

Consultation on Sexual Harassment in the Workplace

Legal protections under the Equalities Act 2010

A joint response by Focus on Labour Exploitation (FLEX) and the Latin American Women's Rights Service (LAWRS)

2 October 2019

About Focus on Labour Exploitation (FLEX)

FLEX is a United Kingdom based charity that works to end human trafficking for labour exploitation, both in the UK and worldwide. To achieve this, FLEX conducts research and policy advocacy to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation. FLEX has conducted research on gender and labour exploitation in high-risk sectors of the UK labour market and has produced a guide to gender-aware labour market enforcement of women's rights at work.¹ Further information on FLEX's work and all of our research publications and policy briefings can be found on our website at www.labourexploitation.org.

Contact: Meri Ahlberg, Research and Policy Officer, meriahlberg@labourexploitation.org

About Latin American Women's Rights Service (LAWRS)

LAWRS is a user-led, feminist and human rights organisation focused on addressing the practical and strategic needs of Latin American migrant women displaced by poverty and violence. LAWRS' mission is to provide Latin American migrant women with tools to assert our rights and pursue personal empowerment and social change. LAWRS directly supports more than 5,000 women annually through culturally and linguistically specialist advice, information, counselling and psychotherapy, advocacy, development programmes, and workshops. More information can be found on our website at <http://www.lawrs.org.uk/>.

Contact: Dolores Modern, Policy and Communications Coordinator on Employment Rights, dolores@lawrs.org.uk

¹ FLEX, 2018. *Women in the workplace: FLEX's five-point plan to combat labour exploitation*. <http://www.labourexploitation.org/publications/women-workplace-flexs-five-point-plan-combat-exploitation>

Summary

- I. FLEX and LAWRS welcome the opportunity to contribute to the Government Equalities Office Consultation on Sexual Harassment in the Workplace. At the outset, we would like to note that sexual harassment is highly damaging to all workers and it is important that the Government is taking steps to prevent and tackle it.
- II. We would also like to note that while sexual harassment can be experienced by anyone, it disproportionately affects women. Studies have shown that women are more likely than men to experience sexual discrimination and harassment in the workplace.² Research from 2016 by the Trades Union Congress (TUC) found that more than half of women workers surveyed had experienced some form of sexual harassment, and more than one in ten had experienced unwanted sexual contact.³
- III. In addition to gender, it is crucial to recognise and assess how other personal characteristics (e.g. age, race, disability) and situational (e.g. migrant status, language barriers, sector of work and employment type) and circumstantial (e.g. economic destitution) vulnerabilities shape and contribute to a person's experience of and risk to sexual harassment.
- IV. Often personal, situational and circumstantial vulnerabilities intersect and can compound each other. For example, research indicates that the incidence of sexual harassment is higher among workers who are reliant on flexible working patterns, suggesting that the risks are increased where there is a significant power imbalance between the employer and the worker.⁴ Women, young people and migrants are all disproportionately represented among workers employed through flexible contracts.⁵
- V. Like most types of violence against women, sexual harassment is intricately linked with power, with perpetrators abusing their position by harassing someone they see as less able to confront them, or using sexual harassment to disempower their target and thus strengthen their own position and status in the workplace. In order to be effective, any strategies and measures that are put into place to tackle sexual harassment in the workplace must be based on a thorough and nuanced understanding of how power is distributed both in the workplace and in society more broadly, and should seek to address and mitigate power imbalances that enable harassment.

² BBC. 2017. Sexual Harassment in the Workplace 2017 Survey. <http://www.comresglobal.com/polls/bbc-sexual-harassment-in-the-workplace-2017/>

³ TUC. 2016. *Still just a bit of banter? Sexual harassment in the workplace in 2016*. p.4. <https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>

⁴ BBC. 2017. Sexual Harassment in the Workplace 2017 Survey. <http://www.comresglobal.com/polls/bbc-sexual-harassment-in-the-workplace-2017/>

⁵ CIPD. 2019. *Mega Trends: Flexible Working*. p.16 https://www.cipd.co.uk/Images/megatrends-report-flexible-working-1_tcm18-52769.pdf; Migration Observatory. 2019. *Migrants in the UK labour market: An overview*. p.13. <https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-labour-market-an-overview/>

Key points:

- Sexual harassment at work must be understood and tackled as part of a broader strategy to combat labour abuse and exploitation of women in the workplace.
- Sexual harassment is often linked with other forms of labour abuse and can put workers at greater risk of exploitation.
- Proactive and gender-informed enforcement of workplace rights must form a core element of any strategy to end sexual harassment in the workplace.
- Special attention should be paid to regulating sectors that are feminised, particularly outsourced services like as cleaning, as workers are at risk of harassment from employers and colleagues at the outsourced company, employees of the client company, and other third parties.

