The Trades Union Congress (TUC) exists to make the working world a better place for everyone. Working people joining together can change things.

For more than 150 years, unions have fought for safer workplaces and wages you can build a life on. And today we’re needed more than ever to make sure every job is a decent job and everyone at work is treated with respect.

We bring together more than 5.6 million working people who make up our 50 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living. Every day, we campaign for more and better jobs, and a more equal, more prosperous country.

How widespread sexual harassment in the workplace is, and has this increased or decreased over time?

In January 2016, the TUC commissioned YouGov polling on women’s experiences of sexual harassment in the workplace. The principal reason for carrying out this research was that there was no existing data on the scale of sexual harassment in UK workplaces. Prior to this we were dependent on EU wide data such as the Fundamental Rights Agency report on violence against women in 2014 and single employer or sector surveys such as the data collected by the Ministry of Defence in 2008.

Based on the YouGov polling and testimonies from union members gathered via an online survey about their experiences of sexual harassment, the TUC published a report, Still Just a Bit of Banter, which explores scope, nature and impact of workplace sexual harassment and makes recommendations to government, employers, and unions to tackle the problem. The polling asked respondents about their experiences of different types of sexual harassment as set out in the Equality Act.

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1 Violence Against Women: An EU wide survey, FRA 2014


3 Still Just a Bit of Banter, TUC 2016
The key findings of the report relating to the extent of sexual harassment in the workplace are:

- More than half (fifty two per cent) of all women polled have experienced some form of sexual harassment.
- Nearly two thirds of young women (age 18-24) have experienced some form of sexual harassment.
- More women in the private sector reported having experienced some form of sexual harassment (56%) but the difference between public and private was not as great as we might have anticipated. 47% of women in the public sector had experienced some form of sexual harassment.
- Women in the public sector were more likely to report that the perpetrator was a colleague, rather than a manager or someone else in a position of authority.
- Thirty-two per cent of women have been subject to unwelcome jokes of a sexual nature.
- Nearly one quarter of women have experienced unwanted touching (such as a hand on the knee or lower back).
- In the vast majority of cases, the perpetrator was a male colleague, with nearly one in five reporting that their direct manager or someone else with direct authority over them was the perpetrator.
- The results also suggested that women on more precarious types of contracts such as zero hours contracts and agency workers were more likely to experience harassment and less likely to report it.
- Four out of five women did not report the sexual harassment to their employer. Women in the public sector were just as unlikely as women in the private sector to report the harassment to anyone but of those who did report it, they were nearly twice as likely as women in the private sector to say that their complaint was not dealt with satisfactorily.
- The impact of the harassment was significant – including one in ten women reporting a detrimental impact to their mental health, 1 in 5 women said they avoided certain work situations as a result, 7% of women said they wanted to leave their job but were unable to for financial reasons and 6% did leave their job as a result.

In terms of how trends have changed over time, this data is not available because no government agency or academic institution has been collecting comparable data. The TUC recommends that the government should carry out robust research on the extent of sexual harassment.

The TUC envisages that this research would be carried out in the same way that the BEIS/EHRC research into pregnancy discrimination was carried out. That is to say, on a wide scale, surveying both employers and workers, with scope to analyse the data by sector, industry, ethnicity, age, etc., and with a view to repeating the survey at regular intervals in order to capture trends over time and gauge the efficacy of policy interventions. The Australian equivalent of the EHRC carries out a sexual harassment survey every five years.
Who experiences sexual harassment in the workplace, who perpetrates it and what the impact is on different groups

Women are more likely to experience sexual harassment than men. Eurofound data suggests that women in Europe are almost three times as likely to be subjected to sexual harassment as men⁴. BBC ComRes polling in 2017 found that one fifth of men had experienced sexual harassment compared to half of women⁵.

