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# Sexual Harassment in Parliament

**Protecting MPs, Peers, volunteers and staff**  
**Dr Leah Culhane**

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## About us

### The Fawcett Society

The Fawcett Society is the UK's leading membership charity campaigning for gender equality and women's rights at work, at home and in public life. Our vision is a society in which women and girls in all their diversity are equal and truly free to fulfil their potential creating a stronger, happier, better future for us all. We publish authoritative research to educate, inform and lead the debate; we bring together politicians, academics, grassroots activists and wider civil society to develop innovative, practical solutions and we campaign with women and men to make change happen.

### Hogan Lovells

Hogan Lovells is a leading global law firm co-headquartered in London and Washington, D.C. They have kindly sponsored this research and contributed to this report.

# Executive Summary

*‘When I first joined the Party, I expected that I would be able to dedicate my efforts and attention to doing my job well, rather than worrying about the unwanted advances of a man 21 years my senior. These expectations are entirely reasonable ones to hold for any workplace, let alone for someone holding office as a member of the Party.’<sup>1</sup>*

## Context

Everyone is entitled to work free from harassment and abuse and in an environment that promotes dignity and respect. Yet, sexual harassment and violence against women in politics is a long-standing and global phenomenon. The Inter-parliamentary Union’s brief, *Sexism, harassment and violence against women in parliaments in Europe* showed that 47% of the female MPs that took part in the study had received death threats or threats of rape or beating; 58% had been the target of online sexist attacks on social networks, 68% had been the target of comments relating to their physical appearance or based on gender stereotypes and a staggering 25% had suffered sexual violence.<sup>2</sup>

In 2017, some of the extent of sexual harassment in public and political life became known. Allegations of sexual harassment against Harvey Weinstein and the growth of the #MeToo movement, inspired by Tarana Burke, led to women across the world sharing their stories online and in the media. Within the political sphere, both in Britain and elsewhere, women came forward to tell their experiences, shedding light on the pervasive nature of the problem across parliaments, parties and local governments. What has become painfully clear is that tackling sexual harassment in politics is the crucial next step in reforming our political systems and ensuring they are ‘gender-friendly.’

In the last two years, a number of inquiries have been commissioned to explore the nature and extent of sexual harassment in Westminster and to make recommendations about what should be done to confront it. Following disclosures in the media, Rt. Hon Andrea Leadsom MP, Leader of the House of Commons, convened and chaired a cross-party working group to develop a new Independent Complaints and Grievance Scheme (ICGS) covering complaints related to bullying and harassment on the parliamentary estate. Based on their findings and recommendations, new policies and procedures have since been drawn up to promote a culture of respect and tackle unacceptable behaviour within the parliamentary community,<sup>3</sup> including sexual harassment. These include a Behaviour Code for Parliament; an independent complaints and grievance scheme to underpin the Code, together with associated policies and appropriate sanctions; procedures to deal with reports of sexual harassment, including the provision of specialist Independent Sexual Violence Advocates (ISVAs); a system of training to support the Code; an independent human resources support service for staff employed by Members of Parliament or jointly by political parties; and a handbook for these staff.<sup>4</sup>

Running parallel to this work, the inquiry into the bullying and harassment of House of Commons staff, headed by Dame Laura Cox DBE, provided further evidence of the problem, finding that: ‘abusive conduct of this kind is pervasive and no workplace is immune.’<sup>5</sup> The Cox Report made a number of

1 Former elected representative, interview 3.

2 Inter-Parliamentary Union, *Sexism, Harassment, and Violence against Women in Parliaments in Europe*, 2016. <https://www.ipu.org/resources/publications/reports/2018-10/sexism-harassment-and-violence-against-women-in-parliaments-in-europe>. This study was based on voluntary one-to-one conversations with 123 women from 45 European countries. 81 of these women were Members of parliament (MPs) and 42 were members of the parliamentary staff.

3 The Parliamentary Community includes: staff employed by or working for the House of Commons, Parliamentary Digital Service and the House of Lords, MPs and MPs’ staff, interns and other paid or unpaid staff, holders of parliamentary security passes including those employed by external organisations, Peers and Peers’ staff.

4 Working Group on an Independent Complaints and Grievance Policy, *Report*, 8 February, 2018

5 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018, p.3

further recommendations, which, it has been suggested, should be taken into account in the six-month review of the current Independent Complaints and Grievance Scheme (ICGS).<sup>6</sup>

The House of Lords has also come under scrutiny. The Lester case saw sexual harassment claims made against Lord Lester, a peer of the House of Lords, which were upheld by the Privileges and Conduct Committee.<sup>7</sup> Two other inquiries have since been commissioned. The first, headed by Gemma White QC, deals with the sexual harassment of past and present staff of MPs (including in constituency offices) and of Members of Parliament. The other, headed by Naomi Ellenbogen QC, focuses on bullying and harassment in the House of Lords. Both are expected to finish in Spring 2019.

These developments are welcome. However, while a lot has been done, there is much more left to do. The establishment of the ICGS is a step towards tackling sexual harassment in Parliament, but there have been ongoing debates about various aspects of the scheme. These debates have been informed by Dame Laura Cox's separate recommendations and have particularly focused on questions of anonymity, sanctions and the level of independence afforded to the complaints and appeal process. In light of these discussions and to ensure the effective development of the process, the Working Group recommended that at least two reviews of it be undertaken six and eighteen months after its implementation based on feedback.<sup>8</sup>

Given ongoing debates about appropriate responses to sexual harassment in Westminster politics, efforts must be made to engage the public. We have little insight into whether there is public demand for change, and if so, what shape these changes should take. We also know little about the impact of the sexual harassment scandal on public perceptions of politics. In undertaking this report, we wanted to establish what women and men think about sexual harassment in Westminster and how they would like to see Parliament and parliamentary responses to sexual harassment reformed, particularly given the ongoing disputes around certain elements of the process and future revisions of the current Scheme.

Furthermore, while the work to establish an effective Independent Complaints and Grievance Scheme is important, it is vital that it is backed up with the availability of a remedy under the law. The current system establishes procedural mechanisms through which those who have experienced sexual harassment in the parliamentary community can report it. There are, however, still serious questions about whether those who work in politics have legal employment protection against sexual harassment. While the focus has thus far been on a procedural response within Parliament as a workplace, we wanted to better clarify how the backstop of legal employment rights work in this context.

We add to the current debates on sexual harassment in politics by providing original data on these key areas through:

- A public survey which assesses public attitudes towards the sexual harassment scandal in Westminster, the demand for change and the impact of sexual harassment on political participation and perceptions of politics.
- A comprehensive review of the UK legal framework and a clear analysis of how existing legislation fails to protect specific political actors from sexual harassment.
- A similar review of the legal status of elected officials and other political actors in Australia, Denmark, Germany, New Zealand, and Sweden to identify whether an alternative model might improve accountability and support for those who have experienced sexual harassment in the UK.

Throughout the report, these insights are coupled with anonymous excerpts from testimonies of women who have been sexually harassed whilst working in politics.<sup>9</sup> We conclude with a list of recommendations

6 Independent Complaints and Grievance Policy Programme Team, *Independent Complaints and Grievance Scheme Delivery Report*, July 2018, Foreword

7 Committee for Privileges and Conduct, *The conduct of Lord Lester of Herne Hill*, 7 November 2018

8 Working Group on an Independent Complaints and Grievance Policy, *Report*, 8 February, 2018, paragraph 49

9 Three testimonies were collected overall.

based on the findings of this report, to inform policy-makers on the necessary changes that are needed to prevent and tackle sexual harassment in UK politics.

## Findings

### Public attitudes towards sexual harassment in Westminster

Data in this report draws on a nationally representative online panel survey of 2,056 individuals.

#### Demand for change

Our data shows that there is clear public demand for reform of how sexual harassment in politics should be addressed:

- 73% of both men and women believe there needs to be a change in how unwanted sexual behaviour is dealt with in politics, with little variance across gender, political affiliation or age. Only 5% of people disagreed that a change is needed, with 19% neither agreeing nor disagreeing.
- There is also public support for some key principles of reform. 77% of both women and men polled agreed that there should be clear policies and procedures for people working in Westminster or politics to report concerns about sexual harassment or assault. Further to this, 77% of people agreed that people working in Westminster or in politics who have been sexually harassed or assaulted should feel confident that they can report it without it having a negative impact on their career, with no significant difference between women and men respondents.

#### Appropriate responses to sexual harassment in Westminster

We asked about some of the specifics of reform, which are contested in the current discussions, so that parliamentarians can factor in the views of the public when designing an appropriate system.

- **Independence:** The level of independence afforded to the reform process has been a subject of debate. As it stands, the ICGS gives responsibility to the Committee on Standards to carry out the appeal function under the scheme, which is composed of lay members and MPs. As advocated in the Cox Report, the independence of investigations must be an absolute priority to ensure impartiality.<sup>10</sup> This should apply to each part of the process. Support for this is shown in our findings. 80% of both men and women agreed that an independent investigation should be carried out if an MP is accused of sexual harassment.
- **Anonymity and publicity:** There have been ongoing debates around whether or not details of sexual harassment claims should be published.<sup>11</sup> This is a complex situation where two sets of rights – the rights of MPs to be protected from the risk of unfounded claims, and the rights of victims to see justice done – are in opposition. Publication of any detail of investigations should of course only be done when this is the complainant's wish (this is certainly not always the case), and with their anonymity protected if they choose.
- Our polling suggests that the public are slightly more supportive of publishing details about sexual harassment investigations rather than keeping them anonymous, however they are also in favour of protecting the anonymity of the complainant. 52% of respondents (48% of men and 55% of women) think that the identity of the person who made the accusation should be kept anonymous, while only 20% disagree, with the remainder unsure. When it comes to the question of publicity for ongoing investigations, respondents were asked 'If an MP was under investigation due to being accused of sexual harassment, which of the following is closest to your view?' 43% opted for 'the investigation

10 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018, p.6

11 Independent Complaints and Grievance Policy Programme Team, *Independent Complaints and Grievance Scheme Delivery Report*, July 2018, paragraph 60



should be made public so that other victims can come forward,' whereas slightly fewer, 36% of respondents, thought that 'the investigation should be kept private to protect the anonymity of the MP.' 76% of people think that if an investigation was to take place, information about it should only be made public if the accusations are found to be true.

• **Sanctions:** The Independent Complaints and Grievance Scheme Delivery Report established the provision of sanctions following misconduct. Given the broad range of behaviours that could be sanctioned, remedies will be varied, depending on the seriousness of the case.<sup>12</sup> We asked members of the public if allegations of sexual harassment against an MP were upheld, what actions they would support being taken. Our findings show strong support for sanctions;

- 70% of people think that the MP should be removed from office and banned from running as an MP for a period of time;
- 70% of people think that the MP's constituents should be able to trigger an election in their constituency;
- 70% of people think that the MP should be required to issue a public apology;
- 68% of people think that the MP should be required to apologise to the House of Commons; and
- 65% of people think that MP should be required to undergo training to address their conduct.

### **Impact on political participation**

Our polling also finds that the sexual harassment scandal has had an impact on public perceptions of politics, negatively affecting whether members of the public want to participate in politics.

- 29% of respondents agreed that accusations of sexual harassment made them less likely to get involved in politics.
- 23% of both women and men respondents said that accusations of sexual harassment in politics have made them less likely to vote. Younger people are much more likely to agree that sexual harassment has negatively impacted their likelihood of voting with agreement starkly declining amongst people who fall within older age brackets.

### **Sexual harassment in politics: The legal context in the UK**

There are still serious questions about whether the UK's current legal framework (The Equality Act 2010) is effective and allows bullying and sexual harassment in politics to be legally challenged. In particular, we have identified:

- A lack of formal legal protection for elected representatives. To be protected against harassment, an individual has to be an employee, or fall within one of the other categories protected by Part 5 of the Equality Act. Given that MPs are elected, not employed, they are not protected against sexual harassment under current legislation.
- A lack of legal protection for peers of the House of Lords
- A lack of formal legal protection against sexual harassment for volunteers. Volunteers are also not employees and do not fall within the legal definition of those protected under the Equality Act 2010.
- The absence of protection for all employees within Parliament and the broader political sphere against third-party harassment (i.e. harassment carried out by someone who is not either the employer or a colleague with the same employer as the complainant). Each of the 650 MPs is legally a separate employer, alongside many of the 785 Peers, the House itself, contractors, political parties, and external visitors. This creates a complex web of employment relationships under one roof which makes protection from third party harassment all the more vital.

<sup>12</sup> Independent Complaints and Grievance Policy Programme Team, *Independent Complaints and Grievance Scheme Delivery Report*, July 2018, paragraph 53

## Sexual harassment in politics: The comparative legal context

In order to identify whether an alternative model might improve protection and support for political actors in the UK, we compared the UK legal framework against that of Australia, Denmark, Germany, New Zealand and Sweden. We find a mixed picture in terms of whether political actors have formal legal protection against sexual harassment in the countries examined.

- **MPs:** In Germany and Sweden, the picture reflects that in the UK. Elected representatives are not employees and are not therefore covered by anti-discrimination legislation.
- Our review shows, however, that it is possible to offer protection to and from MPs through legislation. Within the Australian states and territories, the relevant legislation offers protection to MPs by a) making explicit reference to MPs within the anti-discrimination legislation by stating that it is unlawful for an MP to harass another person and for another person to harass an MP in a mutual workplace (see New South Wales), b) offering protection to 'any person' who is sexually harassed within a workplace, rather than just employees (see Northern Territory of Australia) and c) including a broad definition of employment such that MPs are covered (see Tasmania). Within Denmark and New Zealand, general legislation offers protection from sexual harassment to all members of society, not just employees, which offers further protections that are not available in the UK.
- **Parliamentary/administrative staff:** Administrative staff in Parliament are generally well protected by anti-discrimination legislation and were covered in each of the countries surveyed. Administrative and parliamentary staff are likely to have clearly identifiable employers, to be subject to formal contracts and therefore generally fall under 'employment' for the purposes of anti-discrimination legislation.
- **Staff of MPs:** Staff of MPs in these comparator countries are also generally well covered by anti-discrimination legislation. As with administrative staff, staff of MPs and political parties are generally formally employed under a contract and are therefore likely to fall within the protection of relevant legislation. However, similar to the UK, there may be practical difficulties in making claims while still in employment, given that claims made by employees would be against the MP themselves as the individual's employer.
- **Volunteers:** Volunteers, at both the parliamentary and constituency levels are particularly vulnerable, as is the case with UK. Given that they fall outside standard definitions of an employee, volunteers are not protected against sexual harassment in the workplace in Germany and Sweden.
- Much like MPs however, our review shows that it is possible to offer protection to volunteers. Within Denmark, the broad framework of anti-harassment and discrimination law covers everyone in society, not just employees and within New Zealand, all can rely on the broad protection provided by their Human Rights Act, including volunteers. Within Australia, legislation in some of the states and territories do cover volunteers, either by explicitly referencing volunteers and unpaid workers as protected parties within anti-discrimination legislation (as is the case in the Australian Capital Territory, Queensland and South Australia), or by offering protection to 'any person' or 'workplace participant' who is sexually harassed (see New South Wales). Additional Work Health and Safety Laws (WHS), which have been implemented in parts of Australia offer additional workplace protections to those outlined in anti-discrimination legislation, including volunteers. These provide a good model for future UK legislation.
- **Third party harassment:** Similar to the UK, third party harassment is also a significant issue in the countries surveyed. Only Germany and New Zealand have specific provisions dealing with third party harassment.
- **Internal workplace policies:** While political employees, including MPs, are legally protected in some countries, the absence of sexual harassment complaints procedures within some parliaments means that incidents can go unreported. This was particularly relevant in Denmark. While the UK has no legal protection for MPs under employment law, it has taken steps to establish parliamentary procedures to report sexual harassment through the ICGS. Our findings reiterate that clear and effective workplace policies to report and deal with sexual harassment are key.