Inquiry questions

Q1. If a preventative duty were introduced, do you agree with our proposed approach?

- 1.1 The shift from employer liability after the incident of harassment to a preventative duty before any unlawful conduct has taken place is a positive step for preventing sexual harassment in the workplace.
- 1.2 However, to be effective, there needs to be clarity on how this duty will work in non-traditional employment contexts, such as 1) outsourcing – when a business hires another company to perform services that were traditionally performed in-house by the company's own employees and staff; 2) agency work; and 3) self-employment, including employment through online platforms or 'apps' such as Helpling, Uber, and Taskrabbit.
- 1.3 For example, if a hotel housekeeper working for an outsourced cleaning company is sexually harassed by a customer, an employee of the client company (i.e. the hotel), or by a worker employed by another outsourced company delivering a service to the same client (e.g. security), who in this context is responsible for preventing the harassment from taking place?

Case study: Sexual harassment of an outsourced worker by a client company employee

Cristina (Colombian, 45 years old) works as an outsourced cleaner from 8pm to 11pm in the premises of a multinational corporation. One night, while cleaning the

building's showers, someone pushed her against the wall and touched her against her will. She reported the incident to her supervisor, but he said that because the aggressor was working for the company that hires their cleaning company, nothing could be done.

LAWRS

- 1.4 The Equality and Human Rights Commission's (EHRC's) new statutory Code of Practice on sexual harassment and harassment at work must consider and clarify how the preventative duty will work in contexts such as the above. Specifically, employers should have a duty to prevent sexual harassment not only of their direct employees, but also of outsourced workers and agency workers delivering services on their premises. This is important because outsourced companies and agencies will have limited control over the working environments of the employees they deploy to the premises of the client company. Issues can include a lack of adequate changing facilities (e.g. sex-segregated changing rooms) at the workplace; isolated and/or dark working environments; and a lack of sexual harassment training, reporting mechanisms and policies at the client company, among other things.
- 1.5 A recent publication by LAWRS found that women working as hotel housekeepers who had experienced gender-based abuse at work, including sexual harassment, listed their employers (the outsourced cleaning company), the staff from the company hiring their services (the client company), or the clients or guests of the client company as the perpetrators. Incidents took place in bedrooms, saunas, changing rooms, storage rooms and basements; and most were spaces where there are no cameras.⁶
- 1.6 Outsourced companies and agencies must also be required to have policies in place to deal with incidences of sexual harassment experienced by their workers at the hands of colleagues, client company employees and third parties. All too often, outsourced workers who report incidences of sexual harassment do not receive the support needed from their employer. They may be disbelieved, moved to work in another location, or told that nothing can be done (see case study above).
- 1.7 The same study by LAWRS, conducted in the largely outsourced sectors of cleaning and hotel housekeeping, found that when victims of sexual harassment and abuse reported cases to their employers, the responses were very poor with no formal procedure or investigation activated as a result of the grievances.⁷ Of the 326 women whose cases were analysed, 16% had experienced sexual harassment and abuse in the workplace. Half of the women who made a complaint to their employer were relocated to a different workplace.⁸ This not only makes victims feel as though they are being penalised for raising the grievance, it also results in no consequences for

⁶ LAWRS. 2019. *The unheard workforce: Experiences of Latin American women in cleaning, hospitality and domestic work*. p.6. <http://www.lawrs.org.uk/lawrs-research-launch-the-unheard-workforce-experiences-of-latin-american-migrant-women-in-cleaning-hospitality-and-domestic-work/>

⁷ *ibid.* p.14.

⁸ *ibid.*

the abuser and sends a message to the rest of the workforce that reinforces abusive practices.

Case study: Refusal to be relocated leads to dismissal

Victoria worked as a cleaner in a car park. She continuously had shifts where she was alone with a male colleague who sexually harassed her and performed lurid acts. She complained to the company employing her but was told there was not enough evidence even though she had eyewitnesses. The company offered to relocate her to a workplace two hours away from her home. Since she refused relocation, she was dismissed.