Perpetrators of sexual harassment are overwhelmingly male. TUC YouGov polling found that 9 in 10 perpetrators were male. This reflects wider patterns of sexual offending and violent crime. The EU Fundamental Rights Agency report into violence against women in 2014 found that “When asked whether the perpetrator of sexual harassment was male or female, 71% of victims indicated that the perpetrator of an incident since the age of 15 was a man, 2% indicated a female perpetrator and 21% pointed to both male and female harassers. The results reflect that, although the gender of many perpetrators is unknown because of the nature of harassment – such as through the internet– this form of violence against women is perpetrated mostly by men.”⁶

The TUC polling provided data disaggregated by age, social grade, region, ethnicity, salary, industry, sector and contract type. Women of all ages, social grades, and ethnicities experienced sexual harassment in all sectors, industries and regions. However, in many cases, the sample size was not large enough to draw conclusions and specific groups of women or specific sectors.

Age stands out as one of the characteristics with greater differentiation between groups of women, with young women more likely to experience sexual harassment and more likely to experience sexual harassment by phone or email or on their journey to and from work. In response to each of the questions about different types of sexual harassment, women aged 18-24 were more likely to respond positively that they had experienced the harassment described in the past 12 months. Sixty eight per cent of women aged 18–24 had experienced some form of sexual harassment compared to an average of 52 per cent amongst women of all ages. Polling by the BBC corroborates the TUC’s finding that age is a significant factor in sexual harassment. That is not to say that older women do not experience sexual harassment, but it is clear that younger women are more likely to experience sexual harassment.

An Equal Opportunities Commission literature review of sexual harassment in the workplace noted several studies and surveys which have found younger women to be more likely to experience sexual harassment in the workplace⁷.

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⁵ http://www.bbc.co.uk/news/uk-41741615
⁷ Sexual Harassment in the Workplace: a literature review, EOC, Working Paper Series No.59,
The FRA research on sexual harassment found that young women were more likely to experience sexual harassment overall and were also more likely to experience particular types of sexual harassment. For example, the FRA survey found that women aged 18–29 years old were twice as likely to receive threatening and offensive advances on the internet as women aged 40–49 years old, and more than three times as likely compared to women aged between 50 and 59 years old.

Young women are more likely to be on casual contracts, such as temporary, agency or zero-hours contracts and are likely to have had shorter tenure and be in more junior roles; all of which may be factors in sexual harassment.

Women who were not on permanent contracts, particularly those doing agency work or on zero hours contracts also stand out as a group which seems more likely to experience certain types of harassment and are less likely to report it. Overall 58 per cent of women on zero hours contracts reported experiencing some form of sexual harassment compared to fifty per cent of women on permanent contracts.

In terms of understanding the different demographic characteristics of women who experience sexual harassment in the workplace, TUC research found that there was surprisingly little difference between different ethnic groups. Our research found that almost the same overall proportion of BME respondents had experienced some form of sexual harassment (53%) however there were some notable differences in relation to specific types of harassment and in responses to the incidents. More BME women reported having experienced unwanted touching (e.g. lower back or knee) in the past 12 months than the average (10 per cent compared to an average of four per cent).

More BME women reported that the perpetrator was a colleague (64 per cent) or a third party such as a client or customer (11 per cent) compared to the average (average 54 per cent colleague and seven per cent third party).

While seven per cent of white women said that they had reported an incident of sexual harassment to their employer and it had been dealt with satisfactorily, no BME women who had reported an incident to their employer felt that it had been dealt with satisfactorily.

A greater proportion of BME women left their employment due to harassment (10 per cent compared to a 6 per cent average).

It is also worth noting that BME women’s experience of sexual harassment is often bound up with racial harassment. Many black feminist academics and activists have pointed to the double oppression faced by BME women and the “othering” and eroticising of BME women’s bodies and sexuality.

While the sample size was small in individual industries, there were some significant differences between industries. Seventy one per cent of women in media, marketing, advertising, PR and sales reported having experienced some form of sexual harassment compared to an average of 52 per cent. Sixty-nine per cent of women in manufacturing and 67 per cent of women in hospitality and leisure reported experiencing some form of sexual harassment.
Research by individual unions suggests high levels of sexual harassment in a wide range of industries. A recent report by the National Education Union found that one in three (32%) teachers in mixed-sex secondary schools report having witnessed sexual harassment in their school on at least a weekly basis. A further 36% say they witness it on a termly basis.

