it. Rather, the individual without the relevant protected characteristic must be able to show that the disadvantage they experience is essentially the same as that experienced by the group sharing the protected characteristic.

Example
In the previous example, if a male hotel worker is sexually harassed by a customer, he may have a claim for same disadvantage indirect discrimination. The disadvantage a male hotel worker would suffer by their employer's inaction is arguably the same as the disadvantage a female hotel worker would suffer.

Third party harassment: direct discrimination

3.76 An employer may also be liable for direct discrimination if it treats complaints of harassment by a worker with a protected characteristic in a less favourable way than it treats complaints by others. Direct discrimination is covered in more detail in Chapter 3 of the Employment Statutory Code of Practice.

Example
A male worker is sexually harassed by a customer. He makes a complaint about the harassment to his employer. The employer says that the worker should be flattered by the attention and doesn't do anything about it. Had the worker been a woman who had complained

of sexual harassment by a customer, the employer would have taken the matter more seriously and taken action to address it. The employer has directly discriminated against the worker because of sex.

In this example the employer will also be in breach of the preventative duty. The employer is not taking any steps to prevent sexual harassment of its male workers by third parties. It would likely be a reasonable step for the employer to treat this complaint as seriously as it would a complaint from a woman and take action to address it.

Third party harassment: health and safety at work

3.77 The Health and Safety at Work etc. Act 1974 (HSWA) may apply where workers are subject to third party violence while carrying out their work.

3.78 Third party violence means violence caused by any person who is external to the employer such as customers, clients, patients, service users, students and members of the public. Third party violence may take the form of physical or verbal abuse with the effect of causing physical or psychological harm to the worker.

3.79 In general, for HSWA to apply, third party violence should arise out of the work activity of the employer. It occurs, for example, when the employer is providing a service (often to the public). Factors which increase the risk of third party violence may include, for example, services not meeting expectations, acting in a position of authority such as an enforcement officer, or dealing with people who have consumed alcohol or drugs.

3.80 Under the Management of Health and Safety at Work Regulations 1999, employers are required to assess risks to their workers including reasonably foreseeable risks of third party violence. Employers should identify reasonably practicable organisational measures to prevent or control risks from third party violence as appropriate. Common measures include the provision of equipment, design of the workplace, instruction or training on personal safety which may involve conflict resolution techniques as well as support arrangements. Further information on violence at work can be found in the HSE leaflet 'Violence at work: A guide for employers' (INDG69).

3.81 Violence by a third party against a worker is likely to amount to a criminal offence. The actions of perpetrators should therefore be dealt with in accordance with paragraphs 4.70 to 4.74.

Third party harassment: constructive unfair dismissal

3.82 A contract of employment between an employer and employee always includes certain implied terms. One of these implied terms is that an employer will not act in a way which destroys the trust and confidence between the employer and the worker. If an employer breaches this implied term, then the worker will be entitled to resign and claim that they have been constructively dismissed. A failure to take action by an employer may amount to a breach of this term. If so, such a dismissal would likely be an unfair dismissal contrary to section 94 of the Employment Rights Act 1996. For further information on constructive dismissal, read the Acas website.

Third party harassment: Public Sector Equality Duty (PSED)

3.83 Public sector employers must comply with the PSED. This means that when carrying out their functions, they must pay due regard to the need to:

1. eliminate discrimination, harassment and victimisation
2. advance equality of opportunity between people who have a protected characteristic and people who do not, and

3. foster good relations between people who share a protected characteristic and people who do not

3.84 To comply with the PSED, public sector employers must give due regard to how taking steps to prevent third party harassment may help to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations. For further information on the PSED, read our PSED guidance.

Third party harassment and the preventative duty

3.85 Employers have a positive legal duty to prevent sexual harassment of their workers. They must take reasonable steps to prevent sexual harassment of workers in the course of their employment (the 'preventative duty'). This includes sexual harassment by third parties **(s.40A(1))**.

3.86 Further information about the preventative duty, and the consequences of breaching it, are explained in paragraphs 3.16 to 3.43.

Harassment by a colleague outside of work

3.87 As explained in paragraphs 3.47 to 3.48, an employer will be liable for harassment by one worker against another if it took place during the course of employment. An employer will not be directly liable under the Act for harassment by one worker against another if it took place outside of the course of employment.

3.88 However, an employer should still take reasonable steps to deal with a complaint of harassment by one worker against another committed outside of the course of employment. This is because the legal principles set out in paragraphs 3.69 to 3.76 and paragraphs 3.82 to 3.84 in relation to third party harassment, could be applied equally to any failure by an employer to deal with such a complaint. That is, the employer could potentially be liable for direct or indirect discrimination, constructive dismissal or breach of the PSED.

Who else can be liable for harassment?

3.89 Workers may be personally liable for acts of harassment they carry out during their employment. They will only be liable under the Act if their employer is also liable for the harassment, or if their employer would have been liable but is able to rely successfully on the 'reasonable steps' defence **(s.110(1) and s.110(2)** (read paragraphs 3.49 to 3.58).

Example

A supermarket worker is subjected to comments about her race by a colleague. The worker subsequently brings a claim for harassment related to race against her employer and her colleague. The employer argues that it provided workers with equality and diversity training, implemented an anti-harassment policy, and investigated the complaint and dismissed the colleague for gross misconduct.

The employment tribunal finds that the worker was subject to harassment related to race by her colleague. The supermarket will be liable unless the tribunal accepts that it took all reasonable steps to prevent harassment. The colleague will be liable regardless of whether the supermarket establishes the defence or not.

3.90 Agents (as defined in paragraphs 3.59 to 3.61) may also be personally liable for acts of harassment committed with the employer's authority where the employer is also liable.

3.91 If a worker or agent reasonably relies on a statement by the employer that an act is not unlawful, then the worker or agent will not be liable even if the employer is liable **(s.110(3))**.

Example
The chief executive of a company tells a manager to ask a worker, who is 67, a series of unjustified questions regarding his intention to retire and his performance. These questions are all based on stereotypical assumptions about people of the worker's age. The chief executive tells the manager that he is entitled to do so because the worker is over 65 and only people below 65 are protected. The chief executive is wrong as the Act protects employees of all age groups against harassment related to age. If the manager reasonably relies on that statement and follows the chief executive's instructions, he will not be personally liable. The employer would still be liable.

Chapter 4. Taking steps to prevent and respond to harassment

4.1 Harassment at work can have a profound, long-lasting and damaging impact on both workers and employers. It damages the mental and physical health of individuals, affecting both their personal and working life, and has a negative impact on the work environment and productivity.

4.2 But harassment is not inevitable. Employers can and must take action to change workplace behaviours and eradicate harassment in the workplace. By taking the practical steps outlined in this guidance, employers can protect their workers against harassment and transform workplace cultures.

4.3 Management and senior leaders play a critical role in creating respectful workplaces that are free from harassment. They should role model respectful behaviour and visibly promote a positive and inclusive workplace culture where harassment is taken seriously and not tolerated.

4.4 This chapter sets out what steps can be taken to prevent harassment and protect workers, to help employers understand how best to meet their responsibilities under the Act. An employer will be liable for harassment or victimisation committed by its workers unless they can show that they took all reasonable steps to prevent such behaviour. The relevant factors as to whether an employer has taken all reasonable steps are considered in paragraphs 3.49 to 3.58. **(s.109(4))**.

