

Information and support for anyone experiencing sexual violence and harassment in the workplace



**RAPE
CRISIS
SCOTLAND**

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All employers must make sure that their employees are safe and respected at work.

If you are experiencing sexual violence or harassment in your workplace, you do not have to put up with it.

But it can be difficult to know what to do or what your rights are, especially if the person who is sexually harassing you is your colleague, line manager or employer.

All workers have rights, including human rights, which are the basic rights and freedoms which every person has.

This information sets out:

- What sexual harassment at work is
- Where to get support if it is happening to you
- Action to think about taking
- What your employer should do
- Sexual harassment and the law

Supporting survivors of sexual violence

The Rape Crisis Scotland (RCS) Helpline is for anyone over 13 who has experienced sexual violence, no matter when or how it happened. Sexual harassment, whether at work or elsewhere, is a form of sexual violence.

The RCS Helpline offers short-term free and confidential support and information over the phone and by email. You do not need to give your name or any information about yourself.

The helpline is open daily between 6pm and midnight on Freephone: 08088 01 03 02 or can be contacted by email at: support@rapecrisisScotland.org.uk. If you want longer-term or face-to-face support we can help you find this in your area.

We can help you if you are experiencing sexual violence and harassment at work. We will listen to what you say and discuss options with you.

Drawing the line: about sexual violence and harassment at work

Sexual violence is a broad term covering behaviour which takes place in private and in public. It may make you feel uncomfortable, threatened and distressed. It can include someone at work:

- Making unwelcome verbal or physical advances
- Touching you in a sexual way
- Making offensive or sexually explicit remarks
- Making sexually embarrassing 'jokes'

- Sending you inappropriate texts and emails
- Downloading pornographic emails or other materials, even if they do not send them to you personally
- Following you out of work
- Sexual assault

Whether or not the person who does any of the above intends to offend or upset you is irrelevant. If the behaviour is unwelcome, it is harassment.

Sometimes victims feel confused about what is and is not sexual violence. This is partly because, for women in particular, 'low level' harassment is very common. This could be someone making personal remarks about them in the street; sexualised images of women in adverts, music videos and gaming; the treatment of women in social media and so on.

Women sometimes wonder if they are 'right' to feel unhappy about someone's behaviour or are unsure when someone has 'crossed a line'. Indeed, there may be a level of unacceptable 'banter' at work which is tolerated so you may feel as if you are a lone voice or have no power to complain.

Your workplace environment may not help. Offensive calendars, graffiti in communal toilets, 'lads mags' on coffee tables, all contribute adversely to the mood and atmosphere and the safety of women in the workplace and can feel very oppressive. It is OK to complain about these things and ask for them to be removed.

And if someone at work is behaving in a sexual way that makes you feel uncomfortable, unhappy or even in danger, it is wrong. There are laws to protect workers, and employers must make sure of the health and safety of their staff.

Experiencing sexual harassment at work

Sexual violence and harassment can happen in all kinds of workplaces and at any level. The person responsible for it may be a work colleague, manager, customer, someone making deliveries or in some way connected to your work. It is very common. Research published in 2013 by employment law firm Slater and Gordon found that six in ten working women have had a male colleague behave 'inappropriately' towards them¹.

It is usually experienced by women and perpetrated by men; but it can also be the other way round; and may involve people of the same sex.

It can be difficult to know what to do about it, especially if your job or prospects are being threatened. You may worry that you will not be taken seriously or that complaining about the harassment has negative consequences. If the person harassing you is senior to you, there are many ways in which they can abuse their position of trust and power. Sometimes this is very subtle and may not be obvious to anyone else but you. It may also be difficult if the perpetrator is someone you have a professional responsibility for (for example if you work in a caring profession).

Perpetrators of any kind of sexual violence, including sexual harassment, look for ways to isolate and control people and to exploit any vulnerability. The person who is harassing you may have some kind of hold over you. For example they may threaten to sack you or refuse to promote you if you complain about them; they may threaten to complain about you to a boss; they may make things so difficult for you that you feel you need to leave your job.

¹ www.tuc.org.uk/equality-issues/gender-equality/violence-against-women/sexual-harassment-still-fact-working-life

Third party harassment

Third party harassment is the term used to describe the harassment that a worker may receive from a customer or other person in the course of their work. This includes online abuse. There have been some recent high-profile cases of this on social media. Some examples are teachers getting sexist abuse from pupils or parents; women university lecturers receiving abusive comments from male students; carers being groped by their 'patients'; shopworkers being sexually harassed by a customer.

