



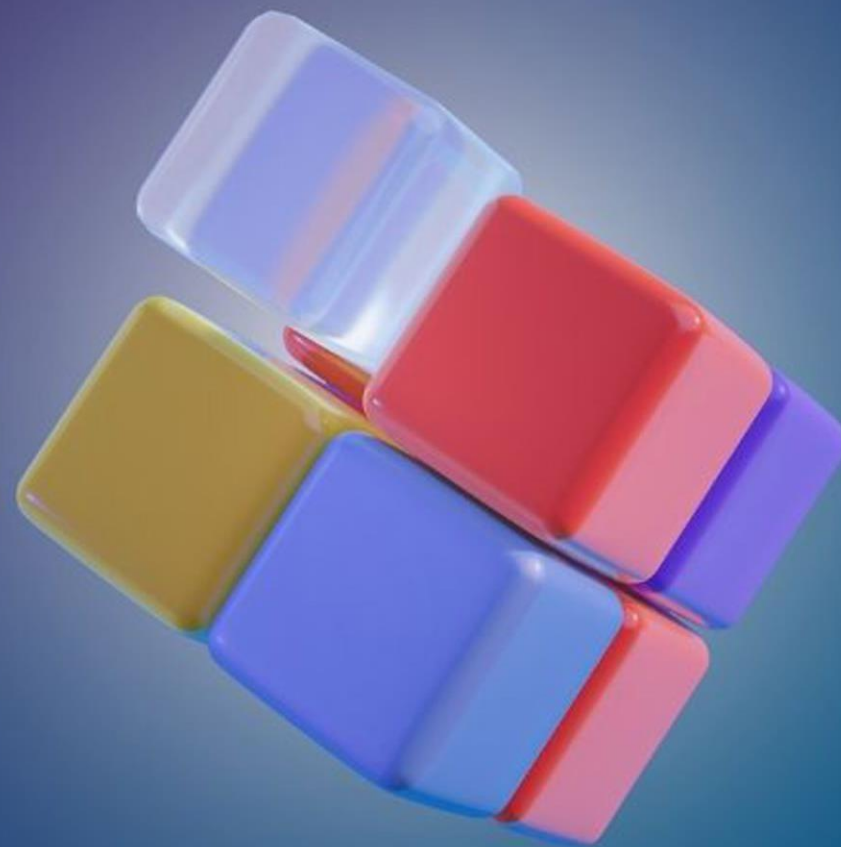
UHR Conference 2025

Online 13 - 15 May

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Sexual harassment:

How to meet your legal obligations and create a positive working environment

Judy Roy and Pili Fernandez-Mahoney

15 May 2025



Today's speakers



Pili Fernandez-Mahoney

Principal Associate



Judy Roy

Principal Associate

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Agenda

Legal and wider context

Office for Students Condition E6

New preventative duty from 2024

What does “reasonable steps” require?

Preventing harassment by third parties

Future reform

Q & A

Statistics: Fawcett Society

40% of women experience sexual harassment during their career

45% of women experienced harassment online

68% of disabled women reported being sexually harassed at work

Ethnic minority workers (women and men) report higher rates than white workers (**32%** compared to 28%)

4 in 5 workers do not report unwanted sexual behaviour to their employer

Heightened awareness



Government and OfS attention

Universities pledge on NDAs

Higher Education (Freedom of Speech) Act 2023

True or false?



True or false?

- Unwanted conduct needs to be repeated to constitute sexual harassment

True or false?

- Sexual harassment does not have to be motivated by sexual interest

True or false?

