



# Sexual Harassment in the Workplace

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**DISCLAIMER:** This guidance is for general information purposes and does not constitute legal advice. Specific advice should be sought in respect of particular cases.

## Introduction

Research shows that sexual harassment remains a serious problem in some UK workplaces<sup>1</sup>. Working relationships need to be positive and free from any form of discrimination or harassment. The default position is often the law which requires dignity to be violated or the behaviour to cross a certain threshold so that the working environment becomes – intimidating, hostile, degrading, humiliating or offensive.

This practical guide developed specifically for Hospitality Ulster provides an overview of sexual harassment and outlines the proactive and preventative steps employers should take to prevent sexual harassment in the workplace, from a business perspective as well as a legal one with clickable links to further information throughout the guide. It includes a checklist to enable employers to assess the extent to which their current workplace culture, policies and practices provide adequate protection to victims of sexual harassment and those who report it.

## Understanding Sexual Harassment

Sexual harassment can manifest itself in many ways in the workplace and may involve conduct of a verbal, nonverbal or physical nature, including written and electronic communications. It can occur between persons of the same or different genders, and individuals of any gender can be either victims or the perpetrators<sup>2</sup>. Sexual harassment may also occur outside the workplace and outside working hours, including during official travel or social functions related to work and these will often be considered as if they had happened in the workplace.

The law defines harassment generally as “actions or behaviour which have the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment”.

Sexual harassment can take a variety of forms – from looks, gestures and words through to physical actions and/or contact of a sexual nature. Examples of sexual harassment (non-exhaustive list) include:

- Attempted or actual sexual assault, including rape
- Sharing or displaying sexually inappropriate images or videos in any format
- Sending sexually suggestive communications in any format
- Sexual posts or contact on social media
- Sharing sexual or lewd anecdotes or jokes

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<sup>1</sup> [CIPD Sexual Harassment in the Workplace](#)

<sup>2</sup> On occasions throughout this guidance, we use the term “victim” to refer to the individual who has been, or is being, subjected to sexual harassment. However, we acknowledge that an individual may not identify as a victim and prefer to be described differently. We use the term “perpetrator” to describe the individual who has committed, or is committing sexual harassment.

- Making inappropriate sexual gestures, such as pelvic thrusts
- Unwelcome touching, hugging, massaging, or kissing including pinching, patting, rubbing, or purposefully brushing up against another person
- Staring or leering in a sexually suggestive manner
- Repeatedly asking a person for dates or asking for sex
- Rating a person's sexuality
- Making sexual comments about appearance, clothing, or body parts
- Name-calling or using slurs with a gender/sexual connotation
- Making derogatory or demeaning comments about someone's sexual orientation or gender identity.

Intentional or unintentional unwanted verbal, nonverbal or physical conduct of a sexual nature is totally unacceptable in the workplace and there are methods of addressing such behaviour, often starting with work colleagues “calling it out” as part of the “Bystander Approach”<sup>3</sup> and the wider strategy for ending violence against women and girls [here](#). Read more on the bystander approach later in the guide. The tone of the workplace being free from sexual harassment is both set from the top (owners and managers), but also by the staff (regardless of gender or seniority) who can call such behaviour out as it happens and nip it in the bud before it escalates.

Since the introduction of the specific legal framework to protect against sexual harassment in the workplace the world has moved on significantly and so to have the modes and techniques of sexual harassers in the workplace, for example, unwanted sexts<sup>4</sup>, sharing unwanted pornographic images, cyber-trolling<sup>5</sup>, sexual gaslighting<sup>6</sup> and so on.

Many victims of sexual harassment do not pursue complaints because of issues associated with – power imbalances, fear of impact on career, being labelled as prudish, previous experiences, ineffective procedures, concerns about retaliation and so on.

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<sup>3</sup> Seeks to build shared individual and community responsibility for responding to and preventing sexual violence by encouraging people not directly involved as a victim or perpetrator to take action. As such, they potentially have a key role to play in challenging cultures of violence and gender inequality.

<sup>4</sup> A sexual text message. Any electronic message with sexual context.

<sup>5</sup> Internet slang term. Refers to people who deliberately use highly offensive, indecent, threatening or false language to upset or offend another person on the Internet.

