

**RIBBLE VALLEY BOROUGH COUNCIL
REPORT TO PERSONNEL COMMITTEE**

meeting date: WEDNESDAY, 30 OCTOBER 2024
title: DUTY TO PREVENT SEXUAL HARASSMENT
submitted by: CHIEF EXECUTIVE
principal author: HEAD OF LEGAL AND DEMOCRATIC SERVICES & HR OFFICER

1 PURPOSE

- 1.1 To inform Committee of a new duty and to seek approval of a policy and procedures to ensure compliance with that duty.
- 1.2 Relevance to the Council’s ambitions and priorities
 - Community Objectives - }
 - Corporate Priorities - } Consideration of these issues will promote the Council’s aim to be a well-managed Council.
 - Other Considerations - }

2 BACKGROUND

- 2.1 The Equality Act 2010 (“EqA10”), is the main sources of legal protections against harassment in the workplace. Section 26 of the EqA10 defines sexual harassment as unwanted conduct of a sexual nature that has the purpose or effect of violating a person’s dignity or creating for that person an intimidating, hostile, degrading or offensive environment. Examples of such behaviour can include sexual comments and jokes, suggestive looks, staring or leering, propositions or sexual advances, intrusive questions about a person’s sex life, sexual gestures, sexually explicit email or text messages or welcome touching or hugging. A person can be sexually harassed by some of the same or different sex.
- 2.2 The EqA10 prohibits both sexual harassment and any less favourable treatment because an employee has rejected, or submitted to, conduct of a sexual nature. For the purposes of the EqA10 it does not matter if the unwanted conduct is not intended to cause distress as long as the conduct violates a person’s dignity or creates an offensive environment. In fact, whether unwanted conduct violates a person’s dignity or creates an offensive environment depends on the victim’s perspective and whether their reaction is reasonable in all of the circumstances.
- 2.3 The EqA10 provides that employers can be vicariously liable for acts of sexually harassing their employees or job applicants, it also provides that employers can be vicariously liable for acts of sexual harassment carried out by their employees in the course of their employment (sections 40 & 109). An employer does not need to have approved of, or even been aware of, its employees’ actions in order to be liable for sexual harassment

carried out by its staff. However, employers may have a defence if they can show that they took all reasonable steps to prevent the harassing employee from acting unlawfully (section 109(4), 2010Act) (section 109).

3 ISSUES

3.1 Despite the protections set out above, it became apparent that they are inadequate to fully protect employees and that there is an issue with under reporting. The Equality Human Right Commission (“EHRC”) and the House of Commons Women and Equalities Committee (“WESC”) both issued reports on this in 2018.

3.2 Following this a private members bill was introduced in 2022, which has culminated in The Worker Protection (Amendment of Equality Act 2010) Act 2023 (“New Duty”) comes into force on 26 October 2024.

3.3 The New Duty set out in Section 40A of the EqA10 states as follows:

“40A Employer duty to prevent sexual harassment of employees:

(1) An employer (A) must take reasonable steps to prevent sexual harassment of employees of A in the course of their employment.

(2) "Sexual harassment" in subsection (1) means harassment of the kind described in section 26(2) (unwanted conduct of a sexual nature).

(3) A contravention of subsection (1) (or a contravention of section 111 or 112 that relates to a contravention of subsection (1)) is enforceable as an unlawful act under Part 1 of the Equality Act 2006 (and, by virtue of section 120(8) and (9), is enforceable only by the Commission under that Part or by an employment tribunal in accordance with section 124A (compensation uplift in employee sexual harassment cases)).”

3.4 It is as yet unclear what might constitute the reasonable steps that employers should take to prevent sexual harassment. The phrase “reasonable steps” is not defined and there is not yet any guidance on what it entails or how this requirement might be interpreted differently from the originally proposed “all reasonable steps”. Indeed, although the removal of the word “all” may suggest a lower threshold of responsibility for employers, many practitioners are speculating that employment tribunals will interpret the new duty in a similar way to the existing section 109 defence for employers that can demonstrate they took all reasonable steps to prevent sexual harassment.

3.4 What is reasonable will vary from employer to employer and whether or not an employer has taken reasonable steps will depend on the facts and circumstances of each situation. In order to ensure compliance with the New Duty therefore it is recommended that the Council take the following steps:

Approve and apply a Sexual harassment Policy

3.4.1 A Sexual Harassment Policy has been drafted by HR in conjunction the Head of Legal and Democratic Services. It has been submitted to CMT who have approved it and Unison have been consulted upon it. A copy of the Policy is attached at Appendix 1 for consideration.

Training

3.4.2 Having a policy and reporting procedures in itself should be supplemented by appropriate training and periodic refresher training. The Council uses ME Learning to provide online

training to staff. They have developed a training module for Managers (45 minutes) and for employees (30 minutes).

- 3.4.3 HR will make arrangements for this training to be available to Managers and all other staff and will set a deadline of 30 November 2024 for all Managers to have completed this training and all remaining staff by 31 December 2024. HR will report the completion of this training to CMT and Personnel Committee going forward. HR will also produce and circulate Guidance Notes for Managers to assist with the practicalities of any reported incident(s).

Registering and Reporting Complaints

- 3.4.4 The policy includes a reporting procedure which should be clearly communicated to workers, effectively implemented, and monitored and reviewed regularly. This includes as recommended formal and informal resolution routes.

The practicalities of developing online reporting tool for sexual harassment complaints is to be investigated also as it is felt that this will assist in promoting the reporting of any such issues.

Investigation of complaints

- 3.4.5 It is important that arrangements are put in place for properly investigating complaints raised by workers and acting where wrongdoing is identified and those who will be tasked with investigating such complaints will be provided with additional training where this is required to allow them to do so sensitively.

Risk Assessments

- 3.4.6 Targeted risk assessments will be carried out to identify risk factors and establish what steps can be taken to minimise risk including a a risk management framework for sexual harassment. This will include identifying risk areas such as lone working and putting in place measure to minimise those risks.

4. RISK ASSESSMENT

- 4.1 The approval of this report may have the following implications

- Resources – The training is understood to be provided is included within an online training framework already procured and so there will be no additional costs relating to this.
- Technical, Environmental and Legal – The recommendations within the report seek to ensure legal compliance with the duty and have been drafted with input from Legal Services.
- Political – No implications
- Reputation – Legal compliance and taking steps to ensure that employees are protected and have proper reporting mechanisms will enhance the Council's reputation.

- Equality & Diversity – The Council considers that the proposals ensure compliance with its duties.

5. **IT IS RECOMMENDED THAT COMMITTEE:**

- 5.1 Approve the Sexual Harassment policy.
- 5.2 Note and approve the procedures which the Council is to put in place to ensure compliance with the duty.

MAIR HILL

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HEAD OF LEGAL AND DEMOCRATIC SERVICES

CHIEF EXECUTIVE

BACKGROUND PAPERS

None.

For further information please ask for Mair Hill, extension 4418

REF: MJH/Personnel Committee/30 October 2024