4.5 The guidance in this chapter also explains what employers should do to meet the sexual harassment preventative duty. Employers should carefully consider all of the guidance in this chapter when considering what reasonable steps they can take to prevent the sexual harassment of their workers (s.40A(1))**.**

4.6 The sexual harassment preventative duty is a positive and proactive duty designed to transform workplace cultures by requiring employers to take reasonable steps to prevent sexual harassment of their workers. Employers should not wait until an incident of sexual harassment has taken place before they take any action. Employers should anticipate scenarios when its workers may be subject to sexual harassment in the course of employment and take action to prevent such harassment taking place. If sexual harassment has taken place, the preventative duty means an employer should take action to stop sexual harassment from happening again.

4.7 As explained in Chapters 3 and 4, there is no prescribed minimum about what an employer can do to prevent harassment, including sexual harassment, and protect its workers. It is an objective test about what it is reasonable for the employer to do in the circumstances. This will vary from employer to employer depending on the size and nature of the employer, the resources available to it and the risk factors which need to be addressed within the particular

employer or sector. Therefore, not every step set out in this chapter will be reasonable for every employer to take, nor should they be considered exhaustive. Employers should consider what steps they have taken to date and what further steps it is practicable for them to take.

4.8 This should not be a one-off exercise. Employers should continue to review whether there are any further steps it is practicable for them to take, considering issues such as whether there have been any changes in the workplace or the workforce and the availability of new technology such as new reporting systems.

4.9 You may also want to read our short guide for employers on preventing sexual harassment at work.

Preventing harassment
Assessing risks relating to harassment

4.10 Employers should make an assessment of risks relating to harassment, sexual harassment and victimisation. Existing risk management frameworks, traditionally used in the workplace health and safety context, could be used for this process. Assessments should identify the risks and the control measures identified to minimise the risks. Factors may include, for example:

- power imbalances
- job insecurity, for example, use of zero hours contracts, agency staff or contractors
- lone working and night working
- out of hours working
- the presence of alcohol
- customer-facing duties
- particular events that raise tensions locally or nationally
- lack of diversity in the workforce, especially at a senior level
- workers being placed on secondment
- travel to different work locations
- working from home
- attendance at events outside of the usual working environment, for example, training, conferences or work related social events
- socialising outside work
- social media contact between workers
- the workforce demographic, for example, the risk of sexual harassment may be higher in a predominantly male workforce

4.11 There are certain factors that may increase the risk of sexual harassment. An employer should consider these factors when thinking about how it can comply with the preventative duty. The factors include, but are not limited to:

- a male-dominated workforce
- a workplace culture that permits crude / sexist 'banter', or other disrespectful behaviour
- gendered power imbalances (for example, where most junior staff are female and most senior managers / leaders are male)
- workplaces that permit alcohol consumption
- an expectation that workers will attend social events / conferences outside of the workplace or stay away from home overnight (particularly if alcohol is being consumed)
- lone or isolated working
- working alone with a third party
- night working
- an insecure / casual workforce
- a failure to respond appropriately to previous reports of sexual harassment
- no policies or procedures to prevent or respond to sexual harassment

- workers that have more than one protected characteristic, for example, disabled people, ethnic minorities and people from the LGBT community are more likely to experience sexual harassment than people who do not have these protected characteristics
- there may be risks that only affect one job role or worker - these should still be considered and addressed

4.12 A risk assessment should consider working practices, including policies and procedures. Employers should ensure staff are aware of reporting mechanisms and management know what to do if a staff member raises a complaint of harassment. The working environment must also be considered. Employers should identify any particular risks that apply to the working environment (read paragraph 4.10) and how these can be mitigated. Communications with staff are key. Employers should ensure that policies and procedures are clearly communicated to staff. Staff should understand what harassment and sexual harassment is, know what to do if an incident happens, and what the employer will do when a complaint of harassment is made.

4.13 Employers should ensure they specifically assess the risk of sexual harassment in the course of employment. They should also review the risk assessment regularly and take mitigating action if they identify any new or additional risks. Employers are unlikely to be able to meet the requirement of the preventative duty to take reasonable steps to prevent sexual harassment of their workers, if they do not carry out a risk assessment.

4.14 Employers should produce an action plan that sets out what preventative steps they will take to address any identified risks and how that will be monitored. Employers should consider publishing their action plan to workers and the public, for example on their website.
4.15 Employers may want to consider appointing a designated lead to take responsibility for implementation of the action plan and compliance with the preventative duty.

Effective policies and procedures

4.16 As part of the measures to prevent harassment, sexual harassment and victimisation it is reasonable to expect that employers have in place effective and well-communicated policies and practices which aim to prevent harassment and victimisation. This will not only encourage reporting of any unlawful conduct but also communicate the consequences of engaging in unlawful conduct. The policies should be monitored and their success regularly reviewed (read paragraphs 4.29 to 4.32). Employers should not conflate different forms of harassment. They should have different policies to deal with sexual harassment and harassment related to protected characteristics, or have one policy that clearly distinguishes between the different forms of harassment. Employers should also consider preparing separate strategy documents to accompany their anti- harassment policy or policies, setting out what measures they will take to tackle the different forms of harassment. These documents should take into account issues such as the different causes of different forms of harassment and the risk of different forms of harassment happening in the employer's particular workforce. Some employers decide to adopt a 'zero tolerance' approach to harassment. This means recognizing that no worker should have to experience sexual harassment at work, taking all concerns raised about harassment seriously and acting promptly to take action.

4.17 To ensure that workers' views are taken into account, anti-harassment policies and other measures to prevent and respond to harassment should be developed in consultation with recognised trade unions, or where there is no trade union, other worker representatives.

4.18 A good anti-harassment policy (or policies where, for example, an employer has separate policies to deal with sexual harassment and other forms of harassment) will:

- confirm who the policy covers

- state that sexual harassment, harassment and victimisation will not be tolerated
- state that sexual harassment, harassment and victimisation are unlawful
- state that the law requires employers to take reasonable steps to prevent sexual harassment of workers in the course of their employment
- state that harassment, sexual harassment or victimisation may lead to disciplinary action up to and including dismissal if it is committed:
    - in a work situation
    - during any situation related to work such as at a social event with colleagues
    - against a colleague or other person connected to the employer outside of a work situation, including on social media, or
    - against anyone outside of a work situation where the incident is relevant to their suitability to carry out the role
- state that aggravating factors such as abuse of power over a more junior colleague will be taken into account in deciding what disciplinary action to take
- define the protected characteristics that harassment may be related to
- define harassment related to protected characteristics, sexual harassment, less favourable treatment for rejecting or submitting to sexual harassment and victimisation separately
- different forms of harassment should not be conflated
- if bullying is included within the same policy, distinguish between bullying and harassment
- provide clear examples to illustrate each definition of the different forms of harassment, which are relevant to the employer's working environment
- include an effective procedure for receiving and responding to complaints of harassment and sexual harassment (read paragraph 4.51)
- address third party harassment, outlining:
    - while an individual cannot bring a claim for third party harassment alone, it can still result in legal liability when raised in other types of claim (read paragraphs 3.65 to 3.86)
    - that the law requires employers to take reasonable steps to prevent sexual harassment by third parties (read paragraphs 3.28 to 3.36)
    - that it will not be tolerated
    - that workers are encouraged to report it
    - what steps will be taken to prevent it, such as warning notices to customers or recorded messages at the beginning of telephone calls
    - what steps will be taken to remedy a complaint or prevent it happening again, such as warning a customer about their behaviour, banning a customer, reporting any criminal acts to the police or sharing information with other branches of the business

4.19 The policy should also include a commitment to review it at regular intervals and to monitor its effectiveness. It should cover all areas of the employer's organisation, including any overseas sites, subject to any applicable local laws which impose any additional requirements on the employer.