LAWRS

- 1.8 Having specific policies on sexual harassment in the workplace in the context of outsourcing is crucial due to the heightened risk of incidences in this type of work. Outsourcing is strongly driven by cost reduction, which often leads to neglect in the quality of the service, working conditions and personnel training.⁹ This drives poor employment practices like low-pay, intensification of work, short-term contracts and unpredictable working hours, which increase workers' vulnerability to workplace abuses, including sexual harassment.
- 1.9 In addition to outsourcing, the preventative duty also needs to apply to online employment platforms or 'apps', such as Helpling, Taskrabbit, Handy and Uber. Workers providing services like cleaning through platforms may experience specific circumstances that put them at higher risk of sexual harassment in the workplace, such as isolated working environments (e.g. cleaning in a private household) and being reliant on the client for a good review in order to secure further work through the platform/app.
- 1.10 Because people working through platforms/apps are usually classed as independent contractors, they fall outside the remit of labour protections, including protections against sexual harassment in the workplace. Having a preventative duty and good practice guidelines for online employment platforms would help protect workers in these highly vulnerable situations.

Case study: Sexual harassment of worker employed through an online cleaning platform/'app'

Fernanda (Brazilian, 47 years old) works as a cleaner in houses and apartments through a popular cleaning 'app'. During her first weeks working in the UK, one of her clients made comments to his housemate about how she was dressed in front of her. She didn't fully understand what they were saying as she didn't speak English.

⁹ ILO. 2008. 'Better business: Multinationals and Decent Work'. *World of Work: The Magazine of work*. No. 62. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_093479.pdf

While her client and his housemate talked about her appearance, her client touched her leg without her consent. Fernanda felt uncomfortable and wasn't sure how to react. She didn't want to tell her husband because she didn't have many clients at the time, and she didn't want him to tell her not to work there anymore. She didn't know who else to report it to.

FLEX

Q2. Would a new duty to prevent harassment prompt employers to prioritise prevention?

- 2.1 Yes. A duty to prevent would highlight an issue that is often invisible and underreported. It would trigger internal processes to prevent sexual harassment, including processes to clearly set out what sexual harassment is. This is important because abusive behaviour can easily be normalised; it is important to clearly identify to workers at all levels what inappropriate/unlawful behaviour looks like.
- 2.2 LAWRS's recent study on employment experiences in the cleaning and hospitality sector identified 13 different types of harassment, including: sexualised comments on the worker's physical appearance; pressure for dates; unwelcome sexual advances; the spreading of rumours about an individual's sexual life; unwanted sexually explicit photos, emails or text messages; unwanted discussions of sexual relations, fantasies or stories; kissing sounds; men exposing themselves or performing sexual acts on themselves; stalking; groping and unwanted touching; attempted sexual assault; and rape. In addition, many described a common practice where supervisors offer better conditions or increased hours of work in exchange for sexual favours, with contracts being terminated if the workers refuse.

Case study: Sexual favours demanded in return for more work hours

Justine is working as a cleaner in one of the main buildings in the City of London. She was told by her manager that if she wanted to be allocated more hours in the rota, she needed to have sex with him. She refused. Justine was also told several times that if she wanted to receive a promotion, she must give sexual favours to her employer.

Justine's colleague got the promotion and is now verbally harassing Justine and threatening her with losing her job. Justine's hours have been reduced. She tried to raise a complaint to stop the bullying and unfair treatment, but she only has the contact details of the two people that are causing the harassment.

LAWRS

Q3. Do you agree that dual enforcement by the EHRC and individuals would be appropriate?

- 3.1 Yes. It is important that EHRC carries out proactive enforcement, particularly of the preventative duty, so that it is not left up to individual workers alone. Workers who

are the most vulnerable to labour abuses, including sexual harassment at work, are also those who are least likely to bring a case to an Employment Tribunal. The danger of losing employment, or being given less work, as a result of complaining may be too significant a risk for many workers.¹⁰

