

SEXUAL HARASSMENT IN THE WORKPLACE – GUIDANCE FOR REPRESENTATIVES AND BRANCHES



INTRODUCTION

Sexual discrimination, including sexual harassment is a widespread problem. High profile claims of sexual harassment reported in the media, together with movements such as #Metoo and emerging research, demonstrate how widespread and frequent sexual assault and harassment is, especially in the workplace.

According to the TUC **1 in every 2 women have experienced some form of sexual harassment at work and more than 70,000 (4%) men are sexually abused or assaulted each year.**

The CWU believe sexual harassment is unethical, unprofessional and undermines the CWU rule to actively oppose all forms of discrimination (rule 2.1.4).

Sexual harassment is clearly an issue of which CWU branches and reps need to be fully informed. This booklet aims to provide information on:

- What sexual harassment is, who is particularly at risk, and its impact;
- the law — including protection under the Equality Act 2010;
- guidance on representing members and dealing with allegations of sexual harassment
- The CWU preventative approach

UNDERSTANDING SEXUAL HARASSMENT

WHAT IS SEXUAL HARASSMENT?

Sexual harassment is any unwanted behaviour of a sexual nature that is offensive or makes you feel uncomfortable, humiliated, distressed, degraded or intimidated. It creates a hostile and offensive environment. Even if it isn't directed at you and was unintentional, something that makes you feel this way is still sexual harassment

WHAT TYPES OF BEHAVIOUR COULD CONSTITUTE SEXUAL HARASSMENT?

Sexual harassment can relate to a range of different behaviours. It may be verbal or physical. It may take place in the workplace, online, by telephone, text or at a work event such as a training course or a party. While the actual nature of the incident may vary, the common factor is that the incident involves unwelcome behaviour of a sexual nature. Some examples of behaviours that could constitute sexual harassment include:

- sexual comments or jokes
- the display or circulation of pornography
- displaying sexually graphic pictures, posters or photos
- suggestive looks, staring or leering
- propositions and sexual advances
- requests or demands 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,
- Rape and sexual assault including unwelcome touching, hugging, massaging or kissing.

Such behaviours do not need to be sexual motivated, only sexual in nature. Often perpetrators of sexual harassment will argue that their behaviour is 'just a bit of banter' or harmless flirting that didn't intend to cause offence. But this is not a defence if it has had a negative effect on someone.

Sexual harassment does not always have to be specifically directed or targeted at an individual. For example, displaying pornography or directing sexual comments at one person, may have a negative impact on other workers, creating a degrading, intimidating or hostile work environment.

It is also harassment to treat someone less favourably because they have rejected unwanted sexual conduct or made a complaint of sexual harassment.

WHO IS MOST AT RISK?

According to research conducted by the TUC, workplace sexual harassment is very often associated to an imbalance of power and authority, usually committed by a perpetrator in a senior position. The TUC found:

- *More than half (52%) of women have experienced some form of sexual harassment in the workplace.*
- *Four out of five did not report it to their employer, often because of the well-founded fear of reprisal and further victimisation.*

While anyone can experience sexual harassment, the TUC says that overwhelmingly, it is women who are harassed and this can be compounded by other forms of discrimination. For example TUC research has also found;

- *BAME women face double discrimination through racism and sexism. 37% of BAME women claimed race and gender as the reason for experiencing verbal abuse.*
- *Seven in 10 LGBT+ workers and disabled women workers have experienced at least one form of sexual harassment at work; and*
- *Nearly a third of young workers have experienced sexual harassment, often from third parties.*

Research carried out by the Gene Expression Omnibus also found that women, young people (ages 15-24 and 25-34), BAME, LGBT+ and people with disabilities were more likely to have experienced at least one form of sexual harassment in the last 12 months.

Moreover, a STUC poll has found 61% of women had experienced sexual harassment in public and on their way to work.

WHAT ARE THE IMPACTS?

