

SEXUAL HARASSMENT DUTY TO PREVENT

What counts as “all reasonable steps” to prevent sexual harassment – and how does that change the way you investigate, discipline or dismiss when a complaint is made?

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24 September 2026



ENLIGHTENED THINKING

What is sexual harassment and who is liable?

IDENTIFYING SEXUAL HARASSMENT

What is sexual harassment?

General harassment

- Unwanted conduct related to a protected characteristic with the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment

Sexual harassment

- Unwanted conduct of a sexual nature with that purpose or effect
- Also covers unwanted conduct of a sexual nature, or related to sex or gender reassignment, followed by less favourable treatment because of rejection of or submission to it

Does the conduct have that effect?

- Consider the individual's perception, the other circumstances of the case, and whether it was reasonable for the conduct to have that effect

LIABILITY FOR HARASSMENT

Who is liable?

Vicarious liability

- An employer is liable for anything an employee does in the course of employment, regardless of the employer's knowledge or approval
- This can extend beyond the workplace where there is a meaningful employment link — for example, work-related social events
- Defence: the employer took all reasonable steps to prevent the harassment

Third party harassment

- **Before 30 October 2026:** Employers are generally not liable for third-party harassment of employees by, for example, a customer, supplier or visitor
- **From 30 October 2026:** Employers will be liable for third-party harassment in the course of employment unless all reasonable steps were taken to prevent it.

LIABILITY FOR HARASSMENT

Third-party harassment from 30 October 2026

- Applies to all three types of harassment: general harassment, sexual harassment and less favourable treatment following harassment
- Covers relevant protected characteristics: age, disability, gender reassignment, race, religion or belief, sex and sexual orientation — as well as sexual harassment
- No repeat-incident requirement and no requirement for the employer to have knowledge of the harassment
- The employee need only show that third-party harassment occurred in the course of employment and the employer failed to take all reasonable steps to prevent it
- Government has indicated that expectations will be lower for third-party conduct than for workers' own conduct because employers have less control
- Include third-party harassment in risk assessments and action steps

Preventing sexual harassment in the workplace

DUTY TO PREVENT SEXUAL HARASSMENT

The duty today

- In force since October 2024: a positive duty on all employers to take reasonable steps to prevent sexual harassment of employees and workers
- Covers harassment by colleagues and by third parties
- There is no standalone claim, but the Equality and Human Rights Commission can take enforcement action even where no incident has occurred
- A tribunal can uplift compensation by up to 25% where an employee succeeds in a sexual harassment claim
- The duty to prevent applies specifically to sexual harassment; other forms of harassment should still be addressed

DUTY TO PREVENT SEXUAL HARASSMENT

30 October 2026: 'All' reasonable steps

- 30 October 2026: duty to prevent is to be extended to a duty to take all reasonable steps to prevent the sexual harassment of employees in the course of their employment
- Higher threshold? – it will require proactive risk management
- What constitutes all reasonable steps will depend on the specific circumstances of the employer including size, sector, working environment, resources and other relevant facts
- Government will be given power to introduce regulations setting out examples of reasonable steps in respect of duty to prevent from 30 October 2026. First regulations expected in 2027/28 after consultation, may include:
 - Carrying out risk assessments
 - Publishing action plans or policies
 - Steps relating to the reporting of sexual harassment
 - Steps relating to the handling of complaints

DUTY TO PREVENT SEXUAL HARASSMENT

Relevant policies and training – some examples

Social Media
Guidance

Resolving
Issues at
Work

Disciplinary
Policy

Active Bystander
Training

Acceptable Use
of IT

Anti-Bullying,
Harassment &
Discrimination

Diversity,
Equity &
Inclusion

DUTY TO PREVENT SEXUAL HARASSMENT

How to comply with the duty

Risk Assessments & Action Plans	Carry out risk assessments (with action plans) to identify areas where risks of sexual harassment could arise – from colleagues or third parties
Complaint Procedure & Policies	Keep policies such as the Anti-Bullying, Harassment and Discrimination policy up to date, and those processes relating to complaints of customer harassment
Training	Ensure managers, hearers and other staff are suitably trained (awareness about standards of behaviour and how to deal with complaints)
Consider Effectiveness	Collect data and review and assess the effectiveness of the risk assessment / action plans
Communications & Culture	Communicate a zero-tolerance culture and implement it from the top down

DUTY TO PREVENT SEXUAL HARASSMENT

Training — don't let it go stale

- Beware outdated training
- Tailor training to cover all three kinds of harassment and victimisation; recognising unacceptable behaviour; and what to do if it is experienced or witnessed
- Train hearers to handle and investigate complaints and take disciplinary action; train managers to support affected workers
- Cover third-party harassment and how to address it
- Keep training records and refresh training regularly
- E-learning is useful but check that it is legally current and sufficiently interactive

DUTY TO PREVENT SEXUAL HARASSMENT

Preventing third party sexual harassment

Risk assessments

- What are the areas of particular risk (e.g. lone working, frontline staff dealing with customer complaints)?
- What about when working elsewhere / shared premises?
- Work-related social events

Policies and training

- Make it clear that you don't tolerate third-party harassment, when it might be appropriate for workers to 'step in'
- Encourage reporting of third-party harassment
- Support those who make complaints and take appropriate action

Suppliers and contractors

- Do they have robust policies for own staff: consider making it a tender requirement

Communicate zero tolerance to third parties

- Use policy letters, codes of conduct, signage/notices and terms in supplier or contractor contracts
- Monitor third-party harassment data and take appropriate follow-up action

**Dealing with sexual harassment complaints:
should handling them
change in light of the
preventative duty?**

IMPACT OF PREVENTATIVE DUTY

Investigations, disciplinary process and dismissal

- Insertion of the word “all” into the statutory language for the duty to prevent- a higher threshold or introduction in consistency of statutory language?
- Further regulations expected – specifying what will count as a “reasonable step”
- EHRC’s existing technical guidance may be built out into a statutory code of practice
- Proposal to introduce a statutory investigation procedure was withdrawn
- We may see the introduction of requirements to
 - instruct independent investigators for serious allegations/allegations involving senior perpetrators
 - Ensure well-being protections during any investigation
 - Implement recommendations
- In the meantime, best advice?....