If this is happening to you, remember that your employer has a legal responsibility to protect you as far as possible. If they do little or do nothing they could be guilty of discrimination. The action you might take depends on what is happening. In the first instance, speak to your manager, employer or trade union representative.

Responsibility for dealing with sexual violence and harassment

Victims of sexual violence and harassment often blame themselves or think that they may have contributed to the abuse. But, sexual violence is always the fault of the perpetrator: they choose how they act towards you.

Employers are responsible for dealing with situations in which employees are being sexually harassed or harmed at work. If it is happening to you, it is not a personal issue although it may be expressed personally towards you. It is a workplace issue. The perpetrator may well be doing the same things to other people too.

It can help to remember that there is no long-term benefit to any employer if any worker is under some kind of threat, and that what is happening may well be illegal.

Even if the harasser is your employer, there are things you can do.

Whatever is happening, it is important to get advice about your options. The RCS Helpline can help to put you in touch with an adviser and there are also some suggestions below.

Gathering evidence

- Build up a picture of what is going on by keeping a note of dates and times of each incident; what happened and what was said. Keeping a log can show you and other people that you are experiencing a pattern of behaviour. One incident on its own may seem 'trivial' but small things which happen every day have a cumulative effect
- Note any friends or witnesses who saw what happened or the effect on you
- If you go to your GP, a counsellor or other service because of the harassment then make a note of this too
- Keep copies of any texts or emails the harasser sends to you; screenshots of any social media and web-based incidents; and photos, for example of any stalking behaviour. To find out how to take a screenshot from the device you are using (phone, pc, mac, android) see www.take-a-screenshot.org

Options for action you can take

What you do may depend on the circumstances, where you work, what is happening, and how confident you feel about taking action. Some options (not necessarily in this order) are:

- If the person is simply unaware of the effect they are having, you may be able to get them to stop by telling them to do so. Let them know that it is not right; you do not want their attention; and dislike their behaviour. You could ask someone else to do this for you such as a trusted colleague. You could also put this in writing (keep a copy)
- Check out workplace policies covering, for example, sexual harassment/violence at work, health and safety at work, dignity at work, equal opportunities/gender equality, grievance and disciplinary procedures. Many organisations have formal procedures for dealing with sexual harassment. These documents describe the procedures and the steps to take
- Tell someone what is going on: this could be a trusted colleague, a friend, your union rep (if you are in a union), a manager, your welfare or equalities officer, RCS helpline, The Scottish Women's Rights Centre, an adviser such as Citizens Advice Bureau (CAB) or law centre, solicitor, or the police. These are both informal and formal sources and, depending on your situation, you may want to use both these sources
- If you are in a union, then speaking to your union rep is likely to be the most effective way to get help. Also, if the union is dealing with the matter, it takes the stress and pressure and focus off you

- If there is no-one at work you can tell, contact one of the other sources of help above; or Acas (Advisory, Conciliation and Arbitration Service) or the Equalities and Human Rights Commission (see below for details)
- If you do not get a helpful response from the first person you tell, try someone else
- For any meeting you have, whether with the person harassing you or management or other, it may be helpful to have someone with you for moral support, to record what is said and any decisions. This supporter could be a union representative, a friend, relative or other person

Formal processes

- If informal methods do not work or are not safe to try, you may have to make a formal complaint to your employer
- Ask your manager to follow the company policy for tackling sexual harassment. If the problem is not resolved then you may need to consider taking a formal grievance and if necessary, taking the matter to Acas (see below) and possibly to an Employment Tribunal (see below)
- If your employer does not do anything or does something which ends up in you feeling that you have to leave to get away from the abuse, this could be 'constructive dismissal'. If your

employer reacts against you and sacks you, this could be 'unfair dismissal'. Technically, to claim either of these you need to have worked for your employer for 24 months. But there is no service requirement to raise a claim for discrimination. If you suffer a detriment – that is you are dismissed because you have suffered sexual harassment, then you can raise a claim for discrimination with less than two years' service. It is important to get good advice about this (some sources of advice are listed below)

- If your employer has no procedures, including no grievance procedure, you could use the Acas grievance procedure (see below)
- You could report the perpetrator to the police. If someone touches you on an intimate part of your body, this is a sexual assault. If someone is following you outside work, or harassing you through calls, texts or emails this could be defined as stalking if there are two or more incidents causing you to feel fear and alarm. Sexual assault and stalking are criminal offences

What your employer should do

All employers are responsible for the health, safety and welfare at work of their employees. They are also usually responsible in law for the acts of their employees at work.