# Summary of recommendations

## 1) Ensure that the Independent Complaints and Grievance Scheme is a completely independent process

- Complaints processes must be independent to ensure that they are impartial. Based on the recommendation made by Dame Laura Cox DBE, and on the findings of this report, steps should be taken to ensure that the future process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament should be an entirely independent process, in which Members of Parliament should play no part.<sup>13</sup>

## 2) Ensure that the Independent Complaints and Grievance Scheme prioritises the wishes of the complainant regarding publicity

- While both the Independent Complaints and Grievance Scheme and Dame Laura Cox's recommendations wish to protect victims of sexual harassment and prioritize their interests, there have been conflicting opinions on how best to do so. Dame Laura Cox has advocated that in cases where there is serious or persistent abuse and where the case proceeds to full investigation, details about the alleged perpetrator should be published unless the complainant objects. This is in order to encourage others who have experienced sexual harassment to come forward.<sup>14</sup> The ICGS has acknowledged that making complaints public as a matter of course risks deterring complaints who may feel they lose a sense of control over the process.
- The decision to publish details should be firmly in the hands of the complainant and should be handled on a case-by case basis. If the complainant wishes, and in cases involving serious or persistent abusive conduct, the name of the alleged perpetrator and the nature of the allegations made should be published if the matter proceeds to full investigation.

## 3) Ensure complaints policies within political parties are effective and adequately address sexual harassment

- Testimonies from women submitted to this report suggest that internal party processes for reporting and dealing with sexual harassment are more or less entirely ineffective. Effective, independent internal party complaints procedures are crucial to give political employees, volunteers and members who experience sexual harassment outside of Parliament an avenue to report these incidences.
- Political parties must revise their own internal sexual harassment and complaint policies to ensure that they are transparent, quick, victim-focused and independent and cover volunteers, employees and elected and appointed representatives so that sexual harassment is prevented and tackled outside of the parliamentary estate. These procedures should also be open to review to ensure that they are effective, as judged by those who use them.

## 4) Reform legislation to cover MPs, Peers and volunteers

- MPs, Peers and volunteers are not currently protected against sexual harassment by anti-discrimination legislation and are in a particularly vulnerable position. The UK government must ensure that MPs and volunteers have access to the same legal protections against sexual harassment as other employees.

13 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018, p.3

14 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018, paragraph 287

- Protection could be given by a) explicitly referencing MPs, Peers and unpaid employees within anti-discrimination legislation, b) offering protection to ‘any person’ who is sexually harassed within a workplace, rather than just employees or c) broadening out the definition of employment such that MPs and volunteers are covered.

## 5) Introduce third party protection for all workers

- There is significant scope for third party harassment to take place in the parliamentary environment, where you have a collection of employers and their staff sharing the same workplace. Parliament is not, however, unique in this regard. ‘Complex workplaces’ are increasingly common and changes to legislation are needed to provide protection against third party sexual harassment in a range of different work environments.
- Those provisions within Section 40 of the Equality Act, which was repealed in 2013, should be reinstated and amended to require only one previous incident of sexual harassment to have occurred. This would make an employer liable for third party harassment that occurred in the course of an employee’s employment if it knew that an employee had been harassed by a third party and had failed to take reasonably practicable steps to prevent further harassment.

## 6) Place an active legal obligation on employers to have preventive measures

- Changes in Parliament are welcome, however, all employers have a responsibility to tackle and prevent sexual harassment. Under the Equality Act 2010, employers are liable for acts of sexual harassment by one employee towards another unless they have taken all reasonable steps to prevent it. If a case is taken against an employer, any actions they have taken can be used in their defence.<sup>15</sup> This does not, however, place a statutory obligation on employers to implement measures, nor does it state what any such measures should be. In 2018, only a small minority of employers in the UK had effective processes and policies to prevent and address sexual harassment at work.<sup>16</sup>
- In line with the recommendations made by the Equality and Human Rights Commission, a mandatory duty on employers should be introduced which requires them to take reasonable steps to protect employees from (sexual) harassment in the workplace.<sup>17</sup> Breach of the mandatory duty should constitute an unlawful act and should be enforceable, regardless of whether a claim is taken against an employer. At a minimum, reasonable steps should include an anti-harassment policy, employee training and clear and confidential procedures for reporting harassment.

<sup>15</sup> Equality and Human Rights Commission, *Turning the tables: ending sexual harassment at work*, March 2018.

<sup>16</sup> Ibid

<sup>17</sup> Ibid, p.13

# Introduction

*‘When I first joined the Party, I expected that I would be able to dedicate my efforts and attention to doing my job well, rather than worrying about the unwanted advances of a man 21 years my senior. These expectations are entirely reasonable ones to hold for any workplace, let alone for someone holding office as a member of the Party.’<sup>18</sup>*

In 2017, allegations of sexual harassment against Harvey Weinstein and the growth of the #MeToo movement, inspired by Tarana Burke, led to women across the world sharing their stories online and in the media. Within the political sphere, both in Britain and elsewhere, women came forward to tell their experiences of sexual harassment in politics, shedding light on the widespread and pervasive nature of the problem across parliament, parties and local government. What has become painfully clear is that tackling sexual harassment in politics is the crucial next step in reforming our political systems and ensuring they are ‘gender-friendly.’

## The impact of harassment

*‘My experiences [of sexual harassment] have completely put me off a career in Parliament or in politics generally, an aspiration that I had nurtured and worked hard to achieve for a long time.’<sup>19</sup>*

Everyone is entitled to work free from harassment and abuse and in an environment that promotes dignity and respect. Sexual misconduct matters, first and foremost, because it is morally wrong. In no instance is the perpetration of sexual harassment and sexual violence excusable, either in the private or public sphere. However, sexual harassment against women in politics has further implications that should be of concern. Critically, sexism, sexual harassment and sexual violence against women in politics affect the democratic process. These behaviours have negative effects on the physical and psychological health of those who are subjected to them, in this instance, the people working within the institutions of our democracy. Sexual harassment can therefore impact the quality and effectiveness of parliamentary work and, consequently, public policies.<sup>20</sup>

Sexism, harassment and violence against women in politics also deter women from entering the political sphere and prevent parliaments from being places that are inclusive and representative of society as a whole. In Westminster, women’s representation has broken through the 200 barrier but it is still low at 32% of MPs and our parliament continues to lag behind many other countries in the world at 38<sup>th</sup> in the global league table of Women in Parliaments.<sup>21</sup> This picture is also reflected within local government. The Fawcett Society’s Local Government Commission found that just 33% of councillors are women and that this figure has barely changed in ten years.<sup>22</sup> Further to this, only 17% of council leaders are women.<sup>23</sup> The Fawcett Society’s most recent report on women’s experiences of getting selected for and elected to political office in the UK found that female party members cited a toxic culture and the

18 Former elected representative, interview 3.

19 Former Parliamentary Researcher, interview 1.

20 Inter-Parliamentary Union, *Sexism, harassment and violence against women parliamentarians*, October 2016

21 Inter-Parliamentary Union, *Women in National Parliaments*, 2018. <http://www.ipu.org/wmn-e/classif.htm>. Figure as of December 1st, 2018

22 The Fawcett Society, *Does Local Government Work for Women? Interim Report of the Local Government Commission - Executive summary*, April 2017

23 Ibid

prevalence of abuse and harassment as a reason that they would not run for election.<sup>24</sup> This behaviour therefore impacts the pipeline of female candidates coming forward. Getting women, in all their diversity, into positions of power is fundamentally important. While the centenary year marking when women were permitted to stand as MPs presents the ideal opportunity to drive change and to increase women's representation, it is also essential that we end sexual harassment in our politics and create a working culture fit for 21<sup>st</sup> century Britain.

Participating within politics is also a civil right. The obligation to ensure that women can fully and freely participate in political processes is enshrined in several international instruments, such as the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Platform for Action and the Sustainable Development Goals (SDGs).<sup>25</sup> Sexual harassment and violence obstruct women from fulfilling their right to partake in politics. Political parties and parliaments therefore have an obligation to find comprehensive solutions to prevent and fight this problem.

## What has been done?

*'I left my role, the Party and even the city. My experience with him [an MP] and with the Party complaints process left me completely disillusioned with politics. Professionally, I had hoped for a long-term career in various levels of politics. I now feel a total loss of hope or desire to carry on in any political role or be in the party political sphere at all.'*<sup>26</sup>

In the last two years, a number of inquiries have been commissioned to explore the nature and extent of sexual harassment in Westminster and to make recommendations about what should be done to confront it. Following disclosures in the media, Rt. Hon Andrea Leadsom MP, Leader of the House of Commons, convened and chaired a cross-party working group to develop a new Independent Complaints and Grievance Scheme (ICGS) covering complaints related to bullying and harassment on the parliamentary estate. Based on their findings and recommendations, new policies and procedures have since been drawn up to promote a culture of respect and tackle unacceptable behaviour within the parliamentary community, including sexual harassment. These include a Behaviour Code for Parliament; an independent complaints and grievance scheme to underpin the Code, together with associated policies and appropriate sanctions; procedures to deal with reports of sexual harassment, including the provision of specialist Independent Sexual Violence Advocates (ISVAs); a system of training to support the Code; an independent human resources support service for staff employed by Members of Parliament or jointly by political parties; and a handbook for these staff.<sup>27</sup>

Running parallel to this work, the inquiry into the bullying and harassment of House of Commons staff, headed by Dame Laura Cox DBE, provided further evidence of the problem, finding that: 'abusive conduct of this kind is pervasive and no workplace is immune.'<sup>28</sup> The Cox Report made a number of further recommendations, which, it has been suggested, should be taken into account in the six-month review of the current Independent Complaints and Grievance Scheme (ICGS).<sup>29</sup>

The House of Lords has also come under scrutiny. The Lester case saw sexual harassment claims made against Lord Lester, a peer of the House of Lords, which were upheld by the Privileges and Conduct

24 The Fawcett Society, *Strategies for Success: women's experiences of selection and election*, 2018

25 Inter-Parliamentary Union, *Sexism, harassment and violence against women parliamentarians*, October 2016

26 Former elected representative, interview 3.

27 Working Group on an Independent Complaints and Grievance Policy, *Report*, 8 February, 2018

28 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018, p.3

29 Independent Complaints and Grievance Policy Programme Team, *Independent Complaints and Grievance Scheme Delivery Report*, July 2018, Foreword



Committee.<sup>30</sup> Two other inquiries have since been commissioned. The first, headed by Gemma White QC, deals with the sexual harassment of past and present staff of MPs (including in constituency offices) and of Members of Parliament. The other, headed by Naomi Ellenbogen QC, focuses on bullying and harassment in the House of Lords. Both are expected to finish in Spring 2019.

## The challenge

*'I believe the party, and Parliament more generally requires a huge cultural change. I have also observed (first-hand and from experiences of others) the bullying and victim-blaming that comes from making a complaint about bullying and harassment within the political world; this must also be addressed.'*<sup>31</sup>

Much has been uncovered about the nature and extent of sexual harassment within UK politics over the last two years and existing developments within Parliament are welcome. However, while a lot has been done, there is much more left to do.

The establishment of the ICGS is a step towards tackling sexual harassment in Parliament, but there have been ongoing debates about various aspects of the scheme. These debates have been informed by Dame Laura Cox's separate recommendations and have particularly focused on questions of anonymity, sanctions and the level of independence afforded to the complaints and appeal process. In light of these discussions and to ensure the effective development of the process, the Working Group recommended that at least two reviews of it be undertaken six and eighteen months after its implementation based on feedback.<sup>32</sup>

Despite ongoing debates about appropriate responses to sexual harassment in Westminster politics, there has been little effort to engage the public. We therefore have little insight into whether there is public demand for change, and if so, what shape these changes should take. We also know little about the impact of the sexual harassment scandal on public perceptions of politics. In undertaking this report, we wanted to establish what women and men think about sexual harassment in Westminster and how they would like to see Parliament and parliamentary responses to sexual harassment reformed, particularly in light of ongoing disputes around certain elements of the process and future revisions of the current Scheme.

Furthermore, while the work to establish an effective Independent Complaints and Grievance Scheme is important, it is vital that it is backed up with the availability of a remedy under the law. The current system establishes procedural mechanisms through which those who have experienced sexual harassment in the parliamentary community can report it. There are, however, still serious questions about whether those who work in politics have legal employment protection against sexual harassment. While the focus has thus far been on a procedural response within Parliament as a workplace, we wanted to better clarify how the backstop of legal employment rights work in this context.

We add to the current debates on sexual harassment in politics by providing original data on these key areas through:

- A public survey which assesses public attitudes towards the sexual harassment scandal in Westminster, the demand for change and the impact of sexual harassment on political participation and perceptions of politics.
- A comprehensive review of the UK legal framework and a clear analysis of how existing legislation fails to protect specific political actors from sexual harassment.

30 Committee for Privileges and Conduct, *The conduct of Lord Lester of Herne Hill*, 7 November 2018

31 Former party activist and delegate, interview 2.

32 Working Group on an Independent Complaints and Grievance Policy, *Report*, 8 February, 2018, paragraph 49

- A similar review of the legal status of elected officials and other political actors in Australia, Denmark, Germany, New Zealand, and Sweden to identify whether an alternative model might improve accountability and support for those who have experienced sexual harassment in the UK.

Throughout the report, these insights are coupled with anonymous excerpts from testimonies of women who have been sexually harassed whilst working in politics.<sup>33</sup> We conclude with a list of recommendations based on the findings of this report, to inform policy-makers on the necessary changes that are needed to prevent and tackle sexual harassment in UK politics.

## Methodology

*'My mental health suffered as a result of the harassment by him [an MP]. I had difficulty sleeping. I started having panic attacks. I was diagnosed with depression. My experience with him was not the sole cause of my depression but it was an important contributing factor. It had affected me by making me feel powerless, isolated and anxious with men. I had looked up to people like him, MPs, and felt disillusioned with politicians and politics.'*<sup>34</sup>

## Public survey

Data in this report draws on a nationally representative online panel survey of 2,056 individuals conducted by the polling company Survation between 13<sup>th</sup> - 14<sup>th</sup> August 2018, and 31<sup>st</sup> August - 2<sup>nd</sup> September 2018. Respondents were asked a number of questions about their opinions on sexual harassment. Differential response rates from different groups were taken into account. Data were weighted to the profile of all adults aged 18+ in the United Kingdom. Data were weighted by age, sex, region, household income, education, 2017 general election vote and EU referendum vote. Targets for the weighted data were derived from Office for National Statistics 2011 Census data and the results of the 2017 general election and 2016 EU referendum.

