

**Government Equalities Office Consultation on
Sexual Harassment in the Workplace
October 2019**

The NASUWT welcomes the opportunity to comment on the Government Equalities Office consultation on Sexual Harassment in the Workplace.

The NASUWT's submission sets out the Union's views on the key issues identified by the Government Equalities Office in the terms of reference for the Consultation. The NASUWT's evidence is informed directly by serving teachers and Headteachers/Principals and by the Union's individual and collective casework.

The NASUWT is the teachers' union.

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GENERAL COMMENTS

1. Effective strategies to address and deal with sexual harassment require concerted action across all spheres of society. Schools and colleges can make a vital contribution in relation to educating, safeguarding and creating a climate in which all staff and children and young people feel safe and are treated with respect.
2. The sexualisation of young people shatters the lives of all victims and also prevents the formation of healthy relationships.
3. Sexual harassment targeting teachers in schools and colleges is commonplace and the majority of incidents fail to be reported or dealt with effectively.
4. There is a need to educate children and young people and school/college staff on the importance of gender equality and to address the causes and impact of sexual harassment.
5. Teachers' lives continue to be marred by regular incidents of sexual harassment, including through the abuse of social media by both pupils and parents. This is having a detrimental impact on the mental health and wellbeing of teachers.
6. A survey carried out by the NASUWT in 2018 found that more than eight in ten (81%) of teachers believe they have suffered sexual harassment or bullying in the workplace. One in five said they had been sexually harassed at school by a colleague, manager, parent or pupil since becoming a teacher. Nearly a third (30%) of those who had been sexually harassed have been subjected to unwanted touching, while two thirds (67%) had experienced inappropriate comments about their appearance or body. Over half (51%) had been subjected to inappropriate comments about sex, and 21% sexually propositioned. 3% said they had suffered

upskirting or down blousing (photos taken up their skirts or down their tops).

7. As a result of these incidents, 43% of teachers say they had suffered loss of confidence and 38% had experienced anxiety and/or depression. 48% made changes to their daily routine to avoid the harasser, while nearly a third (32%) felt pressure to change their appearance or style of clothing to seek to avoid further harassment. 14% changed jobs or moved to a new school, and 18% felt the incident has had a negative impact on their career progression.
8. 42% of victims did not report the incidents of sexual harassment. Over a quarter (28%) said they didn't think they would be believed, while over two thirds (68%) said they didn't feel anything would be done about it. 46% were fearful or embarrassed and 46% said they thought they would be blamed or face negative consequences.
9. Of those who did report the sexual harassment, in over a fifth (21%) of incidents no action was taken against the harasser. Four in ten (41%) said the harasser was spoken to about their behaviour, but the victim did not feel this matched the seriousness of the incident. One in ten also said they felt they were not believed and their claim was dismissed.
10. TUC research also shows the widespread scale of workplace sexual harassment and the intersectional impact of this abhorrent behaviour. Over 50% of women¹ and almost 70% of LGBT² workers have been sexually harassed in the workplace. Figures for BME lesbian, bisexual and trans (LBT) women are significantly higher than those for white LBT women. Women with disabilities also report significantly higher levels of sexual harassment than both disabled men and non-disabled men and women.

¹ TUC - *Still just a bit of banter? Sexual harassment in the workplace in 2016*

² TUC – *Sexual harassment of LGBT people in the workplace, 2019*

11. It should not be left to trade unions to collect data on the extent of sexual harassment faced by workers. Adequate reporting, monitoring and enforcement mechanisms must be put in place, so that employers take seriously their statutory duty of care to employees.
12. Response to workplace sexual harassment, from both the Government and employers, is grievously inadequate and workers are being let down by the failure to protect them from such behaviour.
13. The NASUWT survey, carried out in 2018, showed that 42% of victims did not report the incidents of sexual harassment. Over a quarter (28%) said they didn't think they would be believed, while over two thirds (68%) said they didn't feel anything would be done about it. 46% were fearful or embarrassed and 46% said they thought they would be blamed or face negative consequences.
14. Of those who did report the sexual harassment, in over a fifth (21%) of incidents no action was taken against the harasser. Four in ten (41%) said the harasser was spoken to about their behaviour, but the victim did not feel this matched the seriousness of the incident. One in ten also said they felt they were not believed and their claim was dismissed.
15. The NASUWT firmly believes that there must be a change in the law and its enforcement in order for all workers, including teachers, to be better protected from sexual harassment in the workplace, whatever that workplace happens to be.
16. The NASUWT would like to see a statutory preventative duty introduced for employers. The Union firmly believes that the onus should be on the employer to prevent sexual harassment, and not on the victim of the abusive behaviour to tackle the issue after the event. Current statutory provisions have been woefully inadequate in ensuring employers' exercise of their duty of care to employees. Any specific statutory preventative duty,

coupled with appropriate and robust statutory enforcement measures, could contribute to making workplaces safer for all workers by ensuring employers focus on prevention and early intervention.