As soon as employers are aware of unwanted behaviour from anyone connected with the workplace, employee or customer, they should take action to stop it and also to prevent it happening again.

If you are experiencing sexual harassment at work, your employer should take what you say seriously, investigate it, and find a solution consistent with your health, safety and welfare at work.

They should deal with your complaint fairly and promptly and they should treat it confidentially.

They should keep you informed about the action they are taking and tell you when you will hear about decisions and actions.

They should allow you to have someone with you, such as a union representative or colleague, at meetings.

The action they take may depend on what the complaint is; whether there are formal policies and procedures for preventing and for dealing with sexual harassment at work; and whether it involves another employee, volunteer or customer/client.

They may consider various options: such as informal approaches, mediation or disciplinary procedures. In deciding what action to take, employers should look at the complaint and all the evidence objectively. If it is not reasonable for you to be near, or in contact with the perpetrator, the employer should think about suspending them or transferring them while investigating the case.

They should not transfer you unless you ask to be moved.

Employers should also make sure that you are not 'victimised' in any way for making a complaint.

They should find a solution which stops the harassment and which is

workable for you. If they do not do this, then they run the risk of you taking further action, and possibly, an industrial tribunal.

Acas (see below) suggests that whenever such complaints are made, that employers should take the opportunity to examine policies, procedures and working methods to see if they can be improved. If sexual harassment can be prevented in the first place, that is always the best approach.

To find out more about what employers should do, Acas has a very helpful guide for employers (February 2014) at: www.acas.org.uk/media/pdf/o/j/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf

Sexual harassment and the law

There are laws and rules which are designed to protect workers, including protection from discrimination. For example, under the Health and Safety at Work Act 1974, employers are responsible for the health, safety and welfare at work of all employees. (Although, technically, the law does not protect against harassment from third parties (see third party harassment above) if this took place after October 2013, an employer is likely to still be liable for third party harassment of their employees if they take no action.)

Civil law

You are protected by law against sexual harassment at work. These laws protect women and men including those who are transgender/transitioning.

Relevant laws are the Equality Act (2010), the Employment Rights Act (1996), Health and Safety at Work Act (1974).

Sexual harassment is a form of inequality prohibited under the Equality Act 2010. This Act specifies two types of sexual harassment. *'The first is unwanted conduct on the grounds of gender, where the treatment is because you are a woman (or a man). The conduct does not have to be of a sexual nature for this form of harassment. But it must be done with the purpose of violating your dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment. The second form is unwanted physical, verbal or non-verbal conduct of a sexual nature and could include comments about the way you look which you find demeaning; indecent remarks; questions about your sex life; and sexual demands by a member of your own or the opposite sex.'* Source: Equalities and Human Rights Commission (EHRC)

If the harassment is unlawful conduct under the Equality Act 2010 you can take a claim to an employment tribunal.

You are also being sexually harassed if your employer treats you less favourably because you have rejected, or submitted to, either of these two forms of harassment.

If your employer or anyone victimises you for complaining you can raise a claim for discrimination to an employment tribunal.

Full details at: www.equalityhumanrights.com/your-rights/equal-rights/gender/sex-discrimination-your-rights-at-work/sexual-harassment/sexual-harassment-what-the-law-says

There are other laws to protect people from stalking and harassment and

you may be able to get a non-harassment order. You may be able to get legal orders to prevent a work colleague from coming to your home for example (interdict). Although these are civil remedies, you may be able to apply to the court for a power of arrest to be attached so that if the perpetrator breaches the order, the police can arrest them.

Criminal law

Incidents involving touching and other physical threats are criminal offences and you can report these to the police.

Hate crime

Sexual harassment at work might be linked to other forms of discrimination and hate crime. Hate crime is a crime committed against an individual motivated by a person's hatred of someone because of their actual or perceived race, religion, transgender identity, sexual orientation or disability. The police and criminal justice system take hate crime very seriously. There is more information about hate crime and the opportunity for remote and third party reporting on the Police Scotland website at www.scotland.police.uk/contact-us/hate-crime-third-party-reporting

Employment tribunals

Employment tribunals assess whether employers have acted unlawfully. A tribunal may help if you think your employer has treated you unfairly, or broken the law. For example:

- You are not happy with the action taken by your employer against the harasser or the result of this
- The harasser is your employer and you have no-one else to complain to
- The harassment continues despite your employer intervening

The tribunal is independent. There are time limits. You usually have to apply to the tribunal within three months of your employment ending, or the problem happening at work.

