



Home Office - Public Sexual Harassment Consultation

UNITE – the Union Response

September 2022

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Introduction

Unite is the UK's largest trade union with over one million members across all sectors of the economy including health, transport, manufacturing, financial services, food and agriculture, information technology, service industries, construction, energy and utilities, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

Sexual harassment is a very serious issue for Unite and our members and therefore, we are shocked at the 14-day timescale to respond to this detailed consultation. To ensure an appropriate response to this legislative proposal, we would need to liaise with our legal department but this extremely short timeframe does not allow for that.

We are particularly, concerned about the timing of this consultation as the government should be fully aware that August is a holiday month for most people and especially for those with childcare responsibilities.

Considering the above points and the significance of sexual harassment we would not be able to provide specific answers to each question. However, Unite would want to make the following points:

Sexual harassment as an offence

- Violence against women should be recognised as a hate crime.

Hate crime is on the rise and the government should re-educate its citizens regarding sexual abuse which has risen to an alarming level. This needs to be challenged and changed. Hate crime via the Internet continues to rise with little effective interception or prosecution by providers. The advances and the expertise in the sphere of IT in the world of work and communications must be used to change this situation.

- Unite has long advocated against sexual harassment and violence against women both in and out of the workplace and has supported the TUC statement "We demand safety. We demand justice. We demand equality."¹
- Unite believes that the duty to prevent sexual harassment is paramount. By doing so the Government would also be making it absolutely clear to employers that it would not tolerate sexual harassment in any workplace. It

¹ <https://www.tuc.org.uk/news/joint-union-statement-we-demand-safety-we-demand-justice-we-demand-equality>

should also make it clear that this unacceptable act should be prevented and that non-compliance would bear heavy sanction.

- It should also be made explicit that who is liable when employee of one company suffers violence or harassment in the premises of another company. Lack of clarity means no one takes action to prevent or deal with issues effectively.
- Government should raise awareness amongst employers of the impact of sexual harassment in the workplace and encourage the provision of appropriate support, in consultation with trade unions including Union Equality Representatives.
- Government has a responsibility in addition to ensuring the enforcement of the current legislation, to make it clear that sexual harassment is illegal.

New legal duty to prevent sexual harassment

- Unite supports an easily enforceable legal duty requiring employers to prevent and protect workers from sexual harassment.
- One of the main problems is under reporting of sexual harassment. Many of our members say that sexual harassment is difficult to report and is increasing. This legal duty would tackle the current under reporting as well as preventing it from taking place in the first place.
- Currently, it is only after a serious incident of sexual harassment has taken place and reported that action is taken by the employer and therefore, we agree with the “*shift from employer liability after the incident of harassment, to a proactive duty before any unlawful conduct has taken place.*”²
- Unite strongly supports the introduction of a Statutory Code of Practice clearly explaining what employers need to do to prevent sexual harassment whilst recognising the practical steps required from employers. This Code should include: mandatory training for all staff including managers on what sexual harassment is, how to prevent and tackle incidents and procedures; putting safeguards on social media and having safe reporting routes for all workers, including self-employed, freelance and agency workers.
- Also, appropriate amendments or additions to Chapter 7 of the Equality Act 2010 Employment Statutory Code of Practice are needed.

- Prevention should be the aim and these measures assist in this process, ensuring employers take positive steps to provide a safe environment for their employees as well as their customers or clients.
- The new duty should apply to public, private and voluntary sectors and through the chain. It should also be a precursor in procurement.
- The government should also ensure nightclubs and hospitality venues put effective measure to prevent and tackle spiking of drinks and injections.
- The sanctions for employers who do not comply with a new preventative duty need to be clear and effectively enforced through a strengthened EHRC. In our experience such clear legal requirement are necessary to ensure action. Additionally, Unite believes that positive encouragement of employers to put measures in place to prevent sexual harassment also has an important role alongside these legal requirements. For example, good practice awards, government supported events involving employers, trade unions and other interested organisations.
- The government's damaging agenda of cuts and political interference in the enforcement authorities such as the EHRC, HSE and Charity Commission over the last few years has reduced their powers to investigate, effectively regulate and enforce the law and good practice. Government should sufficiently fund all enforcement authorities in order for them to provide support, advice and safeguards for workers and employers to prevent harassment and bullying in the first place.