- 3.2 Evidence from the Low Pay Commission suggest that women are less likely to make a complaint than men,¹¹ and recent research by the Resolution Foundation found that, though younger people are systematically at higher risk of labour market violations like non-payment of minimum wage and holiday pay, they are also the least likely to take a case to an Employment Tribunal. The same is true for people in atypical forms of work (e.g. agency workers, workers on zero-hour contracts) and in elementary occupations (e.g. cleaning): they are at higher risk of experiencing exploitation but have a below-average application rate to Employment Tribunals.¹²
- 3.3 Considering the difficulties faced by vulnerable individuals in bringing claims to Employment Tribunals, and the limitations of the EHRC's enforcement powers recognised in the consultation document, we believe that more should be done by other UK labour market enforcement bodies¹³ to prevent sexual harassment in the workplace. As has been noted by the Women and Equalities Committee Report, *Enforcing the Equality Act: The law and the role of the Equality and Human Rights Commission*, these bodies are not only bound by the non-discrimination provisions in the Equalities Act, but also by the public sector equality duty to “have due regards to the aims of the general equality duty in their functions”.¹⁴
- 3.4 A key aspect of this duty for labour market enforcement bodies should be to have awareness of and sensitivity to discrimination and harassment integrated across all enforcement functions and strategies. Awareness of the distinct forms of workplace abuse that disproportionately affect women or ethnic minority workers (e.g. racism, sexual harassment, pregnancy discrimination) and the ways in which gender and other protected characteristics interact with experiences of other workplace abuses (e.g. women and ethnic minorities being concentrated in higher risk, lower paid and more precarious sectors or feeling less able to leave abusive situations due to poverty or disproportionate care responsibilities) should be an integral part of the lens through which risks are prioritised and inspection targets set.
- 3.5 It is extremely evident that this has been a missing piece in the enforcement landscape to date. In his oral evidence to the Women and Equalities Committee inquiry on

¹⁰ FLEX. 2017. *Risky Business: Tackling exploitation in the UK labour market*.

http://www.labourexploitation.org/sites/default/files/publications/Risky%20Business_Tackling%20Exploitation%20in%20the%20UK%20Labour%20Market.pdf

¹¹ Low Pay Commission. 2017. *Non-compliance and enforcement of National Minimum Wage, September 2017*.

<https://www.gov.uk/government/publications/non-compliance-and-enforcement-of-the-national-minimum-wage-september-2017>

¹² Resolution Foundation. 2019. *From rights to reality: Enforcing labour market laws in the UK*.

<https://www.resolutionfoundation.org/publications/from-rights-to-reality/>

¹³ Including the Office of the Director of Labour Market Enforcement, the Gangmasters and Labour Abuse Authority, the HMRC National Minimum Wage Team, the Employment Agencies Standards Inspectorate and the Health and Safety Executive.

¹⁴ House of Commons Women and Equalities Committee. 2019. *Enforcing the Equality Act: The law and the role of the Equality and Human Rights Commission*. p.30. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/1470.pdf>

enforcing the Equality Act, then Director of Labour Market Enforcement (DLME), Sir David Metcalf, was asked: “To what extent has the Equality Act been part of your strategy for improving the enforcement of workers’ rights?”, to which he responded: “Hardly at all...” and “...I do not know very much about it”.¹⁵ The DLME is responsible for coordinating and setting the priorities of the Gangmasters and Labour Abuse Authority, the HMRC National Minimum Wage Team, the Employment Agencies Standards Inspectorate. Equally worryingly, the Health and Safety Executive, which falls outside the remit of the DLME, does not see tackling or investigating sexual harassment as part of its duties despite the impact of harassment on workers’ health and despite having an explicit remit to tackle work-related violence.¹⁶

3.6 In Question 15 we outline a plan for integrating gender into the work of the UK’s labour inspectorates.

Q4. If individuals bring a claim on the basis of a breach of the duty, should the compensatory model mirror the existing TUPE provisions and allow for up to 13 weeks’ gross pay in compensation?

4.1 Don’t know.

Q5. Are there any alternative supporting requirements that would be effective in incentivising employers to put measures in place to prevent sexual harassment?

5.1 Transparency requirements could work as a complement to a preventative duty but should not be considered as an alternative. The Transparency in Supply Chains (TISC) reporting requirement outlined in Section 54 of the Modern Slavery Act has arguably helped to put ‘modern slavery’ on companies’ agendas by requiring board-level sign-off on modern slavery statements. The increased awareness has led some companies to allocate more resources to tackling modern slavery.¹⁷ The same could potentially happen if companies were required to report on what they are doing to prevent sexual harassment.

5.2 However, existing transparency reporting requirements have failed to achieve their core aim of inducing businesses to meaningfully address forced labour and human trafficking in their supply chains.¹⁸ Compliance with the TISC reporting requirement has been inconsistent and the breadth and quality of the information disclosed has been insufficient and does not reflect serious efforts to address the drivers of the problem.

¹⁵ House of Commons Women and Equalities Committee. 2019. Oral evidence 27.03.19.

