

# ALLEN & OVERY



## *Complaints of harassment – getting it right*

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# Agenda

- 1 Scene setting
- 2 Why it matters
- 3 What's going on right now?
- 4 The generational shift
- 5 The new normal
- 6 Employment fundamentals
- 7 The challenges of investigations
- 8 Possible outcomes

# Scene setting – a reminder

## Harassment and Sexual Harassment

- **Unwanted** conduct which either relates to gender or is of a sexual nature which has the purpose or **effect** of:
  - either violating the person's dignity; or
  - creating an intimidating, hostile, degrading or offensive environment
  - “of a sexual nature” can include verbal, non-verbal or physical conduct, including sexual jokes or sending emails of a sexual nature
- Witnesses/bystanders can bring a claim

To decide if the conduct has such effect, consider:

- **Perception** of the victim and
- all the surrounding circumstances

# Scene setting – a reminder

## Bullying



“Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”



Extreme cases can be easy to spot but often it is not clear-cut

## Acas Guidance

[Seeking better solutions: tackling bullying and ill-treatment in Britain's workplaces](#)  
[Bullying and harassment at work](#)

# Why it matters

1 Franchise risk

2 Undermining trust

3 Talent management

4 Workplace morale

5 Institutional integrity

6 Shareholder value

7

Regulatory environment

- Misconduct may impact on fitness and propriety of regulated individuals
- FCA recently indicated, in relation to sexual harassment, that misconduct is misconduct, whether its financial or not

# What's going on right now?

## The most common forms of UK workplace harassment

**FIFTY-TWO**

% experienced sexual harassment

**35%**

experienced  
comments of  
a sexual nature

**32%**

experienced  
sexually  
suggestive jokes

**TWENTY-FIVE**

% experienced unwanted touching

Source: Sexual Harassment in the workplace 2016 – Still just a bit of banter? By TUC in conjunction with the Everyday Sexism Project.

# What's going on right now?

## Bullying in the workplace

**TWENTY-NINE**

% have been bullied at work

**34%**  
bullied are women

**23%**  
bullied are men

**72%**  
of bullying carried  
out by manager

**THIRTY-SIX**

% of those who report bullying leave  
their job

Source: TUC, 16 November 2015.

# What's going on right now?

How should I deal with sexual harassment at work?

Monster Job site

Workplace equality: what women want men to know

Financial Times, 23 May 2018

Is your office NSFW?

GQ, 8 May 2018

Saying #MeToo could cost you your dream job, says Sheryl Sandberg

Marie Claire, 4 Dec 2017

Should sexual harassment be a criminal offence?