17. The NASUWT insists that such a statutory duty must be accompanied by strong statutory enforcement arrangements. The NASUWT is concerned about the declining level of funding for the Equality and Human Rights Commission (EHRC) which has impacted on its ability to discharge effectively its enforcement function. If the EHRC is to be the body tasked with enforcing the duty, it is paramount that it is afforded the necessary funding, resources and powers to undertake this function effectively.

SPECIFIC COMMENTS

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

12. The NASUWT supports the introduction of a new statutory preventative duty that will require all employers to protect workers from harassment in the workplace.

13. The Government should ensure that a new duty will strengthen existing obligations with regard to the 'reasonable steps' defence that currently exists within section 109.4 of the Equality Act. Whilst employers must protect all workers, regardless of employment status, from harassment carried out by others in the workplace, the current 'reasonable steps' defence makes no specific reference to sexual harassment. This is therefore inadequate for the purposes of bringing the focus of employers to the issue of sexual harassment.

14. The NASUWT affirms that existing primary legislation will need to be amended in order to secure a new statutory preventative duty. It is important that any new or revised legislative protections should benefit and apply, without exception, to all workers including agency workers.

15. The NASUWT would support the establishment of a system of 'joint and several' liability through the employment supply chain, so that there would be no question of one part of the chain abdicating duty of care to another. This is an issue which particularly affects supply teachers and other workers who have precarious employment arrangements.
16. The proposed new duty should be underpinned by a new EHRC statutory Code of Practice. The Code of Practice should be the subject of full and meaningful consultation with stakeholders, including trade unions, and should outline the reasonable steps an employer should take in order to prevent sexual harassment in the workplace, whilst making clear that any list is not exhaustive.
17. The NASUWT believes that the new duty should apply to all employers and organisations. Therefore, all those within the scope of the new, regulatory framework must be able to demonstrate to the EHRC that they are fulfilling their duty of care to workers in accordance with the Code of Practice and the new statutory duty.
18. The EHRC powers of enforcement should include the power to impose substantial fines and to publish details of organisations in breach of the duty and the Code of Practice.
19. Where employers are in breach of the statutory duties, financial penalties should at least match those imposed under health and safety legislation in cases of failure to fulfil preventative duties to protect workers from risk of harm, whether physical or emotional. Any financial penalty should be proportionate to the size of the organisation and significant enough to incentivise employers to comply with the statutory duty.

Would a new duty to prevent prompt employers to prioritise prevention?

20. Introducing a new duty by itself will not be sufficient to ensure that all employers prioritise prevention. A duty must also be accompanied by robust compliance and enforcement measures. It is, sadly, the case that employers only tend to prioritise that which they have to do, by law.

21. The vast majority of cases of sexual harassment remain unreported.

22. A figure as high as 79% has been quoted as the percentage of victims unwilling to report incidents of sexual harassment to employers.³

23. Women teachers are too often advised 'not to make a fuss' or not taken seriously when they report an incident of sexual harassment. This perpetuates the message that sexual harassment in the workplace is tolerated or acceptable.

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

24. Compliance with the new statutory duty can be ensured through strict enforcement by the EHRC and by litigation by individuals through the Employment Tribunal process. The NASUWT asserts that breaches of the duty should have the potential to lead to the imposition of an employer liability claim, as well as enforcement action. This would, again, help to ensure that the duty acts as a sufficient deterrent.

25. The NASUWT believes that other relevant bodies, such as trade unions, women's organisations and other Non-Governmental Organisations (NGOs), should have the ability to report suspected breaches to the EHRC.