IMPACT OF PREVENTATIVE DUTY

Investigations, disciplinary process and dismissal

Use appropriately
trained investigators

Look for gaps
not just did
the alleged
incident
happen

Assess what
steps could have
been taken to
avoid the
incident

Wellbeing
considerations

Ensure
investigators are
not conflicted

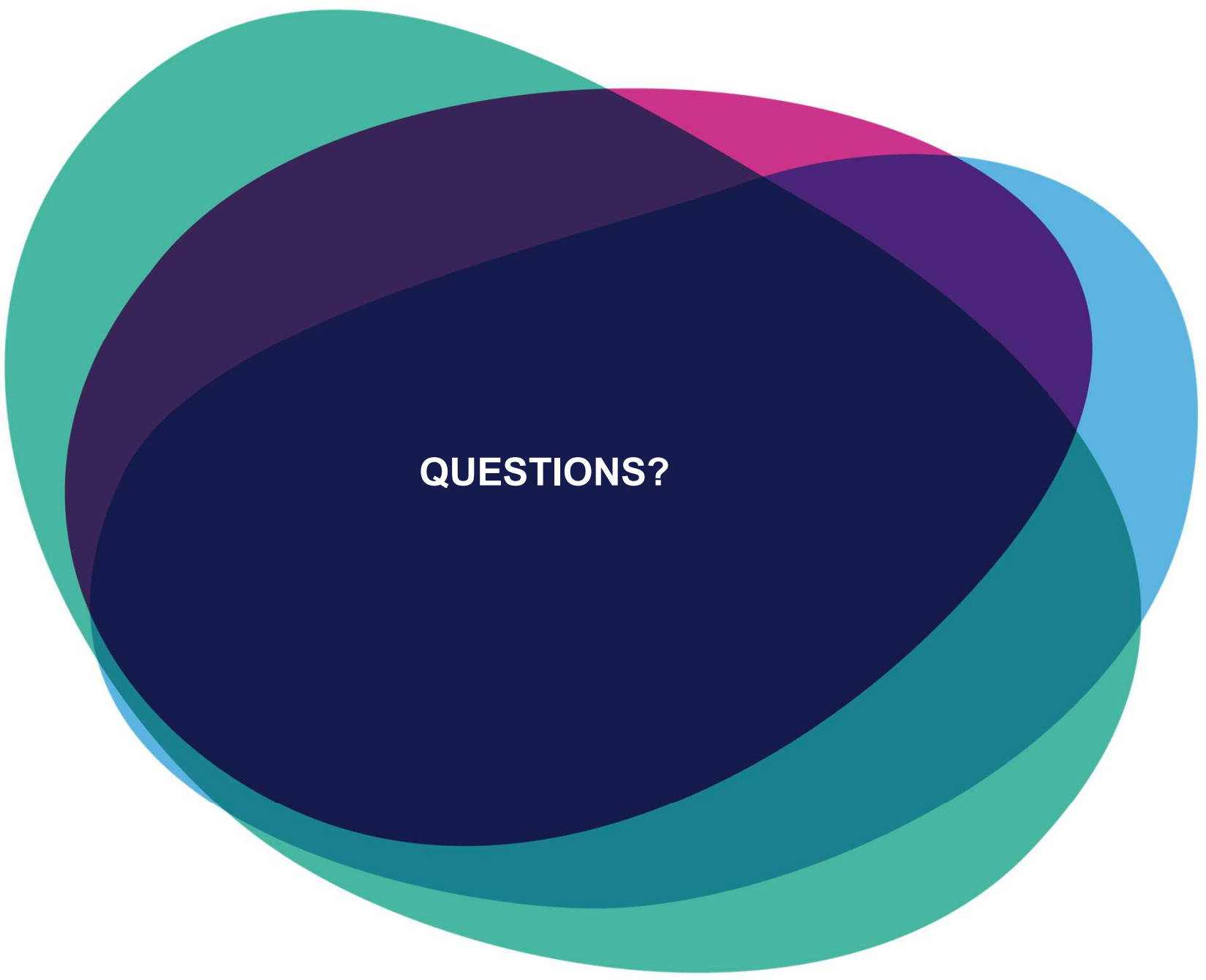
Address findings:
reflect on steps
Consider gaps

Consistent
decision making:
consider
aggravating
factors

DUTY TO PREVENT SEXUAL HARASSMENT

Action checklist before 30 October 2026

- Refresh and reissue the Anti-Bullying, Harassment & Discrimination policy to cover third-party conduct expressly
- Complete or update risk assessments covering colleagues, third parties and high-risk roles or locations
- Refresh and roll out training beyond induction, with specific training for managers and hearers
- Review and test reporting channels, including routes for third-party harassment
- Update supplier/contractor contracts and tendering requirements to reference your policy
- Brief senior leadership and set up regular data-monitoring
- Review investigation and disciplinary procedures against the “all reasonable steps” standard



QUESTIONS?