Malicious complaints

4.20 In our work on sexual harassment, we have found that policies often overemphasise malicious complaints. This does not reflect the fact that the vast majority of complaints are made in good faith. We have also found policies on malicious complaints that, if put into practice, would result in workers who make good faith complaints that are not upheld being victimized contrary to the Act. While employers can lawfully state within their policy that malicious complaints may lead to disciplinary action, if not worded carefully, statements to this effect may discourage complainants from coming forward. People may be worried that they

will be disciplined if their allegation is not upheld. Where such a statement is included, it should be made clear that:

- workers will not be subjected to disciplinary action or to any other detriment simply because their complaint is not upheld, and
- workers will only face disciplinary action if it is found both that the allegation is false and made in bad faith (that is, without an honest truth in its belief)

Interaction with other policies

4.21 Other policies and procedures should be reviewed to ensure that they interact well with the anti-harassment policy and that they create a culture in which the risk of harassment is reduced. An employer should consider, for example:

- Do the examples of misconduct and gross misconduct in the disciplinary policy match or cross reference the anti-harassment policy?
- Do the policies on use of IT, communications systems and social media include appropriate warnings against online harassment and encourage workers to report it, even where such harassment takes place on personal devices?
- Does the dress code potentially foster a culture that could contribute to the likelihood of sexual harassment or harassment related to race or religion occurring? Read the UK government's guidance on dress codes and sex discrimination for further information.
- Is it clear from performance objectives that managers will be expected to deal appropriately with complaints of harassment?

Awareness of policies

4.22 Employers should ensure that all workers are aware of their anti- harassment policies. Employers should consider publishing their policies on an easily accessible part of their external-facing website. This will enable a worker to access a copy of the policy if, for example, they are off work with a stress condition related to their harassment and cannot access the internal system. It will also mean it is available to other workers, such as contract workers, who similarly may not have access to internal systems. Doing so also demonstrates the employer's commitment to transparency and tackling the issue.

4.23 Where policies are not publicised externally, they should nevertheless be as freely available as possible to all workers, including those who do not have access to the internal IT systems. This may mean, for example, providing copies to each worker or publishing them on the intranet. It is not appropriate to tell workers that they can get copies from a manager as the worker may be reluctant to ask the manager and alert them to the fact that they have a complaint. Likewise, leaving copies in an area that is accessible to all workers, such as a staffroom, would not be appropriate, as a worker may not wish other workers to see them reading the policy.

4.24 The policies, and the staff handbook in general, should also be referenced in (though not necessarily incorporated into) the contract of employment, written statement of particulars or other terms and conditions of work.

4.25 The policies should be verbally communicated to workers during the induction process, at which point they should also receive a copy of it, or otherwise know where they can access a copy.

4.26 If employers amend their policies or introduce one for the first time, they should raise awareness of it among workers. They should also take opportunities to remind workers of the existence of the policy and what it contains, highlighting the policy's key messages – such as the employer's zero tolerance approach to harassment and how to report harassment. Employers can communicate the policies and their contents using, for example:

- internal newsletters

- physical or digital noticeboards
- staff meetings
- reminders to staff ahead of key events where the risk of harassment increases, such as an office party
- an annual reminder to staff

4.27 If necessary, the policies should be translated for a linguistically diverse workforce or provided in an accessible format for disabled workers.
4.28 The policies should be shared with other organisations that supply workers and services. This is to ensure that all workers supplied to the employer are aware of the standards expected of them under the policies and how to report instances of harassment.

Evaluation of policies

4.29 The effectiveness of the policies should be evaluated through the use of, for example, centralised records that record complaints in a level of detail that allows trends to be analysed. This could include date of events, areas of business, roles of complainant and harasser, protected characteristic, legal category (such as harassment, sexual harassment), outcome and brief reason for outcome. Employers should keep records of informal complaints and not just formal grievances. Employers should ensure that any such register is compliant with the General Data Protection Regulation (GDPR). They should, for example, review contracts, policies, procedures and privacy notices to ensure that they inform workers that such data will be stored and ensure that appropriate safeguards are in place to protect the data and ensure that any processing of data is proportionate. For example, ensuring that access to the data is restricted to a limited number of people. Further guidance on compliance with the GDPR can be found on the website of the Information Commissioner's Office.
The effectiveness of policies can also be evaluated through:

- staff surveys that ask all workers questions on an anonymised basis to obtain as accurate a picture of harassment that is happening in the workplace as possible, including:
    - whether they have been subjected to or witnessed harassment - the questions should describe behaviours which constitute harassment and ask the worker whether they have experienced such behaviours rather than asking the worker directly whether or not they have experienced harassment
    - what type of harassment they have experienced
    - whether they reported the harassment
    - if they did not report the harassment, why not
    - if they did report the harassment, what the outcome was
    - were they satisfied with the outcome and if not, why not
- if they were to experience harassment in the future (whether they have experienced it in the past or not), whether they would feel able to speak up and if not, why not, and
- whether they believe there are any steps the employer should be taking to address harassment at work

4.30 Employers could also:

- hold lessons-learned sessions once complaints have been resolved
- gather feedback provided through conversations with employees, for example, during exit interviews (read paragraph 4.34)

4.31 Employers should not assume that the number of complaints of sexual harassment, harassment and victimisation made is an accurate reflection of the level of harassment happening in the workplace. Employers should compare data they have regarding reported cases of harassment against data received through the other means listed above, to identify the extent to which harassment is reported. The gap between the actual level of harassment

and harassment that is reported can then be monitored, to determine whether the policy and other steps put in place to encourage reporting are working.

4.32 Policies should be reviewed annually. As part of this review, any themes arising from evaluation and monitoring and feedback received through means such staff surveys and lessons-learned sessions should be considered. This should include evaluating whether the policy is leading to appropriate and consistent outcomes to complaints or whether further steps need to be taken to improve this.

Detecting harassment

4.33 Employers should proactively seek to be aware of what is happening in the workplace. There may be warning signs that harassment is taking place, beyond informal and formal complaints. This could include:

- sickness absence
- a change in behaviour
- comments in exit interviews
- a dip in performance
- avoidance of a certain colleague

4.34 Employers should give workers every opportunity to raise issues with them, even where there are no warning signs of harassment, for example, through:

- informal one-to-ones
- sickness absence or return-to-work meetings
- meetings about performance
- open door meetings with senior management or 'town hall' meetings
- exit interviews
- a post-employment survey
- mentoring programmes and staff networks

4.35 Employers should consider introducing an online or externally run telephone reporting system that allows workers to make complaints on either a named or anonymous basis and makes clear to the worker what the employer may do with the information provided. While it is preferable for workers to raise issues without anonymising their details, some workers will not feel able to raise their complaints and issues will therefore go undetected. The introduction of a reporting system that allows anonymous reports to be made:

- will ensure that those complaints that would otherwise go unreported are captured
- provides the employer with an opportunity to give complainants information about the support and safeguards that can be put into place if they were to report the matter on a non-anonymous basis

4.36 This approach enables the employer to take action to address the matter, even in cases where there may not be sufficient evidence to start an investigation due to the anonymity of the complainant. For example, by issuing a reminder of the policy to workers and monitoring the area of the business affected.

