



EMPLOYMENT LAW

# Sexual harassment at work: what employers need to know

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# Speakers



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# What are we going to cover today?

1. The legal framework
2. Dealing with complaints
3. Making external reports
4. Claims employers may face

# THE LEGAL FRAMEWORK

# What is sexual harassment?

- Unwanted conduct
- Of a sexual nature
- Which has the purpose or effect
- Of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment

# Examples of sexual harassment

- Sexual comments and jokes
- Displaying / viewing sexually graphic images
- Suggestive looks, staring or leering
- Propositions or sexual advances
- Making promises in return for sexual favours
- Suggestive gestures
- Intrusive questions about a person's sex life
- Discussing one's own sex life
- Spreading sexual rumours about someone
- Emails, texts, instant messages, social media posts of a sexual nature
- Unwanted physical touching

# Some important points to remember

It can happen to  
anyone

It can be perpetrated  
by anyone

It can happen even if  
the perpetrator did not  
intend to harass

It can be a one-off  
incident

It can happen where  
the victim tolerated it  
in the past

It can happen where  
the victim encouraged  
it in the past but then  
reached a “tipping  
point”

# Who is protected and who is liable?

## Who is protected?


- ✓ Job applicants
- ✓ Current employees / workers
- ✓ Former employees / workers
- ✓ Agency workers
- ✓ Contractors

## Who is liable?

- ✓ **Individual perpetrator**
  - Own actions
- ✓ **Employer**
  - Own actions
  - Vicariously liable for actions of employees “in the course of employment” and of agents
  - Actions of third parties?



# What are “reasonable steps”?



Relevant policy  
communicated to  
staff and kept  
under review

Regular training  
for all staff and  
special training  
for managers

Effective response  
to complaints and  
disciplinary action  
against harassers

# How might the law change?

- Worker Protection (Amendment of Equality Act 2010) Bill 2022-23:
  - Mandatory duty on employers to prevent harassment
  - Vicarious liability for third party harassment