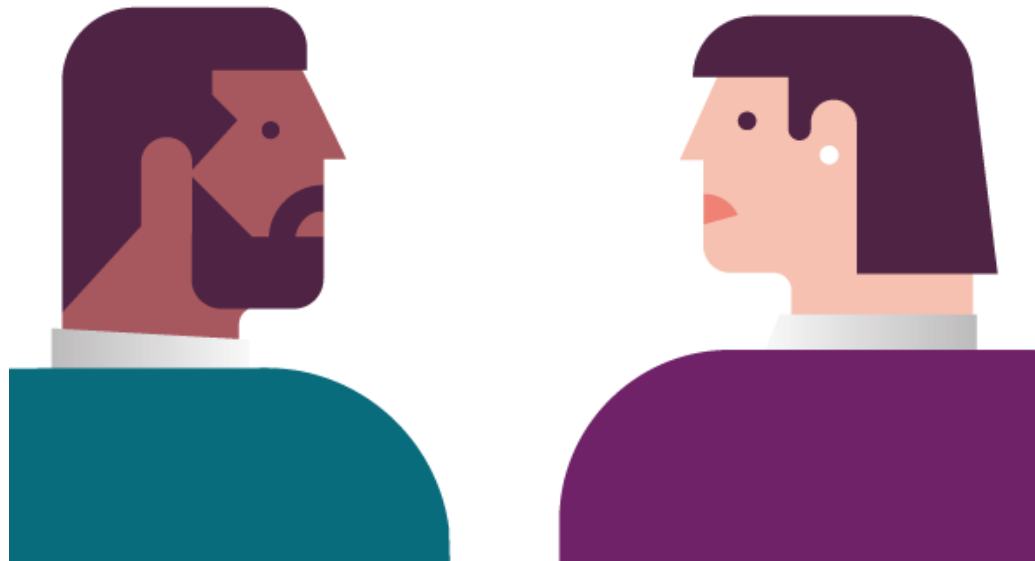
- An employee who has put up with conduct for years cannot complain that it is unwanted

Legal context



What is harassment?

- Equality Act 2010 prohibits three types:
 - Harassment related to a protected characteristic
 - **Sexual harassment**
 - Less favourable treatment because employee rejects or submits to conduct of sexual nature



What is sexual harassment?

- Unwanted conduct of a **sexual nature**
- Which has the purpose **or** effect of:
 - violating the employee's dignity, or
 - creating an “**intimidating, hostile, degrading, humiliating or offensive environment**”



Examples of sexual harassment

Verbal

Language of a suggestive or explicit nature

Intrusive questions

Sexual comments or jokes

Use of affectionate names

Spreading sexual rumours about a person

Non-verbal

Sexual posts or contact on social media

Sexual gestures

Suggestive looks, staring or leering

Propositions and sexual advances

Sexually explicit emails or texts

Unwelcome touching, hugging, massaging or kissing

Is it harassment?

- Harasser doesn't need to harass intentionally
- If *effect* relied upon, take into account:
 - The perception of the victim
 - The other circumstances
 - Whether it is reasonable for the conduct to have that effect on the victim



Main legal risks

- **Equality Act** claims for harassment against:
 - Employer (liable for acts of employees)
 - Employee (personal liability)
- **Protection from Harassment Act 1997** claims against:
 - Employer (liable for harassment by employees)
 - Harassing individual (personal liability)
- Criminal proceedings



E6 Sexual misconduct & harassment

In force from 1 August 2025 (NDA ban already in force)

Single comprehensive source of information

Necessary capacity and resources

Compliance consistent with freedom of speech

Ban relevant NDAs

Take steps to protect students from any actual or potential conflict of interest and/or abuse of power (re. intimate personal relationships)



Definition of
Staff

Intimate
personal
relationships
between staff
and students

Training

Question:

- What approach is your University taking to interpersonal relationships between relevant staff members and students?