<sup>6</sup> A form of psychological abuse; it can involve physical sexual risk and harm. Sexual gaslighting is used by a manipulating partner to have their partner question their sexual reality.

The law is often a blunt instrument to address the issue after the event. It is much better to ensure that proactive and preventative workplace cultures work towards an environment where everyone can work free from sexual harassment. Thus, it is vital that managers and supervisors let staff know that the excuse of “banter” will not be acceptable when instances of sexual harassment occur. Staff on the receiving end of such behaviour should not be portrayed as oversensitive but rather they are making it clear where boundaries of unacceptable behaviour lie.

## **The Impact of Sexual Harassment in the Workplace**

Sexual harassment can have a devastating effect on the health, confidence, morale and performance of people affected by it. The anxiety and stress caused by harassment of any form can negatively affect a victim’s productivity, absenteeism and employment prospects. Sexual harassment may also have a damaging impact on employees who are not themselves directly involved, but who also experience a workplace culture where any form of harassment is normalised and undermines the dignity of workers.

There are adverse consequences for employers. Sexual harassment has a direct impact on the profitability of a business where affected staff take sick leave or resign from their jobs. It can also impact the economic efficiency of a business when employees’ productivity is undermined by a sexually hostile work culture.

Where an employee challenges and successfully wins a sexual harassment case this often throws a spotlight on the employer and in doing so poses a huge reputational risk to the business. See tribunal decisions and practical lessons later in the guide.

Some specific groups are particularly vulnerable to sexual harassment, such as new entrants to the labour market, those with irregular or precarious employment contracts, young people, immigrant workers and employees in non-traditional jobs. In the hospitality industry, it can never be the case that sexual harassment is seen as an occupational hazard or that it is just part of the high-pressure environment or the behaviour of a key individual who is deemed indispensable for the business.

## **The Existing Legal Framework**

### **The Sex Discrimination (Northern Ireland) Order 1976 (as amended)**

[Article 6A](#) came into effect in 2008. In essence, the offence of sexual harassment in the Northern Ireland workplace is where, stereotypically a man engages in unwanted conduct against a woman that is related to her sex or that of another person and has the purpose or effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her.

In addition, it is an offence if he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating her dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or on the ground of her rejection of or submission to unwanted conduct of a kind he treats her less favourably than he would treat her had she not

rejected, or submitted to, the conduct.

This conduct shall be regarded as having the effect mentioned above only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.

It is worth remembering that each case will be fact specific and specialist legal advice should be taken in circumstances where this is deemed appropriate.

Further information is available from the Equality Commission for Northern Ireland [here](#).

### **Health and Safety**

Employers have a duty to take reasonable care of the health and safety of employees, arising from common law, [the Health and Safety at Work \(Northern Ireland\) Order 1978](#) and other health and safety regulations. [The Management of Health and Safety at Work Regulations \(Northern Ireland\) 2000](#) oblige employers to conduct suitable risk assessments and identify preventative measures. Breach of health and safety obligations could give rise to a personal injury or enforcement by the Health and Safety Executive Northern Ireland, including criminal sanctions in serious cases. Further information is available [here](#).

### **Constructive Unfair Dismissal**

Employers have a duty not to treat employees in a way that is calculated or likely to breach the implied term of mutual trust and confidence in the employment contract. An employee with one year's service could potentially bring a claim for constructive unfair dismissal if they allege breach of the implied term – for example, because they feel the employer failed to support them – and resign in response to the alleged breach.

### **Unfair Dismissal**

In circumstances where an employee is experiencing sexual harassment, their performance and/or attendance may be affected. When contemplating dismissal for capability or conduct reasons, an employer should attempt to explore with the employee the underlying reasons for any poor performance or poor attendance. Given that an employee may not be willing to disclose the reasons, an employer should consider if there are any warning signs that indicate harassment may be an issue. If any form of harassment, violence or abuse is suspected, an employer should consider adjustments to its disciplinary, capability or absence procedures and signpost the employee to appropriate support. Employers should be reminded of the need for a fair process in the exceptional cases where dismissal is being considered. The Labour Relations Agency Code of Practice on Disciplinary and Grievance Procedures can be found [here](#).