Training

4.37 Workers should be provided with training that addresses each of the three types of harassment along with training on victimisation. Training should ensure that workers know what each of the three types of harassment involves and what victimisation is, what to do if they experience it and how to handle complaints of harassment. Training should be tailored towards the nature of the employer, the target audience (in terms of, for example, the seniority and job roles of the audience and the best method to deliver the training to them) and the employer's policy to maximise its impact.

4.38 In industries where third party harassment from customers is more likely, training should be provided on how to address such issues. This will vary from employer to employer. For example, in a call centre, a manager may require guidance on what to do in the event of a worker receiving an abusive phone call. In a pub, the manager may need guidance on what to do in the event of physical or verbal abuse of staff.

4.39 All workers, including those without supervisory or management responsibilities, will require guidance on issues such as acceptable behaviour, recognising harassment and what to do if they experience or witness it. Supervisors and managers may need additional guidance on what to do when they receive a report or complaint of harassment, investigating complaints, taking disciplinary action and supporting workers.

4.40 Employers should keep records of who has received the training and ensure that it is refreshed at regular intervals.

4.41 Employers should make sure that there are workers who are trained in providing support to individuals who have experienced harassment through the process of making a complaint. This may be, for example, members of the human resources department or other nominated workers who may be identified by a title such as harassment 'champions' or 'guardians'. Such training should include the particular sensitive issues involved in different forms of harassment related to different protected characteristics.

Arrangements for agency workers

4.42 Before supplying agency workers to a hirer, the agency should check that the hirer has appropriate arrangements in place for the prevention of and to deal with complaints of harassment and victimisation.
4.43 Where agency workers are engaged, the agency and hirer should clearly divide responsibilities in relation to handling complaints of harassment and victimisation between them and confirm these arrangements in writing.

4.44 Normally, it will be most appropriate for the hirer to investigate any complaint relating to harassment or victimisation of agency workers that has occurred during the course of the agency providing their services to the hirer. However, there may be exceptions to this. For example, the parties may wish to make different arrangements in circumstances where the complaint is made by an agency worker against another worker from the same agency. The hirer should not simply end its engagement of the agency to avoid investigating the issue properly.

4.45 The arrangements between the agency and hirer should include agreement as to when and how one party will update the other on progress and take input where appropriate.

4.46 The agency should make sure that the agency worker is provided with clear guidance as to who to make a complaint to, whose policy applies in which circumstances and that the agency worker receives an induction into both the agency's and hirer's policies and procedures.

4.47 An agency should hold regular catch-ups with its workers and give them the opportunity to raise any issues that have come up in the workplace.

Confidentiality agreements

4.48 Employers should promote a culture of transparency, where workers feel empowered to speak up about discrimination and the root causes of issues can be tackled. Employers must only use confidentiality agreements (also known as confidentiality clauses, non-disclosure agreements, NDAs or gagging clauses) where it is lawful. It will not be lawful to use

confidentiality agreements to prevent workers from whistleblowing, reporting a criminal offence or doing anything required by law such as complying with a regulatory duty. Confidentiality agreements should only be used where necessary and appropriate, and the employer should follow best practice where they are used. Read our guidance on confidentiality agreements for further details.

Addressing power imbalances

4.49 Harassment often takes place and goes unreported where there is a power imbalance in the workplace. For example, there may be a power imbalance between a senior manager and someone junior to them, where a worker with a particular protected characteristic is in a minority in the workplace or where a worker is in insecure employment. Employers should consider what action they can take to reduce power imbalances by, for example, taking steps to reduce feelings of isolation, addressing under-representation of workers, ensuring that decision making at senior levels is more representative of different groups, and providing sufficient support for workers at all levels. The employer could, for example:

- take positive action measures to improve representation of an under-represented group, such as introducing a development programme or mentoring network for the under-represented group (read Chapter 12 of the Employment Statutory Code of Practice for further information on positive action)
- tackle bias in recruitment, development and promotion decisions by taking a transparent and structured approach to such processes, including assessing all candidates against a set of objective criteria and ensuring diversity of representation on assessment panels
- introduce training on topics such as diversity and inclusion, particularly for those who have responsibility for the overall strategy of the organisation and such as the board and for those who make decisions on recruitment, development and promotion
- introduce or extend flexible working to all roles and encourage the take up of shared parental leave to help improve representation of women in the workforce, especially at senior levels
- recognise a trade union or introduce another means of collective bargaining to ensure that workers are represented in decisions, such as those about policies and procedures
- include a worker representative such as a trade union official on panels that hear complaints of harassment and disciplinary panels
- ensure that harassment champions or guardians are representative of those who are, for example, in insecure employment and more junior positions **(ss.158 and 159, Equality Act 2010)**

Responding to harassment
Anti-harassment procedure

4.50 When an employer becomes aware that harassment is taking place or may have taken place, it is important that they deal with it promptly, efficiently and sensitively.

4.51 To deal effectively with complaints of harassment, a good anti- harassment procedure should tell workers how to make a complaint. This should not be too restrictive. For example, they should not be required to make a complaint on a specific form. It should also:

- define multiple reporting channels for workers who wish to report harassment, to ensure that a worker is not required to report an incident to the perpetrator or someone who they may feel will not be objective
- set out a range of approaches for dealing with harassment, from informal solutions to formal disciplinary processes
- set out a range of appropriate consequences and sanctions if harassment or victimisation occur

- state that victimisation or retaliation against a complainant will not be tolerated
- provide contact details for and information about support and advice services available to the complainant or alleged harasser, provided by the employer or within the workplace, such as:
    - an employee assistance programme
    - a list of contact points within the employer
    - recognised trade unions, and
- provide contact details for and information about external sources of support and advice both locally and nationally such as:
    - the Equality Advisory and Support Service (EASS)
    - Protect (the whistleblowing charity)
    - local advice centres
    - helplines which have been set up to deal with specific forms of harassment (such as the helplines provided to deal with sexual harassment by the Scottish Women's Rights Centre in Scotland and Rights of Women in England and Wales)

Informal resolution

4.52 The procedure should tell the worker how they can raise an issue informally. However, the policy should not place the onus on the complainant to resolve an issue personally.

4.53 It should provide the worker with guidance on how to raise the issue directly with the harasser if that is their preferred method, they feel able to and it is appropriate to do so. This may involve the complainant speaking to the harasser directly to explain how their conduct has made them feel and why they would like it to stop. The procedure should not place any pressure on a worker to take this approach.

4.54 Often a complainant may not feel able to resolve an issue directly and may need support from a third party to resolve their complaint. The procedure should ensure that, where a complaint is raised informally, those it is raised with fully engage in resolving the issue and provide guidance on how to do so. The procedure should direct the complainant towards someone (preferably a choice of people) who is equipped to help them resolve their complaint, such as a manager, trade union representative, a harassment 'champion' or 'guardian' (read paragraph 4.41) or a member of human resources. This person should listen to the complainant and work out how best they can help them to resolve the issue informally and in a way with which the complainant is most comfortable having considered the different options. They may, for example:

- provide the complainant with advice on how to approach the issue directly with the alleged harasser
- support the complainant in raising the issue with the alleged harasser by accompanying them in any discussion or helping them to set out their thoughts in writing
- raise the matter informally with the harasser on the complainant's behalf
- arrange mediation by a trained mediator between the complainant and the alleged harasser
- help to obtain advice on how best to resolve the issue and / or assistance in doing so from other sources either internally such as from human resources or externally from sources such as Acas
- help to obtain advice on or assistance in dealing with issues relating to particular protected characteristics, such as from a charity with expertise relating to a particular disability
- help to obtain counselling or support for the individual

4.55 The procedure should recognise that an informal solution may not be appropriate or may not work in many cases. For example, any informal solution is unlikely to be appropriate in

more serious cases, or to work in cases where the alleged harasser is unlikely to accept that they have done anything wrong. It should be clear that the worker can make the matter formal at any stage if they wish to.