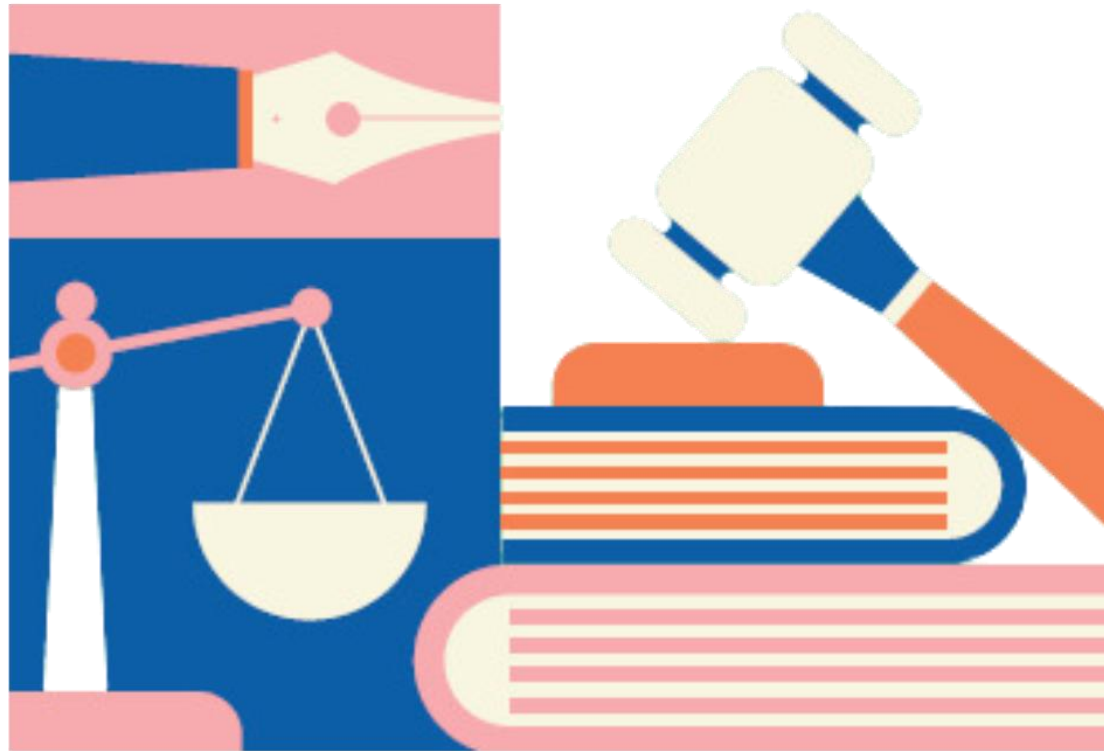
A : Complete ban?

B : Ban with specified exemptions?

C : No ban but taking other steps?



New preventative duty from 2024



What is the preventative duty?

- Employers must “**take reasonable steps to prevent sexual harassment**” of employees
- Law does not list specific steps an employer must take
- Only applies to sexual harassment



Positive legal duty

Anticipatory and proactive

Must not wait
until a
complaint's
raised

Anticipate
possible
scenarios

If harassment
has taken
place, take
action to stop
it from
happening
again

Ongoing



Legal consequences if duty breached

EHRC enforcement

- Investigation
- Unlawful act notice
- Formal agreement
- Court injunction

ET claim for sexual harassment

- Compensation for successful claim uncapped
- May be increased by up to 25% if preventative duty breached
- If employer loses, likely to cost them more
- Cannot claim for breach of preventative duty alone

EHRC Technical Guidance

Guidance

Sexual harassment and harassment at work: technical guidance

Published: 30 January 2020




Last updated: 26 September 2024

68



Equality and
Human Rights
Commission

What countries does this apply to?

 England  Scotland  Wales

MILLS & REEVE

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Employer 8-Step guide

1. Develop an effective anti-harassment policy
2. Engage your staff
3. Assess and take steps to reduce risk in your workplace
4. Reporting
5. Training
6. What to do when a harassment complaint is made
7. Dealing with harassment by third parties
8. Monitor and evaluate your actions

What does 'reasonable steps' require?



What does 'reasonable steps' mean?



Varies from employer to employer

Factors: size, sector, working environment, resources, risks, effect of step, time, cost...

Different methods may be adopted

Consider likely effect and whether alternative could be more effective

Objective test which depends on circumstances

What might 'reasonable steps' require?

Recognise
extent of
problem

Risk
assessments

Policies and
procedures

Staff training

Regular
monitoring and
review

Periodic training

Proactively look
for warning
signs

Regular
opportunities to
raise issues with
managers

Anonymous
reporting
system

Take reports
seriously and
act upon them

Proper
investigation of
complaints

Fostering an
inclusive culture

A University has committed to eradicate sexual harassment in the workplace. It considers it has taken reasonable steps to meet the preventative duty.