### **Third-Party Harassment**

It is unlawful for an employer to allow an employee to be persistently sexually harassed by a third party for example, customer or client, as per the [Sex](#)

[Discrimination \(Northern Ireland\) Order 1976, Part III, Article 8, 2B](#). An employer is likely to be held liable for such conduct if they have:

- Knowledge that the employee has been sexually harassed in the course of their employment on at least two other occasions by a third party, and
- Not taken reasonable steps to prevent it from happening to the employee again.

Note that it does not matter whether the third party is the same or a different person on each occasion.

Examples of third party sexual harassment might include:

- Unwelcome physical contact or sexual advances
- Embarrassing or otherwise offensive jokes
- Lewd comments or innuendo
- The sending of offensive emails, text messages, etc.
- Displays of pornographic material.

It is possible that not all incidents will amount to harassment as defined by the anti-discrimination legislation. However, if an employer fails to deal with any form of bullying or harassment, the victim could resign and claim constructive dismissal.

It is good practice for employers to have a sexual harassment policy that clearly sets out what conduct is unacceptable, the employer's zero-tolerance approach to such conduct and the process that will be followed in such circumstances.

## **The Importance of the Bystander Approach and Training**

The active bystander approach is a promising approach to tackle all forms of harassment or violence. It encourages people to take ownership of a problem and speak up when they witness potentially dangerous situations ranging from off-colour jokes among work colleagues or friends, to street harassment or harassment on public transport.

The principle aim of the bystander approach is to create a positive culture, wherever it is implemented, where violence, abuse and/or harassment are recognised and viewed as unacceptable.

There are many different types of active bystander programmes which have been applied across sectors including schools, universities, workplaces, sports clubs, police, the military, youth and community sectors.

There is strong evidence that active bystander programmes increase participants likelihood of intervening and calling out poor behaviours. They have also been shown

to deliver changes in attitudes, beliefs, social and cultural norms and peer group relationships that may affect conditions of perpetration and victimisation.

Active bystander training is empowering for people who participate in it and equips them with the knowledge, skills and confidence to make safe and intervene in response to harmful behaviours and attitudes. It also provides a way to ensure that people have correct information and appropriate language to recognise and discuss safe and healthy relationships and unsafe behaviour.

### **What is the 'Active Bystander' Approach?**

Essentially, there are four stages to move through to become an active bystander and make an intervention when witnessing harmful behaviours or attitudes:

1. Noticing the event or situation
2. Interpreting it as a problem
3. Feeling responsible for addressing it
4. Taking action to prevent (further) harm

The golden rule of the active bystander approach is to only intervene in a way that is safe.

There are five main types of active bystander strategies:

- **Distract** - create a distraction to interrupt the harmful behaviour and/or offer a victim opportunity to move away.
- **Delegate** - engage others with the necessary skills, training, or authority to assist in making an intervention.
- **Direct** - challenge the behaviour or attitudes directly.
- **Delayed** - offer your support, signpost to support services and reporting routes, and take further action after the incident.
- **Document** - make a record of key information to aid with delegating and reporting, and/or to dissuade further harmful behaviour.

Active bystander intervention strategies work in response to behaviours like sexual misconduct, harassment, racism, sexism, homophobia, transphobia, and more.

### **Preventing Sexual Harassment in the Workplace**

Employers should take all reasonable steps to prevent sexual harassment. They should not wait until a grievance or sexual harassment complaint is made but rather adopt a proactive and preventative approach. This will speak to the individual business culture and what is experienced everyday on the restaurant floor, in the kitchen, behind the bar, in the staff room, at the smoking area, during the clearing up, after hours etc.

Employers, via their managers and frontline supervisors, should be live to things such as harassment “dressed up” as banter, low level misogyny, outdated cultural depictions, counter allegations of political correctness or “woke” behaviours or labelling someone as unduly sensitive or a “snowflake”.

It is extremely difficult to draw up a list of what can and cannot be said because there may be degrees of subjectivity in terms of what “crosses the line” for one person may not cross it for another. The working environment or workplace culture too may have an influence in terms of what might be considered acceptable “industrial language”.