Because only a sample of the full population were interviewed, all results are subject to a margin of error, meaning that not all differences are statistically significant. For the whole sample (2,056 respondents) it is 95% certain that the 'true' value will fall within the range of 2.2% from the sample result. Subsamples will be subject to higher margins of error. Figures throughout are rounded to the nearest % point, and may not sum due to rounding. Responses to the question 'If an MP was under investigation due to being accused of sexual harassment, which of the following is closest to your view?' were to a separate sample of 1,023 respondents.

## Interviews

Three interviews were carried out with women who have experienced sexual harassment within Westminster and politics. Participants were recruited through Fawcett networks and through social media, interviewed by Hogan Lovells lawyers, and enabled to comment on and approve a statement. Participants were completely free to decide not to proceed with the process at any time, including once an initial statement had been taken or a draft statement had been prepared and had the right to ask for their personal data to be removed from the project at any time. Following the data collection, Hogan Lovells and the Fawcett Society reviewed and analysed finalised statements. Although a very small sample, quotes are used throughout the report to illustrate these women's experiences.

<sup>33</sup> Three testimonies were collected overall.

<sup>34</sup> Former party activist and delegate, interview 2.



## UK review and international comparisons

A review of the UK legal context was also carried out. This involved examining existing UK anti-discrimination legislation to understand the legal protections offered to those who work in politics, specifically, MPs, volunteers, staff of MPs and administrative and parliamentary staff. A review of the legal status of elected officials and other political actors in Australia, Denmark, Germany, New Zealand, and Sweden was also carried out. This was done to identify whether an alternative model existed that would offer better protection to those who work in politics in the UK. These countries were chosen as they have a good record on gender equality. Following from the UK review, we examined how legislation in each of these countries protected (or failed to protect) MPs, volunteers, staff of MPs and administrative and parliamentary staff. We also examined whether third party protection was offered under existing legislation.

# Context

## Sexual harassment in Parliament

*'All of the incidents; incessant and inappropriate texts after hours, discussions about his affair, encounters with women in his office after hours, requests to plan private dinners, making me clean up a red wine stain on his office floor after a 'party' he held there, comments about my appearance, uncomfortable physical closeness and negativity about me dating made me very confused about what the 'rules' were with him [MP and employer], and they seemed to change whenever he wanted them to.'*<sup>35</sup>

The Women and Equalities Select Committee's 2018 report found that sexual harassment in the workplace is endemic.<sup>36</sup> Sexual harassment is defined as unwanted conduct of a sexual nature which has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.<sup>37</sup> It can take many forms including unwelcome physical contact, sexual comments, promises in return for sexual favours and displaying sexually graphic pictures.<sup>38</sup> Research which polled 6,206 British adults found that 40% of women and 18% of men had experienced some form of unwanted sexual behaviour in the workplace.<sup>39</sup> While sexual harassment is perpetrated against men and women, women are disproportionately subject to this behaviour, both within parliaments and in other workplaces.<sup>40</sup>

Sexual harassment is not specific to politics, however, sexual harassment within parliament as a workplace may be prevalent for a number of reasons. First, male-dominated workplaces, where organisational cultures tend to reward those who demonstrate hyper-masculine characteristics, facilitate a context where sexual harassment can be normalised.<sup>41</sup> Across the globe, parliaments and other political spaces, remain highly male-dominated. Within the UK, men make up 68% of MPs, with significant variations across parties. Parliaments also remain highly masculinised. Political institutions were created in the absence of women, and while women enter these spaces in greater numbers than ever before, the rules, norms and 'culture' of politics continue to reflect certain values and ways of being.<sup>42</sup> The *Good Parliament Report*, for example, showed the various ways that the House of Commons and its working practices continue to reflect the traditions and preferences of Members who have historically populated it.<sup>43</sup> The way that Parliament is organised - the working hours, the style of debates, and the dual-living requirements - continue to reflect the assumption that MPs will be male.<sup>44</sup> With regards to sexual harassment in parliament, existing research has repeatedly stressed that the issue must be understood as

35 Former Parliamentary Researcher, interview 1.

36 Women and Equalities Committee, *Sexual harassment in the workplace*, House of Commons, 2018

37 Equality Act 2010, section 26

38 Women and Equalities Committee, *Sexual harassment in the workplace*, House of Commons, 2018

39 BBC – *Sexual harassment in the workplace 2017*, survey by ComRes, November 2017

40 Women and Equalities Committee, *Sexual harassment in the workplace*, House of Commons, 2018; BBC – *Sexual harassment in the work place 2017*, survey by ComRes, November 2017; TUC, *Still just a bit of banter? Sexual harassment in the workplace in 2016*, August 2016; Inter-Parliamentary Union, *Sexism, Harassment, and Violence against Women Parliamentarians*, 2016

41 Krook, M.L (2018) 'Westminster Too: On Sexual Harassment in British Politics,' *The Political Quarterly*, 89(1): pp 65-72

42 Childs, S, *The Good Parliament*, July 2016. <https://www.bristol.ac.uk/media-library/sites/news/2016/july/20%20Jul%20Prof%20Sarah%20Childs%20The%20Good%20Parliament%20report.pdf>

43 Ibid

44 Ibid; Krook, M.L (2018) 'Westminster Too: On Sexual Harassment in British Politics,' *The Political Quarterly*, 89(1): pp 65-72; The Fawcett Society, *Strategies for Success*, 2018.

a pervasive cultural problem, rather than isolated incidences perpetrated by a few predatory individuals.<sup>45</sup> Inquiries into sexual harassment in Parliament have also stressed this point, highlighting that in order for change to occur, a cultural shift must take place and specific rules and norms in politics must be reformed.<sup>46</sup> In organisational cultures where this behaviour is normalised or condoned, it is also less likely there will be appropriate structures to deal with the prevention or condemnation of such behaviour.<sup>47</sup> Without clear and effective mechanisms to deal with sexual harassment and misconduct, those who experience it are less likely to come forward and report the incident.<sup>48</sup>

Second, a culture of deference and impunity within the political sphere also make political spaces somewhat unique. The inherent imbalance of power between MPs and Peers and their staff and even between MPs or between Peers creates vulnerabilities that may not be as significant in other workplaces.<sup>49</sup> This power difference is also reinforced by ‘the democratic traditions that serve to emphasise parliamentary privilege.’<sup>50</sup> A reluctance to report sexual harassment and sexual violence can be heightened by partisan logic which protects those who perpetrate harassment, in order to defend the overall party.<sup>51</sup>

## The prevalence of harassment in politics- an international overview

*‘I was going to say goodbye and then he [an MP] hugged me. I knew it was not an ordinary hug because I could feel his crotch pressing against me, and he rubbed it from side to side as he hugged me. He did not hold me for long, and there was nobody else around. I did not know what to do or say. He then got into his car and drove off.’<sup>52</sup>*

Sexual harassment of women in parliament has also been situated as one aspect of violence against women in politics (VAW-P). Violence against women in politics has become increasingly documented and conceptualised as a specific attempt to deter women’s participation within politics, because they are women.<sup>53</sup> By entering the political domain women are challenging the status quo and traditional gender roles which confined them to the domestic sphere.<sup>54</sup> Consequently, women are treated as ‘space invaders,’ and experience resistance, which manifests in various forms of violence (sexual, physical, psychological).

The Inter-parliamentary Union’s brief on *Sexism, harassment and violence against women parliamentarians* found that 22% of female parliamentarians had been subjected to one or more acts of sexual violence, with 33% having witnessed acts of sexual violence committed against one or more

45 Krook, M.L. (2018) ‘Westminster Too: On Sexual Harassment in British Politics,’ *The Political Quarterly*, 89(1): pp. 65-72; Collier, C. & Raney, T. (2018) ‘Understanding Sexism and Sexual Harassment in Politics: A Comparison of Westminster Parliaments in Australia, the United Kingdom, and Canada,’ *Social Politics*, 25(3), pp: 432-451.

46 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018, p8

47 Krook, M.L. (2018) ‘Westminster Too: On Sexual Harassment in British Politics,’ *The Political Quarterly*, 89(1): pp 65-72

48 Ibid; Women and Equalities Committee, *Sexual harassment in the workplace*, 2018; Equality and Human Rights Commission, *Turning the tables*, 2018

49 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018

50 Ibid, paragraph 205.

51 Inter-Parliamentary Union, *Sexism, Harassment, and Violence against Women Parliamentarians*, 2016

52 Former party activist and delegate, interview 2.

53 Krook, M.L. (2017) ‘Violence against women in politics’, *Journal of Democracy*, 28 (1), pp: 74–88; Krook, M.L. (2018) ‘Violence against Women in Politics: A Rising Global Trend,’ *Politics & Gender*, 1-3; Piscopo, J. (2016). “State Capacity, Criminal Justice, and Political Rights: Rethinking Violence against Women in Politics.” *Política y Gobierno* 23 (2), pp: 437–58; Inter-Parliamentary Union, *Sexism, Harassment, and Violence against Women Parliamentarians*, 2016

54 Collier, C. & Raney, T. (2018) ‘Understanding Sexism and Sexual Harassment in Politics: A Comparison of Westminster Parliaments in Australia, the United Kingdom, and Canada,’ *Social Politics*, 25(3), pp: 432-451

of their female colleagues in parliament.<sup>55</sup> 82% had also suffered psychological abuse during their parliamentary term which manifested in various ways, including harassment (33% experienced this), threats of death, rape, beatings or abduction (44%) and humiliating sexual or sexist remarks (66%). 20% said they had themselves been sexually harassed during their term in parliament and 7% said that someone had tried to force them to have sexual relations.

The Inter-parliamentary Union's brief *Sexism, harassment and violence against women in parliaments in Europe* presented similar findings in their regional study.<sup>56</sup> Of the female MPs who took part, 25% had suffered sexual violence, 47% had received death threats or threats of rape or beating, 58% had been the target of online sexist attacks on social networks and 68% had been the target of comments relating to their physical appearance or based on gender. Respondents suggested that the perpetrators of harassment and violence were both political opponents and colleagues from the women's own party, or ordinary citizens. The study also showed large-scale sexual harassment of female parliamentary staff. A disturbing 41% of those interviewed said that they had suffered acts of sexual harassment in their work. In 69% of cases, the perpetrators were male MPs. 50% had received comments of a sexual nature, over half the time from a male MP. The report also found a very low level of reporting of sexual harassment. Only 24% of female MPs and 6% of female members of parliamentary staff who had had these experiences reported the incident. Several of the women who took part in the survey reported that there was no process in their parliament to which they could turn.

## Sexual harassment in Westminster

*'I have suffered from emotional, psychological and physical harm. This was not only caused by the harassment he [an MP] subjected me to; it was also a direct outcome of my deeply unsatisfactory experience with the Party complaints process.'*<sup>57</sup>

*'I found the failure of the Party complaints process extremely disappointing. The whole process was stressful and unprofessionally conducted. There was endless backwards and forwards with the complaints office, and I felt as if I was constantly chasing them. This was despite the fact that the Party was openly asking people in the media to come forward [...] If I were to go back now I would not complain again.'*<sup>58</sup>

### Sexual harassment of MPs staff

In November 2017, accounts in the press of inappropriate behaviour, bullying and sexual harassment in the House of Commons turned the spotlight on Westminster. The allegations highlighted the widespread nature of the problem but also the absence of any policy, complaints process or HR department through which staff directly employed by MPs could turn to if they were bullied or sexually harassed by said MP. The allegations led to the establishment of the cross-party Working Group on an Independent Complaints and Grievance Policy (ICGP), headed by the Leader of the House, Rt. Hon. Andrea Leadsom MP.

55 Inter-Parliamentary Union, *Sexism, Harassment, and Violence against Women Parliamentarians*, 2016. The study was based on quantitative and qualitative data provided voluntarily by 55 women parliamentarians from 39 countries spread over five regions of the world: 18 in Africa, 15 in Europe, 10 in Asia-Pacific, 8 in the Americas and 4 in Arab countries.

56 Ibid

57 Former elected representative, interview 3.

58 Former Parliamentary Researcher, interview 1.

The Working Group revealed that bullying, harassment and sexual harassment have been a feature in the lives of many who work in or with Parliament.<sup>59</sup> Their survey of people working in or with parliament found that 39% reported experience of harassment or bullying in the last year.<sup>60</sup> 19% of the respondents reported experience of sexual harassment, including witnessing sexually inappropriate behaviour, with women experiencing this twice as much as men. MAPSA's survey of the staff of MPs and Peers, which was included in the report, found that 53% of the 815 respondents said they had experienced, witnessed or heard of bullying/harassment during their time in employment.<sup>61</sup> Unite's survey of the staff of MPs, which was also included, found high levels of bullying, harassment and sexual harassment, with 27% having experienced behaviour they would describe as bullying or intimidating towards them and 14% experiencing behaviour that they would describe as a form of sexual harassment.<sup>62</sup>

The Working Group published its report on the 8<sup>th</sup> of February 2018 and on the 28<sup>th</sup> of February, the House of Commons agreed a motion endorsing their recommendations and establishing a Steering Group to undertake the work necessary to implement the proposals. These included a Behaviour Code for Parliament that covers bullying, harassment, and sexual harassment; an independent complaints and grievance scheme to underpin the Code, together with associated policies and appropriate sanctions; particular procedures to deal with reports of sexual harassment, including the provision of specialist Independent Sexual Violence Advocates (ISVAs); a system of training to support the Code; an independent human resources support service for staff employed by Members of Parliament or jointly by political parties; and a handbook for these staff.<sup>63</sup>

On the 10<sup>th</sup> of July 2018, the Committee on Standards produced a report on the implementation of the ICGP<sup>64</sup> and later in the month the Independent Complaints and Grievance Scheme Delivery Report was published. This outlined a new separate Sexual Misconduct Policy and Procedure in addition to a new Bullying and Harassment Policy and set out the routes for sanctions e.g. suspension and the potential for recall. This was the first time that sexual harassment was granted a distinct policy, having previously been considered a form of bullying. An independent review of historic allegations was also established to hear any complaints from Members' staff, MPs or Peers who have experienced bullying, harassment, or sexual misconduct in the past. This inquiry, headed by Gemma White QC is to be heard with the six month review of the Scheme.<sup>65</sup>

## **Sexual harassment of House of Commons staff**

In March 2018, BBC Newsnight revealed further allegations of bullying and sexual harassment perpetrated by male MPs against House of Commons staff. Distinct from the staff of MPs, these people are directly employed by the House of Commons. This led to the establishment of an independent inquiry into bullying and harassment of House of Commons Staff, headed by Dame Laura Cox DBE.