Everyone can be affected by sexual harassment at work since it creates an uncomfortable workplace atmosphere that makes it difficult for members to work in. The following are some of the potential consequences of workplace sexual harassment:

- **Emotional And Physical Issues** - Loss of appetite/weight loss, weight gain, migraines, mood swings, depression and sleep difficulties are just some of the impacts victims of sexual harassment may experience. A lack of sleep may also lead to a variety of other health issues, eg. High blood pressure, weaker immune system. Sexual harassment victims frequently experience mental and behavioural consequences such as anxiety, sadness and nervousness. Often victims of sexual harassment will have low self-esteem and assertiveness.
- **Workplace Productivity/membership impacts** - Everyone loses when a workplace is contaminated with prejudice and harassment. Absenteeism, low morale, gossip, anxiety and members leaving the business and the union can all be associated with sexual harassment.
- **Financial impacts** - Sexual harassment not only harms the health of sexual harassment victims but it can also harm their finances. Often victims withdraw from the job and detach themselves from work colleagues and other members. Sometimes sexual harassment victims may experience further discrimination in terms of being overlooked for promotion or workplace opportunities or be negatively impacted by other internal procedures, eg. sick leave and sick pay. Affected members may also choose to leave their present position/ workplace or leave the business entirely. As a result, financial issues may arise.

THE LAW¹

All Employees have legal rights to protection from sexual harassment through the Equality Act 2010. Health and safety laws may also be used depending on the context.

EQUALITY ACT 2010

Section 26 of the Equality Act prohibits three types of sexual harassment.

1. **General Harassment** - As with all protected characteristic groups, general harassment with the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment is unlawful under the Act. General Harassment related to sex does not have to be directed towards the reporter or related to his or her actual sex. For example, a manager makes comments that engineering work is a man's job and that there is no point hiring women because they need lots of help and time off for caring responsibilities. Although his comments are not directed at anyone, another female employee overhears and is worried about her career. This could be considered harassment.

1. LRD, 2023, Tackling sexual harassment at work.

2. **Harassment related to unwanted conduct of a sexual nature** - is when a person engages in unwanted conduct of a sexual nature that has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. It covers verbal and physical treatment like sexual comments or jokes, touching, or assault, as well as, for example, sending emails of a sexual nature, or putting up pornographic pictures. For example a work colleague makes sexual jokes towards another female employee and implies that he will help her with her workloads if she sleeps with him.

3. **Unfair treatment due to refusing unwanted conduct of a sexual nature** - is when a person is treated less favourably than another person because they have either submitted to or did not submit to sexual harassment related to sex or gender reassignment. People are also protected from harassment if they are perceived to have or associate with someone with a protected characteristic

HEALTH AND SAFETY

Under the Health and Safety at Work Act 1974 etc employers have statutory duties to:

- *protect the health — including mental health, safety and welfare at work - of their employees (Section 2(1), HSWA);*
- *provide a safe working environment (Section 2(2)(e), HSWA);*
- *assess the nature and scale of workplace risks to health and safety, including the risk of harassment, to ensure there are proper control measures in place, and to take action to remove or avoid those risks, so far as reasonably practicable (Management of Health and Safety at Work Act Regulations 1999).*

WHY SEXUAL HARASSMENT IS A TRADE UNION ISSUE?

Sexual harassment weakens unions. When trade unions don't take sexual harassment seriously, they send a message to victims that the union is not the place for them. This discourages workers from both joining a union and becoming active within the union.

According to research carried out by the TUC, many people who experience sexual harassment live in fear of repercussions and some are forced out of the workplace. TUC polling on sexual harassment found that 7% of respondents said they wanted to leave their job but couldn't afford to do so, while 6% actually left their job.

Worryingly, just 1% of those polled by the TUC told a trade union rep about their experience of sexual harassment. This finding shows how important it is for trade unions to raise their profile among the groups most affected by sexual harassment and let them know what support they can offer.¹

REPRESENTING MEMBERS

DEALING WITH ALLEGATIONS OF SEXUAL HARASSMENT

It is important that all CWU reps respond quickly and professionally to reports of sexual harassment. The following 5 steps have been provided as guidance to assist CWU representatives and branches when dealing with allegations of sexual harassment.