BBC News, 14 November 2017

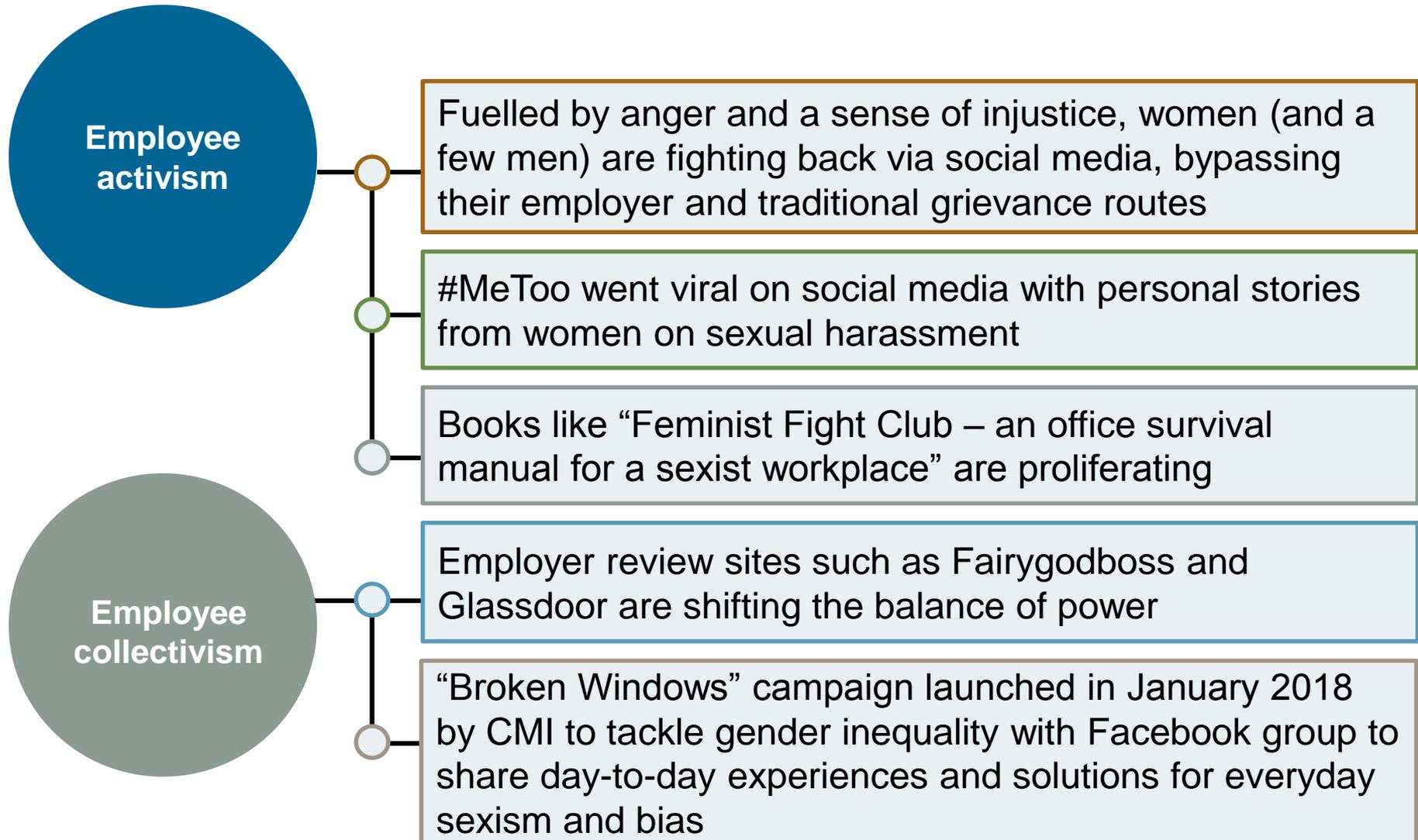
Sexual harassment: what happens to women who speak out?

Financial times, 26 October 2017

Sexual harassment is rooted in power imbalances

Financial Times, 26 October 2017

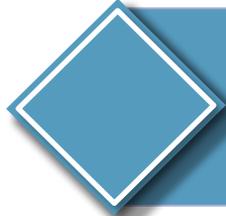
# What's going on right now?



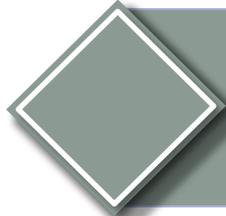
# What's going on right now?

<https://www.managers.org.uk/cmi-women/broken-windows?leadsrc=ldreport>

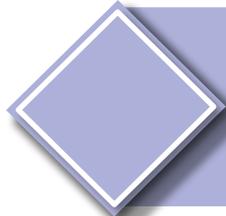
# The generational shift



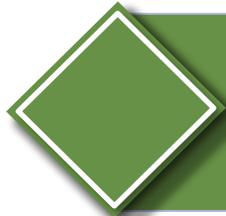
How can the risk be managed if sexual harassment means different things to different people?



Minimal divergence in views with obvious sexual harassment



Strong correlation between a woman's age and what is considered acceptable/not acceptable – younger women have higher expectations



Perceptions differ on the prevalence of sexual harassment: men under-estimate and women over-estimate

# Generational shift – ‘millennial’ peculiarities

1

Different rules of engagement

2

Instant gratification culture – they want answers, feedback and a resolution fast

3

A sense of entitlement to fair treatment and equality – less restricted by hierarchy, and power, or promises around employment or promotion