The report found that sexual harassment is insidious and pervasive.<sup>66</sup> Allegations made against MPs included 'frequent inappropriate touching; the invasion of someone's personal space; repeatedly initiated physical contact, for example men patting women's heads, putting their arms around women, leaving a hand on their knee for an uncomfortably long time, trying to kiss them, grabbing their arms or bottoms or stroking their breasts or bottoms; women being abused in vulgar, gender-related terms if they failed to do

59 Working Group on an Independent Complaints and Grievance Policy, *Report*, 8 February, 2018, paragraph 15

60 Total of 1,377 responses

61 Working Group on an Independent Complaints and Grievance Policy, *Report*, 8 February, 2018, paragraph 16

62 Ibid

63 Working Group on an Independent Complaints and Grievance Policy, *Report*, 8 February, 2018

64 House of Commons Committee on Standards, *Independent Complaints and Grievance Policy: Implementation*, 10 July 2018

65 Independent Complaints and Grievance Policy Programme Team, *Independent Complaints and Grievance Scheme Delivery Report*, July 2018

66 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018

something that had been requested, or did it in a way that was considered inadequate or took too long; women being repeatedly propositioned.<sup>67</sup> A number of similar allegations were also made against other House of Commons unnamed staff.

Almost all of the reports of sexual harassment made during the inquiry into bullying, harassment and sexual harassment were made by women. The report also highlighted that a number of the reports would be considered sexual and racial harassment, reiterating the need to consider the intersectional layers of harassment when creating new policies to prevent and combat these behaviours.<sup>68</sup>

The report stated that this harassment had been exacerbated by the culture of the House of Commons, which impeded the reporting of sexual harassment. It pointed to the male-dominated power hierarchies that existed within Parliament<sup>69</sup> and a ‘macho’ culture that is prevalent within certain areas in the House, where sexual harassment was regarded as ‘the norm.’<sup>70</sup> It also highlighted a lack of support given to those who had been sexually harassed, a culture that has sought to cover up harassment, a lack of protection of those reporting abuse and a lack of accountability. Further to this, complaint procedures were considered ineffective and a number of those who gave testimonies expressed a lack of confidence in these mechanisms which also hindered them reporting incidences.

Following a review of the then proposed policy Independent Complaints and Grievance Policy, The Cox Report made three ‘crucial’ additional recommendations. It recommended that: The ‘Valuing Others Policy’ and the ‘Revised Respect Policy’ should both be abandoned as soon as possible; The new Independent Complaints and Grievance Scheme should be amended, so as to ensure that those House employees with complaints involving historical allegations can access the new Scheme; and steps should be taken to consider the most effective way to ensure that the process for determining complaints will be an entirely independent process, in which Members of Parliament will play no part.<sup>71</sup>

## The House of Lords

In November 2017, Lord Lester, a peer in the House of Lords, was met with allegations of repeated sexual harassment after claims were made that he offered a woman a peerage in exchange for sex. After upholding the complaint, the Privileges and Conduct Committee recommended that Lord Lester be suspended for breaching the House’s code of conduct. However, following a debate in the House of Lords and a vote, Lord Lester’s suspension was effectively blocked, with a number of peers objecting that the process had been unfair and insisting his alleged victim should have been cross-examined.<sup>72</sup> The case was sent back to the Committee who were about to rule on Lord Lester’s suspension for a second time when he resigned from the House of Lords.<sup>73</sup>

## Ongoing issues

The ICGS has a number of positive features including the new Behaviour Code, the new bullying and harassment and sexual harassment policies, the recognition that sexual harassment is a separate and distinct form of harassment, and the independence of the new helplines and investigation services. However, a number of debates are still ongoing.

67 Ibid, paragraph 193

68 Ibid, paragraph 200

69 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff*, 2018

70 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff*, 2018, paragraph 203.

71 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff*, 2018, p.6

72 <https://www.telegraph.co.uk/news/2018/11/15/lord-lesters-sex-harassment-ban-lifted-peer-revolt/>

73 Committee for Privileges and Conduct, *The conduct of Lord Lester of Herne Hill*, 7 November 2018



## Confidentiality and anonymity

The level of confidentiality that should be afforded to investigative proceedings has been a contested issue during the reform process so far.<sup>74</sup> Debates have centred on how much information about grievances should be made available to the public and the need to balance political transparency with the rights of those who make and are subject to complaints.<sup>75</sup> While both the Independent Complaints and Grievance Scheme and Dame Laura Cox's recommendations wish to protect victims of sexual harassment and prioritize their interests, there have been conflicting opinions on how best to do so.

The Report of the Working Group on an Independent Complaints and Grievance Policy proposed that there should be total confidentiality about cases involving harassment, bullying and sexual harassment and almost no disclosure about either the victim or the subject of the complaint unless an allegation is upheld, which should result in information being shared with the political party that the subject belonged to.<sup>76</sup>

The Cox Report, on the other hand, stated that where there was no objection to publication from the complainant, and in cases involving serious or persistent abusive conduct, the name of the alleged perpetrator and the nature of the allegations made should be published if the matter proceeds to full investigation.<sup>77</sup>

As it stands, the scheme has advocated that publicising live allegations would imperil those who had come forward and that making allegations public as *a matter of course* risks deterring future complainants who may feel a loss of control over the process. There will therefore be no publication of ongoing investigations and if a complaint is not upheld, the MP's name will not be published. If a complaint proceeds to the stage of investigation by the Commissioner and if it is upheld, a summary of the facts and findings will be published. In deciding on the contents of this, the Commissioner will pay careful attention to the sensitivities and wishes of the complainant/reporter.<sup>78</sup> In this scenario, the investigation will still not be announced until its conclusion.<sup>79</sup>

## Independence of the process

The ICGS as it now stands gives responsibility to The Committee on Standards to carry out the appeal function under the scheme. Following her inquiry Dame Laura Cox DBE argued that the Committee on Standards should not be involved, as it could not pass the test of impartiality, given that the Committee is composed of MPs. Although lay members are also part of the Committee, MPs have more voting rights and powers, effectively making any appeal a trial by peers.

While acknowledging the difficulty in doing so, The Cox Report recommended that steps should be taken, in consultation with the Parliamentary Commissioner for Standards and others, to consider the most effective way to ensure that the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament will be an entirely independent process, in which Members of Parliament will play no part.<sup>80</sup>

74 Registrar of Members' Financial Interests, *Confidentiality and anonymity in cases involving harassment, bullying and sexual harassment*, 14 June 2018. <https://www.parliament.uk/documents/commons-committees/Standards-Committee/registrar-members-financial-interests-harassment-bullying.pdf>; *Independent Complaints and Grievance Policy Programme Team, Independent Complaints and Grievance Scheme Delivery Report*, July 2018, paragraph 60

75 Ibid

76 Independent Complaints and Grievance Policy Programme Team, *Independent Complaints and Grievance Scheme Delivery Report*, July 2018.

77 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018, paragraph 287

78 Independent Complaints and Grievance Policy Programme Team, *Independent Complaints and Grievance Scheme Delivery Report*, July 2018, paragraph 71

79 Paragraph 71 of the Scheme Delivery Report states that 'In truly exceptional circumstances, the Commissioner may disclose some information before the case has been concluded, either to other agencies, if this is needed in order to protect the interests of vulnerable people, or more generally, if she suspects that a Member is a serial harasser or bully.'

80 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff*, 2018, p6.

In December 2018, the House of Commons Committee on Standards, published 'Implications of the Dame Laura Cox report for the House's standards system: initial proposals.' Following from the urgent recommendations made by the Cox Report, it proposed some immediate changes to make the process more independent from MPs until further changes could be made following the six month review.<sup>81</sup> These were aimed at increasing the powers of the lay members of the Committee on Standards relevant to those MPs,<sup>82</sup> increasing the independence of the Commissioner<sup>83</sup>, and modernising the complaints process by allowing complaints against Members to be emailed rather than submitted in hard copy.<sup>84</sup> The House approved these changes.

81 House of Commons Committee on Standards, *Implications of the Dame Laura Cox report for the House's standards system: Initial proposals*, December 2018, paragraph 49

82 Ibid, paragraph 49

83 Ibid, paragraph 55 and 56. Specifically, it was recommended that the pre-existing requirement for the Commissioner to consult the Committee before beginning an inquiry relating to events more than seven years earlier and before beginning an inquiry into a former Member should be abolished.

84 Ibid, paragraph 64



# Public attitudes towards sexual harassment in Westminster

*‘Throughout my [party] complaint, I had a real sense that the primary concern of the Party was for minimising political exposure rather than genuinely addressing the concerns of victims.’<sup>85</sup>*

The general public have been exposed to the revelations of sexual harassment in Westminster; however, there has been little effort to engage them on the issue. Although we do not suggest it should be the sole concern, public opinion should inform the decisions of elected representatives. We asked about some of the specifics of reform, which, as mentioned previously, are at present contested in the current discussions, so that parliamentarians can factor in public opinion when designing an appropriate system.

## Demand for change

Our data shows that there is clear public demand for reform of how sexual harassment in politics should be handled. Overall, 73% of respondents agreed that there needs to be a change in how unwanted sexual behaviour is dealt with in politics, with no significant difference between men and women. Only 5% of people disagreed that a change is needed, with 19% neither agreeing nor disagreeing. There is also little variation by party, showing general agreement across the political spectrum. 79% of respondents who voted for the Labour Party in 2017 agreed that a change is needed, compared to 77% of Liberal Democrat voters and 72% of Conservative voters. Support for reform was also reoccurring across age groups, showing that agreement for change is broad in scope.

## Appropriate responses to sexual harassment in parliament

While the data shows a clear demand for change, it also gives a strong picture of what the public would like to see happen. 77% of both women and men polled agreed that there should be clear policies and procedures for people working in Westminster or politics to report concerns about sexual harassment or assault. Further to this, 77% of people agreed that people working in Westminster or in politics who have been sexually harassed or assaulted should feel confident that they can report it without it having a negative impact on their career, with no significant difference between women and men.

## Independence of the process

The degree of independence afforded to complaint procedures is one element that has been disputed throughout the current reform process. Members of the public were asked ‘If your MP was accused of sexual harassment to what extent do you agree or disagree that the following actions should be taken?’ The largest number of people agreed that an independent investigation should be carried out if an MP is accused of sexual harassment. 80% of both men and women agreed that this action should be taken. This is relevant to the ongoing debates. Our polling suggests that the public are in favour of the recommendation made in the Cox Report that the process for determining complaints of bullying, harassment or sexual harassment brought by House staff against Members of Parliament be an entirely independent process, in which Members of Parliament play no part.<sup>86</sup>

<sup>85</sup> Former party representative, interview 3.

<sup>86</sup> Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff – Independent Inquiry Report*, 15 October 2018

## Confidentiality and anonymity

There have been ongoing debates throughout the reform process about whether or not details of sexual harassment claims should be published. This is a complex situation where two sets of rights – the rights of MPs to be protected from the risk of unfounded claims, and the rights of complainants to see justice done – are in opposition. There has been general agreement that the confidentiality and the interests of the complainant should be protected during complaints procedures, however, the need to balance this with transparency and accountability, in addition to the need to encourage others who have suffered harassment to come forward, has also been raised.

Members of the public were asked about their opinion on anonymity. 52% (48% of men and 55% of women) who responded think that the identity of the person who made the accusation should be kept anonymous. Just 20% disagreed, with the remaining respondents unsure or neither agreeing or disagreeing.

76% of people surveyed think that if an investigation was to take place, information about it should only be made public if the accusations are found to be true, with little gender variance. The approach taken in the current Independent Complaints and Grievance Scheme reflects this to a degree, stating that if an unpublicised complaint is not upheld, the MP's name should not be published.<sup>87</sup>

Respondents were also asked 'If an MP was under investigation due to being accused of sexual harassment, which of the following is closest to your view?' 43% agreed that the investigation should be made public so that other victims can come forward, whereas 36% thought that the investigation should be kept private to protect the anonymity of the MP.

Our polling suggests that the public are slightly more supportive of publishing details about sexual harassment investigations rather than keeping them anonymous, however are also in favour of protecting the anonymity of the complainant. Publication of any detail of investigations should of course only be done when this is the complainant's wish (this is certainly not always the case), and with their anonymity protected if they choose.

## Sanctions

Under the new Independent Complaints and Grievance Scheme, the Commissioner will have the power to issue sanctions following misconduct, if she sees fit.<sup>88</sup> The appropriate sanctions for MPs accused of sexual harassment were also therefore considered (Figure 1). Following an investigation, 70% of people think that the MP should be removed from office and banned from running as an MP for a period of time. Further to this, 70% of people think that the MP's constituents should be able to trigger an election in their constituency, so that local people can decide if they want a new representative. 70% of people think that the MP should be required to issue a public apology. 68% of those polled also think that the MP should be required to apologise to the House of Commons. 67% said stated that the person who made the accusation should be offered independent professional support. 65% of people think that MP should be required to undergo training to address their conduct.

87 Independent Complaints and Grievance Policy Programme Team, *Independent Complaints and Grievance Scheme Delivery Report*, July 2018, paragraph 63(b).

88 Independent Complaints and Grievance Policy Programme Team, *Independent Complaints and Grievance Scheme Delivery Report*, July 2018.

**Figure 1. 'If your MP was accused of sexual harassment what action do you think should be taken?'**



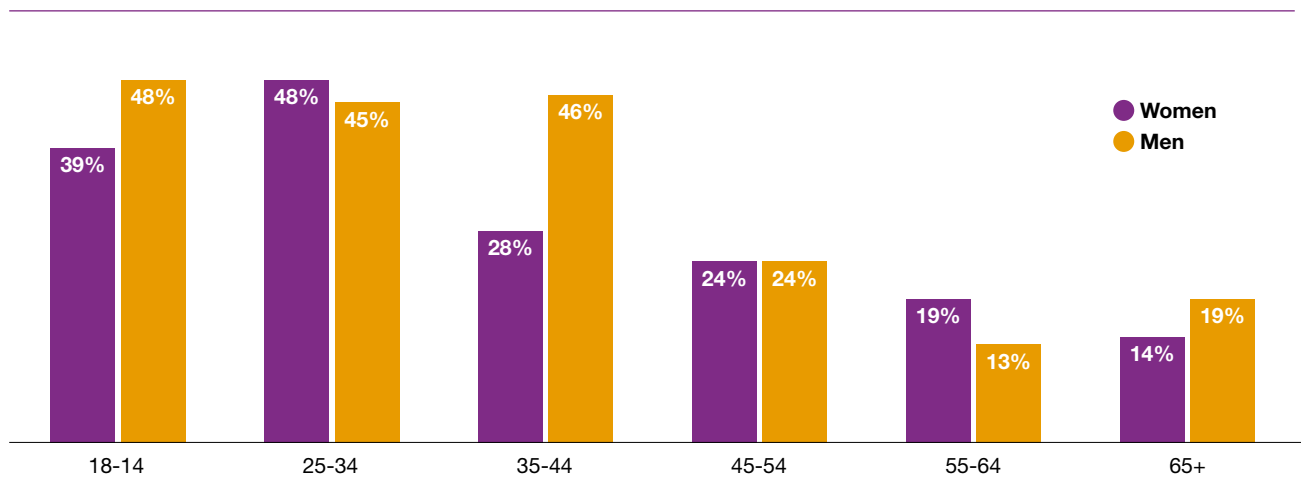
## Political participation

### Involvement in politics

Our data also suggests that the sexual harassment scandal has negatively affected political participation amongst those polled. 29% of the overall respondents agreed that accusations of sexual harassment made them less likely to get involved in politics. As Figure 2 shows, however, more men than women agreed that this was the case, even taking into consideration differences in sample size.<sup>89</sup> Younger people are much more likely to say this, with agreement starkly declining amongst people who fall within older age brackets.