A survey by Unite the Union in January 2018 found that 9 in 10 hospitality workers had experience sexual harassment. Over half of those who had experienced sexual harassment said that the perpetrator was a customer.

Women on zero-hours contracts were significantly more likely to report that the harassment was perpetrated by a colleague (75 per cent) than women on other types of contracts.

The TUC’s polling found that seven per cent of women who had experienced harassment reported that the perpetrator was a third party (e.g. a customer, patient or client) but there was significant variation across sectors. Seventeen per cent of women in leisure and hospitality reported that the perpetrator was a client or customer. More than one in five women in media, marketing, advertising, PR and sales reported that the person who harassed them was a client or customer. There was also some variation by age with younger women being more likely (13 per cent) to be harassed by a third party.

TUC polling found that temporary and agency workers were more than twice as likely to report that they had been harassed by a third party than women on permanent contracts (13 per cent compared to 6 per cent).

Equal Opportunities Commission research in 2002 found that in the majority of sexual harassment cases taken to tribunal, the complainant had been working for their employer for less than one year. This finding may be linked to the fact that younger women are more likely to experience sexual harassment and are also more likely to have shorter periods of tenure, both because they simply have not been in the labour market as long as their older colleagues and because young women are more likely to be in temporary or agency work.

There is also a correlation between casualisation and sexual harassment which is born out in the findings of this report. The EU Agency for Fundamental Rights notes that “women with irregular or precarious employment contracts, which are common for many jobs in the services sector, are also more susceptible to sexual harassment”.

Once again, young women are more likely to be in casual or precarious forms of work. Young women in casualised work and on short, fixed term contracts are less likely to be unionised and are therefore less able to call on the support of a union rep in challenging sexual harassment in the workplace and less able to take a claim to employment tribunal without the financial support of a union.

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11 https://www.tuc.org.uk/sites/default/files/IfeellikeIcantchangeanythingreport_0.pdf
According to European Commission research on sexual harassment in the workplace, women working in male-dominated workplaces are more likely to experience sexual harassment. This is supported by anecdotal evidence from unions which suggests that workplaces which are either male dominated or are heavily segregated, with men in positions of power and women in more junior roles, tend to have more of a problem with sexual harassment. Many of the women who responded to the TUC online survey alluded to all male offices or male dominated sectors when describing their experiences.

Crucially, as is the case in other types of violence against women, sexual harassment is inextricably linked with power. Whether the perpetrator is abusing a position of power by harassing someone they see as less powerful, or whether the perpetrator feels powerless and is using sexual harassment as a means to disempower the target of their harassment and thus increase their own power and status in the workplace, power links all forms of sexual harassment. Several studies have found that perpetrators of sexual harassment tend to be in a position of power over the target of the harassment. The disempowering impact of sexual harassment was a recurrent theme in union members’ responses to a TUC survey on sexual harassment. Shame, humiliation, and a sense of being undermined professionally were all cited by respondents.

**Actions that the government and employers should be taking to change workplace culture to prevent sexual harassment, give people more confidence to report sexual harassment, and make this issue a higher priority for employers**

In order to tackle the problem of sexual harassment, the TUC believes the government must first collect data. Relying on unions and the media to commission private polling to gauge the extent and impact of sexual harassment is not a sustainable strategy for gathering robust data to shape policy. The TUC recommends that the government should follow the Australian model of funding the EHRC to carry out periodic wide scale surveys on the topic of sexual harassment.

The TUC would also like to see the power to make wider recommendations returned to employment tribunals. The Equality Act 2010 gave employment tribunals the power to make wider recommendations for the benefit of the wider workforce, not just the individual claimant, in relation to discrimination claims. This power was removed by the Deregulation Act 2015. In workplaces where a culture of bullying and harassment has been allowed to flourish or where there are systemic failures of the organisation to respond adequately to complaints of harassment, the power to make wider recommendations would be of great benefit.