4

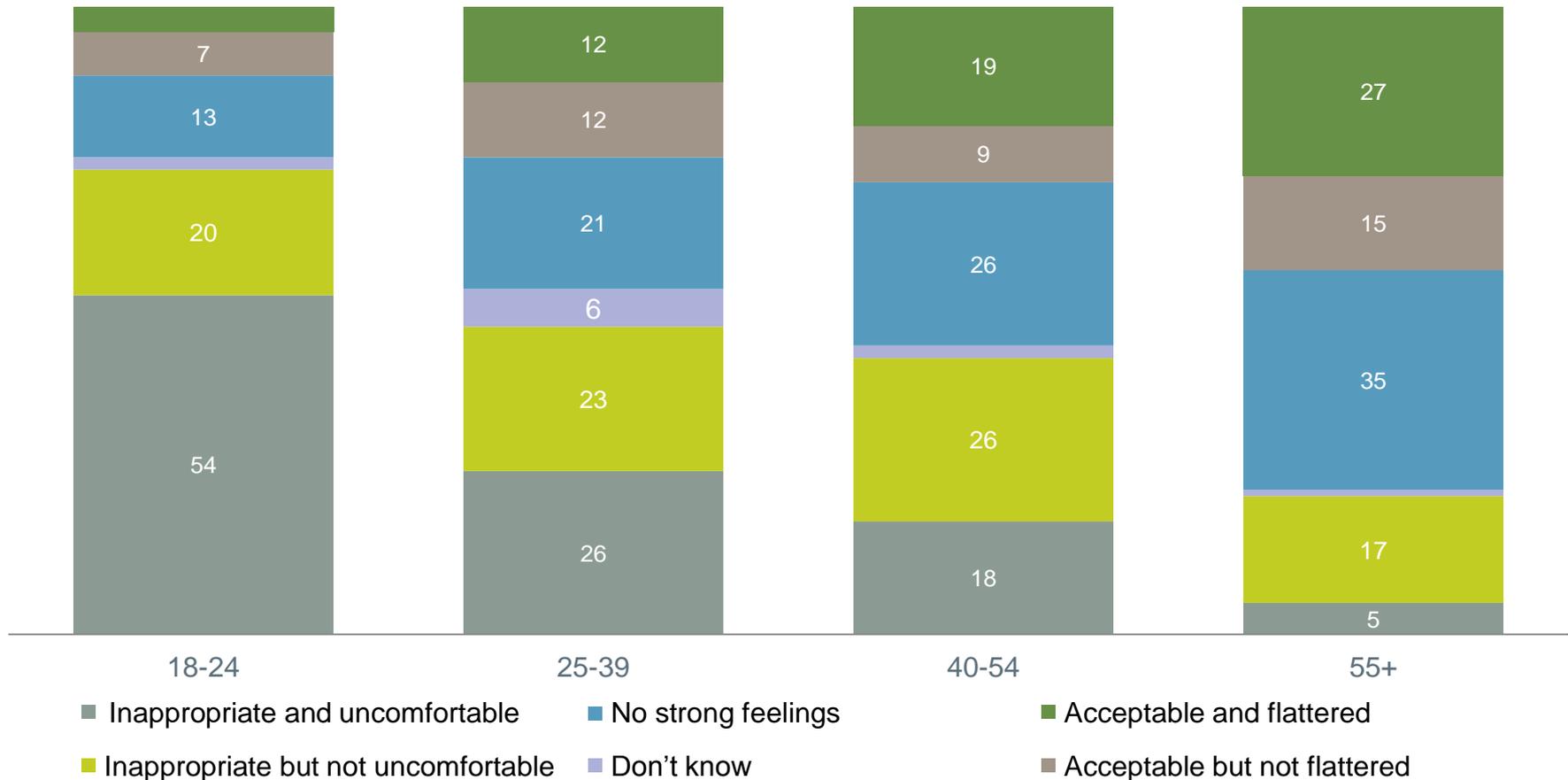
Different perception of what is and what is not appropriate

5

What happens on tour does not stay on tour – if the speak-up culture does not work, social media will

# Generational sift – different views on what amounts to sexual harassment

## Wolf-whistled you



Source: Based on YouGov UK Statistics, October 19-20 2017

# The new normal

**01**

This is not political correctness gone mad – this is the new normal

**02**

Increasing demand for “heads on sticks” at management level

**03**

Recognition that the problem is predominately about abuse of power

**04**

Corporate culture, including speak-up environment, is coming under very close scrutiny