A junior lecturer mentions to her manager that a Professor keeps asking her out and frequently makes sexually suggestive jokes to her. The Professor is respected worldwide. The lecturer says she tries not to engage and does not want to make a complaint. The manager does not take any action.

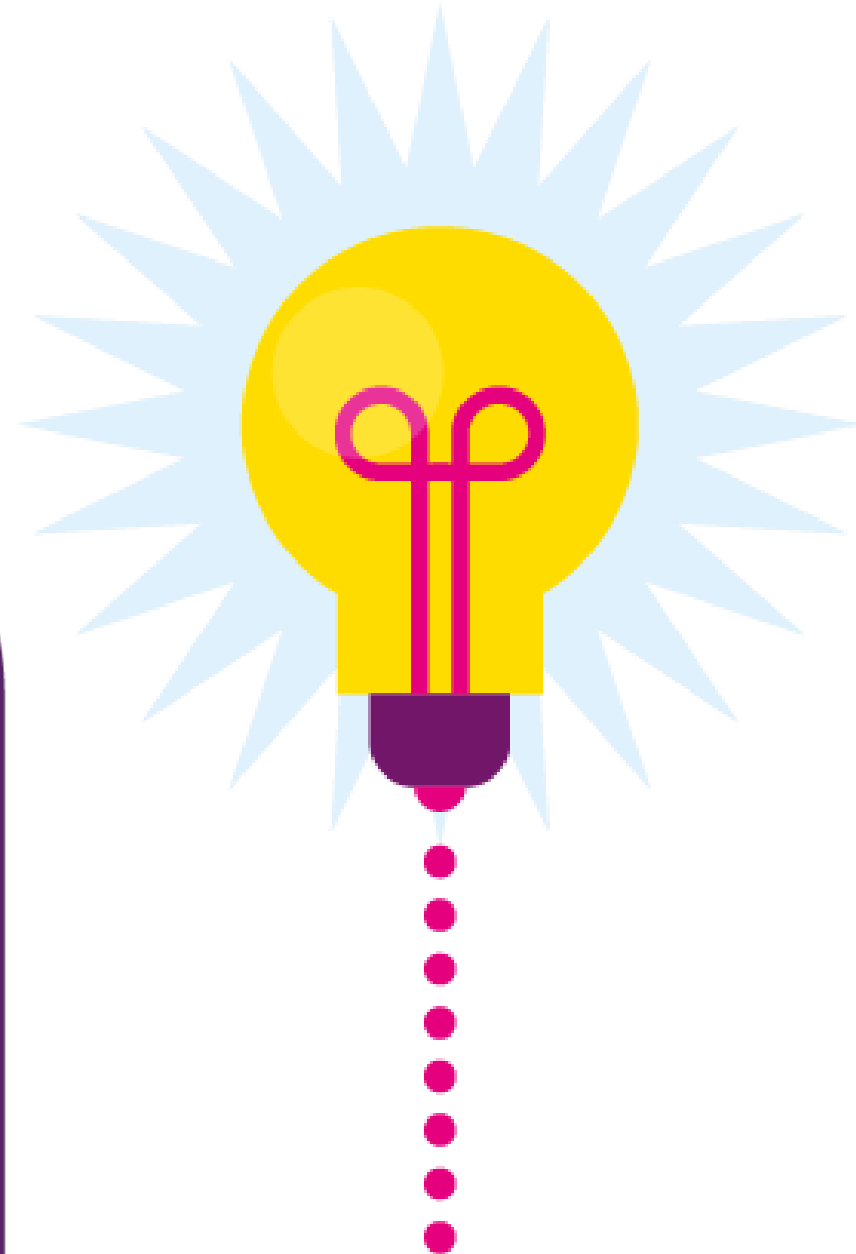
A few months later, a female research assistant tells the same manager she wants to make a complaint about the Professor. She says the Professor touched her inappropriately. The manager advises the research assistant to try and not be on her own with the Professor.