Formal resolution

4.56 This section highlights some particular issues that employers should be aware of when dealing with formal complaints of harassment. However, a detailed explanation of the steps that should be taken in conducting an investigation or a grievance or disciplinary hearing process is beyond the scope of this guidance. Employers should familiarise themselves with Acas guidance on conducting workplace investigations and discipline and grievances at work.

4.57 The formal reporting channels set out in the anti-harassment policy should ensure, wherever possible, that a worker is able to raise an act of harassment or victimisation with someone other than the alleged harasser. Where possible, this should be someone more senior than the alleged harasser.

4.58 Employers should not set a time limit within which complaints must be made. A worker may not be able to raise a complaint within any such time limit due to, for example, illness or fear of victimisation. If complaints are raised about historical matters, these should be investigated in line with normal processes. Employers should not make assumptions that because an alleged event took place a long time ago, it will not be able to find any evidence relating to it.

4.59 Roles and responsibilities during the process should be clearly defined. Employers should ensure independence and objectivity at each stage of the process. For example, wherever possible, different people at escalating levels of seniority should conduct the investigation, formal hearing and appeal hearing phases. Employers should avoid appointing people to carry out these roles who have been involved in the issue. They should, where possible, appoint people from different parts of their organisations who have no or less knowledge of the people involved and consider appointing an external investigator where necessary to ensure objectivity. They should also take into account the particular sensitivities of the case. For example, a woman who has been sexually assaulted may be more comfortable talking to a female investigator.

4.60 If a worker feels that an investigation is taking a long time, this can cause them to feel that their complaint has not been taken seriously or aggravate the stress and worry that they may experience while waiting for the outcome. Target timescales for each stage of the process should be set and communicated to the complainant. These timescales should provide for a prompt but thorough process. They should be realistically achievable and kept to, other than in exceptional circumstances. The employer should provide the complainant with regular updates on progress and, when expected timescales are not met, the employer should give the worker a clear explanation as to why.

4.61 Employers must inform the complainant and alleged harasser of their statutory right to be accompanied to formal grievance hearings by a trade union representative or colleague. Employers should consider extending this right to be accompanied by a colleague or trade union representative to other meetings such as investigation meetings where reasonable. Employers should also consider extending the right to be accompanied, to allow persons others than colleagues or trade union representatives where appropriate bearing in mind the need to maintain confidentiality in the investigation. In certain circumstances, employers must extend the right to be accompanied in order to comply with certain legal obligations. For example, an employer must allow a worker to be accompanied by another person if that would be necessary:

- to comply with the duty to make reasonable adjustments for a disabled worker
- if not extending the right to help a worker overcome a language barrier would amount to discrimination, or
- to maintain trust and confidence between the employer and employee, for example, if a vulnerable employee needs emotional support and this cannot be provided by a trade union representative or colleague
-

Example
A worker has made a complaint of sexual harassment. She is not in a trade union and it would be unreasonable to expect her to recount explicit details of the harassment in front of a colleague. She finds it very stressful and upsetting to talk about the matter and needs emotional support to do so. It would be reasonable in these circumstances to allow the worker to be accompanied by someone who can offer emotional support, such as a friend.

4.62 Employers should ensure that investigators have appropriate expertise to conduct an investigation and that they have access to appropriate advice, taking into account the nature of the particular complaint to be handled. For example, an investigator appointed to deal with a complaint of antisemitism should have a good understanding of what antisemitism means. An investigator appointed to deal with a complaint where the complainant has suffered trauma because of their experience, should understand how to question the complainant in a way that avoids compounding the trauma.

4.63 Investigators should clearly identify the facts that they need to establish, the questions they will need to ask and the evidence they will need to obtain. Investigators should avoid inappropriate lines of questioning. For example, it would not be appropriate to ask a person who complains of sexual harassment about their sexual history.

Confidentiality during an investigation

4.64 During an investigation of a complaint, and whether the process is informal or formal, the employer should ensure that the complaint is kept confidential (subject to any legal obligations or rights such as a requirement to report to a regulator). This will protect the complainant from any further disadvantage, such as gossip among colleagues about the harassment. Confidentiality should not, however, necessarily continue once the complaints process has been concluded (read paragraph 4.48 and paragraphs 4.83 to 4.86).

4.65 As confidentiality means that workers cannot speak to other witnesses about the issue, employers must ensure that they follow up with all witnesses suggested by the complainant and the alleged harasser and actively seek evidence for and against the allegations to ensure that no evidence is missed. The employer should make sure any witnesses they speak to about the complaint are made aware that:

- the matter is confidential (subject to any personal legal or regulatory obligations or rights), and
- breach of confidentiality will be a disciplinary offence
-

Requests by workers not to take action

4.66 If a worker raises a complaint with the employer but asks them not to take the matter any further, an employer should still take steps to ensure that the matter is resolved. The employer should, for example:

- keep a record of the complaint and the worker's request to keep the matter confidential
- encourage the worker to address the issue informally, either directly themselves or with support
- provide the worker with any necessary support and guidance on how to address the issue informally
- keep the situation under review by checking in with the worker to find out if the situation has improved

- where the situation has not improved, explain to the worker that it is necessary to address the issue both for their well-being and that of their colleagues

4.67 Where possible, the employer should respect the wishes of the complainant. Not doing so could compound any harm caused by the original conduct. However, there may be circumstances in which the employer should act because the risk of not taking action outweighs the risk arising from overriding the complainant's wishes. In assessing the relative risk of the options, the employer should ask:

- Have they considered and exhausted all other possible options such as those already referred to in this guidance?
- What will the impact be of overriding the complainant's wishes on them?
- What are the potential risks to the complainant, the complainant's colleagues and to other third parties if the employer does not take further action?
- Have other complaints been made against the same person?
- What is the likelihood of the matter being resolved by the complainant without intervention by the employer?

4.68 For example, it may be appropriate to take further action where the harassment is so serious that that there is an immediate risk to the safety of the complainant, their colleagues or anyone else that the harasser may come into contact with. The risks may be higher in cases where criminal behaviour has taken place (read paragraphs 4.70 to 4.74).

4.69 If the employer decides that it must take formal action then it should explain its decision to the complainant and ensure that it has put in place appropriate safeguards to prevent further harassment or victimisation of the complainant (read paragraphs 4.75 to 4.80) as well as support and counselling for the complainant to deal with any impact the decision may have.

Criminal behaviour

4.70 Some acts of harassment may also amount to a criminal offence.

4.71 If an individual makes a complaint of harassment that may amount to a criminal offence, the employer should raise the possibility of reporting the matter to the police with the complainant and provide them with the necessary support if they choose to do so.

4.72 The employer should give the complainant's wishes a significant amount of weight: if they do not wish to report the matter to the police then in most cases the employer should respect that wish.

4.73 In certain circumstances, however, an incident should be reported to the police. The employer should weigh up the risk of reporting the matter to the police contrary to the complainant's wishes, against any risk to the safety of the complainant, the complainant's colleagues and third parties if the matter is not reported to the police.