**05**

Individual and corporate reputation is being held hostage by social media

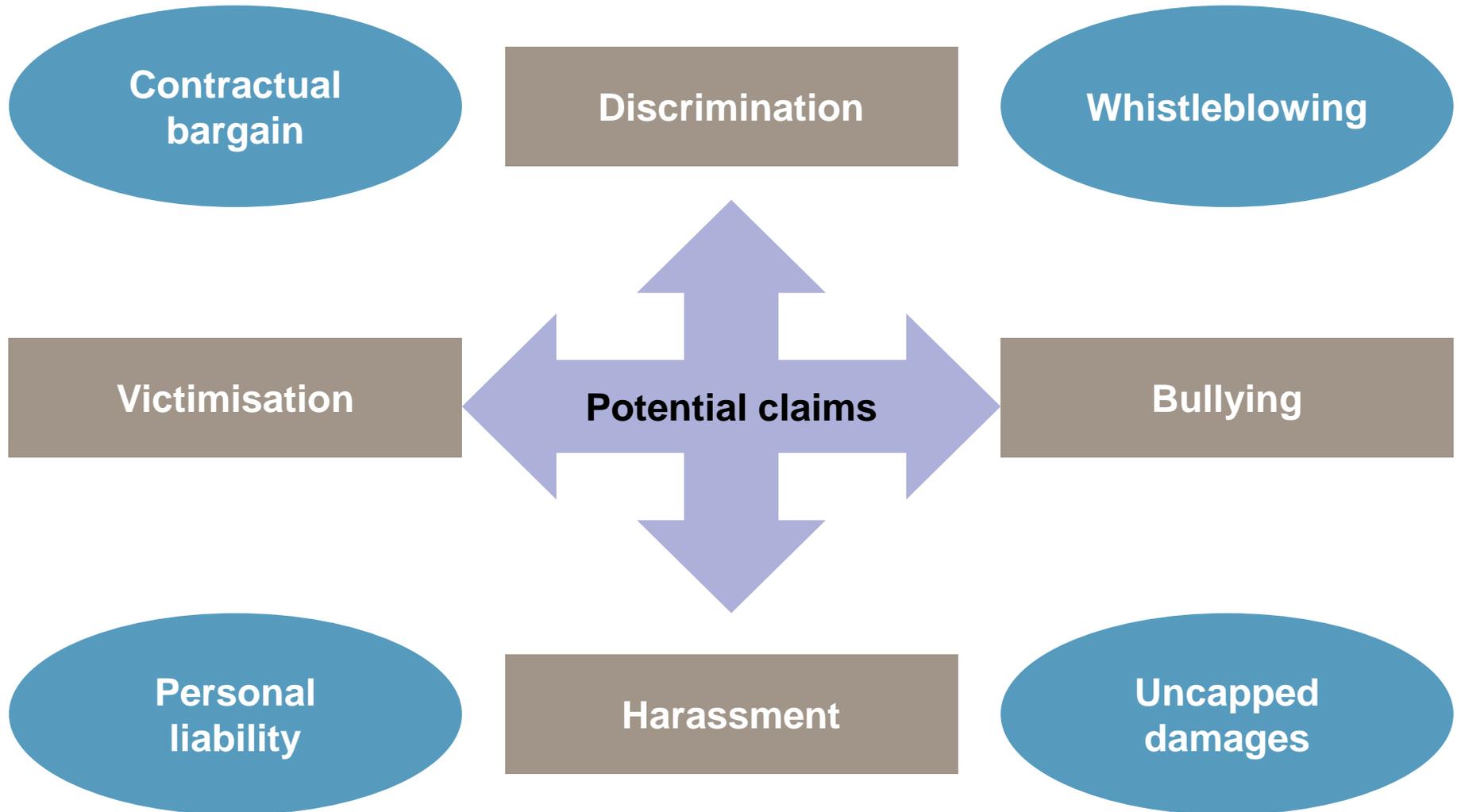