The research assistant decides to raise her concerns with an HR manager. They are very concerned. Management agrees to take action.

1. Suspend the Professor (subject to policies)
2. Investigate the allegations and take appropriate action
3. Reflect with manager on their failure to act, and organise refresher training
4. Consider and implement appropriate support for all staff involved
5. Review effectiveness of policies, procedures and training, and implement changes
6. Make a commitment to deliver further training for senior staff on culture
7. Establish regular staff 'climate' survey
8. Create a log to record all reported incidents

Reasonable steps that should be taken

Risk assessments



EHRC: 4 steps

1

Consider the risks of sexual harassment occurring in the course of employment

2

Consider what steps it could take to reduce those risks and prevent sexual harassment of their workers

3

Consider which of those steps it would be reasonable for it to take

4

Implement those reasonable steps

Assessing risks

Use of risk management framework

Assess risks and control measures

Consider working practices, working environment, policies and procedures

Consider factors in workplace that may increase risk

Take mitigating action for new or additional risks

Produce action plan setting out:

- What preventative steps will be taken
- How that will be monitored

Consult unions and workplace reps

Review regularly

Designated lead

Format of the risk assessment

- No prescribed format
- Overlap with Health & Safety risk assessments
- Consider separate assessments depending upon risk factors:
 - Per department?
 - By role/ duties?
 - Overlap with University policies and wider risk assessments



Example: Health & Safety Executive



Health and Safety
Executive

Risk assessment template

Company name:

Assessment carried out by:

Date of next review:

Date assessment was carried out:

What are the hazards?	Who might be harmed and how?	What are you already doing to control the risks?	What further action do you need to take to control the risks?	Who needs to carry out the action?	When is the action needed by?	Done