³ TUC - *Still just a bit of banter? Sexual harassment in the workplace in 2016*

26. Trade unions are essential in raising the awareness of workers' rights and employers' legal duties towards them. The NASUWT asserts that trade unions, alongside other relevant bodies, should be a key strategic partner in the education of workers on the new mandatory duty, safe reporting mechanisms and how to enforce their rights, as well as in the enforcement of the new preventative duty and in the development of the new Code of Practice and related work. To this end, it is essential that Government creates the conditions in which trade unions are entitled to access workplaces in order to inform, consult and engage with their members on these matters and in order to meet with the employer.

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?

27. The NASUWT believes that individual claims should be treated in the same way as other discrimination claims and that enforcement measures should include uplifts to tribunal awards where an employer has failed to follow a statutory code of practice, with additional penalties where there are repeated infringements.

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

28. The NASUWT remains concerned that provisions to protect workers from third party harassment were removed in 2013. The Union looks forward to these provisions being reinstated and strengthened, as outlined in the consultation.

29. The new proposed preventative duty will need to allow the EHRC and individuals to take enforcement action against an employer for failing to take 'all reasonable' steps to protect workers from sexual harassment in the workplace, regardless of whether perpetrated by a colleague or a third party. This should eliminate the need for any incident to trigger liability.

30. The NASUWT further recommends that, in addition to the implementation of this new preventative duty, the Government should reinstate an improved and strengthened section 40 in the Equality Act, which would not require a previous incident to have occurred in order for an individual to instigate employer liability and bring a claim against their employer.

Do you agree that the defence of having taken ‘all reasonable steps’ to prevent sexual harassment should apply to cases of third party harassment?

31. The new preventative duty to take ‘all reasonable steps’ should apply to all cases of third party harassment, in order to have a consistent approach with other forms of harassment.

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?

32. The NASUWT firmly believes that all workers should be protected from sexual harassment, regardless of their employment or contractual status.

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

Would you foresee any negative consequences to expanding the Equality Act's workplace protections to cover all volunteers eg for charity employers, volunteer-led organisations or businesses?

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

33. The NASUWT firmly believes there would be no negative consequences to the expansion of the preventative duty and that all workers deserve the protections of the new duty, regardless of employment status.

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

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?

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

34. The NASUWT believes that the time scales for bringing a claim to an employment tribunal should be extended, irrespective of the type of case under consideration.

35. The Women and Equalities Select Committee Inquiry into Sexual Harassment in the Workplace recommended an extension of the time limit for bringing a claim of sexual harassment to at least six months.⁴ This would avoid additional pressures being placed upon potential

⁴ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwome/725/725.pdf>

complainants to decide whether or not they should submit a claim when they may be engaged in a potentially difficult and stressful internal grievance procedure.

36. The same Committee also looked at tribunal time limits in its report on pregnancy and maternity discrimination and recommended that the time limit for bringing a claim in maternity and pregnancy discrimination cases should be extended to six months.⁵
37. Three months is not a lot of time in practice, especially when an employee has to absorb the situation, recognise they have been wronged, deal with the stress and trauma of what has happened to them, seek representation (if appropriate), go through early conciliation and begin the process of lodging a potential employment claim, including the associated paperwork. The relationship between such claims and claims on other equalities grounds should also be a consideration, and there must be a consistent approach taken which recognises how the issues of intersectionality can affect the treatment of individuals in the workplace.
38. The NASUWT asserts that the time limit should be extended to a minimum of six months and that the time limit should not begin until *all* the pertinent information requested by the claimant has been fully disclosed.
39. It should also be noted that, often, respondents do not disclose all the information in a timely manner in order to allow claimants to adhere to the current three-month time limits.
40. The NASUWT therefore believes there is a compelling argument for rationalising time limits into a more consistent and generous time limit of at least six months, with greater powers of discretion being afforded to employment tribunals in respect of this.

⁵ <https://publications.parliament.uk/pa/cm201617/cmselect/cmwomeq/90/90.pdf>

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

41. The NASUWT firmly believes that trade unions have a vital role to play in addressing the problem of workplace sexual harassment.

42. The EHRC's research found that those workers who had reported an issue to a trade union representative experienced more positive outcomes in general than those who did not.⁶

43. The Government should mandate compulsory training and support for employers on sexual harassment. This training should not be a one-off tick-box exercise, but ongoing and updated regularly, if it is to be meaningful and effective. It should also be offered to governors, who have a responsibility for staff wellbeing. The NASUWT assert that this training should be fully funded in schools and colleges.

⁶ *EHRC (2018) Turning the tables on sexual harassment*