Employers should be thinking about things such as inappropriate humour, the choice of language, how stereotyping or outdated views manifest themselves, the demographic and gender profile of the workforce and the ramifications therein.

To that extent, each instance will be fact sensitive and will require an examination of things such as perception, reasonableness, frequency, previous complaints and so on.

The checklist below, whilst not exhaustive, is designed to support and enable employers to assess the extent to which their current workplace culture, policies and procedures provide adequate protection to victims of sexual harassment and those who report it. The checklist can be adapted to suit specific workplaces, and is suitable for employers, regardless of sector, size and financial or other resources.

In the workplace:		Yes	No	Not Sure
1	Investigate the extent of the problem or potential for there to be a problem and identify areas of risk.			
2	Create a zero-tolerance workplace culture to sexual harassment where all employees are encouraged to report inappropriate behaviour.			
3	Have a specific sexual harassment policy that clearly sets out what conduct is unacceptable, the employer's zero-tolerance approach to such conduct and the process that will be followed, including the support available for victims of sexual harassment and those who report it.			
4	Have effective reporting mechanisms in place and ensure all employees are aware of them.			
5	Provide sexual harassment training for all employees, trade union and/or staff representatives, where appropriate, with specific training for managers in how to deal with complaints of sexual harassment.			
6	Managers are aware of their specific responsibilities and deal with complaints of sexual harassment quickly, effectively and in a sensitive way.			
7	Have nominated employees to monitor sexual harassment issues, oversee training and offer support to victims of sexual harassment for			

	example, workplace champions, trade union/employee representatives, where appropriate.			
8	Ensure all relevant policies provide adequate protection and the right to report sexual harassment by all staff including seasonal workers, casual workers and agency workers etc.			
9	Ensure third parties such as suppliers and customers are aware of the employer's zero-tolerance policy to sexual harassment and that employees are aware that it will take reports of sexual harassment by third parties seriously.			
10	Ensure the effective monitoring of the treatment of sexual harassment cases in the workplace.			

## Checklist Actions

- For an employer to create a workplace culture that minimises the risk of sexual harassment it must assess and recognise the extent of the problem or potential for there to be a problem. For example, learning from grievances, exit interviews, numbers and types of complaints, tribunal cases etc.
- Risk assess where in the business sexual harassment would be more likely to occur. Consider areas where there may be power imbalances between individuals. For example, inequalities between men and women or abuse of power between senior and junior staff.
- Ensure senior leadership team visibly sets out and openly communicates a zero tolerance approach to sexual harassment in the workplace. This should be reflected in formal statements, prominent on the intranet and website, brought to the attention of all employees by other means such as during regular training, in staff meetings, on noticeboards or posters in the workplace, in staff bulletins or newsletters and in the employee handbook. This should also be communicated with organisations that supply workers and services to the employer.
- Have in place an effective sexual harassment policy, which is regularly reviewed and brought to the attention of all staff.
- Employers need to create a safe working environment where reporting is encouraged and employees feel confident to report sexual harassment. It is important that those who report sexual harassment are taken seriously, given support and protected from victimisation, and where allegations are properly investigated and appropriate action taken against perpetrators.
- Ensure employees know who to report sexual harassment to, for example, manager, front line supervisor or HR and how. Consider using anonymous reporting tools to enable workers to report sexual harassment such as telephone helplines or online portals.
- It is good practice for sexual harassment training to form part of all workers' induction procedures. This is an effective way of ensuring that all new staff are clear about the behaviours expected in the workplace and how to report instances where behaviour falls below this standard. A copy of the employer's

relevant policy should be provided in the induction pack.

- Training should be tailored towards the nature of the employer, the target audience and the employer's policy to maximise impact. Consider offering bystander training to a cohort of staff.
- Employers should keep records of who has received the training and ensure that it is refreshed at regular intervals.
- Provide training for managers on their responsibilities in maintaining appropriate standards of behaviour in the workplace, the steps to follow if an employee reports sexual harassment, who to go to for support and how to support employees. Crucially important, training on maintaining confidentiality during an investigation and how to prevent or address victimisation of employees who have made a report of sexual harassment.
- Have a set policy or process in place if a customer or client sexually harasses a member of staff.
- It can be useful to have a nominated workplace champion or contact mentors to monitor sexual harassment issues, oversee training, and offer support to employees experiencing sexual harassment. An opportunity to speak in confidence with a trained person in the business perhaps before making a formal complaint can be helpful for some employees, as is support during the process.

