

How to build a case

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How to Collect Evidence

- Very rare for sexual harassment to take place in front of witnesses
- Often one person v another with 2 versions of events.
- Need to assess credibility

What do you expect to see?

- Expect to see internal grievance
- Flag up with Human Resources (if have one)
- Speak to their union (if have one)
- They are complaining in law so expect to see that they have raised it internally first.



If they have not raised a complaint internally

- Why have they not done this?
- Is there a credible explanation?
- Have they raised it with friends/ family/ Doctor?
- Have family members noticed a change in their behaviour? Eg Woman went off sex with husband

Is their evidence consistent?

- Take a detailed statement early on
- What did the person do?
- How credible is the story?
- Is the person an aggressive character?
- What is the workplace like?–
- What is the culture of the organisation?
Eg pressured sales environment/ trading floor more likely to use certain language – more credible.



Other evidence

- Is there a contemporaneous record?
- Have they kept a diary?
- Any cards, letters or text messages?

Medical evidence

- Get client's consent to obtain medical records
- Medical notes useful if off with stress as should mention harassment
- If no mention – why not?
 - Credible explanation?
 - Eg family Dr, a man, knows parents, husband?

Gathering information

- Ask the employer specific questions eg any complaints against this person before?
- Ask to see a copy of the equality policy.
- Specific and general disclosure of eg meeting notes, e-mails.



Evidence

- Employer may say interviewed x and then Y – both say opposite so cannot make a finding
- In UK harassment seen as serious by Employment Tribunal
- Expect more investigation than this.

Other actors to work with

- In UK – trade unions – they may have information about that person/employer, other complaints
- Expect employee to raise issue if in union.
- ACAS



Burden of Proof

- Burden of proof starts with the person claiming sexual harassment
- must prove enough facts from which the court can decide, in the absence of any other explanation, that the discrimination, harassment or victimisation has taken place.



Burden continued

- Once they have done this, then, in the absence of any other explanation, the burden shifts onto the employer to show that the employer or someone whose actions or omissions they were responsible for did not discriminate, harass or victimise the person making the claim.



Courts and Tribunals

- Employment claims in UK are brought in the Employment Tribunal
- Service Claims in County Court
- Different time limits and costs regime.



Liability - Employment

- Harasser liable
- An employer is legally responsible for discrimination carried out by workers employed by them or by their agents, unless they have taken all reasonable preventative steps.

Freestanding complaint

Freestanding complaint if respond to complaint in a discriminatory manner

Eg normally deal with complaints quickly

Liability for third party harassment

- employment

- provisions addressing harassment by third parties have been repealed.
- usually an employer will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent in some circumstances they may be legally responsible for the acts of others where they could, but do not, do something to stop it. *Sheffield City Council v Norouzi* [2011] IRLR 897 (and see *Equal Opportunities Commission v Secretary of State for Trade and Industry* [2007] IRLR 327).



Service Providers

- Service providers eg owners of shops, dentists etc can be liable if a customer is harassed by an employee/ owner. (County Court Claims)



Service example

- Training sports person – Sports England
- Harassed by trainer – complained
- Sports England did nothing
- Training withdrawn, performance dipped
- Training facilities withdrawn



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Service Providers

Usually a service provider will not be responsible for discrimination, harassment or victimisation by someone other than their employee or agent (IT IS POSSIBLE THAT THEY ARE legally responsible for the acts of others where they could, but do not, do something to stop it).

A woman is a regular visitor to her local pub. A male customer who also attends the pub frequently makes comments about her clothing and looks. He also sometimes touches her inappropriately and makes sexual comments to her. The woman has complained many times to the manager of the pub about this and he has done nothing to stop it by warning the man or barring him. The pub might be legally responsible for the harassment by the man.



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UK legislation – easier solution?

- We have had legislation re goods and services since Sex Discrimination 1975
- Head start – still not many cases and inexperienced Judges in County Court
- Cost regime – very expensive eg recent supported case at Court of Appeal – costs if we loose after £80,000 euro



Questionnaire

- Used to have questionnaire procedure – very good gathering evidence – went in April 2014
- Used to have free access to Employment Tribunals – April 2014 – fee Claims down for discrimination – no cost regime
- However, Judges in tribunal very experienced, specialist training – claims taken seriously

Practical tips

- See the client early and take a full statement
- Gather as much information – documentary, and ask questions
- Consider using family and friends as witnesses
- Overall – is the story credible!

