

# Webinar: Sexual harassment

How to address anonymous complaints  
from employees

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# Who are we?

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# Overview – Sexual harassment in the workplace

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How to deal with  
anonymous  
complaints

Protection for  
employees making  
a complaint

Non-disclosure  
agreements



# Introduction

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## Why relevant?

- Increased focus due to attention on this issue
- Significant potential reputational risk and financial compensation

## What is sexual harassment?

- Different from harassment related to sex
- A harasses B if A engages in unwanted conduct of a sexual nature AND has the purpose OR effect of (i) violating B's dignity OR (ii) creating an intimidating, hostile, degrading humiliating or offensive environment for B



## Question to the audience

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Have you dealt with an anonymous complaint in the last 12 months?

- Yes, more than one
- Yes, one
- No, not in the last 12 months
- No, never received an anonymous complaint

# Results

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# Anonymous complaints

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## What does the law say?

- Not expressly referred to in any of the discrimination legislation
- Issue considered in *Linford Cash and Carry v Thomson* [1989] IRLR 235
  - Will depend on the facts of each case
  - Consider seriousness of the accusations
  - Consider merits of the circumstantial evidence
  - Is there any reason to believe allegations are fabricated?
  - Record all decisions in writing

# Case study

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ABC plc has received a complaint from [abc23@gmail.com](mailto:abc23@gmail.com) that a senior manager within the firm, John Smith (“JS”) and his direct reports, have created an atmosphere where women are demeaned. The complaint includes the following specific allegations:

- That where individuals raise concerns about JS or his conduct, those concerns are ignored
- That there is inappropriate banter involving women in the team and about women in the team
- JS has made suggestive comments/advances to women in the team and those who have rejected JS’ advances/complained about him have been dismissed/not promoted/receive lower salary/bonus

The complaint has been passed to Sarah in HR.



## Step 1: Evaluate the complaint

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- How much detail have you got about the allegations?
- How specific are they?
- Are the allegations current, historic or a combination?

# Step 1: Evaluate the complaint



The complaints:

**Vague and unspecific**

- JS has created an atmosphere where women are demeaned.
- That where individuals raise concerns about JS or his conduct, those concerns are ignored
- That there is inappropriate banter involving women in the team and about women in the team
- JS has made suggestive comments/advances to women in the team and those who have rejected JS' advances/complained about him have been dismissed/not promoted/receive lower salary/bonus

**No details about when made, by whom or to whom**

**Impossible to know if allegations current and/or historic**

## Step 2: Can further information be obtained?

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- How was the complaint received?

If by email:

- Can request further information
- Can provide reassurance that have appropriate policies in place (both on anti-harassment and retaliation)
- But no guarantee that the individual will respond

If by other means (e.g. letter):

- Unlikely to be able to obtain any further information



## Case study continued

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“ABC plc has received a complaint from [abc23@gmail.com](mailto:abc23@gmail.com)”

Sarah from HR replies to [abc23@gmail.com](mailto:abc23@gmail.com).

She explains that:

- she has received the complaint
- it would be helpful to have some further details about the allegations
- ABC plc takes this matter very seriously and that, should the complainant wish to come forward, it will take steps to ensure that there is no retaliation against him/her.

There is no response to Sarah’s email.



## Step 3: Consider the extent of any investigation

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- How serious is the allegation?
- Is there a reason to believe that the allegation might be fabricated?
- Do you have enough information to carry out any investigation?
- Is the nature of the allegations such that there are likely to be relevant emails or other electronic communications?



## Step 3: Consider the extent of any investigation

The complaints:

**Difficult to investigate this type of general allegation**

- JS has created an atmosphere where women are demeaned.
- That where individuals raise concerns about JS or his conduct, those concerns are ignored
- That there is inappropriate banter involving women in the team and about women in the team
- JS has made suggestive comments/advances to women in the team and those who have rejected JS' advances/complained about him have been dismissed/not promoted/receive lower salary/bonus

**No indication that there has been email/other electronic communications**

**Can look at data to determine whether any concern about dismissals/promotions/remuneration**



## Step 4: Carrying out any investigation

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- Balance the interests of possible victims against those of alleged perpetrators
- Can you investigate without the need to refer to the alleged perpetrators? Is it appropriate to?
- Review progress throughout – consider at each stage whether there is any corroborating evidence or evidence that might suggest that allegations are fabricated

## Step 4: Carrying out any investigation

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The complaints:

- JS has created an atmosphere where women are demeaned.
- That where individuals raise concerns about JS or his conduct, those concerns are ignored
- That there is inappropriate banter involving women in the team and about women in the team
- JS has made suggestive comments/advances to women in the team and those who have rejected JS' advances/complained about him have been dismissed/not promoted/receive lower salary/bonus

**Can look at data to determine whether any  
concern about  
dismissals/promotions/remuneration**



## Case study continued

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- No dismissals in JS' team in the last 3 years
- Only leaver was a man
- No women hired into the team
- No women promoted – but no women applied for available roles
- Bonus decisions are random / unjustified with some women in the team receiving lower bonuses than comparable men



## Step 4: Carrying out any investigation

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### Review progress

- Serious allegations
- Some evidence to corroborate complaint (random / unjustified bonus decisions)

### Consider next steps

- Need to carry out interviews
- Should you mention that allegations are against JS?
  - Possible impact on JS' reputation
  - Could it be obvious who complainant is/might be?
  - Fairness of process if JS/direct reports are not aware of why they are being interviewed



## Step 5: Conclusion of any investigation

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- Is there evidence to corroborate the complaints?
  - If so, consider whether appropriate to commence disciplinary proceedings/disciplinary investigation
  
- Do you need to take any general remedial steps?
  - For example, if lack of understanding of harassment identified, do you need to carry out some additional training?

## Upcoming webinars in this series

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*All webinars take place at 2:00-2:30 (GMT)*

- 24 January – Protection for employees making a complaint
- 31 January – Non-disclosure clauses

Please email [rebecca.schaus@simmons-simmons.com](mailto:rebecca.schaus@simmons-simmons.com) to register.

Browse all our employment law training materials on [elexica.com](https://www.elexica.com)...

# Contacts

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# Questions?

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