## Tribunal Decisions and Practical Lessons

### McFarland v Morelli Ice Cream Ltd & Di Vito [2022]

Northern Ireland Industrial Tribunal (NIIT)      Decision Number NIIT 5722/18IT

Ms McFarland started working for the respondent as an administrative assistant in June 2015. The claimant never received a written contract of employment, nor did she receive any training about the grievance procedures. The second respondent was employed by the first respondent and was part of the extended family of the ownership of the company.

The issues leading to the case arose from complaints against the second named respondent and how he interacted with the claimant. It was alleged that the second respondent referred to the claimant as 'Big Tits' to her face as well as saving her as that in his telephone contact list. The claimant raised a complaint about this during a performance review in September 2016. There was no investigation to that complaint other than issuing the second respondent with a verbal warning. The claimant argued that the lack of proper investigation was due to the family 'closing ranks' to protect a family member. The second respondent was never instructed to apologise to the claimant and the claimant only became aware of the verbal warning through discovery relating to the case.

A second performance review took place in February 2017, which the claimant felt was an act of victimisation as a result of raising the issue previously. The claimant

stated that the second respondent's conduct had not changed, and the nature of the conduct was that the second named respondent would ask the claimant about her sex life in a crude manner. There was evidence that the second respondent had sent a text message to the claimant saying 'get your rat out' which is a crude reference to female genitalia. This continued into early 2018 with crude statements being made by the second respondent to the claimant. The claimant then made a formal complaint of sexual harassment against the second respondent.

The attitude taken by the respondent was that the complaint was a 'smokescreen' by the claimant in relation to her poor performance at work. The conclusion of the internal report was that the claimant had exaggerated the claims and had been untruthful in some of the allegations. The report recommended mediation and the instigation of a disciplinary process against the second respondent. The second respondent was subsequently given a final written warning of twelve months' duration. The claimant stated that this was inadequate considering the conduct of the second respondent.

The Tribunal found that the second respondent's conduct fell within the statutory definition of harassment on the grounds of the claimant's sex. Indeed, it was found that the text message sent was 'obscene'. More interestingly, it was found that the first respondent had probably facilitated the conduct. This was because there was no proper investigation and the word of the second respondent was taken over the claimant at face value. This was repeated in terms of the report that was later carried out. The Tribunal did note that they were aware of placing too high a standard of investigation upon employers yet in this case, the atmosphere produced was inappropriate where the claimant was required to provide repeated descriptions of the conduct faced. As a result, the claimant's claim was successful. She was awarded £20,000 for injury to feelings.

### **Practical Lessons**

This case, now public due to anonymisation being lifted, demonstrates the extent to which employers need to ensure that proper investigation and action is taken when allegations are made in relation to harassment. The Tribunal made it clear that it did not want to make it too onerous for employers but the fact the starting point in the investigation was to believe the second respondent over the claimant was such that it meant the employer fell below what was expected. Decision is available [here](#).

### **McNicholl v Bank of Ireland [2021]**

Northern Ireland Industrial Tribunal (NIIT)      Decision Number NIIT 00002/17IT

This case was anonymised until 2021.

Ms McNicholl started employment with the respondent in May 2015 when she was around 25 years old. The case revolves around allegations she made about a 51-year-old, long-standing, male employee known as 'F'. From almost her first day of employment the claimant stated that F singled her out for special treatment –

stopping by her desk for unsolicited chats and commenting on her appearance, hair and an imagined 'bikini photoshoot'. On one occasion, he printed out celebrity hairstyle pictures, made a small book and delivered it to the claimant's desk suggesting that she try out some of the styles. He also touched her hair and referred to the respondent's incoming post, which the claimant was responsible for opening and sorting, as her 'fan mail'. The Tribunal accepted that he also contrived ways to ensure he always left at the same time as her so they could share a lift, and that he sent unsolicited and inappropriate emails to the claimant.