89 18-24 women n=147; men n=80  
 25-34 women n=233; men n=121  
 35-44 women n= 164; men n=166  
 45-54 women n= 183; men n=182  
 55-64 women n= 152; men n=155  
 65+ women n= 173; men n=300

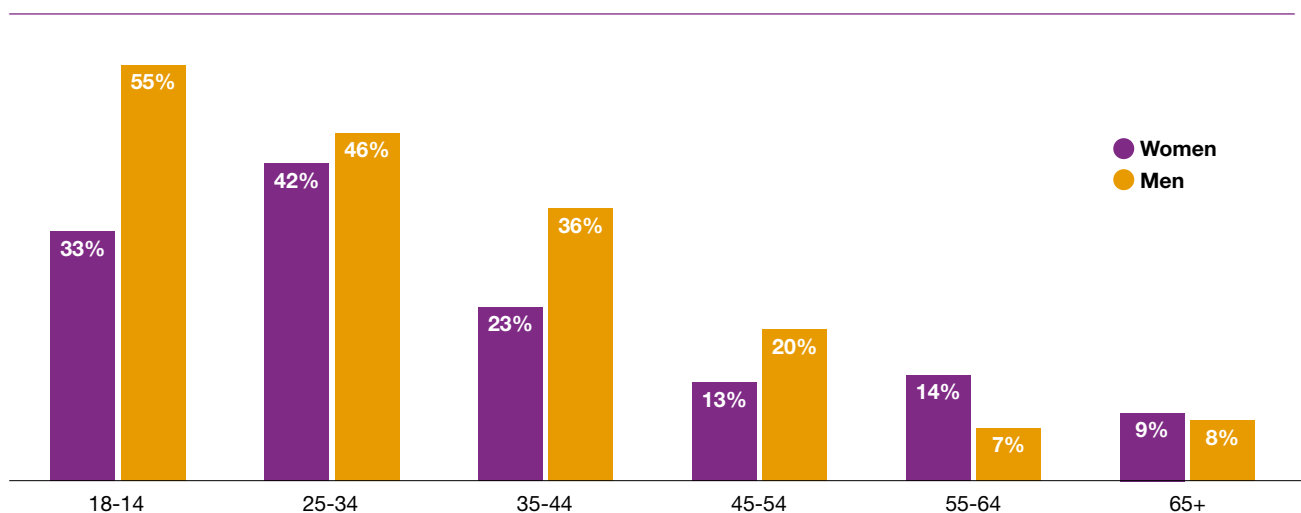
**Figure 2. Agree that 'Accusations of sexual harassment in politics make me less likely to get involved in politics' by age.**



### Voting

Our data shows that accusations of sexual harassment have also affected the public's likelihood of voting. 23% of both women and men respondents said that accusations of sexual harassment in politics have made them less likely to vote. Again, more men than women agreed that this was the case across age brackets, even taking into consideration differences in sample size.<sup>90</sup> Younger people were once again more likely to respond in this way.

**Figure 3. Agree that 'Accusations of sexual harassment in politics make me less likely to vote' by age.**



90 18-24 women n=147; men n=80  
 25-34 women n=233; men n=121  
 35-44 women n= 164; men n=166  
 45-54 women n= 183; men n=182  
 55-64 women n= 152; men n=155  
 65+ women n= 173; men n=300

# Sexual harassment in politics: the legal context in the UK

*‘From my own experience, and that of female colleagues of mine, I am concerned that there is a culture of bullying and sexual harassment within the Party. It is my sincere opinion that this culture is toxic for women and for the Party more generally. It is not acceptable in the twenty-first century for women, whether in their private or personal life, to systematically be subject to unwanted advances and persistent bullying by older, more powerful men.’<sup>91</sup>*

While the work to establish an effective Independent Complaints and Grievance Policy and associated systems is important and welcome, as is the case with all workplaces it is vital that it is backed up with the availability of an effective remedy under the law. The ICGS, as currently constituted, acknowledges this in referring to other routes for progressing a complaint – but at present those routes are unlikely to be open for a number of people who work and operate in politics, given that employment protection against sexual harassment is limited to those who are employees.<sup>92</sup> This section looks at the legal rights and protections afforded to those who work in various political roles in the UK.

## Relevant legislation

In the UK, protection against sexual harassment in the workplace is set out in Part 5, of the Equality Act (2010). Harassment is defined as:

- unwanted conduct related to a protected characteristic that has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the individual;<sup>93</sup> or
- unwanted conduct of a sexual nature which has that purpose or effect;<sup>94</sup> or
- unwanted conduct of a sexual nature or related to sex which has that purpose or effect and the individual has been subjected to less favourable treatment than would have been the case because they either submitted to or rejected the conduct in question.<sup>95</sup>

Under Section 40 of the Equality Act, it is unlawful for an employer to harass its employees or an applicant for employment. Under Section 109, employers are also vicariously liable for acts of its employees that are committed in the course of their employment, unless the employer has taken all reasonable steps to prevent the harassment. This means that the employer can be held legally responsible if one employee sexually harasses another. Employees are also individually liable for acts that they commit.

## Protection for employees and non-employees

However, to be protected against harassment, an individual has to be an employee, or fall within one of the other categories protected by Part 5 of the Equality Act. The Equality Act defines employment as under Section 83(2) as:

91 Former elected representative, interview 3.

92 This note considers employment protection against sexual harassment. It does not deal with the position under criminal law or the Protection from Harassment Act 1997.

93 The Equality Act 2010, Section 26(1)

94 Section 26(2), *ibid*

95 Section 26(3), *ibid*

- employment under a contract of employment, a contract of apprenticeship or a contract personally to do work;
- Crown employment;
- employment as a relevant member of the House of Commons staff;
- employment as a relevant member of the House of Lords staff (as defined in the Employment Rights Act 1996).

An employer is also defined within the Act as someone who engages another person under a contract of employment, a contract of apprenticeship or a contract personally to do work and there are specific provisions about who is to be treated as the employer of House of Commons' and House of Lords' staff.

The Equality Act does extend protection against harassment in the workplace to certain categories of people who do not fall within this definition, including individuals undertaking a personal office, defined as an office or post to which a person is appointed to discharge a function personally under the direction of another person and for which they are entitled to remuneration (section 49).

Individuals undertaking public offices are also entitled to protection against harassment. Public office is defined as an office or post to which the individual is appointed, recommended for appointment, or approved by a member of the executive, the House of Lords, the House of Commons, the National Assembly for Wales, or the Scottish Parliament, or to which an individual is appointed by the Lord Chief Justice or Senior President of Tribunals (section 50). However, section 52(5) expressly provides that appointment to an office or post *does not include election to it*. The Explanatory Notes to the Equality Act expressly state 'elected offices will not constitute personal or public offices'.

Schedule 6 of the Equality Act also states that specified political offices do not amount to personal or public offices. These include offices of the House of Commons or Lords held by a member of the relevant House, Ministerial office, the position of Leader of the Opposition, or the office of the Chief or Assistant Opposition Whip. Similar provisions apply in relation to the devolved assemblies and local councils. Schedule 6 also provides that a life peerage, or any dignity or honour conferred by the Crown, is not a personal or public office.

## MPs and Peers

Members of Parliament are not employees as defined by the Equality Act. They are paid a salary and expenses by the Independent Parliamentary Standards Authority but they are elected, not employed and do not have a contractual relationship with the House of Commons, the Independent Parliamentary Standards Authority or any other entity. Furthermore, MPs are not personal office holders within the meaning of the Equality Act as MPs do not perform their function personally under the direction of another person. Nor are MPs public office holders under the definition of the Act which explicitly states that election to a position does not constitute appointment. Peers are also not employees, and are not treated as personal or public office holders under the Equality Act. Unlike employees of the House or other workplaces, MPs and Peers are not therefore protected against sexual harassment under the current legislation.

## Local Authority Members (councillors)

Although local authority members are not covered by the provisions of the Equality Act dealing with personal or public office holders, Sections 58-59 do offer some protection. Section 58 states that a local authority must not discriminate against or harass a member of the authority in relation to the member's carrying out of official business. The EHRC Employment Code of Practice indicates that the term 'member' usually means an elected member such as a councillor (or in the case of the GLA the Mayor of London or a member of the London Assembly). Official business means anything done by the individual in their capacity as a member of the authority or a member of a body to which the person is appointed by

the authority or a group of bodies including the authority. However, the Equality Act does not apply where someone is not elected, appointed or nominated to an office, committee, sub-committee or body of a local authority.<sup>96</sup>

## Parliamentary/administrative staff

The House staff are not civil servants, but are employed directly by the House of Commons and are formally appointed by the Commission, which is responsible for their pay and conditions.<sup>97</sup> Under Section 83, as outlined previously, members of House of Commons staff are employees for the purposes of the Equality Act and they are expressly protected by its provisions.<sup>98</sup> Their employers (The House of Commons) therefore have obligations in this respect and are potentially liable for acts of harassment on the grounds of a protected characteristic as an act of discrimination. Staff of the House of Commons and House of Lords are covered by current legislation and able to bring claims under the Equality Act about harassment against their employer or other members of the employer's staff.

## Staff of MPs

Those working for MPs under a contract are similarly protected by the Equality Act. Distinct from the staff of the House of Commons and the House of Lords, these people are hired directly by MPs to assist them with their parliamentary duties. Individual MPs are therefore the official employer, although The Independent Parliamentary Standards Authority is responsible for administering their salaries, which are paid from each MP's staffing expenditure budget. Claims in this situation would be against the MP themselves as the individual's employer. There are therefore significant barriers to bringing a claim even where it is legally possible to do so, particularly where the individual remains in the MP's employment. Employees of a political party who are harassed by a colleague who is also employed by that party in the course of their employment would also be able to bring a claim against the party as their employer.

## Volunteers

Volunteers are also not 'employees' for the purposes of section 83 of the Equality Act. If there is no contract governing the working arrangements of a volunteer and they are under no legal obligation to work and have no legal entitlement to be paid, volunteers are not able to claim protection under the Equality Act as an employee. Given that it is common for large numbers of individuals and party members to work as volunteers within political party structures, the current legislation does not therefore provide adequate protection against sexual harassment to a significant number of people working within political spaces.

This was legally confirmed in *X v Mid Sussex Citizens Advice Bureau* [2012] UKSC 59, in which the Supreme Court confirmed that a Citizens Advice Bureau volunteer who worked under a 'volunteer agreement' that was expressed to be binding in honour only and not to be a contract of employment or legally binding was not an employee. However, if in reality there is an expectation that a 'volunteer' will work at specific times and/ or for specific periods, or will receive payment that goes beyond reimbursement for expenses, it would be possible to argue that the volunteer was an employee for the purposes of the Equality Act<sup>99</sup>. If that argument succeeded, it would be possible for that individual to bring a sexual harassment complaint under Part 5. However, the assessment of whether someone is an

96 See *Allan v Wandsworth Borough Council* UKEAT/0049/13 in which the EAT struck out a claim on the basis that a failure to reappoint a councillor to her role as Chair of one of the Council's committees was not actionable under the Equality Act

97 Dame Laura Cox, *The Bullying and Harassment of House of Commons Staff Report*, 2018, paragraph 3

98 The Act also states that a relevant member of the House of Commons' staff is a person appointed by the House of Commons Commission, employed in the refreshment department or a member of the Speaker's personal staff. A relevant member of the House of Lords' staff is a person employed under a contract of employment with the Corporate Officer of the House of Lords.

99 See for example *Migrant Advisory Service v Chaudri* EAT/1400/97 and *Murray v Newham Citizens Advice Bureau* EAT/1096/99

employee is fact-sensitive, and a successful claim by one volunteer would not automatically establish that other volunteers were also employees.

## Third party harassment

Even groups who have protection under the Equality Act are currently unable to bring a claim if harassment is perpetrated by someone other than an employer or a colleague employed by the same employer ('third party harassment'). The legislation states that an employer is liable for harassment which it commits, or which someone for whom it is vicariously liable (such as another member of staff) commits. However, an employer is not liable for harassment of one of its staff by a third party. Within other workplaces, this leaves employees vulnerable against harassment from those who aren't employees of the company, such as customers, clients or employees of other firms they may work with. Within the parliamentary environment, where you have a collection of employers and their staff sharing the same workplace, there is significant scope for third party harassment to take place. The lack of a common employer can result in an increased risk of harassment where the employee's employer may not be able to be held legally responsible, for example, if a member of one MP's staff is harassed by a member of another MP's staff, by another MP, or by staff of the House.

Until 2013, there were specific provisions in the Equality Act (section 40(2)) which made an employer liable for third party harassment that occurred in the course of an employee's employment if it knew that an employee had been harassed by a third party on at least two occasions, and had failed to take reasonably practicable steps to prevent the harassment. Those third party harassment provisions were repealed by the Enterprise and Regulatory Reform Act 2013.<sup>100</sup>

It is possible that an employer will be liable for third party harassment under the Equality Act despite the repeal of the third party harassment provisions. However, the latest case to deal with the position, *Unite the Union v Nailard* [2018] EWCA Civ 1203 makes it clear that an employer's failure to deal with third party harassment will only amount to discrimination and/or harassment if the conduct of the employer in failing to address the third party harassment is itself related to a protected characteristic. It does not automatically follow from the fact that underlying complaints relate to sexual harassment that the employer's failure to deal with them adequately also amounts to sexual harassment and/or sex discrimination. This indicates that even those who are employees within the meaning of the Equality Act may have difficulty in bringing a claim of sexual harassment where the perpetrator of harassment is not their employer or someone for whom the employer is vicariously liable.

What this means for women employed within Westminster is that in a considerable proportion of cases of sexual harassment, dependent on who the perpetrator is, they may not have any recourse to protection under the law.

<sup>100</sup> Enterprise and Regulatory Reform Act, 2013. <https://www.legislation.gov.uk/ukpga/2013/24/contents>



# Sexual harassment in politics: the comparative legal context

*'In September 2017, the sexual harassment issues in Parliament were all over the media and it brought back a lot of bad memories for me. It was on the TV and in the papers constantly – I felt physically sick and would break down crying daily during this period.'*<sup>101</sup>

In order to identify whether an alternative model might improve protection and support for political actors in the UK, we compared the UK context with Australia, Denmark, Germany, New Zealand and Sweden. These countries were chosen as they have a relatively good record on gender equality.