More information on managing risk: www.hse.gov.uk/simple-health-safety/risk/

Published by the Health and Safety Executive 10/19

Areas of particular risk

Power imbalances

Male dominated
teams/
departments

Job insecurity

Lone working and
night working

Significant
interaction with
third parties,
particularly if alone

Presence of
alcohol

Social media
interactions

Lack of diversity

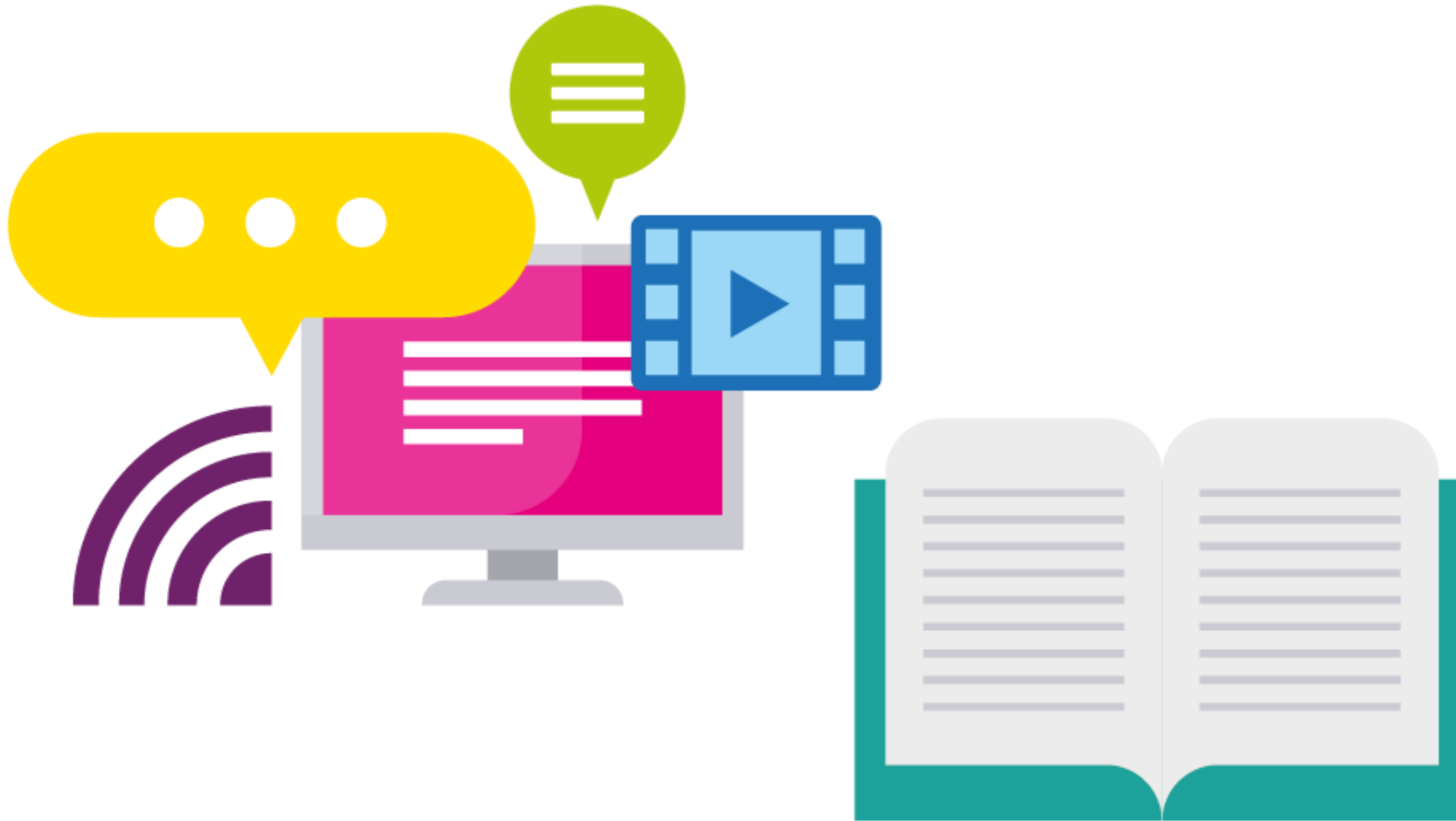
Particular events
that raise tensions
nationally or locally

Work related
events

Workplace culture
which permits
“banter”

Workers with more
than one protected
characteristic

Policies and training



Awareness of policies

External website

Intranet

Hard copies (in appropriate places)

References in contracts and terms and conditions

Verbally communicated during inductions

Internal newsletters

Physical or digital noticeboards

Staff meetings

Reminders ahead of events, e.g. office party

Annual reminder to staff

Translated, accessible format

Shared with agencies and subcontractors

MILLS & REEVE

Achieve more. Together.

Training



Tailored towards employer, audience and policy

Consider seniority and job roles

Consider best method to deliver training

Records of who has received training

Refreshed at regular intervals

Preventing harassment by third parties



Legal position – third party harassment

From 26 October 2024

- No freestanding claim
- EHRC considers that employers' duty includes duty to prevent sexual harassment by third parties
- Currently, two potential consequences of breach:
 - EHRC enforcement
 - Uplift of compensation in relation to general harassment claim?

Employment Rights Bill (2026?)

- Standalone claim for third party harassment
- Will apply to all types of harassment

Preventing third party harassment



Public notices

Code words, panic buttons, alarms

Warnings about unacceptable behaviour

Banning customers

Reporting criminal acts

Changing environment

Reporting mechanisms and appropriate action

Adding express terms to contracts with third parties

Future reform









Extensions in Employment Rights Bill

- Expected in 2026
- Strengthened to “**all** reasonable steps”
 - Very high threshold
 - No further steps that they could have reasonably taken?
 - Every reasonable step, rather than just some steps?
- Prevent all types of harassment by third parties
- Regulations may specify steps that are “reasonable”
- Reports of sexual harassment = protected disclosures



Action points

-  Be familiar with EHRC Technical Guidance and Employer 8-step guide
-  Update harassment and grievance policies
-  Review what reasonable steps your organisation needs to take to comply
-  Collect evidence of risk assessments and action taken, regularly
-  Ensure robust system in place to deal with complaints thoroughly
-  Consider working to higher standard of “all” reasonable steps

Any questions?



Thank you

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