Third party harassment

- Since the mandatory duty to take all reasonable steps to prevent harassment applies to all forms of harassment including third party therefore, the defence of having taken 'all reasonable steps' to prevent sexual harassment should also apply to cases of third party harassment.
- Unite has been strongly opposed to the removal of section 40(2)-(4) of the Equality Act 2010. The harassment of people at work by a third party can be deeply distressing, harmful and dangerous. Unite believes that all parties involved should welcome such provision to ensure that it is both unlawful and can be addressed.
- Section 40 of the Equality Act 2010 which requires employers to prevent harassment from third parties should be reinstated.
- More crucially, Unite welcomed the inclusion of protection from third party harassment in the Equality Act 2010 as well as its extension to all areas of equalities. However, we were and still are strongly opposed to the 'three strikes' element of this provision. Unite will continue to raise with government

the issue of the removal of this element since harassment is, harassment and unlawful whether is the first time or the second or the third.

- We believe the government should take this opportunity to provide better protection for employees by removing the 'three strikes' element instead of providing them with no defence or protection from harassment by third parties.

Stalking legislation

- We have been concerned about the gaps in stalking legislation. All too often victims are not believed or taken seriously. Often, the one place where stalkers can find women is the workplace and this is a key issue for women at work.
- Stalkers should as a routine be assessed and managed through a holistic multi-agency stalking intervention programme. Without an effective intervention the stalking will continue.
- There are barriers in access to justice, legal aid and there are also issues around cross examination of witnesses where the woman's wishes are not always followed and in many cases, women are not believed. All these should be addressed.
- Government should introduce a stalkers and domestic violence perpetrators register to enable the police to pro-actively identify, track, monitor and manage perpetrators. Unite supports Paladin, the national stalking advocacy service, in its call for a register of serial stalkers and domestic violence perpetrators.

Paladin states:

Currently there is no existing framework which can track or monitor serial stalkers and domestic violence perpetrators. Instead police rely on a series of victims to report multiple crimes and often it is the victims who are forced to modify and change their behaviour, flee their homes and disappear themselves in order to stay safe. This is the reason why refuges are in demand and victims continue to be moved around the country. Multi agency risk assessment conferences also tend to focus on the victim too rather than the perpetrator. We track victims when they move but not the problem – the perpetrator.

This needs to change. It is the perpetrator's behaviour that is the problem. There needs to be a positive obligation on them to change their behaviour and take responsibility. They are the ones who need to be tracked, supervised and managed and not the victim.³

³ <https://paladinservice.co.uk/serial-perpetrator-register-and-order/> accessed 8 September 2020

- Laws and its enforcement surrounding the use/abuse of social media, need to be stricter considering the shocking increase in on-line bullying, stalking and 'trolling". People also need to be educated and told what is acceptable and what is not. Internet providers/social media companies and controllers must be made to face up to their responsibilities.
- Putting safeguards on social media with stronger abilities to identify and prosecute abusers of such media.

Employment Tribunal time limit and powers

- Unite believes the statutory time limit for all employment claims relating to the Equality Act 2010 should be extended to a minimum of six months.

Also, the Employment Tribunals should be given powers to extend the six month time limit when it is necessary in some cases.

The pressure on someone who is suffering from sexual harassment can be very severe and this can impact on someone's ability to report that it is taking place. Additionally, procedures in the workplace can mean that the three month deadline make the situation worse because it escalates to a legal case in order to meet the deadline.

- Government should also reinstate the employment tribunals' power to make wider recommendations in discrimination cases; and the questionnaire procedure, which encouraged employers to take issues of discrimination and harassment more seriously often resolving them without the need to proceed to lengthy and costly tribunals. Both these measures can help avoid future harassment cases.

ILO C190 Convention

- In March this year the UK and Northern Ireland have ratified the ILO C190 Convention. Now, it is the time for the governments to fully implement C190 by making sexual harassment part of the public policy on violence against women which requires government to adopt an integrated plan of action that includes better inter-agency working, raising awareness of the issues, more effective legislation and policies and innovative practice. Additionally, educating and raising awareness on these important issue both in schools and in our wider society.
- Unite has been involved in global campaigns against sexual harassment and violence against women including at the ILO in particular the ILO C190 Convention and campaigned for its ratification. Our longstanding involvement in representing women transport workers facing sexual harassment both as bus and lorry drivers where they are under-represented and as cabin crew where their role as safety professionals in undervalued and often

unrecognised. As part of our global campaigning, we have recently signed a pledge with IndustriALL, the global union representing workers in manufacturing, energy and mining sectors, a dignity at work policy at the European Transport federation and a joint commitment with the food and home/consumer products manufacturer Unilever, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association and IndustriAll on preventing sexual harassment at the workplace.