The TUC also recommends the reinstatement of the statutory equality questionnaire. The statutory equality questionnaire allowed claimants to ask questions about their potential claim to the alleged discriminator before going to tribunal. It enabled claimants to gather

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information at an early stage, often before proceedings started, and to determine whether they had a case or not. The questionnaire procedure was removed in 2014 in spite of over 80 per cent of respondents to the government consultation opposing the proposal. Reintroducing the questionnaire would allow anyone who wished to pursue a claim of sexual harassment to gather information to support their case.

In order for union reps to provide adequate support for members in the workplace, they need time off for training and time to deal with these issues promptly before they escalate. Trained reps – in particular, equality reps - are well placed to deal with issues such sexual harassment, but statutory rights and facility time for equality reps is needed to enable them to carry out their role effectively.

The TUC polling has highlighted the vulnerability of women in precarious work who are less likely to report harassment and feel less able to leave their job to escape harassment due to financial reasons. The government should ensure that all workers are entitled to the full range of statutory employment rights, regardless of their employment status or their type of contract. In particular, the law on employment status and rules on continuity of employment should be reformed to ensure agency workers and those employed on zero-hours or casual contracts do not lose out on basic rights at work, including protection from unfair dismissal. Given the particular vulnerability of women on casualised contracts highlighted by this research, employers should aim to employ staff on permanent, secure contracts which offer decent hours and decent pay. Temporary contracts, zero-hours contracts, casual contracts and agency workers should only be used by employers to respond to genuine peaks and troughs in demand, or to match short-term skill needs.

Many of those responding to the TUC online survey identified workplace cultures that allowed sexual harassment to go unchecked and management failures to respond to complaints effectively or sympathetically. In order to tackle workplace sexual harassment, employers must ensure they adopt a top-down approach, working with all employees and managers and, where there is a recognised union, working in partnership with unions.

HR and all levels of management should receive training on sexual harassment, including what constitutes sexual harassment, stalking and online harassment, relevant law and workplace policies, and how to respond to complaints of sexual harassment. In some workplaces, training for all staff may be appropriate.

Employers should have a clear zero tolerance approach to sexual harassment and policies which reflect that. Use of social media and workplace equipment (e.g. work phones or laptops) should be taken into consideration when formulating policies on sexual harassment. All employees should be made aware of these policies, reporting procedures and their rights and responsibilities regarding workplace sexual harassment. Where there is a recognised union, seeking input from union reps into the development of a sexual harassment policy is recommended.

Employers should ensure that everyone working within their organisations can use grievance procedures to raise concerns about discrimination and harassment at work, including those on zero hours or casual contracts, agency workers and contractors who may be employed by another organisation.
Given the findings of this report in relation to employers failing to act when sexual harassment is reported – or indeed, the harassment worsening after reporting to the employer – employers should pay particular attention to grievance procedures and how complaints of sexual harassment are dealt with when they arise. It is essential that employers deal with any complaints or allegations of sexual harassment in a timely and sensitive manner, ensuring that those making a grievance do not suffer any detriment or victimisation as a consequence.

Policies should make specific provision to ensure that employees are protected from experiencing adverse outcomes after reporting workplace sexual harassment. The TUC online survey and the Everyday Sexism site provide many examples of inadequate management responses, from moving the complainant to a different department, to disbelieving or even victimising the complainant. Government and employers could do more to raise awareness of the protections against victimisation afforded by the Equality Act 2010.

How workers can be better protected from sexual harassment by clients, customers and other third parties

The TUC would like the government and employers to take tougher action on third party harassment. As outlined above, perpetrators of sexual harassment are often third parties. Women working in retail, hospitality, healthcare, care, transport and many other sectors deal with clients, patients, and customers on a daily basis and currently have little protection from their employer when facing harassment.

