

Sexual Harassment:
From prevention to enforcement

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CMS

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The question…..



Sexual Harassment
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?



Agenda

1. **What counts as “all reasonable steps”?**

2. How does that change the way you investigate, discipline or dismiss when a complaint is made?



The legal framework from 30 October 2026

Statutory provision	Test	Enforcement
Preventative duty, Equality Act 2010, s.40A	Employer must take **all reasonable steps** to prevent sexual harassment of employees	EHRC enforcement; compensation uplift of up to 25% where a related Equality Act claim succeeds
Vicarious liability, Equality Act 2010, s.109	Defence if employer took **all reasonable steps** to prevent the conduct	Potential defence to liability for an employee's harassment
Third-party harassment, **new** s.40(1A)–(1C)	Employer liable where it failed to take **all reasonable steps** to prevent harassment by a third party	Direct Equality Act claim against employer

What must the employer prevent?

Unwanted conduct of a sexual nature which has the purpose or effect of:

- violating dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment.

When considering "effect", take account of:

- the complainant's perception;
- the other circumstances of the case; and
- whether it was reasonable for the conduct to have that effect.

One incident can be enough. Intent, motive and the label "banter" are not decisive



Your “must read”



EHRC *Sexual harassment and harassment at work: technical guidance*

Updated 30 October 2026



What does “all reasonable steps” mean?

- Key message - shifts the focus:
  - ✓ from whether an employer has done enough
  - ✓ to whether there were any further reasonable preventative measures the employer could have taken

What does “all reasonable steps” mean?

- What is reasonable will differ for different employers – relevant factors include:
  - ✓ Size
  - ✓ Working environment / Sector
  - ✓ Likely effect of taking a step
  - ✓ Time, cost and potential disruption of a particular step weighed against benefit
- Whether or not employer has taken reasonable steps is an objective test – fact specific

What does “all reasonable steps” NOT mean?

- Does **not** mean every conceivable precaution

Forthcoming regulations…..

- ❑ Regulations to be introduced - aim to bring consistency
- ❑ Will include:
  - Carrying out assessments of a specified description (likely to cover risk assessments).
  - Publishing plans or policies of a specified description (likely to cover action plans and sexual harassment policies).
  - Steps relating to the reporting of sexual harassment.
  - Steps relating to the handling of complaints.
- ❑ Government have committed to these being proportionate and evidence based.
- ❑ Refer back to earlier call for evidence by OEO:
  - Effective steps employers can take in relation to company culture, staff training, enforcing policies, reporting systems and procedures and recording and investigating complaints.
  - How best practice may potentially differ according to an employer's size, sector or other factors.

What does “all reasonable steps” mean?

01

Develop an Effective Anti-Harassment Policy

- Define sexual harassment with clear, relevant examples
- Include effective complaint and reporting procedures
- Address third-party harassment (customers, clients, visitors)
- Commit to regular policy review

02

Engage Your Staff

- Conduct regular 1-2-1s, staff surveys and exit interviews
- Maintain open-door policies to understand workplace issues
- Ensure all workers know how to report harassment
- Communicate consequences of breaching the policy

What does “all reasonable steps” mean?

03 Assess and Reduce Risk

- Undertake a workplace risk assessment
- Consider: power imbalances, lone working, customer-facing roles
- Review workplace culture, alcohol policies, staff socialising
- Address external events and factors that increase risk

04 Reporting

- Implement anonymous or named reporting systems
- Explain clearly what is acceptable behaviour
- Keep centralised, confidential records of all concerns
- Identify trends from complaint data

What does “all reasonable steps” mean?

05 Training

- Train all workers including managers and senior staff
- Cover: recognising harassment, what to do, handling complaints
- Additional training for high third-party harassment risk industries
- Review effectiveness and offer regular refresher sessions

06 Handling Complaints

- Act immediately, considering the complainant’s wishes
- Respect confidentiality; protect from victimisation
- Support reporting to police if potentially criminal
- Communicate outcomes and appeals process promptly

What does “all reasonable steps” mean?

07 Third-Party Harassment

- Treat third-party harassment as seriously as colleague harassment
- Put dedicated reporting mechanisms in place
- Assess high-risk workplaces (e.g. lone working with customers)
- Consider suppliers, clients, patients, and visitors

08 Monitor and Evaluate

- Regularly evaluate effectiveness of preventative steps
- Review complaints data for trends; survey staff anonymously
- Hold lessons-learned sessions after complaints resolved
- Review policies, procedures and training with worker input

What does “all reasonable steps” mean?