Collective bargaining and trade union rights

- Unite strongly supports the role of sectoral and workplace collective bargaining. It is widely acknowledged that workplaces with a trade union where collective bargaining takes place are more likely to have measures in place to prevent sexual harassment.
- Unite also believes that there should be a duty on employers to negotiate with the trade unions to establish anti-harassment policies ensuring prevention and action.
- Unite has been representing and supporting members experiencing harassment, discrimination and bullying. Our representatives work tirelessly to negotiate agreements and policies to prevent discrimination and establish best practice. However, the Trade Union Act 2016 has been an attack on our organisation and our reps facility time. Unite has been calling for the repeal of this Act.
- Central to the zero tolerance approach is recognition by the company from the Chief executive through to all managers and customers to give confidence to employees that harassment will not be tolerated; that complaints will be dealt with confidentially and swiftly, that inappropriate behaviour is a disciplinary offence, and that they have a positive strategy which is resourced and integrated in to the day to day operation of the business.
- Unite works with employers to negotiate Dignity at work policies with a positive approach to conducting workplace relationships, based on an organisational commitment to restrict all forms of unacceptable behaviour, including bullying and harassment, and to treat all employees with respect. By adopting a strategic Zero Tolerance approach to inappropriate behaviour and encouraging dignity at work, companies need to adopt a clear set of values that deal swiftly and effectively with bullying, harassment or any other form of unwanted behaviour and to reduce the number of incidents that occur.

We have negotiated agreements with many companies to prevent and tackle harassment, discrimination, bullying for example, at Sainsbury, IMI and NHS.

Statutory rights for union equality reps

- Employer recognition for Union Equality Representatives strengthens action to prevent sexual harassment and Unite has many examples to demonstrate this.
- Union Equality representatives do not have statutory rights to time off, training or facilities in the workplace. However, their skills, experience and activities are recognised in various official guidance and statutory codes of practice, for example the ACAS Trade union representation in the workplace, the EHRC Employment Statutory Code of Practice and Equal Pay Statutory Code of Practice.
- Unite has been representing and supporting members experiencing sexual harassment. Our union equality representatives have been ensuring equality in workplaces across various sectors. They work with employers to prevent sexual harassment and to establish best practice. They can and do resolve problems at the sharp end. Statutory rights for Union equality reps will ensure prevention and therefore avoiding legal cases. Unite has been calling for statutory rights for union equality reps for many years. At a time when existing inequalities in society are increasingly in evidence, statutory recognition of trade union Equality Representatives must no longer be deferred and Government should show its commitment and respond positively to these demands.

Two tier workforce

- Nobody should be harassed at work. It is wrong, immoral and illegal. Unite continues to call for the same employment rights for all workers and calls for the use of one definition for all who are engaged in work including those on zero-hours, fixed term and temporary contracts as well as outsourced, self-employed, freelance, agency and voluntary workers. This will eliminate the existing divisions within the workforce and would encourage an equal and fair environment where everyone is respected and treated equally.
- Too many organisations have a culture to overuse short and fixed term contracts which contributes to insecurity, inequality and poor power dynamics. At the simplest level such insecure contracts prevent people from coming forward to report abuse as they fear that they will not have their contract renewed. Such a high turnover of staff and volunteers also make it far harder to implement background checks and sufficient safeguarding controls. Government should ask organisations to explain clearly how they seek to address this culture and ensure that it enables precarious workers to make a complaint, without affecting their contract renewal. Oxfam is an example of one of these organisations.
- Legal rights should be enforced however, in sectors where precarious employment practices and lack of access to trade union representatives

prevail, workers will continue to lack confidence that if they make a complaint to their manager, whether their complaint will be dealt with at all, and worse still, would they risk losing their job. The Government has continuously chipped away at employment rights but instead they should reinstate basic employment rights from day one for all workers, and also the right to organise collectively in trade unions, particularly in small workplaces.

Workplace Women's Advocates

- Government should give statutory status to workplace women's advocates, a specialist type of equality representative who is trained to support women affected by violence at work.
- There should be a specific legal duty on employers to prevent harassment, discrimination and bullying at work including a duty to protect victims of domestic violence and abuse. Victims of domestic violence and abuse and their perpetrators are likely to be at work, and sometimes in the same workplace.
- Women's advocates are union activists who are trained to support survivors of violence, link them with community support and advocate for workplace safety planning and job security. They also campaign for prevention of violence in the workplace and with allies in wider society.