**06**

Offenders are being outed

**07**

Millennials play by different rules

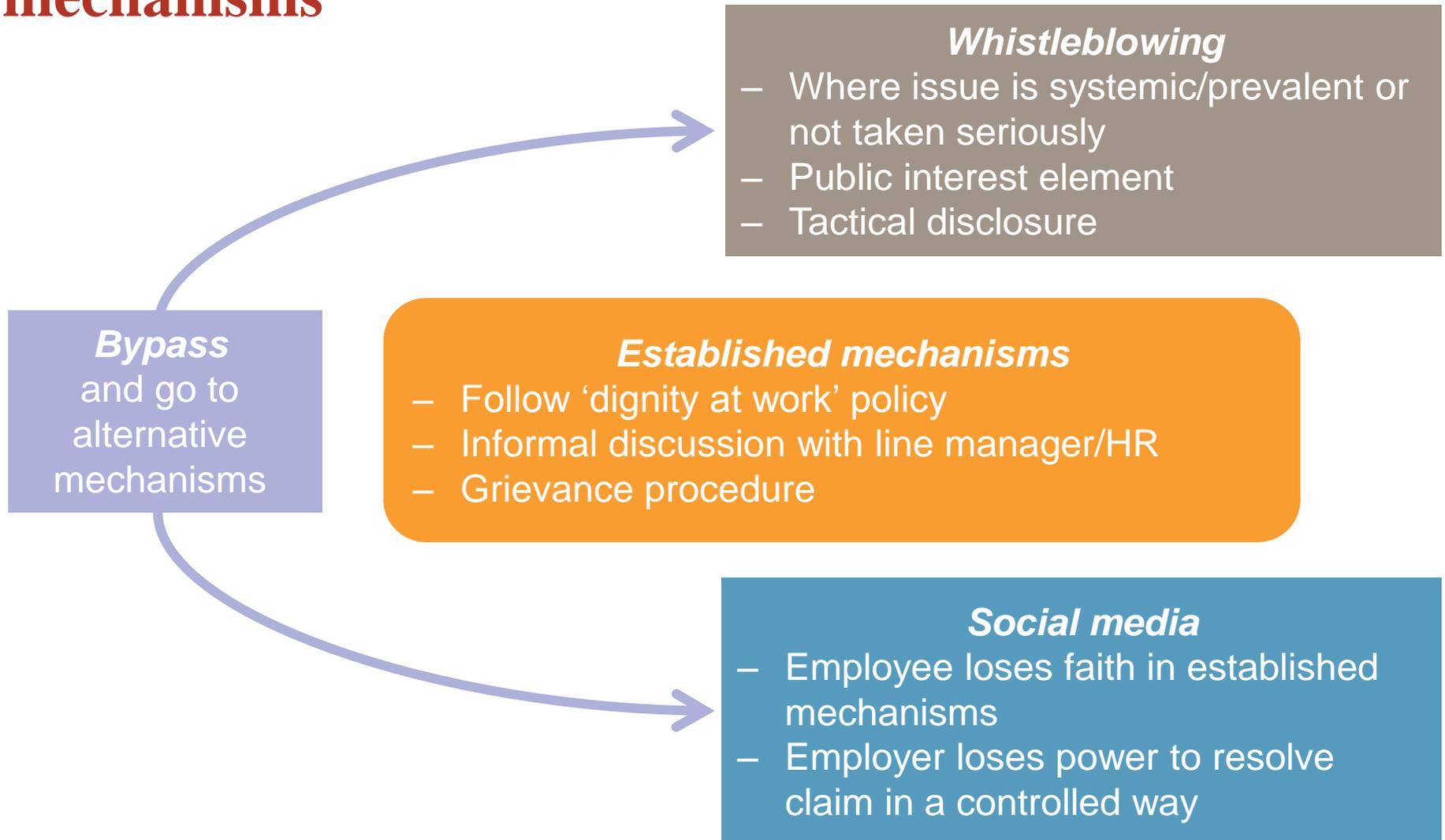
# Employment fundamentals