Identify risk	Put controls in place	Test and improve
Role, location and sector risks	Clear, specific policy	Check training was understood
Power imbalances and vulnerable groups	Relevant, regular training	Audit reporting and outcomes
Alcohol, travel and social events	Several reporting routes	Analyse patterns and hotspots
Online contact and lone working	Trained managers and investigators	Review after every complaint
Customers, clients and other third parties	Contractual and operational controls	Record decisions and reasons

Lessons from all reasonable steps case law



- High bar
- Existence of policy alone will not be sufficient
- Culture can undermine policies
- Training helpful but must be sufficiently specific & up to date
- Taking steps to deal effectively with complaints
- A further step need not be guaranteed to prevent the harassment
- The occurrence of harassment does not itself defeat the defence



Agenda

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2. **How does that change the way you investigate, discipline or dismiss when a complaint is made?**



Changes to practice



- ❑ Investigation
- ❑ Disciplinary / dismissal



The investigation

Dealing with complaints - two linked workstreams

Individual fairness

- Support both parties
- Particularise the allegations
- Preserve evidence
- Investigate impartially
- Decide on the evidence

Organisational prevention

- Reassess immediate and wider risk
- Identify earlier warning signs
- Examine management and control failure
- Prevent retaliation and recurrence
- Track remedial action



The investigation may need a wider lens

Investigate the allegation

- Establish the context and impact
- Who did or said what, when, where and in whose presence?
- What is agreed, disputed or independently supported?
- What was the context, perception and impact?

Investigate prevention measures and possible failures

- Were there earlier incidents, informal reports or warning signs?
- Did managers witness conduct or receive concerns?
- Did the same person, team, event or third-party feature before?
- Were the policy, training and reporting routes understood and used?
- What continuing risk now requires action?



The investigation

Investigate allegations about third parties

- Often glossed over
- Not “within our control”
- Too difficult?
- Too awkward – client?
- The law has changed
- Cultural change needed
- Contractual changes needed?



The investigation



- Failure to investigate whistleblowing
- Informal complaints – has the bar moved?
- Importance of “joining the dots”



The investigation

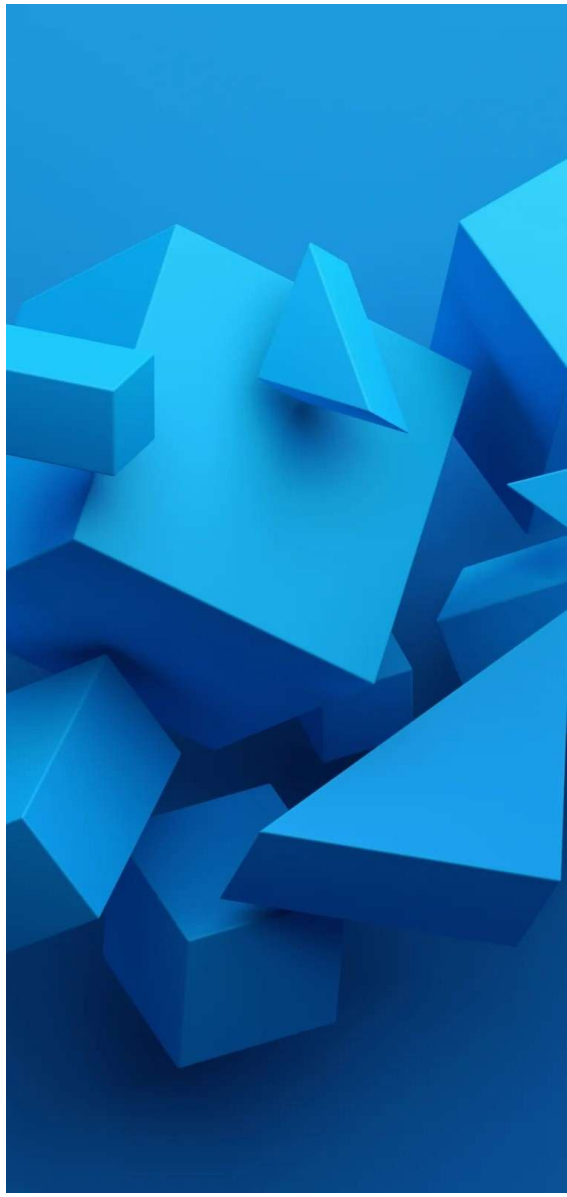


- ❑ Trained investigator
- ❑ Confidentiality
- ❑ Records of informal/formal outcomes
- ❑ Records of complaints not taken forward and why
- ❑ Interim steps (during investigation)



Disciplinary / dismissal

Relevant to sanction	– Nature and seriousness of the conduct – Power imbalance, vulnerability and impact – Repetition, escalation or earlier warnings – Insight, candour and risk of recurrence – Policy wording and treatment of comparable cases – Whether continued employment can be made safe
Wider action may still be required	– Team or leadership intervention – Targeted refresher training – Changes to supervision, events or client contact – Action concerning a third party – Monitoring, audit and follow-up



“All reasonable steps” does not require automatic dismissals

A fair misconduct dismissal still requires:

- a genuine belief in misconduct;
- reasonable grounds for that belief;
- a reasonable investigation;
- a fair procedure; and
- dismissal within the range of reasonable responses.



The disciplinary charge and the reason for dismissal must match the findings

Outcome and next steps

“Accused”

- Findings and reasons
- Sanction and expectations
- Confidentiality and non-retaliation
- Appeal

Complainant

- Whether the complaint was upheld, so far as appropriate
- Steps to protect and support them
- Non-retaliation and reporting route
- Review point

Organisation

- Risk assessment updated
- Control failures and owners recorded
- Wider measures completed and tested

Impact on liability?



- ❑ Employer investigates and proceeds with disciplinary action in respect of harassment allegations
- ❑ This will **not** be sufficient on its own to avoid liability.
- ❑ But can help



Questions?



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