This model has been used effectively by trade unions across the world. Unite is calling for statutory recognition of women's advocates. The International Transport Workers' Federation and its affiliates are campaigning for the recognition of workplace women's advocates.

More information can be found on

<https://itfvioencefreeworkplaces4women.wordpress.com/womens-advocacy/>

Unite has been representing and supporting members experiencing harassment, discrimination and bullying. Our representatives work tirelessly to negotiate agreements and policies to prevent discrimination and establish best practice. The following are some good and bad practice examples.

BAD PRACTICE EXAMPLES

No woman in any sector is immune from sexual harassment. Women of all ages, race and ethnicity, disability, sexual orientation and gender identity experience sexual harassment and sometimes more because of their identity.

The perpetrators are colleagues, managers, customers and clients. The more women are put in a vulnerable position the more they will face harassment and the less likelihood of reporting.

As we said above, under reporting of harassment is a major issue. The following are only some examples of sexual harassment faced by our members in a range of industries.

Transport, aviation

High level of reported harassment from colleagues, airport staff and passengers including criminal cases that may not have been pursued. These include sexually explicit comments, attempts to kiss or grope, blatant sexual innuendo, pinching, squeezing, overly tactile behaviour, telephone numbers being forced into staff hand with passengers hotel and telephone details, offers to take them out, knocking on the door of hotel rooms or waiting outside room, sexual assault, asked about sexual activity and preferences, exposing themselves, aggressively pursued for sex, intimidation over an assessment if did not comply with request for sex, graphic sexual comments, smutty photos from magazines, questions of a sexual nature, notes under hotel doors.

Finance

One of our women members was receiving, counselling and support, linked to her mental health at the time.

The counselling was given by both the company and her own doctor, linked to the company support frame.

The member approached her Unite representative as she was getting unwanted attention from the counsellor/support worker. She was receiving sexually explicit emails and late night texts from him. He also called and would pop in sometimes unannounced for a coffee and chat. This behaviour was really upsetting our member.

With the member's consent, Unite representative showed the offending messages to the HR director. The HR director was disgusted with the fact that this was meant to be a trusted counsellor whom people could confide in for help and support.

Consequently, the company contacted the support group senior manager, the man involved admitted the offending texts and visit, and was dismissed from their company and was removed from the register.

This case was dealt with promptly and effectively since Unite has an agreed Bullying and Harassment policy including zero tolerance to sexual harassment within the company.

Late-night workers

- Many women either face or are fearful of harassment when travelling to and from work working on a night shift. Cuts in the number of services and staffing in public transport has had a major impact. Additionally, there are no safe paths home from public transport and visa-versa.

We also, had cases from members where in order to cut costs, employers were ignoring workplace safety eg. no lights in the car park.

GOOD PRACTICE EXAMPLES

Not on the Menu

Unite has exposed and campaigned against sexual harassment in the hospitality sector. In 2018 we surveyed hospitality workers on sexual harassment. The '*Not on the Menu*' campaign was designed as a consequence of this survey. This was followed up with a new survey in 2021 to find out if anything had changed and sadly it has not; in fact, it has got worse for hospitality workers.

Campaign demands include:

- Strengthen the law around sexual harassment and reinstate an employer's duty to protect staff from abusive clients.
- Safe, secure workplaces free from bullying and sexual harassment.
- Safe transport home after late shifts.
- Effective anti-sexual harassment policy
- Support Fair Hospitality Charter, which includes an anti-sexual harassment policy and paid transportation past midnight

More information can be found on
<https://www.unitehospitality.org/notonthemenu/>
<https://unitelive.org/14506-2/>

Get Me Home Safely

A Unite national campaign, which started as a joint campaign developed between the Passenger and Hospitality sectors has now been extended to a campaign in all sectors. The background to its development was rooted on a concern for the safety

of women who work late and unsocial hours, particularly those in low paid jobs who cannot afford taxi travel home and rely on buses and other forms of public transport which are often scarce or simply unavailable after midnight. The guiding principal of the Get Me Home Safely campaign is that every worker must have access to safe transport at all hours of the day and we are working with employers, local authorities and the Government to engage with our union to develop solutions for ensuring workers who work past 11pm are able to travel to and from work safely.