Reintroducing a duty on employers to act where an employee is being harassed by a third party would be an important step in tackling workplace sexual harassment. While it is possible to use other provisions in the law to challenge third party harassment, this is not always well understood. The TUC believes the government has a responsibility to highlight the fact that an employer may be found to be vicariously liable for actions of third parties.

Many women are unaware of their rights and employers unaware of their duties. Reinstating Section 40 of the Equality Act would also send a strong signal to employers that they have a duty to take action on sexual harassment.

The effectiveness and accessibility of tribunals and other legal means of redress and what can be done to improve those processes

The TUC welcomes the removal of employment tribunal fees as an important step in giving those who experience sexual harassment access to justice. The TUC and unions argued that the introduction of employment tribunal fees in 2013 created an often insurmountable
hurdle for women wishing to pursue a claim of sexual harassment. Women who were not members of trade unions and could not afford the £1,200 fee required to take a sex discrimination claim found themselves priced out of justice. While it is not possible to determine the number of tribunal claims for sexual harassment from the government data, it is possible to determine the number of claims for sex discrimination (sexual harassment is under the jurisdiction of sex discrimination) and the number of claims fell by 76 per cent from 2012/13 (before fees were introduced) to 2014/15\(^\text{13}\). It was thanks to a landmark Supreme Court case taken by Unison that in 2017 the fees were ruled to be unlawful.

Even once the barrier of tribunal fees is taken out of the equation, tribunals can be a daunting prospect for a worker – particularly when they fear standing up in front of their harasser and detailing experiences which were by their very nature humiliating and embarrassing. Given the significant disincentives which mitigate against workers taking cases of sexual harassment to tribunal, the TUC would support an increase in the time limit to bring a claim from 3 months to 6 months. The TUC would also support higher awards in cases of sexual harassment and for greater consideration to be given to compensation for injury to feelings.

The barriers for casualised, precarious and atypical workers accessing justice are even higher and the TUC would like to see the government give consideration to how disincentives for these workers to take a claim to tribunal could be minimized.

Following the Taylor Review into Good Work, the government should take action to introduce stronger rights for those in insecure work and consider how best to remove barriers to justice for these workers.

The advantages and disadvantages of using non-disclosure agreements in sexual harassment cases, including how inappropriate use of such agreements might be tackled

The TUC recognises that there has been an increase in interest in the use of Non-Disclosure Agreements (NDAs) since the President’s Club case, where women agency workers at the event were made to sign NDAs as a condition of their contract. The TUC deplores the use of NDAs in cases like this. Concerns about the misuse of NDAs have been raised by Equity, the entertainment union. A recent report on sexual harassment in the entertainment industry highlighted the widespread use of NDAs in casting and production and called for a review of how these agreements were being used\(^\text{14}\).

Requiring workers to sign NDAs can only be justified in very limited circumstances, for example, where it is necessary to protect vulnerable individuals, commercially sensitive data and state secrets. However, it is vital that employers are not allowed to contract out of their

\(^{13}\) Ministry of Justice Employment Tribunal receipts by jurisdiction 2007/08 to Q1 2015/16

\(^{14}\) https://www.equity.org.uk/documents/agenda-for-change-report/
employment responsibilities – including their duty to protect workers from discrimination and harassment at work.

Non-Disclosure Agreements should not be conflated with confidentiality clauses in settlement or compromise agreements. The TUC recognises that on occasions it would be appropriate to include confidentiality clauses in settlement agreements.

Such settlement agreements can nevertheless play an important role in resolving disputes in an amicable way and in ensuring that women are fully compensated and protected from future harassment, without the need to go to an employment tribunal. For women who simply want to move on from a traumatic or unpleasant experience without facing their harasser in a tribunal, a swift negotiated exit with a significant settlement payment may well be a more attractive option. The settlements reached in such agreements are often higher than those awarded by tribunals. However, it is important that settlement agreements are not used as a means of silencing women who have experienced sexual harassment and sweeping the problem under the carpet.

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