STEP 1. STAY CALM AND ESTABLISH ANY IMMEDIATE SAFETY ISSUES:

Stay calm and establish a safe space - Do not act surprised or flustered when being told that sexual harassment has occurred. Provide a safe and confidential space for the affected member to talk. This could be an empty

room or union office. Ensure that the member is happy with the environment you have provided and that confidentiality is protected and maintained.

Listen and be supportive - Be aware that a member disclosing sexual harassment may display a range of emotions and behaviours including shock, fear, confusion, feeling numb, feelings of guilt, responsibility, withdrawal, denial or disbelief, agitation, distress and anger. Your role is not to investigate or judge the accuracy of statements made. Your role is to listen with empathy and compassion. Be aware, that the member may feel distressed regardless if the incident is recent or from a long time ago. Be visible and supportive, in particular:

- *Focus on the member's physical and emotional wellbeing.*
- *Ask the member what they need at this moment – Some members may feel safer with two representatives in the room or prefer to talk to a woman or an equality representative that looks like them. Offer and facilitate this option if requested.*

Signpost - If the member's mental or physical health has been affected by the impacts of sexual harassment, discuss support options and signpost to services e.g.

- NHS/GP
- Occupational Health Services
- Samaritans
- Rape UK
- Galop

Note: A list of support service contacts can be found at the back of this guide. If members request your assistance, help them to contact a support service for immediate and confidential support.

STEP 2. GATHER THE FACTS:

When someone experiences a traumatic event, their recollection can be disjointed or fragmented. This is because the brain processes overwhelming experiences differently. Affected members may seem confused or anywhere on the spectrum from highly emotional and distressed through to detached and unemotional. Above all, it is important you do not judge or disbelieve the member, no matter how confused or disjointed their account may be. Reliving experiences through retelling events can also be a traumatic experience for members and can lead to other mental health conditions such as PTSD, mood swings, anxiety and depression. Therefore it is important that branch representatives write notes during the conversation, in particular noting:

- *What happened and when?*
- *Who was involved?*
- *Were there any witnesses?*

Be sure to note as much detail as possible and keep written records securely; this is relevant in connection with reporting options discussed in step 3.

Hearing disclosures of sexual harassment can be difficult. As CWU representatives your wellbeing is also important. It is important that representatives supporting members affected by sexual harassment practice self-care and access available support where needed.

STEP 3. DISCUSS OPTIONS FOR REPORTING:

Typically, a person who has experienced sexual harassment is feeling disempowered, so a priority in responding to a disclosure of sexual harassment is to help to give them back power by establishing trust, providing information about their options, respecting their choices and supporting them.

On the basis of the information obtained from the member about the incident take them through the various reporting options available to them. This should include discussions on:

- **Policies** - *Employer/CWU policy for handling complaints. Familiarise yourself with the relevant policy and explain to the member:*
 - *The Informal process*
 - *The formal process*
- **Police (sexual assault/rape)** - *Some forms of sexual harassment automatically break criminal law and are therefore crimes. These include:*
 - *stalking*
 - *indecent exposure*
 - *'up skirting'*

If sexual harassment involves sexual violence or assault, members should be encouraged to report this to the police.

It is not your role to decide what the disclosing member does next but it is important you provide information (including printed copies) on relevant policies or signposted organisations; CWU members need to make their own choice about how they wish to proceed.

STEP 4. AGREEING REPORTING OPTIONS AND NEXT STEPS

When agreeing reporting options, the privacy and choices of the member making the disclosure must always be respected. The CWU encourages members who have been affected by sexual harassment to report instances to the employer/CWU and/or police (for incidences of sexual assault).