The campaign has the support of a number of councillors, MPs, Wales Senedd members, elected Mayors, Suzy Lamplugh Trust and others.

Campaign demands:

- Highlight lack of enforcement regarding sexual assault including upskirting on public transport
- Highlight the cost of travel which is often unaffordable to those who work shift patterns and are on low pay and zero-hours contracts
- Call for local government and licensing boards to change regulations so employers would need to put provisions in place for workers' working past 11pm.
- Call for municipal ownership of buses to improve bus service provision especially for night time and off-peak services
- Identify workable solutions to facilitate safe travel home, such as getting supplemented taxi travel for late shift workers.
- Full implementation of the ILO Convention 190 by the government
- MPs and local authorities to publicly support the Unite Hospitality Charter and urge employers in their constituencies to implement a safe home policy – example: East Dunbartonshire Council, the Licensing Board has made safe transport home a requirement of any venue wishing to apply for a new or 1am license.
- National minimum standards for the taxi and private hire sector to address safety issues.
- Compulsory training on sexual harassment/gender based violence for workers in passenger transport – Unite Taxi School deliver this as part of their taxi driver training. This training would better equip transport workers to report and takes steps against sexual harassment where it occurs on our buses, tubes and trains.

More information can be found on <https://www.unitetheunion.org/campaigns/get-me-home-safely-campaign/>

Toilet Dignity

Unite has long been campaigning for workers to have safe access to decent toilets and sanitary facilities, and identifying and including the equalities aspects of this campaign.

Our surveys throughout Passenger Transport and Road Transport & Logistics, as well as in Construction, in particular, have uncovered tens of thousands of workers across the UK still suffering a lack of “toilet dignity”.

This has included ensuring access to toilets for women particularly in male-dominated industries and among mobile workers, disability access, additional gender neutral toilets, as well as exposing discriminatory attitudes and lack of implementation of the health and safety requirement for drivers visiting a workplace to have access to sanitation and toilet facilities.

<https://www.unitetheunion.org/campaigns/toilet-dignity/>

SUMMARY OF UNITE DEMANDS

Collective trade union rights

- A positive framework of employment legislation and trade union rights to safeguard dignity at work.
- Statutory rights for union equality representatives.
- Repeal of the Trade Union Act 2016.
- Statutory rights for Workplace Women's Advocates

Employment rights

- Protect and strengthen the Equality Act 2010, Protection from Harassment Act 1997 and Health & Safety legislations.
- Reinstate section 40(2)-(4) of the Equality Act 2010, the harassment of people at work by a third party such as customers, clients and contractors.
- Removal of the 'three strikes' element of section 40(2)-(4) of the Equality Act 2010.
- Put safeguards and stricter laws on use and abuse of social media with stronger abilities to identify and prosecute abusers of such media.

Implementation of the ILO convention

- Full implementation of ILO Convention 190 by the government.
- Sexual harassment should be part of the public policy on violence against women which requires Government to adopt an integrated plan of action that includes better inter-agency working, raising awareness of the issues, more effective legislation and policies and innovative practice.

Guidance and support for employers

- A new legal duty requiring employers to prevent and protect workers from sexual harassment and the introduction of a Statutory Code of Practice.
- Raise awareness amongst employers of the impact of sexual harassment in the workplace and encourage the provision of appropriate support, in consultation with trade unions.
- Government has to ask employers to explain clearly how they seek to address this culture and ensure that it enables precarious workers to make a complaint, without affecting their contract renewal.
- Mandatory training for all staff including managers on what sexual harassment is, how to prevent and tackle incidents and implement procedures.
- Employers to adopt a strategic Zero Tolerance approach to inappropriate behaviour and ensure dignity at work, deal swiftly and effectively with bullying, harassment or any other form of unwanted behaviour and to reduce the number of incidents.

Wider implementation of civil rights around stalking and also access to justice

- Strengthening the stalking legislation. Stalkers should as a routine be assessed and managed through a holistic multi-agency stalking intervention programme once they come into contact with the criminal justice system. Without an effective intervention the stalking will continue.
- Extend the employment tribunal time limits also, reinstate their power to make wider recommendations in discrimination cases and the questionnaire procedure.

Funding of advice and support organisations

- Sufficient funding for all enforcing bodies in order for them to provide support, advice and safeguards for workers and employers to prevent harassment and bullying in the first place.