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/enforcing-the-equality-act-the-law-and-the-role-of-the-equality-and-human-rights-commission/oral/98875.pdf>

¹⁶ House of Commons Women and Equalities Committee. 2019. *Enforcing the Equality Act: The law and the role of the Equality and Human Rights Commission*. p.32. <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/1470/1470.pdf>

¹⁷ FLEX and ICAR. 2019. *Full Disclosure: Towards better modern slavery reporting*. <https://www.labourexploitation.org/publications/full-disclosure-towards-better-modern-slavery-reporting>

¹⁸ FLEX. 2018. *Seeing through transparency: Making corporate accountability work for workers*.

<https://www.labourexploitation.org/publications/seeing-through-transparency-making-corporate-accountability-work-workers>

- 5.3 Considerable time and resource commitments are needed from the government to ensure that transparency reporting is effective, and there is a danger that, if not properly designed and implemented, transparency reporting will become a tool for companies to present as though tackling the problem of sexual harassment without making significant or effective changes. For further analysis on the limitations of TISC reporting requirements, see [Full Disclosure: Towards better modern slavery reporting](#) by FLEX and the International Corporate Accountability Roundtable.

Q6. Do you agree that employer liability for third party harassment should be triggered without the need for an incident?

- 6.1 Yes. Research by the TUC shows that four out of five women surveyed did not report the sexual harassment they had experienced to their employer,¹⁹ indicating that the majority of incidences of sexual harassment go unreported. Ensuring employer liability for third party harassment without the need for an incident would be the first step in changing the culture of silence around this issue and making sure there are avenues for people to report. It would also help prevent sexual harassment from taking place in the first instance.
- 6.2 People face barriers to reporting incidences of sexual harassment for many reasons, including:
- Fear of not being believed;
 - Fear of reprisals from employers;
 - Lack of knowledge of their rights and/or complaints processes;
 - Not knowing what constitutes sexual harassment or abuse;
 - Different forms of sexual harassment and abuse being naturalised or accepted as “part of the job”;
 - Not feeling ready or able to report because of related trauma or mental health issues;
 - Uncertainty due to being undocumented or having insecure immigration/work status.

Considering how few women report incidents of sexual harassment, employer liability for third party harassment should not be dependent on there being a known incident.

Case study: Immigration status as a barrier to reporting sexual harassment

Maria is an undocumented migrant worker who experienced an attempted rape from a hotel guest when she went to clean his room. She reported the attack to her supervisor, but he accused her of lying and reprimanded her for not finishing the room. She was scared of taking the complaint further because of her immigration status.

¹⁹ TUC. 2016. *Still just a bit of banter? Sexual harassment in the workplace in 2016*. p.5.
<https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>

LAWRS

Case study: Language as a barrier to reporting sexual harassment and assault

Andrea (Ecuadorian, 37 years old) was working in a hotel as a housekeeper. She was subjected to different types of verbal abuse and intimidation. One day, when she was changing the bed linen in one of the rooms, a male staff member entered the room abruptly. He grabbed her from behind and used his force to restrain her on the bed. He tried to rape her, but she managed to kick him and push him away.

When she told him that she would tell the manager, he laughed. Andrea does not speak English, so she asked for a colleague's help to speak to the manager. However, when speaking to the manager, the colleague refused to translate for her and instead told her that Andrea had not finished the room. In the end, the manager threatened to dismiss her for not doing her job.

She came to LAWRS, where she was advised to report the incident to the police. After reporting, Andrea felt the urge to take a shower and wash her clothes. The police had not taken pictures and did not inform her that the clothes could constitute proof of the violence.

The police closed the case due to lack of evidence and Andrea resigned from her job.

LAWRS

Q7. Do you agree that the defence of having taken 'all reasonable steps' to prevent harassment should apply to cases of third-party harassment?

7.1 Don't know. It will depend on what is considered as 'reasonable'. Guidance on what it means in the case of third-party harassment and in other cases of sexual harassment in the workplace needs to be developed through consultation. Organisations representing and/or supporting women, migrant workers, young workers and workers employed in low-paid precarious work must be consulted to make sure the experiences and circumstances of these groups are considered in the development of guidance.

Q8. 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?

8.1 Yes. It is our belief that the Equality Act 2010 should include not only contractual employees, but also interns and those carrying out unpaid or voluntary work. Volunteers and interns are expected to comply with all the policies of the organisation they are dedicating their time to, and often entrusted with responsibilities that match

those of employees. Yet, as acknowledged in the consultation, volunteers and interns can be especially vulnerable to sexual harassment in the workplace due to power dynamics and their lack of legal protection. There should therefore be mechanisms in place to prevent sexual harassment from happening, with clear and specific guidelines for employers to follow, and legal pathways for volunteers and interns to report abuse and challenge non-compliant employers.