# DEALING WITH COMPLAINTS

# Your initial response

Take stock of the complaint before doing anything



Consider whether you need external assistance



Hold discussions with the complainant and decide the next steps

# Dos and Don'ts

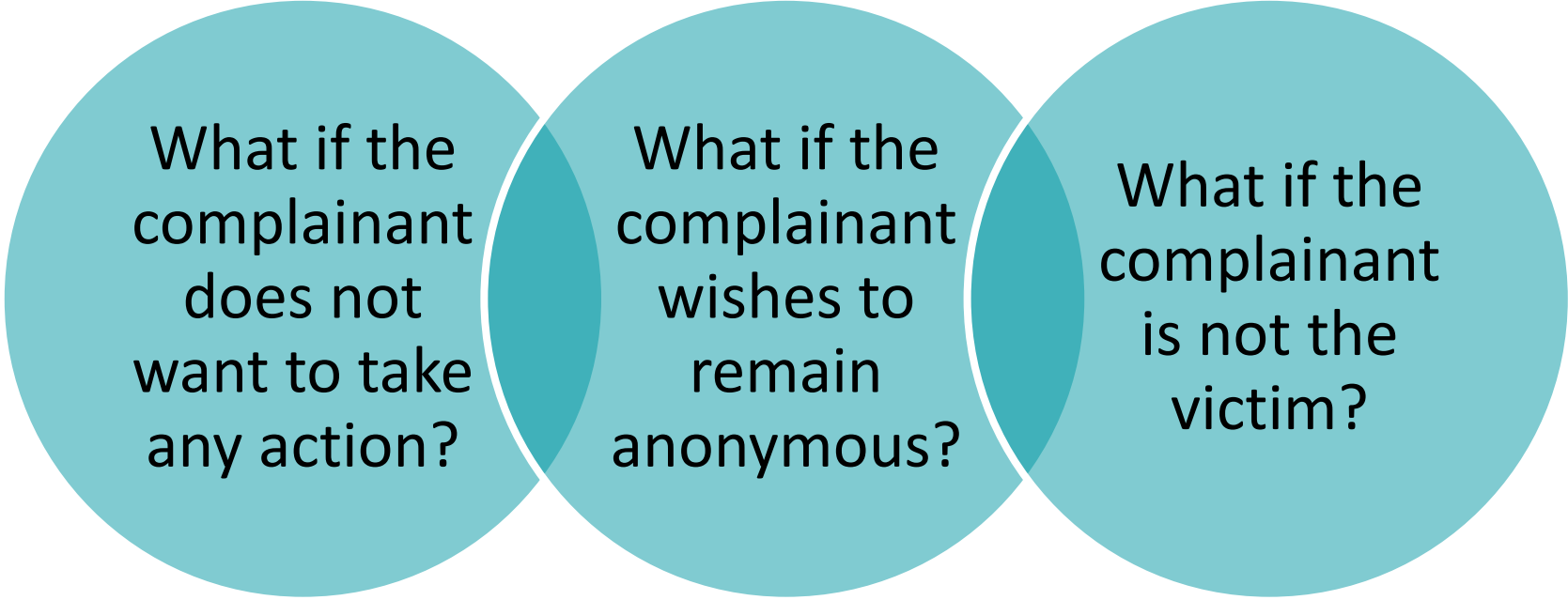
## Dos

- Actively listen
- Remember it is not their fault
- Remember it may be traumatic for them
- Let them stay in control
- Be patient and respect their boundaries

## Don'ts

- Ask why they didn't raise a complaint sooner
- Judge them for their behaviour
- Ask why they didn't fight back
- Judge how they have responded to the incident

# Tricky issues



What if the complainant does not want to take any action?

What if the complainant wishes to remain anonymous?

What if the complainant is not the victim?

# Overview of the formal process

- **Grievance process**

- Consider suspending perpetrator
- Investigation
- Grievance hearing
- Outcome (if upheld, a disciplinary process should be initiated)
- Appeal

- **Disciplinary process**

- Further investigation as required
- Disciplinary hearing
- Outcome
- If upheld, issue disciplinary sanction (up to and including dismissal)
- Appeal

# Tips for conducting the investigation

- Dealing with historic complaints
- Choosing the right investigator
- Managing the process in a timely way
- Confidentiality and victimisation



# MAKING EXTERNAL REPORTS

# Criminal considerations

- If you know or suspect a criminal offence has been committed, are you required to report it to the police?
  - No legal obligation to do so
  - Balancing exercise: consider safety of staff
  - If you do not report, ask complainant to tell you if they do given the impact of your process on a police investigation and vice versa

# Regulatory considerations

- Regulators are taking a much tougher approach to non-financial misconduct, especially sexual misconduct
- Trigger of when to make a report will depend on the regulator in question – for example:
  - **SRA:** expected to report where you have found, or have grounds to believe, that someone has committed a serious breach of SRA requirements. Note that if a report has been made to the Police, they may share the information with the SRA under a “Memorandum of Understanding”
  - **FCA:** must report where you have taken “formal disciplinary action” for harassment (even if an appeal is pending). However, in serious cases, you may need to report at an earlier stage

# CLAIMS EMPLOYERS MAY FACE

# Common claims

## From victims / other complainants

- Sexual harassment
- Whistleblowing
- Victimisation
- Personal injury
- Constructive dismissal

## From alleged perpetrators

- Unfair dismissal
- Discrimination

# Time limits

- Currently, three months to initiate claim (starting with Acas Early Conciliation)
- Time runs from the act of harassment or last in a series of acts
- Tribunal may extend time limit where it is “just and equitable” to do so

# Compensation

- Unfair dismissal
  - Basic award: based on a formula and currently capped at £19,290
  - Compensatory award: based on loss and currently capped at £105,707
- Harassment, victimisation and whistleblowing claims
  - Primarily based on losses and uncapped
- Other possible awards
  - Injury to feelings (ranging between £1,100 - £56,200)
  - Aggravated damages

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