- **Reporting to Police** - It should not be assumed that a CWU member disclosing a sexual assault will necessarily wish to report the matter to the police – the decision to do so must remain theirs alone. However, recent sexual assaults should be reported to police in the early stages to optimise the outcome of an investigation, should a member later choose to make a formal report to police. This means that police will collect and store evidence when they are notified of the incident and, if the person is undecided about a police investigation (and possible criminal charges), they can make that choice later.
- **Making a report to the employer** - Branches and representatives should encourage and if requested, assist members to report incidences of workplace sexual harassment with their employers and represent them in procedural meetings.
- **Making a report to the CWU** - In circumstances where the alleged perpetrator is a Representative of the CWU and the sexual harassment occurred at a CWU event, conference or in connection with a CWU organised activity, the member has the option of making a report under the CWU's sexual harassment procedure.

- **Reporting** - Where the CWU member does not want to take any specific action in response to the incident, members should be advised they have the option of recording the incident – members can use the CWU’s sexual harassment diary log to assist with this process. Keeping a log will assist with members who may wish to make a complaint in the future.

Once a member makes a decision on how they wish to proceed, branches and representatives should take **one or more** of the following actions:

- *Help the member complete a record of the incident using the CWU’s sexual harassment diary log.*
- *Help the reporter set out their report in writing*
- *Help and assist with raising the matter in writing to the harasser (usually informal route approach – members can use the CWU template harassment letter to assist with this process)*
- *Help and assist with raising the matter in writing to the employer*
- *Accompany and represent the member in procedural meetings.*
- *Obtain advice or assistance from CWU HQ.*

STEP 5. KEEPING RECORDS

Keeping records and documenting incidences of sexual harassment has a number of benefits.

1. *It allows members to record accurate accounts of incidences of sexual harassment*
2. *It assists with monitoring incidences of sexual harassment – helping to determine whether an incident is isolated or forms part of a pattern*
3. *It provides a record of internal action taken - this could be useful in establishing whether reasonable steps were taken to deal with the harassment and may assist members with any legal claims.*

Records of sexual harassment complaints will invariably contain highly sensitive personal information. It is therefore imperative that they are protected in line with GDPR and data protection legislation.

PREVENTING SEXUAL HARASSMENT – A CWU APPROACH:

The CWU believes every member has the right to be able to work in an environment which values difference, is free from hostility and to work in an environment that is safe. People cannot make their best contribution if they are working in fear.

Branches and representatives can play a key role in influencing good working cultures by promoting dignity and respect. Branches are encouraged to take a visible lead in preventing sexual harassment by raising awareness of the issue with members and creating safe spaces so that members feel empowered to speak up.

The following tools and suggestions have been created for branches and reps use and/or consideration.

- **CWU workplace member meeting briefing and Q&A Handout** - created for local workplace union meetings. The briefing covers “what is sexual harassment?” and “what to do if you are being sexually harassed”.
- **CWU sexual harassment members guide** - designed to help members recognise sexual harassment, make informed choices about reporting incidences of sexual harassment and understanding what support is available
- **CWU sexual harassment diary log** - created for members to use to record incidences of sexual harassment. Branches are encouraged to make blank copies ready and accessible for members use.
- **Provide safe spaces** - The comfortability to speak out without fear or discrimination is vitally important. Advocate an open door approach and provide members access to safe spaces to speak out and access support.
- **Invite branch equality officers to visit your workplace** - holding surgeries and inviting equality officers or women’s officers to promote awareness of sexual harassment in the workplace demonstrates that the CWU take sexual harassment seriously. It also provides members opportunities to talk to someone they may feel more comfortable with.

All sexual harassment materials can be accessed from the CWU’s sexual harassment tool pack.

FURTHER HELP AND SUPPORT

Members requiring further support following experiences of sexual harassment, sexual assault or rape can be signposted to:

- **Samaritans**
www.samaritans.org/how-we-can-help/contact-samaritan
- **LGBT Foundation**
<https://lgbt.foundation/how-we-can-help-you>
- **GALOP (LGBT+ sexual violence support)**
<http://www.galop.org.uk>
- **Rape Crisis England and Wales**
<https://rapecrisis.org.uk>
- **Rape Crisis Scotland**
<https://www.rapecrisisscotland.org.uk>
- **Rape Crisis Northern Ireland**
<https://rapecrisisni.org.uk>