Written submission from Health and Safety Executive (SHW0077)

Summary

Workplace harassment is unlawful and existing criminal and civil protections through the Equalities Act 2010, Protection from Harassment Act 1997 and Sexual Offences Act 2003 apply to harassment offences in the workplace. Criminal law provides protections and sanctions are available to employers under Employment Law that would allow a range of disciplinary measures to be applied to individual employees harassing or bullying others.

Under the Protection from Harassment Act enforcement on breaches can be taken by the Police, or there is provision for action through the civil courts. Breaches of the Equality Act 2010 are investigated by the Equality and Human Rights Commission (EHRC).

HSE is the regulator for workplace health and safety in Great Britain. The Health and Safety at Work etc Act 1974 (HSWA), and health and safety regulations made under it, impose duties on employers to ensure, so far as is reasonably practicable, the health, safety and welfare of their workers; and to assess the risks to employees and take appropriate measures to prevent or reduce the risk.

HSWA applies to work-related acts of violence and aggression, which could include harassment offences in the workplace. In practice, and in line with HSE’s prioritisation criteria, reports of harassment would be referred to a regulatory authority with more specific responsibility (eg Police or EHRC); or more directly applicable legislation.

HSE works closely with other regulators to promote co-operation, share intelligence and where appropriate, co-ordinate on joint regulatory activities. HSE’s expertise lies in organisational approaches to managing and controlling the risks of reasonably foreseeable work-related violence and aggression from third parties (usually from members of the public).

Sexual harassment by colleagues is most appropriately dealt with as a disciplinary issue through the employer’s bullying, harassment or discrimination/equality policies. Victims have recourse to the Police, Employment Tribunals and the ACAS Early Conciliation Service.

HSE also publishes guidance and case studies on work-related violence on the HSE website; sector specific guidance is produced by a number of industry bodies; and there is joint guidance on the implementation of a European Social Partner Agreement in relation to preventing workplace harassment and violence.
1. **What is HSE's regulatory role and enforcement approach?**

Health and safety legislation is aimed at protecting employees and others who may be affected by work activities and to help prevent workplace death, injury or ill health. The duties on employers are not absolute; they are conditional on the foreseeability of harm and the reasonable practicability of taking appropriate precautions.

Breaches of health and safety at work law constitute criminal offences and can involve death and serious injury to people and failures to manage risks to health and safety. The most serious work-related incidents, injuries or cases of ill health are investigated in line with HSE’s published [Incident Selection Criteria](#).

HSE’s enforcement approaches include providing written information on breaches of the law; issuing improvement and prohibition notices; withdrawing approvals and varying licences.

HSE’s emphasis is on prevention but, where appropriate, we take enforcement action to ensure dutyholders:
- deal immediately with serious risks (to prevent harm)
- comply with the law
- are held to account if they fail in their responsibilities

Enforcement action is taken in line with HSE’s Enforcement Policy Statement and application of HSE’s Enforcement Management Model, and is proportionate to the risk and extent of the breach.

HSE’s regulatory role is not just policing compliance and imposing sanctions; it encompasses publishing information, advice and guidance to encourage and support business to help employers comply with the law and manage health and safety risks in a sensible and proportionate way.

2. **How does HSE work with other regulators and share knowledge and intelligence?**

HSE does not seek to regulate or apply health and safety at work legislation where another regulator has specific responsibility or there is more directly applicable legislation, so for:
- Acts of violence – The police are the more appropriate regulator.
- Harassment – The Equalities Act 2010, enforced by Equality and Human Rights Commission (EHRC), is the most appropriate legislation.

HSE works closely with others in government to ensure the most appropriate organisation intervenes and the most appropriate legislation is applied. Where legislative provisions overlap, arrangements are in place to:
• promote cooperation
• minimise duplication
• share information and intelligence
• coordinate on joint regulatory activities

3. **What is HSE’s role with regards to bullying and harassment in general?**

HSE’s definition of work-related violence is “any incident in which a person is abused, threatened or assaulted in circumstances relating to their work”; bullying and harassment could fall within that definition.