# Managing the franchise risk



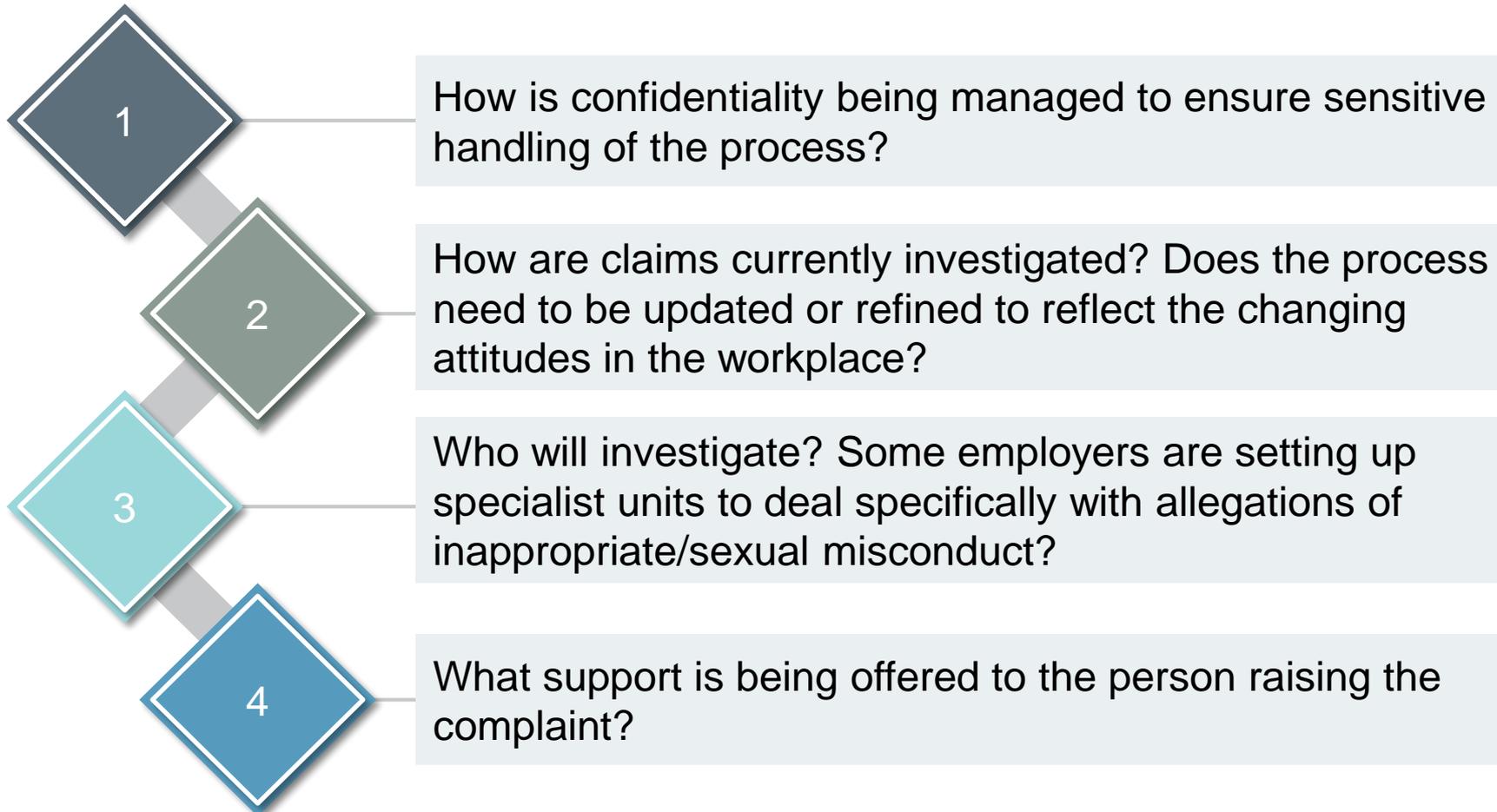
# Resolution of claims – established v alternative mechanisms