You must contact Acas (Advisory, Conciliation and Arbitration Service) free 'early conciliation' service before you apply to the tribunal.

Information about the Acas early conciliation service is at:

www.acas.org.uk/index.aspx?articleid=4028

If conciliation does not work, Acas will give you a certificate which will enable you to lodge a claim with the employment tribunal. The deadline for applying to the tribunal is extended by the amount of time you spend in conciliation.

There are costs involved in applying to an employment tribunal. Discrimination claims fall under Type B claims with an issue fee of £250, and a further £950 payable ahead of the full hearing. Details are at: www.gov.uk/employment-tribunals/apply-to-the-tribunal

You may be able to get help with the fees if you are on benefits or a low income.

Sources of advice and information

Acas

Advisory, Conciliation and Arbitration Service (Acas) aims to improve organisations and working life through better employment relations.

Provides free 'conciliation service'.

Tel: 0300 123 1100

www.acas.org.uk

Acas guide: www.acas.org.uk/media/pdf/o/c/Bullying-and-harassment-at-work-a-guide-for-employees.pdf

Citizens Advice

Your local CAB can give you advice and assistance by phone or in person.

Citizens Advice publishes useful information on sex discrimination and sexual harassment at work in its online advice guide at:

www.adviceguide.org.uk/scotland.htm

Equality and Human Rights Commission (EHRC)

The Commission in Scotland champions equality and human rights for all.

www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland

Information on sexual harassment and the law at:

www.equalityhumanrights.com/your-rights/equal-rights/gender/sex-discrimination-your-rights-at-work/sexual-harassment/sexual-harassment-what-the-law-says

Equality Advisory and Support Service

Advice service (works with EHRC) aimed at individuals who need expert information, advice and support on discrimination and human rights issues and the applicable law, particularly when this is more than advice agencies and other local organisations can provide. EASS can:

- Give bespoke advice to individuals across the whole of UK on discrimination issues
- Explain legal rights and remedies within discrimination legislation, across the three nations
- Explain options for informal resolution and help people to pursue them
- Refer people who cannot or do not wish to go down this road to conciliation or mediation services
- Help people who need or want to seek a legal solution by helping to establish eligibility for legal aid and, if they are not eligible, to find an accessible legal service or to prepare and lodge a claim themselves

www.equalityadvisoryservice.com

Tel: 0808 800 0082

Textphone: 0808 800 0084

Employment tribunals

You can get more information about employment tribunals from:

www.gov.uk/employment-tribunals/taking-a-case-to-an-employment-tribunal

Employment tribunal enquiry service: 0141 354 8574 (cannot give legal advice)

Safe workers

Website with useful information

www.safeworkers.co.uk

Scottish Centre for Healthy Working Lives

NHS Health Scotland organisation to help employers create a safer, healthier and more motivated workforce

www.healthyworkinglives.com

Adviceline: 0800 019 2211 (for employees and employers)

STUC

Represents trade unionists in all sectors and promotes workplace rights generally. Main point of contact for Scottish union contacts.

www.stuc.org.uk

Trade union information

worksmart: www.worksmart.org.uk

This is a useful TUC site with information about your rights at work

Equality handbook: (if you are a TUC member or your workplace has a copy; otherwise you can order a copy): www.tuc.org.uk/equality-issues/gender-equality/working-women-tuc-handbook-all-trade-unionists

Your Human Rights Guides

www.bih.org.uk/resources/guides

Scottish Women's Rights Centre legal helpline

Freephone: 08088 010 789 (Wednesday from 1.30pm to 4.30pm)

Rape Crisis Scotland Helpline

Tel: 08088 01 03 02 (every day from 6pm to midnight)

Email support: support@rapecrisisscotland.org.uk

Website: www.rapecrisisscotland.org.uk

Twitter: <https://twitter.com/rapecrisisscot>

See our survivors guide to the Scottish justice system at:

www.youtube.com/watch?v=bG32uX2YFWQ

Note: if you are experiencing any form of sexual harassment, for example at school or college, in your social groups, or on the street, the RCS Helpline is there to support you and to discuss options.

Text: Compiled/written by Shirley Henderson

Acknowledgement: Ann Henderson, STUC

The RCS Helpline aims to be inclusive and welcoming to all regardless of age, disability, gender reassignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex, gender identity, intersex status or sexual orientation.

The SWRC Helpline aims to be inclusive and welcoming to all regardless of age, disability, gender reassignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, gender identity, intersex status or sexual orientation.

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