## Protection of MPs in a comparative context

The picture is mixed in terms of whether elected representatives have formal legal protection against sexual harassment in the countries examined. In Germany and Sweden the picture reflects that in the UK. Elected representatives are not employees and as such are not covered by anti-discrimination legislation. It is, however, possible to offer protection to and from MPs through anti-discrimination legislation as is illustrated in Australia, Denmark and New Zealand.

### Germany

In Germany,<sup>102</sup> protection against discrimination, including harassment and sexual harassment, in the workplace is regulated in the General Act on Equal Treatment (2006) (*Allgemeines Gleichbehandlungsgesetz – AGG*).<sup>103</sup> According to German Labour Law a person in dependent employment is defined as a person who has the obligation under a private-law contract to perform tasks in the service of and bound by instructions of another person (the employer).<sup>104</sup> Section 24 extends the protection to other groups who are not considered 'employees,' although not to MPs. Members of Parliament are elected into the German Bundestag as representatives of the people and not employed by the German Bundestag. As such, they are not protected against discrimination and (sexual) harassment in the workplace under the General Act on Equal Treatment.

### Sweden

The main piece of legislation in Sweden is the Discrimination Act (2008) which has the aim of promoting equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. The Discrimination Act defines harassment and sexual harassment as forms of discrimination and prohibits an employer from discriminating, directly or indirectly, against: employees; job applicants; trainees; and persons who are on standby to carry out or who carry out work as hired or borrowed manpower.<sup>105</sup> MPs are not employed by the Riksdag (the Swedish Parliament). Instead, they have an assignment from the voters to represent them in the Riksdag for a specific period of time. MPs therefore technically have no employer, and so they do not benefit from the protections under the Discrimination Act.

<sup>101</sup> Former Parliamentary Researcher, interview 1.

<sup>102</sup> This note considers employment protection against discrimination and (sexual) harassment provided under the General Act on Equal Treatment (2006). It does not deal with the position under criminal law.

<sup>103</sup> Regulated in Part 2 (Protection of Employees against Discrimination) and Part 5 (Special Regulations Applying to Public-Law Employment Relationships)

<sup>104</sup> Schrader/Schubert in: Däubler/Bertzbach, *Allgemeines Gleichbehandlungsgesetz*, 2018, § 6 Rn. 7; Benecke in: BeckOKG, *AGG*, 2018, § 6 Rn. 7.

<sup>105</sup> The Discrimination Act 2008, Chapter 2, Section 4

## Australia

In Australia, federal anti-discrimination laws are contained in the Sex Discrimination Act 1984. Under this legislation, it is unlawful to discriminate on the basis of a number of protected attributes including age, disability, race, sex, intersex status, gender identity and sexual orientation in certain areas of public life, including education and employment. Under section 9, the Act gives protection to Commonwealth employees, the definition of which extends to persons holding an administrative office (although not to the legislative branches of the ACT or NT). It therefore appears that Members of Parliament are protected by these laws given that an administrative office includes an office established by, or an appointment made under, a law of the Commonwealth (which, as it is understood, would include the Australian Constitution, under which positions in Australian Parliament are established).

Australian territories and states have also enacted anti-discrimination legislation, some of which do offer further protection. Within **the Northern Territory** Section 31 of the Anti-Discrimination Act 1992 states that discrimination in the work area by a 'person' is prohibited, so there is no issue of whether there is an employer or not in this instance.

In **New South Wales (NSW)**, MPs do not come under the standard definition of an employee within the Anti-Discrimination Act 1977, however, the Act explicitly makes reference to MPs. It states that it is unlawful for an MP to sexually harass a workplace participant or another Member of Parliament at a mutual workplace.<sup>106</sup> In this instance, it is likely to be the Member of Parliament who would be liable. It further states that it is unlawful for a 'workplace participant' to sexually harass a member of either House of Parliament at a mutual workplace,<sup>107</sup> in which case, the harasser's employer would be liable, as is the case in any other instance of sexual harassment under the Act. A 'workplace' of an MP is broadly defined as the whole of Parliament House, any ministerial office or electoral office of the member or any other place that the member attends in connection with their Ministerial, parliamentary or electoral duties.<sup>108</sup> This protects MPs and other workplace participants within constituency offices, which is something that needs to be addressed in the UK context.

Within **Tasmania**, Members of Parliament are likely to benefit from the Anti-Discrimination Act 1998 since it defines employment as 'employment or occupation in any capacity, with or without remuneration.' Both political belief or affiliation, and political activity are included as prohibited grounds of discrimination.

## Denmark

Protection against sexual harassment in the workplace in Denmark is provided through the Consolidation Act on Equal Treatment of Men and Women as regards Access to Employment etc. (2006). The Act ensures the equal treatment of men and women and prohibits direct and indirect discrimination on the ground of sex.<sup>109</sup> Harassment and sexual harassment are deemed discrimination on the ground of sex and are consequently prohibited.<sup>110</sup> While there is no definition of employment or an employee, the Act states that any employer who employs men and women shall treat them equally as regards working conditions.<sup>111</sup> Third party protection is not specified in the Act.

There is also a framework of anti-harassment and discrimination law in Denmark designed to cover everyone at all levels of society, not just employees: The Consolidation Act on Gender Equality (2002). The Act promotes gender equality and equal opportunities 'in all functions in society on the basis of men and women's equal status' and is designed 'to counteract direct and indirect discrimination on the ground of gender and to counteract sexual harassment'. Although the Act is not limited to those in employment

<sup>106</sup> Anti-Discrimination Act 1977, Section 22(7)

<sup>107</sup> Anti-Discrimination Act 1977, Section 22B(8)

<sup>108</sup> Anti-Discrimination Act 1977, Section 22B(10)

<sup>109</sup> Consolidation Act on Equal Treatment of Men and Women as regards Access to Employment etc 2006, S1(1)

<sup>110</sup> S1(4), *ibid*

<sup>111</sup> S2(4), *ibid*

in the traditional sense, it does place obligations on employers, stating that is the responsibility of 'employers, authorities or organisations within the public administration and in connection with business and general activities'<sup>112</sup> to ensure that men and women receive equal treatment. If a person's right to equal treatment is violated, that person may be awarded compensation, although it is not clear where this compensation will come from and an obligation for employers to protect against third party harassment is not explicitly mentioned. The issue with this all-encompassing Act is that very few cases actually make it to the law courts. Victims of harassment can take their case to the civil courts or file a complaint with the Ligebehandlingsnaevnet (Equality Complaints Board), however, very few sexual harassment cases are brought forward.

Members of the Danish parliament (the 'Folketing') appear to be protected against sexual harassment by both pieces of legislation. The Standing Orders of the Danish Parliament refer to their relationship with the Folketing as 'employment' in several instances which would indicate that MPs would be covered by the Consolidation Act on Equal Treatment of Men and Women as regards Access to Employment etc. (2006). Further to this, The Consolidation Act on Gender Equality (2002) would offer MPs (and other members of society) further protection.

Although MPs and other employees are legally protected, it should be noted that there is no legal requirement for employers to tackle and prevent sexual harassment through internal policies. The relevant legislation therefore provides a legal recourse for those experiencing harassment or discrimination to bring their cases to the civil courts or the complaints board (the 'Ligebehandlingsnaevnet'), but there is no statutory need to have a sexual harassment policy or to provide training for employees, and there is no requirement as to how complaints should be investigated. Within the Folketing, there is no internal code of conduct and no indication of a harassment, sexual harassment or discrimination policy in the parliament. The Folketing does focus on creating an environment void of pregnancy and childcare discrimination (for example it does not allow voting after 7.00pm on sitting days and permits a leave of up to 12 months when due to pregnancy, childbirth or adoption), but does not necessarily target sexual harassment in the same way.

## New Zealand

The main pieces of legislation protecting individuals from harassment within New Zealand are the New Zealand Bill of Rights Act 1990 (the Bill of Rights), the Human Rights Act 1993 (the HRA) and the Employment Relations Act 2000 (the ERA). The ERA only applies to employees, which it defines as any person of any age employed by an employer to do any work for hire or reward under a contract of service.<sup>113</sup> This definition does not apply to MPs and therefore fails to offer them protection. Protection from sexual harassment is not, however, dependent upon employment status under the Human Rights Act 1993 (the HRA). All can rely upon protection under the Human Rights Act 1993 (the HRA) including MPs.

The above anti-discrimination laws do offer good models for future UK legislation where protection could be given by a) explicitly referencing MPs within anti-discrimination legislation, b) offering protection to 'any person' who is sexually harassed within a workplace, rather than just employees or c) broadening out the definition of employment such that MPs are covered.

## Parliamentary/administrative staff

Administrative staff in Parliament are generally well protected by anti-discrimination legislation and were covered in each of the countries surveyed. In some places, these staff are considered civil servants, and are therefore protected under different provisions to normal employees. However, administrative and parliamentary staff are likely to have clearly identifiable employers, to be subject to formal contracts and therefore generally fall under 'employment' for the purposes of anti-discrimination legislation.

<sup>112</sup> The Consolidation Act on Gender Equality 2002, S2(1)

<sup>113</sup> Employment Relations Act 2000, Section 6 (1)(a)

## Staff of MPs

Staff of MPs are generally well covered by anti-discrimination legislation. As with administrative staff, staff of MPs and political parties tend to be formally employed under a contract and are therefore likely to fall within the protection of relevant legislation. However, similar to the UK, there may be difficulties in making claims given that claims made by employees would be against the MP themselves as the individual's employer. There are therefore significant barriers to bringing a claim even where it is legally possible to do so, particularly where the individual remains in the MP's employment.

## Volunteers

Volunteers, at both the parliamentary and constituency levels are particularly vulnerable, as is the case with UK. Given that they fall outside definitions of employees, volunteers are not generally protected against sexual harassment in the workplace in **Germany** (under the General Act on Equal Treatment) or **Sweden** (under the Discrimination Act).

Within **Australia**, protection offered against discrimination and harassment under the Sex discrimination Act 1984 is contingent upon employment status and volunteers are not therefore protected under federal anti-discrimination laws however, legislation in some of the states and territories do cover volunteers. Within the **Australian Capital Territory (ACT)**, for example, the relevant legislation prevents employers from discriminating against employees in the workplace, however the definition of employment within the Act specifically includes 'work as an unpaid worker.' In **South Australia (SA)** and **Queensland** employment is similarly defined as unpaid and voluntary work. Volunteers can therefore benefit from the same protection under the Acts as all standard employees.

The harmonised Work Health and Safety (WHS) laws in Australia offer additional workplace protections to those outlined in anti-discrimination legislation. WHS laws are a set of workplace health and safety laws which require that organisations that employ paid workers ensure, so far as is reasonably practicable, the physical and mental health and safety of its workers, including volunteers. Given that health is defined as including both physical and psychological health, an employer must ensure that its workers' health is not detrimentally impacted by workplace harassment or bullying. If an employer fails to comply with its obligations under the WHS laws and a worker suffers physical or psychological harm as a result, the maximum penalty is \$300'000 and/or five years' imprisonment in the case of an individual, or a fine of up to \$3'000'000 for a body corporate.

These laws have been implemented in ACT, NSW, NT, QLD, SA, TAS and the Commonwealth. The other states and territories (Vic, WA) have made minor amendments to the model laws to ensure that they are consistent with local drafting protocols and other laws and practices. Under the model WHS laws, the definition of 'worker' includes a volunteer<sup>114</sup> so long as they are working in a 'workplace,' that is, 'a place where work is carried out for a business or undertaking.'<sup>115</sup> A 'volunteer association' is exempted from being a 'business or undertaking' and therefore a volunteer volunteering for such an association would not be covered by the protection of the Act(s).<sup>116</sup> However, a political party would not fall within the definition of a 'volunteer association,' since it is almost inevitable that a political party will employ paid staff.<sup>117</sup> Political party volunteers would therefore be covered by the WHS Act(s).

As outlined above **Denmark and New Zealand's** broad framework of anti-harassment and discrimination law covers everyone in society, not just employees. As such, volunteers are protected. However, Denmark's employment law is heavily structured around collective agreements and the unions

114 Model Work Health and Safety Bill, Section 7(1)(h)

115 Section 8(1), *ibid*

116 Section 5(6), *ibid*

117 Section 5(7) defines a volunteer organisation as 'a group of volunteers working together for one or more community purposes where none of the volunteers whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.'

play a large part in safeguarding rights in the workplace. On that basis, those who do not belong to a union may struggle to have their claims brought to any court. This suggests that volunteers with political parties may be even more vulnerable to harassment and discrimination, in addition to non-unionised employees.

Similar to the case with MPs, protection against sexual harassment can therefore be given to volunteers. This could be done in the UK by a) explicitly referencing that volunteers are protected within anti-discrimination legislation, b) offering protection to 'any person' or 'workplace participant' who is sexually harassed either within a workplace or within society or c) broadening out the definition of employment such that unpaid workers are covered.

## Third party harassment

Similar to the UK, third party harassment is also a significant issue in the countries surveyed. Only Germany and New Zealand have specific provisions dealing with third party harassment.

Within the current German legislation, Section 12 of the General Act on Equal Treatment (2006) states that the employer has to take appropriate measures to protect his employee in the case that s/he is discriminated or (sexually) harassed by a third party, e. g. business partners or clients, in the course of her/his employment. Appropriate measures can include amongst others written warnings, exclusion from the property or termination of business relations.<sup>118</sup>

Within New Zealand, the Employment Relations Act 2000 (the ERA), provides for protection against third party harassment where someone other than the employer or his representative (such as another employee, a customer or client) subjects an employee to sexual or racial harassment.<sup>119</sup> Where an employer is informed of such third party harassment, it must inquire into the facts and, if satisfied that the relevant behaviour did occur, must take whatever steps are practicable so as to prevent any repetition of the conduct. If the employer fails to do this, under section 118(2) ERA, the employee will have a personal grievance against the employer, as if the employer had harassed the employee itself.

118 Buschmann in Däubler/Bertzbach, Allgemeines Gleichbehandlungsgesetz, § 12, Rn. 30.

119 The Employment Relations Act 2000, Section 117

# Appendices

## Denmark

### Relevant legislation

There is a complex and strong framework of Danish legislation designed to counteract harassment and discrimination.<sup>120</sup> Protection against sexual harassment in the workplace is provided through the **Consolidation Act on Equal Treatment of Men and Women as regards Access to Employment etc. (2006)**, which ensures the equal treatment of men and women and prohibits direct and indirect discrimination on ground of sex. Harassment and sexual harassment are deemed to be discrimination on the ground of sex and are consequently prohibited. If someone suffers harassment or discrimination based on gender, their employer is vicariously liable and has an obligation to pay them compensation.

Sexual Harassment is understood in Section 1(6) of the Act as:

‘taking place when any form of unwanted verbal, non-verbal or physical conduct with sexual undertones is exhibited in relation to one person’s sex for the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment’.