4.74 In cases where the police are involved, an employer should discuss the disciplinary process with the police. The employer should not assume that it cannot take any action to investigate the matter until police enquiries or any subsequent prosecution have concluded. The employer should check with the police that it can carry out its own investigation without prejudicing any criminal process. If it is safe to do so, then the employer should consider whether it would be reasonable in all the circumstances to continue with an investigation immediately, rather than to await the outcome of the criminal process. Likewise, if the investigation does not result in a conviction, the employer should not assume that it cannot take further action. Criminal offences must be proved beyond reasonable doubt, meaning that there must be clear evidence supporting the allegation against the accused. An employer, on the other hand, need only have reasonable grounds to conclude that a disciplinary offence has been committed. This could involve, for example, the employer weighing up the evidence

of the witnesses and deciding which witness or witnesses have provided the most cogent version of events.

Preventing further harassment or victimisation during an investigation

4.75 When a formal complaint of harassment or victimisation is made, an employer should consider what steps need to be taken while the matter is investigated to ensure that:

- the complainant is not subjected to further acts of harassment
- the complainant is not victimised for having made a complaint
- any potential adverse impact on the complainant is minimised
- other workers are safeguarded against similar behaviour, and
- there will be no interference with the investigation

4.76 In some cases, no action may be necessary because, for example, the employer is satisfied that the complainant is prepared to continue working with the alleged harasser and that the alleged harasser is unlikely to repeat the alleged behaviour while under investigation.

4.77 In other cases, it may be necessary to limit the contact between the complainant and the alleged harasser, and ensure this is maintained, to minimise the risk of the alleged harassment being repeated. For example, by redeploying the alleged harasser to another part of the employer or a different site pending conclusion of the matter, arranging working from home, or removing duties from the harasser that bring the complainant and harasser into contact. Any measures to limit contact should normally be applied to the alleged harasser unless, for example, the complainant's preference is to be moved. It is important to assess the risks of moving a worker elsewhere before doing so. For example, whether the alleged harasser might pose a risk to other workers other than the complainant.

4.78 In cases where there is a continuing risk to the complainant or their colleagues, or to the integrity of the investigation, then the employer should consider suspending the alleged harasser on full pay. The employer should carefully consider the necessity of suspension and any viable alternatives before pursuing this route. Employers should ensure that alleged harassers are able to access appropriate support. This will be particularly important where they are suspended from work.

4.79 The employer should make clear to the alleged harasser that any steps taken are a precaution only and do not imply that the employer has formed any conclusions about the complaint. Likewise, if the alleged harasser makes counter allegations against the complainant, the employer should be clear with both parties about how it formed its view as to which party to suspend, redeploy or remove duties from, so as to avoid any suggestion that it has favoured one account over the other.

4.80 The need to take preventative steps to protect the complainant will be particularly important in cases where the complainant did not want to make their complaint formal, but the employer has concluded that they have to deal with it formally due to the risks of not doing so (read paragraphs 4.66 to 4.69).

Witnesses to harassment

4.81 The anti-harassment policy should encourage witnesses to harassment or victimisation to take steps to address it. This may include:

- the witness intervening, where the witness feels able to do so
- the witness asking the person subjected to the harassment if they would like the witness to report it or support them in reporting it
- the witness reporting the incident where the witness feels that there may be a continuing risk if they do not report it, and
- requiring witnesses to cooperate in an investigation

4.82 The employer should assure witnesses that it will not subject them to a detriment for providing information and that it will also take steps to prevent them being subjected to a detriment by any other worker.

Reporting outcomes and data protection

4.83 To be effective in encouraging those with complaints to come forward, the outcome to a formal complaint of harassment should be as transparent as possible. This means that wherever appropriate and possible, if a complaint is upheld then the complainant should be told what action has been taken to address this including action taken to address the specific complaint and any measures taken to prevent a similar event happening again in the future. If the complainant is not told what action has been taken, this may leave them feeling that their complaint has not been taken seriously or addressed adequately.

4.84 Employers may have concerns that reporting outcomes such as disciplinary action taken against the harasser, may be a breach of obligations that it owes to the harasser. In particular, they may be concerned about breaching the General Data Protection Regulation (GDPR). However, while employers must comply with the data protection principles under Article 5 GDPR, they should not assume that disclosure of the harasser's personal data will amount to a breach of the GDPR. It often will not if the employer has been clear that outcomes may be disclosed, considered what grounds it has for disclosure and acts proportionately in disclosing personal data.

4.85 Employers should take steps to enable disclosure of the outcomes to complainants where it is appropriate to do so. This includes reviewing contracts, policies, procedures and privacy notices to ensure that they inform workers when the outcome of complaints and disciplinary proceedings may be disclosed.

4.86 The employer should consider on a case-by-case basis each of the grounds on which data can be processed lawfully under Article 6 of the GDPR (and Article 9, where special category data is involved) and what measures it can put in place to ensure that disclosure is proportionate. The employer should record its decision as to whether the outcome can be disclosed or not and its reasons for that decision. Read further guidance on compliance with the GDPR on the Information Commissioner's Office website.

Further steps after the process has ended

4.87 Where a complaint is not upheld, or it is upheld but this results in action short of dismissing the harasser, the employer should carefully consider the continuing relationship between the complainant and the (alleged) harasser. The employer should nominate someone to manage the reintegration of all those affected by the allegation and investigation including:

- arranging the appropriate support and counselling for the parties
- arranging mediation
- making an offer of redeployment where any relationship breakdown cannot be resolved through other means

4.88 If the complaint is upheld and the harasser is not dismissed, the employer may need to consider, as part of any disciplinary process involving the harasser, issues such as:

- further training for the harasser
- permanent redeployment of the harasser to another role (or permanent redeployment of the complainant if that is their preference), or other measures needed to keep the two parties separate, and
- asking the harasser to apologise to the complainant

4.89 If a complaint is upheld and the harasser is dismissed, the employer should assess whether any post-employment issues might arise and ensure that it has appropriate processes in place to deal with them. For example:

- How will it answer requests to provide a reference for the harasser, ensuring compliance with its duty not to provide a misleading or inaccurate reference to a potential employer? The employer should consider the risk that harassment may be repeated with a new employer in the future and should not assume that it cannot disclose details of the harassment to the potential employer for data protection reasons. It should instead consider whether the reasons for dismissal can be lawfully disclosed under Article 6 of the GDPR and what measures it can put in place to ensure that disclosure is proportionate, and
- If the workplace is open to the public, how will the employer ensure that the harasser does not target the complainant at work?

Employer 8-step guide:
Preventing sexual harassment at work

Introduction

Under equality law employers must take reasonable steps to prevent sexual harassment of workers.

The Equality Act 2010 defines sexual harassment as unwanted conduct of a sexual nature which has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Under the Equality Act 2010 employers have a positive legal duty to take reasonable steps to prevent sexual harassment of their workers.

This is called the preventative duty. If employers do not comply with it, they are breaking the law. The preventative duty is designed to improve workplace cultures by requiring employers to anticipate how sexual harassment might happen in their workplace and take proactive reasonable steps to prevent it happening.

The preventative duty includes worker-on-worker harassment and harassment by third parties such as customers, clients or patients.

If an employer fails to take reasonable steps, we can take enforcement action. Employers also risk an employment tribunal increasing the amount of compensation if an individual's claim of sexual harassment is successful.

The law does not list specific steps an employer must take. Different employers may seek to prevent sexual harassment in different ways, but all employers must take action and no employer is exempt from the sexual harassment preventative duty.

Everyone has a right to feel safe and supported at work. If you as an employer do not deal with sexual harassment in your workplace, it can have a damaging effect on your workers' mental and physical health. This can affect them across their personal and working life. It has a negative impact on workplace culture and productivity.