- 8.2 Interns especially are likely to be young, and younger workers are in general more likely to experience all forms of violence and harassment in the workplace.²⁰ By leaving out interns and volunteers from the protections of the Equality Act 2010, the law is compounding the vulnerability of an already at-risk group. The approach to sexual harassment in the workplace should be the same as the approach to health and safety – no one should be left exposed to the risk.

Q9. Do you know of any interns that do not meet the statutory criteria for workplace protections of the Equality Act?

- 9.1 Don't know.

Q10. 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?

- 10.1 Don't know.

Q11. If the Equality Act's workplace protections are expanded to cover volunteers, should all volunteers be included?

- 11.1 Don't know.

Q12. Is a three-month time limit sufficient for bringing an Equality Act claim to an Employment Tribunal?

- 12.1 No. It is our belief that in many cases the three-month time limit will not be sufficient for bringing an Equality Act claim to an Employment Tribunal.
- 12.2 People who have experienced sexual harassment often need time to come to terms with what has happened to them. One of the main barriers to reporting a case of sexual harassment is trauma. The effects of trauma can be varied, including feelings of shame and self-blame, fear of threats or further harm, problems with short term memory, and even denial of the harassment crime itself. Furthermore, trauma from sexual harassment can lead women to experience a lack of confidence to confront

²⁰ TUC. 2016. *Still just a bit of banter? Sexual harassment in the workplace in 2016*. p.8.
<https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>

their situation and lead to a lack of trust in their employer and the systems meant to protect workers.

- 12.3 It can also be very difficult to find free or affordable legal support, which in turn can cause delays to bringing an Equality Act claim to an Employment Tribunal. This is compounded if the person who has experienced harassment works during unsociable hours, has low income, is not familiar with the avenues of support available to her/him or does not speak English: they will need to find an organisation that provides advice in their own language and that has a sufficient understanding of sexual harassment to support a grievance procedure.

Q13. 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?

- 13.1 Yes. See above.

Q14. If time limits are extended for the Equality Act claims under the jurisdiction of the Employment Tribunal, what should the new time limit be?

- 14.1 Minimum six months with the possibility to extend depending on the circumstances of the case.

Q15. Are there any further interventions the Government should consider to address the problem of workplace sexual harassment?

- 15.1 **There is a need to address sexual harassment in the workplace not as an isolated issue but in the broader context of labour abuse and exploitation of women at work.** Like other workplace abuse, discrimination and harassment are often linked to unequal power dynamics within society and the workplace, and are therefore likely to occur and be linked with other labour abuses happening in similar settings.
- 15.2 Addressing sexual harassment within the broader context of labour abuse should take into consideration:
- a) How protected characteristics as defined in the Equality Act 2010 interact with and increase vulnerability to experiences of workplace abuse;
 - b) How particular employment models (e.g. zero-hours contracts, agency work, outsourcing) and characteristics (e.g. night work, isolation), and forms of labour abuse contribute to risk of sexual harassment in the workplace;
 - c) The ways in which sexual harassment might in turn put workers at risk of other forms of labour abuse; and
 - d) The ways in which abuses, including sexual harassment, can cause workers to feel disempowered in relation to their employers and thereby make it harder to complain or challenge abuse.

- 15.3 Women who face sexual harassment at work experience specific barriers to reporting what has happened to them and raising complaints. Women who have suffered workplace abuse, particularly of a sexual nature, may face a culture of disbelief, bullying or intimidation from employers or fellow staff. In such cases women, and particularly migrant women, often feel that they won't be believed by authorities, and may be reluctant to report abuse to colleagues, particularly men, in a position of authority.
- 15.5 The Working Group on Women Workers and Exploitation, a group of organisations convened by FLEX, has identified four high-risk sectors for labour abuse and exploitation of women workers: cleaning, care, hospitality and domestic work, in which sexual harassment and gender-based violence are particularly prevalent. Other studies have also found that women experience high levels of sexual discrimination and harassment in the hospitality and domestic work sectors.^{21, 22}

Case study: Sexual harassment in the hospitality industry

Mariela is working as a waitress in a restaurant. Since she started work there, she has experienced stress and anxiety due to “jokes” made by the owner of the restaurant. Mariela has tried, at different times, to talk to him about how uncomfortable those jokes made her feel, but the situation got worse. The owner of the restaurant started to make comments about her body and touched her breast and bottom several times. Mariela confronted him and he finally stopped, but he then started to complain about her “lack of interest and passion” for the job. He is now threatening her with losing the job due to a “poor” performance.

