



Response to UK Government (Equalities Office) Consultation on Sexual Harassment in the Workplace

[About the STUC](#)

The STUC is Scotland's trade union centre. Its purpose is to co-ordinate, develop and articulate the views and policies of the trade union movement in Scotland; reflecting the aspirations of trade unionists as workers and citizens.

The STUC represents over 540,000 working people and their families throughout Scotland. It speaks for trade union members in and out of work, in the community and in the workplace. Our affiliated organisations have interests in all sectors of the economy and our representative structures are constructed to take account of the specific views of women members, young members, Black members, LGBT+ members, and members with a disability, as well as retired and unemployed workers.

STUC response to consultation on Sexual Harassment in the Workplace

Any improvements on how employers can challenge sexual harassment should be welcomed. Legislative amendments and additions may be helpful, but there is a current misunderstanding and mistrust of the effectiveness of legal protections which already exist. The STUC's Better than Zero campaign has highlighted, through a mini campaign 'Cat Calling it Out', that sexual harassment within sectors such as hospitality is rife and needs serious intervention. The TUC research, 'Not just a bit of banter', found that one in five said they were too embarrassed to report sexual harassment. Fifteen per cent feared a negative impact on their career if they reported it. Twelve per cent of women said they did not know how to report the unwanted behaviour and just under one in ten women said they were unaware that they could report it. There is a lack of training, lack of understanding, and lack of care from some employers. Furthermore, sexual harassment is not just a workplace issue to be addressed in isolation. It is part of a wider systemic issue in society where the power structure favours men.

Regardless, there needs to be a more positive framework of employment legislation and trade union rights to safeguard dignity at work. This includes statutory rights for union equality reps and the repeal of restrictive trade union legislation. Ensuring employers are abiding by their duties to create and maintain healthy and safe workplaces comes within the remit of health and safety reps, who do have statutory rights. Challenging harassment in the workplace should be seen not simply as part of the remit of equalities reps but also as part of the remit of health and safety reps. Instead of encouraging any 'anti-sexual harassment champions' who are statutorily toothless in the workplace, trade union membership and recognition should be encouraged in order that there is a more equitable balance of power in the workplace.

The STUC agrees that a mandatory preventative duty on employers would be appropriate and shifts the onus from the individual to the employer to deal with sexual harassment in work. The STUC believes

that the Government should introduce a statutory code of practice on sexual harassment and harassment at work, specifying the steps that employers should take to prevent and respond to sexual harassment, and which can be considered in evidence when determining whether a mandatory duty has been breached. Furthermore, establishing this preventative duty allows the Equality and Human Rights Commission (EHRC) to take action, as well as individuals, which would mean a dual-enforcement mechanism. The EHRC, advice agencies and any other supporting organisations need to be adequately resourced and funded.

The STUC believes that the Government should also ratify the ILO Convention and Recommendation on Elimination of Violence and Harassment in the World of Work in order to highlight the serious nature of such offences.

The STUC believes that the Equality Act 2010, Protection from Harassment Act 1997 and Health & Safety legislations also needs to be protected and strengthened. Section 40(2)-(4) of the Equality Act 2010 needs to be reinstated to address the harassment of people at work by a third party such as customers, clients and contractors and the 'three strikes' element of section 40(2)-(4) has to be removed. Furthermore, section 14 of the Equality Act 2010 should be implemented and a review of the limit of two characteristics carried out as it is not currently possible for someone to bring a discrimination claim based on multiple characteristics. An intersectional approach that draws on more than one characteristic would strengthen claims.

The STUC continues to call for the reinstatement of employment tribunals' power to make wider recommendations in discrimination cases; and the questionnaire procedure. The time limit to bring a claim of three months from the act of discrimination or harassment is a significant barrier to people bringing claims. Precarious, insecure, and agency work has an impact on whether people feel comfortable to report or make a claim. It is well recognised through international agencies that a person who does not have security of employment may feel that by reporting issues of sexual harassment they are in a vulnerable position

in terms of their employment continuing. The limitation period for discrimination and harassment claims should be amended to at least six months from the latest of the date of the act of harassment; the last in a series of incidents of harassment; or the exhaustion of any internal complaint procedure. Failing this, if claims are brought out of time, once the claimant has established the reason for delay, the burden of proof should shift to the respondent to establish why time should not be extended.

The STUC agrees with EHRC's submission that organisations which employ paid staff should already have in place sufficient policies and procedures to deal with harassment and these could be easily adapted to cover volunteers. Employers who do not have adequate preventative measures in place for paid staff will have to revise or introduce preventative measures anyway which will provide the opportunity to ensure that they also cover volunteers with minimal additional cost, effort or disruption. The STUC would go further to include organisations who hire self-employed or freelance staff due to the increase in organisations who operate this model, and the increasing precarity which these staff can face including fear about speaking out in the workplace.¹ The STUC believes that self-employed and freelancers also deserve legislation that will protect them from discrimination and sexual harassment. As such, the Government should extend the protections relating to discrimination and harassment to protect all in the workplace from harassment and victimisation.

There needs to be more state-wide guidance and support for organisations to develop training and culture change with awareness raised amongst employers of the impact of sexual harassment in the workplace and encourage the provision of appropriate support, in consultation with trade unions. There needs to be mandatory training for all staff including managers on what sexual harassment is, who has rights and obligations, how to prevent and tackle incidents and how to implement procedures.

¹ See the STUC research 'Precarious Work, Precarious Lives' – to be published mid-October 2019

Employers should be required to explain clearly how they seek to address culture changes and ensure that it enables workers, particularly precarious workers, to make a complaint, without affecting their contract renewal. A program of sexual harassment awareness should be developed which includes equality and diversity training, safeguarding training, and sessions on ‘lad culture’² prior to the introduction of sexual harassment reporting and monitoring frameworks. These training sessions should be in place for new as well as existing staff and should be updated and included in general staff CPD. Clear definitions of ‘sexual harassment’, ‘sexual assault’, ‘sex discrimination’ and terms such as ‘misogyny’ can help to label and pinpoint attitudes and behaviour. Peer to peer training with external agencies serves to ensure people understand these terms and the impact which attitudes and behaviour can have on those who are on the receiving end, as well as on men who are negatively impacted by “toxic masculinity” in society. It is the STUC’s position that online training, or top-down training, serves only as a tick-box exercise for employers and will not break down people’s perceptions of language and behaviour. Instead, training must be interactive and include everyone in the workplace – from the highest paid to the lowest paid member of staff – completing the training together or in mixed groups.

The STUC also wish to highlight again that sexual harassment in the workplace does not happen in isolation to wider workplace and societal discrimination and inequality. Women and other under-represented groups need to have collective power in the workplace. Ensuring equal pay, no gender pay gap, better opportunities for parents to progress, better childcare support and flexible working are all key measures which require to be taken in order to address these wider societal issues.

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² NUS report “That’s what she said”, 2012, defines ‘lad culture’ as a group or ‘pack’ mentality residing in activities such as sport and heavy alcohol consumption, and ‘banter’ which was often sexist, misogynist and homophobic.