The practical steps below illustrate the types of action you can take to prevent and deal with sexual harassment in the workplace. These steps are not an exhaustive list, but implementing these steps should help you take positive action to prevent and deal with sexual harassment at work.

Step 1: develop an effective anti-harassment policy

An employer may have separate policies to deal with sexual harassment and other forms of harassment, or a single policy covering both. A good policy should:

- specify who is protected
- state that sexual harassment will not be tolerated and is unlawful
- state that the law requires employers to take reasonable steps to prevent sexual harassment of their workers
- state that harassment or victimisation may lead to disciplinary action up to and including dismissal
- state that aggravating factors, such as abuse of power over a more junior colleague, will be taken into account in deciding what disciplinary action to take

- define sexual harassment and provide clear examples of it -examples should be relevant to your working environment and reflect the diverse range of people that harassment may affect
- include an effective procedure for receiving and responding to complaints of harassment
- address third-party harassment (such as by customers or service users)

The section addressing third party harassment should explain clearly:

- that the law requires employers to take reasonable steps to prevent sexual harassment by third parties
- that while an individual cannot bring a claim for third-party harassment alone, it can still result in legal liability when raised in other types of claim
- that it will not be tolerated
- that workers are encouraged to report it
- what steps will be taken to prevent it
- what steps will be taken to remedy a complaint and prevent it from happening again
    - for example, warning a customer about their behaviour, banning a customer, reporting any criminal acts to the police or sharing information with other branches of the business

The overall policy should also:

- include a commitment to review the policy at regular intervals, monitor its effectiveness and implement any changes that may be required
- cover all areas of the business including any overseas sites, subject to any applicable local laws

Step 2: engage your staff

Conduct regular 1-2-1s, run staff surveys and exit interviews, and have open door policies. You should use these to help you understand where any potential issues lie and whether the steps you are taking are working.

Make sure that all workers are aware of:

- how they can report sexual harassment
- your sexual harassment policy
- the consequences of breaching the policy

Step 3: assess and take steps to reduce risk in your workplace

Undertaking a risk assessment will help you comply with the preventative duty. When doing a risk assessment, consider factors that might increase the likelihood of sexual harassment and the steps that can be taken to minimise them.
For example:

- Where are the power imbalances?
- Is there a lack of diversity in your workforce?
- Is there job insecurity for a particular group or role?
- Are staff working alone or at night?
- Do your staff have customer-facing duties?
- Are customers or staff drinking alcohol?
- Are staff expected to attend external events, conferences or training?
- Do staff socialise outside of work?
- Do staff engage in crude or disrespectful behaviour at work?

Step 4: reporting

Consider using a reporting system (such as an online or independent telephone-based service) that allows workers to raise an issue either anonymously or in name.

Explain clearly to all workers:

- what is considered acceptable behaviour
- how to recognise sexual harassment
- what to do if they experience or witness it
-

Keep centralised, confidential records of all concerns raised, formal and informal. This enables trends to be identified.

Step 5: training

Workers, including managers and senior staff, should be trained on:

- what sexual harassment in the workplace looks like
- what to do if they experience or witness it
- how to handle any complaints of harassment
-

In industries where third-party harassment from customers is more likely, workers should also be trained on how to address these issues.

You should review the effectiveness of any training and offer refresher sessions at regular intervals.

Step 6: what to do when a harassment complaint is made

Act immediately to resolve the complaint, taking into account how the worker wants it to be resolved.

Respect the confidentiality of all parties.

Protect the complainant from ongoing harassment or being victimised during an investigation or complaint. For example, move the alleged harasser to another team or site. You should also protect witnesses to the sexual harassment.

If a worker makes a complaint of harassment that may be a criminal offence, you should speak to the individual about whether they want to report the matter to the police and support them with this if they go ahead.

Only use confidentiality agreements (also known as confidentiality clauses, non-disclosure agreements, NDAs, or gagging clauses) where it is lawful, necessary and appropriate to do so. For more information, read our guidance on the use of confidentiality agreements in discrimination cases.

Always communicate the outcome of the complaint and outline any appeals process to the complainant in a timely manner.

Step 7: dealing with harassment by third parties

Harassment by a third party, such as a customer, client, patient, or supplier, should be treated just as seriously as that by a colleague.

Employers should take steps to prevent this type of harassment, including putting reporting mechanisms in place or assessing high-risk workplaces where staff might be left alone with customers.

Step 8: monitor and evaluate your actions

It is important to regularly evaluate the effectiveness of the steps you put in place to prevent sexual harassment in your workplace and implement any changes arising from that. This will help you comply with the preventative duty and protect your staff from sexual harassment.

You could evaluate the effectiveness of the steps you have taken by:

- reviewing informal and formal complaints data to see if there are any trends or particular issues and appropriate actions
- surveying staff anonymously on their experiences of sexual harassment, including whether they have witnessed or been subjected to harassment, whether they have or would in the future report it (and if not, why not) and what further steps they think you could take
- comparing reported complaints with survey feedback to ensure you have an accurate reflection of the level of sexual harassment in your workplace, and take appropriate actions
- hold lessons-learned sessions after any complaints of sexual harassment are resolved

You should also review policies, procedures and training regularly. It is important to seek input from workers or their representatives, such as staff networks or trade unions, to consider whether any changes are needed. These changes should then be implemented, where appropriate.

You should also consider whether there have been any changes in the workplace or workforce that mean there are further steps that would now be reasonable for you to take.

Godalming
Town Council
Supporting Our Community

APPRAISAL & PERFORMANCE REVIEW SCHEME

INTRODUCTION

The appraisal and performance review scheme provides the Council with a framework to review employees' performance and potential which can benefit both employers and employees by improving job performance, identifying strengths and weaknesses and by determining suitability for development.

APPRAISALS AND PERFORMANCE MANAGEMENT

Appraisals and performance reviews give managers and employees opportunities to discuss how employees are progressing and to see what sort of improvements can be made, or help given, to build on their strengths and enable them to perform more effectively.

Review of potential and development needs predicts the level and type of work that employees will be capable of doing in the future and how they can be best developed for the sake of their own career and to maximise their contribution to the organisation.

WHO SHOULD UNDERTAKE APPRAISALS?

The Town Clerk will usually appraise those who report directly to the Town Clerk. Managers will usually appraise the staff reporting to them and share the reports from these appraisals with the Town Clerk to enable the senior management to comment on the report.

The Chair of the Staffing Committee and the Leader of the Council will conduct the appraisal of the Town Clerk.

BENEFITS OF APPRAISALS & PERFORMANCE REVIEWS

Appraisals can help to improve employees' job performance by identifying strengths and weaknesses and determining how their strengths can be best utilised within the organisation and any weaknesses overcome. They can help to reveal problems which may be restricting employees' progress and causing inefficient work practices.

Appraisals can also provide information to assist succession planning and to determine the suitability of employees for promotion, for particular types of employment and training. In addition, they can improve communications by giving employees an opportunity to talk about their ideas and expectations and to be told how they are progressing. This process can also improve the quality of working life by increasing mutual understanding and respect between managers and employees.

FREQUENCY OF APPRAISALS & PERFORMANCE REVIEWS

Employee appraisal should be a continuous process and should not be limited to a formal review once a year.

The majority of formal employees' appraisals will be conducted annually. However, more frequent performance reviews may be conducted for new employees, for longer serving staff who have moved to new posts or for those who are below acceptable performance standards.

Annual appraisals should be conducted within the anniversary month of their employment start date as stated on the employees Particulars of Employment i.e. an employee who joined in April, should have an appraisal each April.