This behaviour made the claimant feel uncomfortable and she reported it to her line manager, Lisa McManus. Ms McManus took advice from her own manager, Liam Lagan and from in-house HR. At no point did either the managers or HR reference the comprehensive Bank of Ireland Harassment and Bullying Policy or their Equal Opportunities Policy. The Tribunal also noted that the joint Equality Commission for Northern Ireland (ECNI) and Labour Relations Agency (LRA) Harassment and Bullying in the Workplace Policy was in existence, but not relied on by the first respondent for best practice advice.

F was reminded of appropriate office etiquette and was told to stay away from the claimant. The claimant was informed of this approach and told that if there was any repeat of the issues, formal action would be taken. The claimant was informed by Lisa McManus and Liam Lagan that the next step would be up to her, (e.g., escalation of complaint, face-to-face apology, email apology, etc.). The claimant advised that as F had been spoken to, if there was no repeat and a full investigation would be undertaken if there was, she was satisfied to leave it at that.

While the Tribunal accepted that the claimant had not been pressurised into agreeing to this informal action, they did conclude that the detailed harassment policy had not been explained to the claimant nor all the options within the policy outlined to her, nor was she told that F had been informally warned about similar behaviour towards a female employee in the Bangor branch.

Several months passed without incident. The claimant was disciplined herself for a series of short-term absences. The Bank of Ireland policy on this issue was followed to the letter. F then began to approach the claimant again, making conversation and finding ways to chat. Another young, female colleague told the claimant that she also felt uncomfortable with F and so the claimant approached her line manager again. The respondent enlisted the expertise of Emma Woods, an experienced investigator and HR consultant. The Tribunal believed her report to be detailed and accurate but disagreed with her assessment of the seriousness of the harassment. The claimant resigned before its outcome saying that she felt unable to "return to work for a company who let [her] down on so many occasions". Ms Woods' investigation was the basis for her constructive unfair dismissal claim.

The claim for constructive dismissal was dismissed by the Tribunal, not least because the claimant had booked a 'trip of a lifetime' to Australia with her boyfriend, just after she received the formal warning for short term absences, and months before the incident with F which prompted her second complaint. The Tribunal did not accept

her evidence that she had intended to ask for a sabbatical from work, nor that Emma Woods' second interview with her was the 'last straw'. It was held that her resignation was made in order to go travelling, not a reaction to her treatment by the respondent.

The age discrimination claim failed as the Tribunal considered that F's treatment of the claimant was because she was female, not because she was young. The Tribunal held that F repeatedly violated the claimant's dignity and created an adverse working environment for her and that it was on grounds of her sex. While the tribunal accepted that the injury to the claimant's feelings were increased as a result of the informal resolution and subsequent resumption of F's action, they found that allegations by the claimant in relation to panic attacks and severe anxiety wrongly sought to exaggerate her feelings and increase any award. The claimant was awarded £18,483.07, which was held to fall within the middle Vento band.

### Practical Lessons

This is a lengthy judgment, running to some 90 pages in all. It is packed with case law and a step-by-step approach to the application of statute, so worth a closer look. It serves as a useful guide to when, and why, a case may be anonymised - it will take more than a 'a vague reference to a preference' to convince a Tribunal that it is necessary. This case is also a cautionary tale for employers. It is not enough to have policies; you must also ensure thorough training for HR and management, and good support throughout any process. There should also be a flow of information between managers to ensure that recurring problems are correctly addressed. The respondents are a large organisation with in-house HR support and comprehensive policies and procedures. However, managers were unaware of policies and how to deal with serious allegations of harassment. There was no central way of linking allegations against F. If there had been, perhaps the claimant's complaints would have been dealt with differently. Decision is available [here](#).

## Further information on Sexual Harassment

### Useful Resources

- Equality and Human Rights Commission - [Preventing sexual harassment at work: checklist and action plan for employers](#)
- Joint guidance published by the Equality Commission and Labour Relations Agency - [Harassment and Bullying in the Workplace](#)
- Health and Safety Executive for Northern Ireland - [Risk Assessment](#)



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