This legislation is somewhat restricted in that it only includes discrimination and harassment based on gender, not other characteristics. Furthermore, there is no legislation in Denmark which obliges an employer to implement measures to prevent sexual harassment in the workplace, for example a sexual harassment policy or training for employees. There is also no legal requirement as to how complaints should be investigated.<sup>121</sup>

Further to this, there is a framework of anti-harassment and discrimination law in Denmark designed to cover everyone at all levels of society, not just employees: **The Consolidation Act on Gender Equality (2002)**. The Consolidation Act on Gender Equality (the ‘Gender Equality Act’) is a broad act promoting gender equality and equal opportunities ‘in all functions in society on the basis of men and women’s equal status’. The act is designed ‘to counteract direct and indirect discrimination on the ground of gender and to counteract sexual harassment’. Although the Act is not limited to those in employment in the traditional sense, it does place obligations on employers, stating that is the responsibility of ‘employers, authorities or organisations within the public administration and in connection with business and general activities’<sup>122</sup> to ensure that men and women receive equal treatment. If a person’s right to equal treatment is violated, that person may claim compensation. The Gender Equality Act also places an obligation on public authorities to produce an annual report on gender equality. These authorities include ‘ministries, state institutions and state-owned undertakings’, as long as the institution employs more than 50 people.<sup>123</sup>

While broad in its scope, the Act is limited in that very few cases actually make it to the law court. Victims of harassment can take their case to the civil courts or file a complaint with the Ligebehandlingsnaevnet (Equality Complaints Board). However, often only the most severe cases of harassment reach the law courts and there are many settlements.<sup>124</sup>

### Members of Parliament

Members of the Danish parliament (the ‘Folketing’) are covered by both pieces of legislation. MPs receive a basic fee and cost allowance and The Standing Orders of the Danish Parliament refer to their

<sup>120</sup> <http://www.unwomen.org/en/get-involved/step-it-up/commitments/denmark>

<sup>121</sup> <https://www.lexology.com/library/detail.aspx?g=5ab39cb3-f3ac-4981-b444-1ddb1d1dd7d0>

<sup>122</sup> The Consolidation Act on Gender Equality (2002) S2(1),

<sup>123</sup> S5 Consolidation Act on Gender Equality (2002)

<sup>124</sup> <http://sciencenordic.com/sexual-harassment-about-masculine-power>



relationship with the Folketing as 'employment' in several instances. MPs are therefore protected. Given that the Gender Equality Act is designed to cover everyone in society, members are further covered by this.

This legislation is, however, somewhat limited in its application. Although MPs are legally protected, there is no code of conduct in the Folketing and no indication of a harassment, sexual harassment or discrimination policy in the parliament. The Folketing is focused on creating an environment void of pregnancy or childcare discrimination (for example it does not allow voting after 7.00pm on sitting days and permits a leave of up to 12 months when due to pregnancy, childbirth or adoption),<sup>125</sup> but does not necessarily target sexual harassment in the same way.

The presence of this legislation also does not mean that Danish MPs are safe from harassment, within or without the workplace. In 2014, the documentary 'Ti stille, kvinde' (Shut Up, Woman) looked into online sexual harassment and interviewed female politicians in Denmark about their experiences of online abuse. 59% of those politicians surveyed alongside the documentary reported that they had experienced harassment online.<sup>126</sup> This was further reported on by The Local in March 2018, which cited a study conducted by Kvinno and Amnesty International.<sup>127</sup> The study found that female members of the Folketing are regularly subjected to abuse and harassment including direct threats of rape and gendered slurs. A survey conducted by Berlingske research of Denmark's female council members found that one in ten had been harassed or insulted 'by their political colleagues'.<sup>128</sup>

### **Parliamentary/administrative staff**

Administrative staff in the Danish Folketing (parliament) are covered by the remit of the Equal Treatment Act and the Gender Equality Act. Administrative staff in the Folketing fall into the category of civil servants, whose employment terms are regulated by Circular 11/12/2000, and public staff, who form collective agreements with the Ministry of Finance as state employer.

### **Volunteers**

There is no legal framework surrounding volunteering and no legal definition of a volunteer within Denmark.<sup>129</sup> However, for the purposes of regulation, volunteers are considered as employees. This brings volunteers into the remit of the Equal Treatment Act and further to this, volunteers fall within the broader framework of the Gender Equality Act. However, Denmark's employment law is heavily structured around collective agreements and the unions play a large part in safeguarding rights in the workplace. On that basis, those who do not belong to a union may struggle to have their claims brought to any court. This suggests that volunteers with political parties may be even more vulnerable to harassment and discrimination, in addition to non-unionised employees.

### **Third party protection**

Third party protection is not granted under the Consolidation Act on Equal Treatment of Men and Women as regards Access to Employment etc. It is unclear whether people are protected against third party protection under the Consolidation Act on Gender Equality. Under section 2, it states that 'persons whose rights under clause 1 (gender equality, counteraction of sexual harassment) may be awarded compensation' and that 'persons who are exposed to sexual harassment may be awarded compensation' but it is not clear where this compensation is to come from.

125 Standing Order 41(d)

126 [http://www.kun.no/uploads/7/2/2/3/72237499/2017\\_onlineviolence\\_web.pdf](http://www.kun.no/uploads/7/2/2/3/72237499/2017_onlineviolence_web.pdf)

127 <https://www.thelocal.dk/20180308/denmarks-female-politicians-subjected-to-online-harassment>

128 <http://cphpost.dk/news/one-in-ten-women-council-members-sexually-harassed.html>

129 [http://ec.europa.eu/citizenship/pdf/national\\_report\\_dk\\_en.pdf](http://ec.europa.eu/citizenship/pdf/national_report_dk_en.pdf)

## Germany

### Relevant legislation

In Germany, protection against discrimination, including harassment and sexual harassment, in the workplace is regulated in Part 2 (Protection of Employees against Discrimination) and Part 5 (Special Regulations Applying to Public-Law Employment Relationships) **of the General Act on Equal Treatment**. The purpose of the General Act on Equal Treatment is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation (protected characteristics).

According to Section 3 of the General Act on Equal Treatment, discrimination shall be taken to occur:

- where one person is treated less favourably than another is, has been or would be treated in a comparable situation on any of the grounds of a protected characteristic. On the grounds of sex this includes the less favourable treatment of a woman on account of pregnancy or maternity.
- where an apparently neutral provision, criterion or practice would put persons at a particular disadvantage compared with other persons on any of the grounds of a protected characteristics, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Section 3 further clarifies that the term discrimination includes acts of harassment and sexual harassment. Sexual harassment is defined under the act as occurring when:

‘when an unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images, takes place with the purpose or effect of violating the dignity of the person concerned, in particular where it creates an intimidating, hostile, degrading, humiliating or offensive environment.’

Section 7 of the General Act on Equal Treatment prohibits discrimination of employees by employers on the grounds of a protected characteristic. Section 12 further describes the duties of the employer to protect employees against discrimination and (sexual) harassment including such acts committed by other employees. The employer has the duty to take preventative measures, such as training of employees in an appropriate manner for the purpose of preventing discrimination. Moreover, if an employee is discriminated or (sexually) harassed by another employee, the employer has to take reactive measures such as cautioning, relocating or dismissing the employee. This duty is not only limited to discrimination at the immediate workplace but includes discrimination in relation to the workplace such as conduct on business trips, training or company events.

To be protected against discrimination, including (sexual) harassment, in the workplace through the General Act on Equal Treatment an individual has to be an employee or fall within one of the groups protected by the act.

According to section 6 for the purpose of the act the term ‘employee’ refers to:

- persons in dependent employment (salaried employees, workers); or
- persons employed for the purposes of their vocational training; or
- persons of similar status on account of their dependent economic status, including those engaged in home work and those equal in law to home workers; or
- persons applying for an employment relationship and persons whose employment relationship has ended; or
- insofar as the conditions for access to gainful employment and promotion are affected: self-employed and members of an organ of an enterprise, in particular directors and board members.

According to German Labour Law a person in dependent employment (Arbeitnehmer) is defined as a person who has the obligation under a private-law contract to perform tasks in the service of and bound



by instructions of another person (the employer).<sup>130</sup> Section 24 extends the protection to individuals who are not considered 'employees' to the following groups:

- civil servants of the Federal Administration, the Länder, local authorities, local authority associations, as well as other public-law bodies, institutions and foundations under the jurisdiction of the Federal Administration or one of the Länder;
- judges of the Federal Administration and the Länder; and
- persons undertaking alternative military service (Zivildienstleistende) and recognised conscientious objectors, insofar as they are required to undertake alternative military service.

## Members of Parliament

Members of Parliament are not considered employees under section 6 of the General Act on Equal Treatment. They are elected into the German Bundestag as representatives of the people and not employed by the German Bundestag. They do not receive a salary but are instead entitled to remuneration adequate to ensure their independence. Members of Parliament are also not considered civil servants under section 24 of the General Act on Equal Treatment. In Germany, Members of Parliament are not protected against discrimination and (sexual) harassment in the workplace under the General Act on Equal Treatment, since they do not fall within any of the protected groups of individuals set out in section 6 and 24 of the act.<sup>131</sup>

## Parliamentary/administrative staff

Staff working within the Administration of the German Bundestag may either work as employees remunerated according to a collective labour agreement for public service (*Angestellte im öffentlichen Dienst*) or as civil servants (Beamte) remunerated according to their level in the official civil servants scale. Both are granted protection according to section 6 and section 24 of the General Act on Equal Treatment.<sup>132</sup>

## Volunteers

Voluntary and nonpaid work by party members does not constitute a form of dependent employment regulated by a work contract. Volunteers are therefore not considered employees according to section 6 of the General Act on Equal Treatment, nor do they fall within any other protected category.

## Staff of MPs

Personnel working directly for Members of Parliament of the German Bundestag under a contract of employment are equally protected by section 6 of the General Act on Equal Treatment. The German Bundestag has a Members' Staff Division within the Administration of the German Bundestag which deals with all issues of concern to the staff who is employed by the Members of Parliament. However, the official employer is the Member of Parliament. Parties who employ people for regular administrative work on the basis of a work contract also fall under the General Act on Equal Treatment.

## Third party protection

The current German legislation protects employees against third party harassment. Section 12 of the Act states that the employer has to take appropriate measures to protect his employee in the case that s/he is discriminated or (sexually) harassed by a third party, e. g. business partners or clients, in the course of her/his employment. Appropriate measures can include amongst others written warnings, exclusion from the property or termination of business relations.<sup>133</sup>

130 Schrader/Schubert in: Däubler/Bertzsch, Allgemeines Gleichbehandlungsgesetz, 2018, § 6 Rn. 7; Benecke in: BeckOKG, AGG, 2018, § 6 Rn. 7.

131 This note considers employment protection against discrimination and (sexual) harassment provided under the General Act on Equal Treatment (2006). It does not deal with the position under criminal law.

132 Mahlmann in: Däubler/Bertzsch, Allgemeines Gleichbehandlungsgesetz, 2018, § 24 Rn. 21.

133 Buschmann in Däubler/Bertzsch, Allgemeines Gleichbehandlungsgesetz, § 12, Rn. 30.

## New Zealand

### Relevant legislation

The main pieces of legislation protecting individuals from harassment are ***the New Zealand Bill of Rights Act 1990*** (the Bill of Rights), ***the Human Rights Act 1993*** (the HRA) and ***the Employment Relations Act 2000*** (*the ERA*).

Sexual harassment is defined narrowly in the ERA (section 108): where the employer or a representative of the employer either directly or indirectly:

- (a) requests sexual intercourse, sexual contact or some other form of sexual activity of the employee, coupled with an implied or overt
  - (i) promise of preferential treatment; or
  - (ii) threat of detrimental treatment; or
  - (iii) threat as to the employee's present or future employment status; or
- (b) subjects the employee to unwelcome or offensive behaviour which, through its repetition or by its nature, has a detrimental effect on that employee's employment, job performance, or job satisfaction, by
  - (iv) the use of language – written or spoken – of a sexual nature; or
  - (v) the use of visual material of a sexual nature; or
  - (vi) physical behaviour of a sexual nature.

The ERA applies between 'an employer and an employee employed by the employer' (section 4(2)(a)). An employee is defined in section 6(1)(a) of the same act as 'any person of any age employed by an employer to do any work for hire or reward under a contract of service.'

Sexual harassment in the HRA is defined as the making of 'a request of any other person for sexual intercourse, sexual contact, or other form of sexual activity which contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment'; or to subject an individual to unwelcome or offensive behaviour through the use of language (written or spoken), visual material or physical behaviour which is either so serious that one incident has a detrimental effect on the person, or which is repeated so as to cause such an effect.

The Bill of Rights establishes that 'everyone has the right to freedom from discrimination' on the grounds established in the HRA (which include sex, marital status, religious belief and disability, among others). This therefore considerably widens the scope of anti-discrimination legislation, by removing the requirement that the discrimination occurs in one of the relevant areas of life. However, the Bill of Rights only applies to acts done by the Government of New Zealand or by any person (legal or natural) in the performance of any public function, power, or duty (section 3). However, this protection may be particularly important to Members of Parliament who are unable to rely upon the ERA due to their lack of traditional employment status, coupled with their greater-than-average interaction with public bodies and individuals performing a public function.

### Members of Parliament

The ERA only applies to employees, which it defines as any person of any age employed by an employer to do any work for hire or reward under a contract of service. Those offices to which the Remuneration Authority Act 1977 applies (for example the General Manager of the Parliamentary Service, the Chief Parliamentary Counsel and Members of Parliament) are employed neither by the Remuneration Authority nor by the agencies within which they work. These people are therefore statutory officers appointed – but not employed – by the Crown. Following *O'Rourke v Secretary for Justice* [1996] 2 ERNZ 169 it is clear

that statutory officers cannot access employment-related rights such as personal grievance rights. They can, however, agree for the inclusion of some employment-related rights in their terms of appointment. MPs are not therefore protected in this instance. Similarly, internal policies do not typically apply to statutory officers, but instead only to employees; in order for statutory officers to be covered by these policies, they must be specifically applied to them in their terms of appointment. MPs would not therefore be able to bring such claims; they may, moreover, also be more immune to commit such harassment due to not being bound by workplace policies.

Protection from sexual harassment is not dependent upon employment status under the Human Rights Act 1993 (the HRA). All can rely upon protection under the Human Rights Act 1993 (the HRA) including MPs.

### **Parliamentary/administrative staff**

The ERA applies to employees working for various political entities, for example members of staff of the Office of the Clerk of the House of Representatives (section 25, Clerk of the House of Representatives Act 1988), but not to the Clerk or the Deputy Clerk. The ERA also applies to the public service, save where explicitly excluded (section 67 State Sector Act 1988). Consequently, the vast majority of employees working in the political sphere are able to bring claims for harassment or discrimination under the ERA.

### **Volunteers**

Volunteers are not covered under the ERA. The definition of an employee specifically excludes volunteers who do 'not expect to be rewarded for work to be performed as a volunteer; and receives no reward for work performed as a volunteer.'<sup>134</sup> Volunteers can however rely upon protection under the Human Rights Act 1993 (the HRA) which offers protection from sexual harassment to all.