LAWRS

- 15.6 Research by the TUC found that more than half of women workers surveyed had experienced some form of sexual harassment, and more than one in ten had experienced unwanted sexual contact.²³ Women in the hospitality sector were significantly more likely to have experienced sexual harassment, with 67% of women surveyed reporting some form of sexual harassment from colleagues, managers, customers and hotel guests. Domestic workers have also reported sexual harassment and sexual abuse that is heightened by the extreme dependency and isolation that many domestic workers experience.²⁴
- 15.7 In cleaning, hospitality, care and domestic work, expectations that women should be friendly, compliant, and subservient makes it difficult for women workers to complain

²¹ TUC. 2016. *Still just a bit of banter? Sexual harassment in the workplace in 2016*. p.4.

<https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>

²² Kalayaan. 2014. *UK Immigration Law and the position of migrant domestic workers*. <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/UK-immigration-law-and-the-position-of-MDVs.pdf>

²³ TUC. 2016. *Still just a bit of banter? Sexual harassment in the workplace in 2016*. p.4.

<https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf>

²⁴ Kalayaan. 2014. *UK Immigration Law and the position of migrant domestic workers*. <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/UK-immigration-law-and-the-position-of-MDVs.pdf>

and they may be made to feel that sexual harassment is 'part of the job'.²⁵ Case studies (see above) also show that when women do take action to challenge sexual harassment, this can lead to reduction of work or threats of dismissal. Shame and fear associated with sexual harassment and assault is a strong barrier to women reporting such abuse, and may also deter them from reporting other forms of labour abuse.

- 15.8 The protection and enforcement of women's rights at work is critical to preventing workplace abuse of women workers, including sexual harassment.** Gender-based violence and harassment is of key relevance to all labour market enforcement bodies, because the presence of violence and harassment is not only a serious abuse in itself but also often deters women from reporting other forms of labour abuse.
- 15.9** However, the UK currently has one of the poorest resourced labour inspectorates in Europe and falls far below the International Labour Organization's recommended target of one labour inspector per 10,000 workers.²⁶ According to a joint report from the Work and Pensions and the Business, Energy and Industrial Strategy Parliamentary Select Committees, the average business can expect an inspection of their labour practices once every 500 years.²⁷ Furthermore, enforcement activity is predominantly reactive, relying on complaints from workers themselves. This excludes the most at-risk workers, those who are afraid or unable to raise complaints. Taking into account the significant barriers women who suffer sexual harassment and abuse at work face to reporting, this creates a culture of impunity for unscrupulous employers who know they can get away with harassment unchallenged.
- 15.10** Furthermore, women working in the UK who are undocumented are particularly at risk of sexual harassment and discrimination and exploitation because there are so few channels by which they might report abuse or exploitation (see case study in response to Q6 above). In only limited circumstances can undocumented workers pursue cases through Employment Tribunals on the grounds of discrimination and Acas offers limited support to undocumented workers. Above all, the Government's hostile environment policies has a chilling effect on workers seeking help and identification when suffering sexual harassment and discrimination as evidenced by workers entering into contact with members of the Labour Exploitation Advisory Group (LEAG).²⁸ Many workers are fearful that if they come forward for help in cases of harassment, they will be referred to immigration enforcement and some

²⁵ Jasiewicz, E. 2017. *At Your Service? Migrant Women Workers in the Hospitality Sector*. <http://novaramedia.com/2017/03/10/at-your-service-migrant-women-workers-in-the-uk-hospitality-sector/>

²⁶ FLEX. 2017. *Risky business: tackling exploitation in the UK labour market*. http://www.labourexploitation.org/sites/default/files/publications/Risky%20Business_Tackling%20Exploitation%20in%20the%20UK%20Labour%20Market.pdf

²⁷ Work and Pensions Committee and Business, Energy and Industrial Strategy Committee. 2017. *A framework for modern employment: Second Report of the Work and Pensions Committee and First Report of the Business, Energy and Industrial Strategy Committee of Session 2017–19*. <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/352/352.pdf>

²⁸ LEAG is a group of experts from ten organisations supporting workers in, or at risk of, human trafficking for labour exploitation. LEAG members represent a range of issues that are crucial to preventing labour exploitation, including migrants' rights, women's rights, labour rights and victim support. LEAG consists of experts from: Focus on Labour Exploitation, Latin American Women's Rights Service, East European Resource Centre, Unite the Union, Ashiana Sheffield, British Red Cross, Kalayaan, Bail for Immigration Detainees, Praxis Community Projects and Equality.

unscrupulous employers use this threat as a means of coercing women into situations of abuse and exploitation. The Home Affairs Select Committee recently raised concerns that the government has not made any assessment of the impact and effectiveness of the hostile environment.²⁹ Given the evidence from LEAG and others that this policy is preventing women from reporting abuses committed against them, it is clear that an assessment is needed of the effect of hostile environment as a barrier to women reporting cases of sexual harassment.