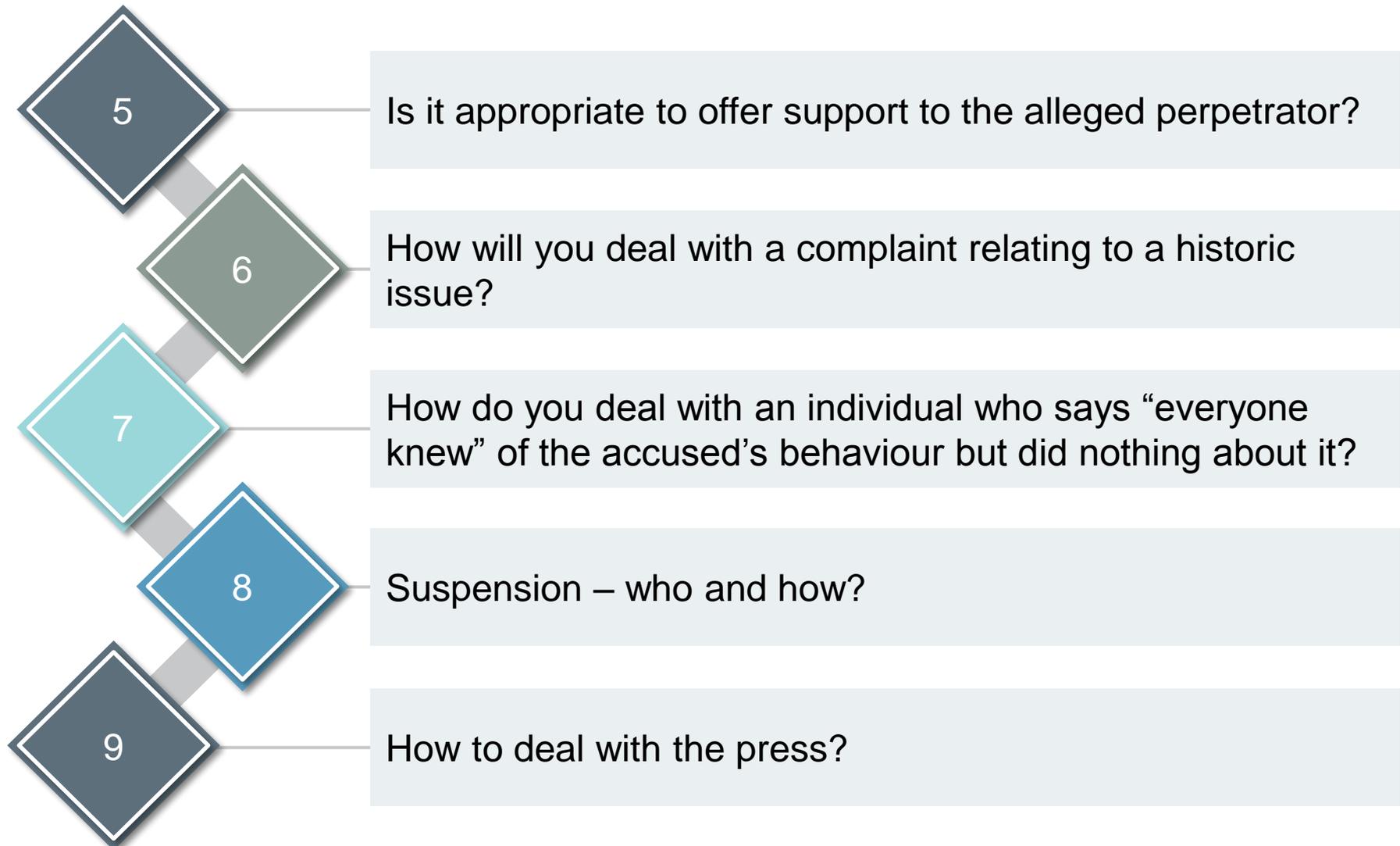
# Dealing with historic claims



# Investigations – challenges (1)



## Investigations – challenges (2)



# Possible outcomes

What is the organisation's attitude to those who have acted in unacceptable manner?

Is zero tolerance always the right approach, or is a more nuanced/flexible approach more effective?

Will an apology be sufficient/desirable?

If dismissal is the outcome, will this reason be cited on references?

How is the risk of retaliation being monitored?

Have you trained your staff, managers and board?

What remedial action is being taken, particularly in relation to the culture of the organisation?