### **Third party protection**

The ERA also provides for protection against third party harassment (section 117) where someone other than the employer or his representative (such as another employee, a customer or client) subjects an employee to sexual or racial harassment, as described above. Where an employer is informed of such third party harassment, it must inquire into the facts and, if satisfied that the relevant behaviour did occur, must take whatever steps are practicable so as to prevent any repetition of the conduct. If the employer fails to do this, under section 118(2) ERA, the employee will have a personal grievance against the employer, as if the employer had harassed the employee itself.

The remedies for such a grievance are described in section 123 ERA and include reinstatement; reimbursement of any sum lost as a consequence of the behaviour which resulted in the grievance; compensation for humiliation, loss of dignity or any benefit, or injury to feelings; and court recommendations to the employer to prevent any such conduct from re-occurring, including a recommendation that the harasser be transferred or be subject to rehabilitative action

134 Employment Relations Act 2000, Section 6(1)

## Sweden

### Relevant legislation

The main piece of legislation is **the Discrimination Act** (2008:567), which has the aim of promoting equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. Additionally, **the Work Environment Act** (1977:1160) establishes an employer's obligations in relation to the working environment. This includes a responsibility to prevent all kinds of harassment. The former as it is more wide-ranging and so will be elaborated upon here.

The Discrimination Act defines harassment and sexual harassment as forms of discrimination and prohibits an employer from discriminating, directly or indirectly, against:

- Employees;
- Job applicants;
- Trainees; and
- Persons who are on standby to carry out or who carry out work as hired or borrowed manpower.<sup>135</sup>

Harassment is defined as: 'conduct of a sexual nature that violates someone's dignity.' Sexual harassment is also explicitly defined in the legislation as: 'conduct of a sexual nature that violates someone's dignity.'<sup>136</sup>

A person who has the right to make decisions on the employer's behalf in matters concerning someone in any of the positions above, i.e. a manager, is equated with the employer. As the legislation is directed at employers, usually the person who actually acted in a discriminatory way cannot be held personally liable. In Sweden, a discriminator who is not the employer can only be held liable if he/she has the authority to represent the employer to the (other) employees.

Section 3 of Chapter 2 obliges an employer to investigate and take reasonable measures against harassment related to all grounds for discrimination (sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation and age) if it becomes aware that an employee considers themselves subjected in connection with work to harassment or sexual harassment by someone performing work at the employer's establishment. Harassment and sexual harassment by colleagues or third parties is not prohibited as such, although the employer can be held liable for damage caused by its failure to investigate and implement measures to prevent harassment between employees.

Chapter 3 of the Act mandates employers and employees to work together to bring about equal rights, and to endeavour to equalise pay between men and women. Employers are also required to take measures to prevent any employee being subject to harassment or sexual harassment.

### Members of Parliament

The members of the Riksdag receive a basic, monthly pay of SEK 65,400, a sum which is subject to income tax. MPs are not employed by the Riksdag (the Swedish Parliament). Instead, they have an assignment from the voters to represent them in the Riksdag for a specific period of time. They therefore receive a pay rather than a salary. MPs therefore technically have no employer, and so they do not benefit from the protections under the Discrimination Act.

### Parliamentary/administrative staff

Administrative staff who support MPs are classified as central government employees, and so public sector employees. The same employment status applies to public sector employees as private sector employees. Therefore, the Discrimination Act applies to administrative staff and they benefit from the protections described above.

<sup>135</sup> The Discrimination Act, 2008, Chapter 1

<sup>136</sup> The Discrimination Act, 2008, Chapter 2, Section 1

## Volunteers

There is no law to establish the legal status of volunteers.<sup>137</sup> The legislation does prohibit discrimination including harassment and sexual harassment against 'persons who are on standby to carry out or who carry out work as hired or borrowed manpower.' Even this however, does not appear to cover volunteers.

## Third party protection

The current legislation does not hold employers liable for third party harassment, nor does it hold employers liable for a failure to implement measures to prevent harassment by third parties.

## Australia

### Relevant legislation

Australia is a federated constitutional monarchy with power divided between the federal government (also referred to as the Australian or Commonwealth government) and the states and territories. The federal Parliament has passed a number of laws which aim to protect people from certain kinds of discrimination in public life and from breaches of their human rights by Commonwealth departments and agencies. Australia's federal anti-discrimination law are contained in **the Sex Discrimination Act 1984**. Under this legislation, it is unlawful to discriminate on the basis of a number of protected attributes including age, disability, race, sex, intersex status, gender identity and sexual orientation in certain areas of public life, including education and employment.

The Sex Discrimination Act 1984 defines 'employment' as:

- part time and temporary employment; and
- work under a contract for services; and
- work as a Commonwealth employee; and
- work as an employee of a State or an instrumentality of a State.

The federal Sex Discrimination Act 1984 includes protection against sexual harassment – Divisions 3 (sections 28A to 28L) and 4 (sections 30 to 47). In summary, a person sexually harasses another person if:

the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or

engages in other unwelcome conduct of a sexual nature (including statements of a sexual nature made to, or in the presence of, a person, whether orally or in writing) in relation to the person harassed;

Under section 9, this Act applies throughout Australia. Section 9 also identifies how the Act applies to Commonwealth employees, the definition of which extends to persons holding an administrative office (although not to the legislative branches of the ACT or NT).

It also states that employers must take all reasonable steps to minimise the risk of discrimination and harassment occurring. 'All reasonable steps' are not defined in the Act, but is instead determined on a case-by-case basis depending on the organisation's size and resources.<sup>138</sup> The Australian Human Rights Commission describes the implementation, monitoring and communication of an appropriate sexual harassment policy as the minimum which employers would be expected to implement.<sup>139</sup> Thus, whilst there is no legislative specification that employers must adopt a harassment policy, there is a tacit understanding that employers will adopt one in order to comply with their statutory duties.

137 [http://ec.europa.eu/citizenship/pdf/national\\_report\\_se\\_en.pdf](http://ec.europa.eu/citizenship/pdf/national_report_se_en.pdf)

138 <https://www.humanrights.gov.au/sexual-harassment-information-employers>.

139 <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/effectively-preventing-and-responding-sexual-harassment>

Each state and territory has enacted anti-discrimination legislation, which offers further protection (listed in full below). The Australian states (the “States”) also have their own constitutions: New South Wales, including Norfolk Island (“NSW”); Victoria; Tasmania; South Australia (“SA”); Western Australia (“WA”); and Queensland. In addition to the States there are ten Australian territories. The Commonwealth governs the majority of these territories; however, two territories (the “Territories”) are self-governing: The Australian Capital Territory (“ACT”) and The Northern Territory (“NT”). Individuals can lodge complaints about discrimination, harassment and bullying at the state and territory level depending upon the circumstances of the complaint with the relevant agency in that state or territory.

- **ACT** - The Discrimination Act 1991
- **NT** - Anti-Discrimination Act 199
- **NSW** - Anti-Discrimination Act 1977
- **Victoria** - Equal Opportunity Act 2010
- **Tasmania** - Anti-Discrimination Act 1998
- **SA** - Equal Opportunity Act 1984
- **WA** - Equal Opportunity Act 1984
- **Queensland** - Anti-Discrimination Act 1991

The harmonised Work Health and Safety (WHS) laws offer additional workplace protections, separate to those granted under the above anti-discrimination laws. Safe Work Australia, an Australian statutory body established to develop national policy relating to workplace health and safety and workers’ compensation, originally developed a single set of model WHS laws in 2011. These laws have now been adopted and implemented in ACT, NSW, NT, QLD, SA, TAS and the Commonwealth. The other states and territories (Vic, WA) have made minor amendments to the model laws to ensure that they are consistent with local drafting protocols and other laws and practices.

The Acts provide that ‘a person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of – workers engaged, or caused to be engaged, by the person; and workers whose activities in carrying our work are influenced or directed by the person.’<sup>140</sup> Health is defined as including both physical and psychological health and therefore to comply with their WHS law duties, an employer must ensure that its workers’ health is not detrimentally impacted by workplace harassment or bullying. What an employer must do to comply with this duty is not stated in the laws; they must do all that is ‘reasonably practicable.’<sup>141</sup> The Australian Human Rights Commission has suggested minimum steps which an employer should take to comply with these duties:

- Have an appropriate sexual harassment policy;
- Train employees on how to identify and deal with sexual harassment;
- Put in place an internal procedure for dealing with complaints; and
- Take appropriate remedial action if and when sexual harassment occurs.

If an employer fails to comply with its obligations under the WHS laws and a worker suffers physical or psychological harm as a result, the maximum penalty is \$300’000 and/or five years’ imprisonment in the case of an individual, or a fine of up to \$3’000’000 for a body corporate. Whilst awards for sexual harassment have traditionally been low, following improvements in understanding of the psychological impact of such treatment, awards have correspondingly increased. In *Richardson v Oracle Corporation*

<sup>140</sup> The Work Health and Safety Act, 2011

<sup>141</sup> Section 18 of the WHS Act sets out what is reasonably practicable as that which “at a particular time [it is] reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including – the likelihood of the hazard or the risk concerned occurring; and the degree of harm that might result from the hazard or the risk; and what the person concerned knows, or ought reasonably to know about – the hazard or the risk; and ways of eliminating or minimising the risk; and the availability and suitability of ways to eliminate or minimise the risk; and after assessing the extent of the risk and the available ways of eliminating or minimising the risk – the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.”



Australia Pty Limited [2014] FCAFC 82, the plaintiff was awarded £130'000 for general damages and economic loss as a consequence of leaving her job following consistent inappropriate sexual comments and sexual advances from her co-worker.

## Members of Parliament

The law is unclear as to whether Members of Parliament are employees, and if they are, who their employer is. However, it appears that members of Parliament are protected by these laws at a federal level given that all commonwealth employees are protected under the federal discrimination laws, and all Commonwealth employee includes persons who hold an administrative office. An administrative office includes an office established by, or an appointment made under, a law of the Commonwealth (which, as it is understood, would include the Australian Constitution, under which positions in Australian Parliament are established). Furthermore, the definition of administrative office explicitly excludes members of the legislative branches in ACT and NT, which suggests that members of other legislative branches are protected.

As already mentioned, Australian territories and states have also enacted anti-discrimination legislation, some of which do offer further protection. Within the **Northern Territory (NT)**, discrimination in the work area by a 'person' is prohibited, so there so no issue of whether the perpetrator is the person's employer is this instance.<sup>142</sup>

In **New South Wales (NSW)**, MPs do not come under the standard definition of an employee within the Anti-Discrimination Act 1977, however, the Act explicitly makes reference to MPs to offer protection to and from MPs. It states that it is unlawful for an MP to sexually harass a workplace participant or another Member of Parliament at a mutual workplace.<sup>143</sup> A 'workplace' of an MP is broadly defined as the whole of Parliament House, any ministerial office or electoral office of the member or any other place that the member attends in connection with their Ministerial, parliamentary or electoral duties.<sup>144</sup>

Within **Tasmania**, the definition of employment is extremely broad to include 'employment or occupation in any capacity, with or without remuneration' and both political belief or affiliation, and political activity are included as prohibited grounds of discrimination.

In **Queensland**, MPs are likely to fall within the scope of 'work' as defined in the Anti-Discrimination Act 1991. Political belief or activity constitutes one of the prohibited grounds of discrimination, so MPs should enjoy a good level of protection in Queensland.

## Parliamentary/administrative staff

Parliamentary and administrative staff are covered by the federal protections listed above for Commonwealth employees. Legislation within each of the individual territories also offers additional protection.

## Volunteers

Protection offered against discrimination and harassment under the Sex discrimination Act 1984 is contingent upon employment status. As a consequence, volunteers face a mixed picture, due to not falling within the standard definition of an employee. For those who are genuine volunteers, legislative protection will generally not apply, since such legislation typically only applies in specified areas of life, including employment, which mostly does not include volunteers. However, where a volunteer assists an organisation covered by the model WHS laws, they are afforded the same protection as other workers, including discrimination and harassment protection. Political volunteers in Australia would have to see if their organisation is covered by these laws on a case-by-case basis in order to understand fully what protections they can rely upon.

<sup>142</sup> NT's Anti-Discrimination Act 1992, Section 31

<sup>143</sup> Anti-Discrimination Act 1977, Section 22(7)

<sup>144</sup> Anti-Discrimination Act 1977, Section 22B(10)

However, each of the ten Australian territories has its own legislation, some of which offers additional protection to volunteers. In ACT, The Discrimination Act 1991 prevents employers from discriminating against employees in the workplace, however the definition of employment within the Act specifically includes “work as an unpaid worker.” In South Australia (SA) and Queensland employment is similarly defined as including unpaid and voluntary work. Volunteers can therefore benefit from the same protection under the Act as all standard employees.

Within New South Wales, the anti-discrimination legislation protects a broad range of actors from sexual harassment, including ‘workplace participants’, defined as an employer or employee, a commission agent or contract worker, a partner in a partnership, a person who is self-employed, or a volunteer or unpaid trainee.<sup>145</sup>

Under the model WHS laws, the definition of ‘worker’ includes a volunteer (section 7(1)(h)) so long as they are working in a ‘workplace’, ie ‘a place where work is carried out for a business or undertaking (section 8(1)). A ‘volunteer association’ is exempted from being a ‘business or undertaking’ and therefore a volunteer volunteering for such an association would not be covered by the protection of the Act(s). However, a political party would not fall within the definition of a ‘volunteer association’ in section 5(7): ‘a group of volunteers working together for one or more community purposes where none of the volunteers whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association’ since it is almost inevitable that a political party will employ paid staff. Political party volunteers would therefore be covered by the WHS Acts. Where a volunteer assists an organisation covered by the model WHS laws, they are afforded the same protection as other workers, including discrimination and harassment protection. Political volunteers in Australia would have to see if their organisation is covered by these laws on a case-by-case basis in order to understand fully what protections they can rely upon.

Similar to the case with MPs, protection against sexual harassment can be given to volunteers. This could be done in the UK by a) explicitly referencing volunteers within anti-discrimination legislation, b) offering protection to ‘any person’ or ‘workplace participant’ who is sexually harassed either within a workplace or within society or c) broadening out the definition of employment such that unpaid workers are covered.

### **Third party protection**

The Sex Discrimination Act 1984 does not protect against third-party sexual harassment in the workplace. However, this may be covered under the Workplace Health and Safety Laws, since employers are liable for any damage to the health and safety of employees and volunteers which they could, so far as is reasonably practicable, have avoided. If it is reasonable for an employer to foresee that an employee’s psychological health may be negatively impacted as a consequence of third-party sexual harassment and the employer could implement cost-effective means of reducing this risk (for example having a policy of refusing to serve or ‘banning’ customers who are sexually inappropriate to employees (so long as this policy is not in and of itself discriminatory –although it should not be so long as it is applied to everyone equally or where an individual or group has a history of disruptive behaviour) then they may be found to be liable under the WHS laws if they fail to implement such policies.

<sup>145</sup> Anti-Discrimination Act 1977, Section 22B(9)





The Fawcett Society is the UK's leading membership charity campaigning for gender equality and women's rights at work, at home and in public life. Our vision is a society in which women and girls in all their diversity are equal and truly free to fulfil their potential creating a stronger, happier, better future for us all.

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