- 15.11 To combat sexual harassment in the workplace, more targeted, proactive and gender-aware enforcement is essential. This must be accessible to all and effective at reaching out to the most at-risk workers. Proactive enforcement would not only serve as a strong deterrent, making the issue a higher priority for employers, but also increase confidence in reporting sexual harassment.
- 15.12 FLEX has produced a practical guide, [Women in the workplace: FLEX's five-point plan to combat exploitation](#), that aims to support labour inspectorates to build a more gender-aware response to detecting and tackling labour abuses against women in the workplace, including sexual harassment.³⁰ In this guide FLEX recommends that enforcement agencies should:
- a) Appoint a lead officer within each agency (or the potential new Single Enforcement Body) to oversee the organisational response to feminised labour sectors and to tackle gender-related abuse and exploitation.
 - b) Conduct research and evidence-gathering to build a full picture of risk of abuse and exploitation in feminised sectors.
 - c) Engage with NGOs and support organisations that are already working with and trusted by workers in feminised sectors.
 - d) Establish a joint working group on labour market enforcement in feminised sectors with members from each of the labour market enforcement bodies and other organisations.
 - e) Develop and implement a gender policy and training programme that provides guidance on identifying gender-related abuse and gender sensitivity in the monitoring and enforcement of labour rights.
 - f) Make proactive inspection a core element of enforcement strategy in feminised sectors.
- 15.13 Country case study examples of labour market enforcement approaches to detecting

²⁹ Home Affairs select Committee, 2018. *Home Office delivery of Brexit: Immigration*.
https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/421/42106.htm#_idTextAnchor067

³⁰ FLEX. 2018. *Women in the workplace: FLEX's five-point plan to combat labour exploitation*.
<http://www.labourexploitation.org/publications/women-workplace-flexs-five-point-plan-combat-exploitation>

and preventing sexual harassment in the workplace:

Finland

In addition to occupational safety and health and labour market enforcement, the Finnish Occupational Safety and Health Administrator (OSHA) conducts inspections on equality and discrimination and sexual harassment and violence in the workplace. Guidance on these issues for labour inspectors, employers and workers is available on the OSHA website, with the purpose of providing clarity and transparency on the role and methods of OSHA, both for its inspectors and for its clients.³¹ The guidance is produced by the Department for Work and Gender Equality of the Ministry of Social Affairs and Health.³²

Czech Republic

In the Czech Republic, the Ministry of Labour has developed *Methodological instructions for the inspection of compliance with equal opportunities for men and women*³³ for labour inspectors. The instructions, which came into force in January 2003, contain the relevant legal provisions dealing with equal remuneration and equal treatment in the workplace, including matters relating to recruitment, training and promotion, working conditions, sexual harassment, and maternity and parental leave. They also give guidance on how **gender equality inspections** should be carried out and provide a list of questions to be asked during the inspections.³⁴

El Salvador

In response to the widespread incidence of sexual harassment and other forms of gender-based violence in El Salvador, the Ministry of Labour and Social Security has developed a training module for labour inspectors on discrimination and sexual harassment at work. Labour inspectors conduct preventive inspections to identify all types of violence against women, including harassment, sexual harassment, violence and ill-treatment.³⁵

³¹ Työsuojelu: Website of the Occupational Safety and Health Administration in Finland. 2019. *Unfair treatment at work*.

<https://www.tyosuojelu.fi/web/en/working-conditions/unfair-treatment>

³² See the Finnish Ministry of Social Affairs and Health's website on the Department for Work and Gender Equality:

<https://stm.fi/en/department-for-work-and-gender-equality-tto->

³³ Czech Republic Ministry of Labour and Social Affairs. 2003. *Methodological instructions for the inspection of compliance with equal opportunities for men and women*.

³⁴ ILO. 2014. *Labour inspection, gender equality and non-discrimination in the Arab States: Guide Book*. Beirut: International Labour Organisation. https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_249296.pdf

³⁵ ILO. 2018. *Ending violence and harassment against women and men in the world of work*. p.82. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_553577.pdf