Performance reviews are to be conducted as required to support an employee in identifying any weaknesses or issues that are affecting their employment.

SIGNING OF APPRAISALS & PERFORMANCE REVIEWS
Before an appraisal or performance review is passed to the senior management for comment, employees are to be given the opportunity to see their appraisal reports and are required to sign the completed form and may, if they wish, express their views on the appraisal they have received; in particular whether they feel it is a fair assessment of their work over the reporting period.

TRAINING
All managers who carry out appraisals must receive training to help them assess performance effectively and to put that skill into use in the appraisal process. Godalming Town Council will provide all those who have responsibility with conducting appraisals and performance reviews appropriate training through ACAS Performance and Appraisal modules. At least one of the councillors conducting the Town Clerk's appraisal, or any performance review, must also have conducted the ACAS Performance and Appraisal Module.

RECORD KEEPING
A written record of an annual appraisal, a performance review, any intermediate appraisals or catch-up meetings will be given to the employee for their own records and copies will be kept in the employee's personnel file.

The written record of an annual appraisal, a performance review or any intermediate appraisals or catch-up meetings for the Town Clerk will be held by the Chair of the Staffing Committee on behalf of the Committee, as well as in the Town Clerk's own personnel file and a copy given to them.

When the Chair of Staffing Committee changes, then these records will be made available to the new Chair.

OBJECTIVES
If objectives are set as part of an appraisal or performance review, wherever possible agreement should be sought for those set. It is important for the appraiser to listen carefully to any concerns raised by the 'appraisee'. However, if agreement cannot be reached then the disputed objectives can be referred to the Town Clerk for employees whose appraisal is conducted by other managers or to the Staffing Committee where the appraisal is conducted by the Town Clerk, who will consider whether to amend, withdraw, or retain the disputed objectives after having considered the matter.

Objectives should always be written meeting the SMART criteria (see Appendix A)

Wherever possible, agreement should be sought for the other aspects of the appraisal (i.e. looking back at past achievements, training required, etc.). However, where agreement cannot be reached a note of the employee's comments/objections will be recorded within the appraiser comments.

TOWN CLERK'S APPRAISAL VS THE APPRAISALS OF OTHER MEMBERS OF STAFF
For clarity, the Town Clerk's appraisal process is entirely independent from that of other members of staff. In other words, if for any reason any stage of the Town Clerk's appraisal is delayed in full or in part - then this should not delay any element of the appraisal process progressing for any other member of staff.

APPENDIX A

Objectives should always be written meeting the SMART criteria.

Specific	The objective should provide clarity about the outcome required.
Measurable	The objective must include some means by which it will be possible to identify whether it has been achieved.
Achievable	The objective must be challenging and testing but realistic.
Relevant	The objective must be appropriate to the member of staff's role and also fit within the team objectives. Alternatively, there can be one or two personal objectives which are loosely connected with the team objectives but support staff development. (Note that the Staffing Committee would need to approve expenditure for staff development.)
Time bound	A timeframe must be given. It might be useful to define interim milestones which can be discussed at the 6-monthly review or more frequently.

TEMPLATES WHICH CAN BE USED AS THE BASIS FOR WRITING SMART OBJECTIVES

Example 1 – For delivering a one-off piece of work

By…*DATE* …to have written the …….. plan to deliver the……

This objective might lend itself to setting milestones such as:

By…*DATE*…to have presented an outline project plan to the *line manager.*

You might also want to include additional information such as:

"You should use Microsoft Excel to detail the activities which fall under the plan, together with dates and responsibilities."

Example 2 – To raise the standard of current performance

To meet the deadlines for……..on 95% of occasions during the second half of the year.

This objective lends itself to noting what both the appraiser and appraisee need to do to enable this objective to be met. For example:

- Appraiser will explore the possibility of team member attending a Time Management course.
- Appraiser will support the team member in taking one half day to tidy up and sort out personal workspace.
- Team member to use Outlook to create a running 'to do' list.
- Team member will read ……book on time management.
- Team member's time management will be a regular item for discussion at catch-up meetings.

Record of Appraisal

This form is to be used to record the issues discussed at an employee's performance appraisal meeting.

Employee's Name:	
Job Title:	
Service Area:	
Date of Engagement:	
Manager:	
Date of Meeting:	
JOB DESCRIPTION *The employees current job description is to be reviewed as part of the appraisal. Any suggestions from either the appraiser or the employee for amendments to the job description, which they wish to be considered by the senior management/Staffing Committee, as appropriate, should be recorded below.*	
CURRENT PERFORMANCE *This section should be used to record a summary of achievement against the objectives that have been previously agreed as well as any observations on overall performance.*	
Objective 1:	
Objective 2:	
Objective 3:	

Confidential When Complete

OVERALL PERFORMANCE
DEVELOPMENT SUMMARY *This section should be used to record any areas of the employee's work where further training and support is required, and any areas where performance is particularly strong and should be developed further.*
DEVELOPMENT AND TRAINING *This section should list specific requirements for any training or development. These activities are not restricted to training courses, and may include attachments, projects, coaching, planned experience or any other suitable activity that will enhance the skills, knowledge and behaviour required in the employee's work or to develop them further.*
CAREER PLANNING *This section should record any areas of the Council in which the employee has expressed a specific interest.*
OTHER AREAS OF DISCUSSION *This section should record any other points raised at the appraisal meeting.*
OBJECTIVE FOR NEXT 12 MONTHS *This section should be used to record the objectives agreed for the next 12 months, if objectives cannot be agreed the Appraiser is to record the reasons in the Appraiser's Comments section below.*
Objective 1:

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Objective 2:
Objective 3:
APPRAISER'S COMMENTS *This section is for the appraiser's narrative-based assessment of the employee's performance over the year including achievements of objectives. The appraiser is also to record any concerns or objections to the future objectives.*
EMPLOYEE'S COMMENTS *This section provides the employee to provide any feedback, either in support of or challenging the information provided above that they may wish the reviewer to be aware of.*

Employee's signature:	
Appraiser's signature:	
Date:	
Reviewer's name, position, and signature:	
Date:	

One copy of this completed form will be kept by the appraiser, one by the appraisee and one in the employee's personnel file.

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GODALMING TOWN COUNCIL

Disclosure by a Member[1] of a disclosable pecuniary interest or other registerable interest (non-pecuniary interest) in a matter under consideration at a meeting (S.31 (4) Localism Act 2011 and the adopted Godalming Members' Code of Conduct).

As required by the Localism Act 2011 and the adopted Godalming Members' Code of Conduct, **I HEREBY DISCLOSE**, for the information of the authority that I have [a disclosable pecuniary interest][2] [a registerable interest (non-pecuniary interest)][3] in the following matter:-

COMMITTEE: **DATE:**

NAME OF COUNCILLOR: _____

Please use the form below to state in which agenda items you have an interest.

Agenda No.	Subject	Disclosable Pecuniary Interests	Other Registerable Interests (Non-Pecuniary Interests)	Reason

Signed _____ **Dated** _____

[1] "Member" includes co-opted member, member of a committee, joint committee or sub-committee

[2] A disclosable pecuniary interest is defined by the Relevant Authorities (Disclosable Pecuniary Interests) regulations 2012/1464 and relate to employment, office, trade, profession or vocation, sponsorship, contracts, beneficial interests in land, licences to occupy land, corporate tenancies and securities

[3] A registerable interest (non-pecuniary interest) is defined by Section 9 of the Godalming Members' Code of Conduct.