HSE may carry out inspections, investigate incidents or complaints in relation to work-related violence and these would usually focus on the organisational arrangements that the employer has in place and the precautions to protect groups of staff.

4. **Are employers expected to have risk assessments for dealing with harassment, and more specifically on sexual harassment?**

No. HSE would not expect specific risk assessments on harassment or sexual harassment under our legislation. It would be appropriate for employers to include third party harassment/sexual harassment under their broader violence and aggression risk assessment, if these are foreseeable.

5. **Which regulator is responsible for ensuring employers take action on sexual harassment?**

Under the Protection from Harassment Act 1997 enforcement on breaches can be taken by the Police, and there is provision for action through the civil courts.

Under the Equality Act 2010 breaches are investigated by the EHRC. These along with provisions in other legislation such as the Sexual Offences Act target sexual harassment whether it occurs in the workplace or elsewhere.

The Equality Act 2010 provides a strong civil remedy for harassment, including sexual harassment, in the workplace, regardless of who commits it. EHRC has specific duties relating to enforcement.

As well as enforcing the law, the EHRC provides advice to individuals and organisations, and will help individual people with their legal cases.

6. **How, if at all, does that relate to health and safety law?**

Sexual harassment is not a mainstream issue under occupational health and safety legislation – compared with falls from height, machinery dangers or exposure to dangerous substances, for instance.

Some forms of sexual harassment could fall within HSE’s definition of work-related violence, and might be a contributory factor to work-related stress. Any HSE action would
be focused on the employer in relation to their general arrangements and actions for dealing with these broader issues. HSE’s policy is not to regulate or apply its legislation where another regulator has more directly applicable legislation and is better placed to do so.

7. Do employees have any recourse under health & safety law or other legislation where employer is not doing enough on sexual harassment?

No. Sexual harassment by colleagues is most appropriately dealt with as a disciplinary issue through the employer’s bullying, harassment or discrimination/equality policies and associated internal complaints and disciplinary procedures.

If they are unable to reach agreement through the employer’s grievance procedure, any employee who feels they have been harassed in the workplace has recourse to the Police; can take legal action in an Employment Tribunal, or through the ACAS Early Conciliation Service. The EHRC also provides advice to individuals and organisations, and will help individual people with their legal cases.

8. What duty is on the employer in relation to third party harassment?

Sexual harassment by third parties may constitute work-related violence where “… a person is abused, threatened or assaulted in circumstances relating to their work”. Such violence usually originates from members of the public and service users.

Employers have a duty to assess the risks of foreseeable work-related violence against their workers and take reasonably practicable measures to control those risks. HSE has prosecuted employers, for example, care providers, for violence against an employee.

Employers would also have a legal duty under Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) to report incidents of work-related violence resulting in injury or absence from work for seven days or more.

Under the Equality Act 2010, employers have a legal obligation to protect their workers and can still be liable under existing provisions if they fail to take reasonable steps to prevent harassment of workers by third parties.

9. What role would HSE have, or what action would HSE take with regard to third party harassment? (eg If an employer does not have risk assessment for violence and a violent incident occurs?)

HSE may carry out inspections, investigate incidents or complaints in relation to work-related violence and these would usually focus on the organisational arrangements that the employer has in place and the precautions to protect groups of staff. Where a breach of the law has been identified, HSE will secure compliance using the range of enforcement powers as appropriate. The police usually focus on the individual acts of violence and offences by the perpetrator.
If the incident is reportable under RIDDOR, and it meets HSE’s published incident selection criteria, then an investigation maybe be carried out. Depending on the outcome of the investigation, HSE may decide to take enforcement action against the employer.

The circumstances in each situation are likely to vary. In general, more serious enforcement action is likely to be taken where the actual risk to employees is high and the employer has not taken reasonably practicable control measures. Examples of high risk sectors include protective service occupations such as the police and health and social care.

10. **Will the UK Government be supporting the proposed ILO Convention on violence and harassment against workers worldwide?**

DWP leads for the UK on the relationship with the International Labour Organisation and is co-ordinating cross-Government to establish the UK position on a range of employment and social protection issues.

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