



The Law  
Society

Junior Lawyers Division  
response to the  
Government Equalities Office consultation  
on Sexual Harassment in the Workplace

October 2019

## Sexual Harassment in the Workplace

### Junior Lawyers Division response to the Government Equalities Office consultation

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales with an independent representative voice. The JLD is one of the largest communities within the Law Society with over 70,000 members. Membership of the JLD is free and automatic for those within its membership group including Legal Practice Course (LPC) students, LPC graduates, trainee solicitors, solicitor apprentices and solicitors up to five years qualified.

A recent worldwide survey conducted by the International Bar Association found that the legal profession is significantly affected by sexual harassment in the workplace, with 38% of female respondents and 6% of male respondents in the UK reporting that they had been subject to sexual harassment in the workplace. The survey also found that younger members of the profession (and therefore often more junior) are disproportionately affected by bullying and sexual harassment in the workplace<sup>1</sup>. The likely cause is the imbalance of power in the workplace.

The survey has reported that amongst those respondents who experienced sexual harassment, 74% of cases are not reported and, in the cases that are reported, 71% said that the response from the employer was insufficient or negligible.

In light of these findings the JLD considers it appropriate to respond to this consultation in the interests of its members.

The JLD has considered the response prepared on behalf of the Law Society and supports its response to the consultation. However, the JLD wishes to highlight the points that are of particular concern to its members.

Q1	<p><b>If a preventative duty were introduced, do you agree with our proposed approach?</b></p> <p>The JLD welcomes changes in legislation to better protect its members from sexual harassment in the workplace, with responsibility on employers to prevent harassment from occurring in the first place. However more information is required to understand what would constitute a breach of that duty to prevent, how that duty would exceed those already set out in the Equality Act and how, in practical terms, such a breach can be proven where harassment has not actually taken place.</p> <p>It is also necessary for the enforcement of such duties to be sufficiently robust to ensure employers comply with those duties.</p>
Q2	<p><b>Would a new duty to prevent harassment prompt employers to prioritise prevention?</b></p> <p>There are already laws in force which makes an employer liable where an employee is subject to sexual harassment. Despite that, sexual harassment in the workplace continues</p>

<sup>1</sup> 58.4% of respondents who reported being sexually harassed in the past year were under the age of 35



	<p>to be a significant problem, indicating that it is not acting as a prompt for employers to prioritise this issue.</p> <p>The new duty needs to be underpinned by a robust system of monitoring and enforcement, beyond what is currently there, if it is to prompt employers to prioritise prevention. It is also important that there is sufficient guidance for employers to fully understand what is expected of them.</p>
<b>Q3</b>	<p><b>Do you agree that dual enforcement by the EHRC and individuals would be appropriate?</b></p> <p>The consultation proposes that the EHRC would not have sufficient capacity to enforce the duty and as such the enforcement can be brought by an individual as well. More information is required to understand in what forum it is intended such enforcement action would be brought by an individual, what would be the benefit to an individual to bring such enforcement action if there has been no actual harassment against the individual, and how the action would be funded by an individual. The JLD is concerned that in reality there are likely to be very few enforcement actions by individuals due to the cost of bringing such action.</p>
<b>Q4</b>	<p><b>If individuals can bring a claim on the basis of breach of the duty, should the compensatory model mirror the existing TUPE provisions and allow for up to 13 weeks' gross pay in compensation?</b></p> <p>This is not within the JLD's expertise and we do not have the resources to undertake research in this area</p>
<b>Q5</b>	<p><b>Are there any alternative or supporting requirements that would be effective in incentivising employers to put measures in place to prevent sexual harassment?</b></p> <p>This is not within the JLD's expertise and we do not have the resources to undertake research in this area. The JLD agrees with the Law Society's response on this question.</p>
<b>Q6</b>	<p><b>Do you agree that employer liability for third party harassment should be triggered without the need for an incident?</b></p> <p>The members of the JLD come in to contact with third parties on a daily basis during the course of their work. As such the JLD considers it important that employers do have responsibility for the protection of their employees when such contact takes place, together with vicarious liability for the acts of third parties, in the same way that they would be responsible for harassment that occurs within the workplace. Employers should have adequate policies in place to deal with any acts of harassment by third parties against an employee during the course of their employment.</p>



Q7	<p><b>Do you agree that the defence of having taken ‘all reasonable steps’ to prevent harassment should apply to cases of third-party harassment?</b></p> <p>The JLD agrees that any defences available to an employer in the event of failing to prevent harassment in the workplace should apply in the same way to matters involving third parties.</p>
Q8	<p><b>Do you agree that sexual harassment should be treated the same as other unlawful behaviours under the Equality Act, when considering protections for volunteers and interns?</b></p> <p>The JLD is concerned that the proposed changes to the route to qualification as solicitors by the Solicitors Regulation Authority, in particular the fluid nature of the proposed qualifying work experience element, will give rise to a number of individuals who are likely to fall within the category of volunteers or interns during their qualifying work experience. By way of example, there may be individuals working in advice centres run by charities or university run advice centres and therefore may not be covered by the Equality Act as currently in force. Those individuals will find themselves in a position of significant power imbalance and therefore vulnerable to victimisation and harassment. The JLD is in favour of legislation to ensure these individuals are protected from harassment.</p>
Q9	<p><b>Do you know of any interns that do not meet the statutory criteria for workplace protections of the Equality Act?</b></p> <p>The definition of intern is unclear, however see answer to question 8 as an example of types of individuals who may fall within this category. The JLD believes it is important that all individuals are protected from harassment within organisations.</p>
Q10	<p><b>Would you foresee any negative consequences to expanding the Equality Act’s workplace protections to cover all volunteers, e.g. for charity employers, volunteer-led organisations, or businesses?</b></p> <p>This is not within the JLD’s expertise and we do not have the resources to undertake research in this area. The JLD agrees with the Law Society’s response to this question.</p>
Q11	<p><b>If the Equality Act’s workplace protections are expanded to cover volunteers, should all volunteers be included?</b></p> <p>This is not within the JLD’s expertise and we do not have the resources to undertake research in this area. The JLD agrees with the Law Society’s response to this question.</p>
Q12	<p><b>Is a three-month time limit sufficient for bringing an Equality Act claim to an Employment Tribunal?</b></p> <p>The IBA survey referred to in this consultation response found that a vast majority of individuals in the legal profession who are subject to sexual harassment in the workplace, do not report the incident. The reasons cited for not reporting are the status of the perpetrator, fear of repercussions and the incident being endemic to the workplace. As such, it can take an individual several months to come to terms with what has happened</p>



	to them, let alone be in a position to seek advice and bring a claim. 3 months is an insufficient amount of time to bring such claims.
<b>Q13</b>	<b>Are there grounds for establishing a different time limit for particular types of claim under the Equality Act, such as sexual harassment or pregnancy and maternity discrimination?</b> This is not within the JLD's expertise and we do not have the resources to undertake research in this area.
<b>Q14</b>	<b>If time limits are extended for Equality Act claims under the jurisdiction of the Employment Tribunal, what should the new limit be?</b> This is not within the JLD's expertise and we do not have the resources to undertake research in this area.
<b>Q15</b>	<b>Are there any further interventions the Government should consider to address the problem of workplace sexual harassment?</b> This is not within the JLD's expertise and we do not have the resources to undertake research in this area.