RIGHTS of WOMEN

helping women through the law

The Sexual Harassment at Work Handbook

REPORTING, GRIEVANCES, INVESTIGATIONS AND SETTLEMENT AGREEMENTS

A handbook for survivors of sexual harassment

Rights of Women's vision is to achieve equality, justice, and safety in the law for all women

Rights of Women's mission is to advise, educate and empower women by:

- Providing women with free, confidential legal advice by specialist women solicitors and barristers.
- Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
- Campaigning to ensure that women's voices are heard, and law and policy meets all women's needs.

Rights of Women's areas of expertise include all forms of violence against women, family, employment, criminal, immigration and asylum law and we run regular training courses on these issues.

For free confidential legal advice on Sexual Harassment law including identifying sexual harassment, how to bring complaints against your employer, advice about grievances and investigations, the Employment Tribunal procedure and Settlement Agreements and Non-Disclosure Agreements contact our **Sexual Harassment at Work advice line on 020 7490 0152**, see our opening hours at **Rights of Women: Get Advice**.

The information in this handbook is correct to August 2022. The law is complex and may have changed since this handbook was produced. This handbook is designed to provide general information only for the law in England and Wales and is not legal advice. If you are affected by any of the issues in this handbook you should seek up – to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

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1. Introduction

1.1 About Sexual Harassment at Work

The Rights of Women (ROW) Sexual Harassment at Work Handbook has been written in three parts to provide information and support to women survivors of sexual harassment in the workplace, as well as your families, friends, trade unions and other organisations that support you.

It has been designed to help you understand your legal rights so you can recognise sexual harassment in the workplace and make informed choices about reporting and challenging it alongside understanding what support is available. We know how difficult and distressing this process can be and the aim of this handbook is to help you through it. This handbook sets out the relevant law and explains the different stages of the legal process from grievances, investigations, settlement agreements and beginning an Employment Tribunal claim, as well as related employment rights if you are losing your job or thinking about resigning from your job because of sexual harassment in the workplace.

The handbook applies to nearly all jobs, industries, and professional sectors, as well nearly all the different types of workers. In it we recognise the various types of harassment, abuse and oppression working women face in England and Wales and how these intersect with multiple types of harassment and discrimination.

Rights of Women's work on sexual harassment in the workplace started to take shape in early 2018 after the growth of the MeToo movement and the formation of TimesUP in the US. There was a determination globally to ensure that the growing movement was turned into long term action to tackle sexual harassment and this handbook is part of that long term work.

Rights of Women has been campaigning for greater legal rights for women since 1975. Alongside others in the women's movement, we have recognised for a long time that the disproportionate gender-based abuse and violence that women experience in the workplace has been treated as a norm in society rather than as a serious form of Violence Against Women and Girls which requires urgent address and a strong legal framework to prevent and provide redress for this behaviour.

Although very little data has been collected about the prevalence of sexual harassment in the workplace against women in the UK, the data available

in 2018 showed that as many as 1 in 2 of women have experienced sexual harassment at work [1]. Our vision as MeToo unfolded was to work with others to tackle the lack of legal redress, provision and visibility around the sexual harassment of women in the workplace in the UK and as a result we launched a dedicated legal advice service for women in 2019. All advice is provided by our team of fully qualified women lawyers who are comprised of staff and volunteers. We have supported over a thousand women since then and have utilised our learning from delivering this service including working with women survivors with lived experience to create this handbook.

1.2 Support

Sexual harassment in the workplace is extremely difficult to deal with, both in terms of the legal processes and the emotional impact.

If you require emotional support, see Rights of Women – Further Help.

Resources for Legal Advice

There are some ways of getting free legal advice if you cannot afford a lawyer. Below are some additional resources to consider.

Rights of Women

Rights of Women offer free, confidential, and anonymous legal advice to women who have been sexually harassed at work. In addition to our sexual harassment at work advice line, we also offer advice for women who need help with family law, criminal law and immigration and asylum law. For more information, see the Rights of Women website.

Acas

The Advisory, Conciliation and Arbitration Service (Acas) is a public body of the Government of the UK designing for facilitating disputes in the workplace.

You can find work and employment law advice at Acas: Advice.

The Acas helpline is a confidential, free advice line for anyone who needs employment law or workplace advice.

Telephone (open Monday to Friday, 8am – 6pm): 0300 123 1100.

1 TUC's 2016 survey 'Still just a bit of banter?'

Law centres

Law centres work within their communities to defend the legal rights of local people. Law centres are independent and work on a not-for-profit basis. To find a local law centre, look on the Law Centres Network website.

Advocate

Advocate is the pro bono charity of the Bar and is supported by the Bar Council. If your case is going to court or a tribunal and you are eligible for help, they can put you in contact with a volunteer barrister to represent you for free. Go to Advocate: Find out if you can get free legal help to see if you are eligible for their services.

LawWorks

Go to LawWorks: Find a legal advice clinic near you to search for free legal advice clinics. LawWorks also has information about other organisations which might be able to help you.

2. I want to report sexual harassment at work – What are my options?

This section is designed to help you understand your options for reporting sexual harassment at work.

It also includes a guide to the Employment Tribunal procedure and guidance on Settlement Agreements and Non-Disclosure Agreements (NDAs).

This section will help you if you have identified that you have been, or are being, sexually harassed at work and want to understand the different ways you can report it.

If you are unsatisfied with the response from your employer, or you are unable to report to your employer, you can bring an Employment Tribunal claim.

There may be many reasons why you cannot bring an Employment Tribunal claim. This might be simply because you do not want to, but sometimes you might not be able to bring a claim in the Employment Tribunal, for example, if you are outside the time limit to bring a claim (and are unable to get a just and equitable extension), or if you are not an employee or worker.

You are not under any obligation to report the harassment, and you should always do what is best for you in the situation you have been put in.

If you do not want to report to your employer or the Employment Tribunal, please see our guide Your Rights and Options for information on how to report sexual harassment to regulators, damages and injunctions, crimes, whistleblowing and health and safety claims.

3. How to Gather Evidence

3.1 What counts as evidence?

There are lots of different things that can count as evidence of sexual harassment. This is because harassment comes in many different forms.

Sexual harassment can include, amongst other things, inappropriate remarks, touching, sexual comments, pornographic images, and offensive social media posts. We know that harassment often occurs behind closed doors without witnesses.

Your statement of what has happened counts as evidence.

Evidence from the time the harassment happened, ideally time-stamped, is the best. This could be a diary with dates, photos, or messages. There may also be medical evidence if you are willing to disclose.

Even if you decide not to report the harassment, it is always a good idea to keep any evidence of the harassment. This puts you in a much stronger position if you decide to report later. Even if you are certain that you will not want to report, it is a good idea to keep all evidence to protect your position and it could be useful if someone else does decide to report the perpetrator.

3.2 How to keep a record

It is very important to keep a thorough record of every incident of harassment and any resulting victimisation you may experience. Your record should include what was said and done, by whom, on what date and how it made you feel.

Being able to show these records will help your employer investigate your grievance and make it more difficult for your perpetrator to deny that you are being harassed or deny the impact of their behaviour on you.

There is no set form in which the records should be kept. You should use whichever method is easier for you. Some people hand-write notes in a diary. If you do so make sure that you date each entry. Alternatively, you can send yourself an email or record a voice note. The last two methods have the advantage of being electronically date stamped. Rights of Women has a template you can download, **visit** Rights of Women – Get Information:

Sexual Harassment at Work. You can also see a copy of this template in the Appendix of this guide.

It is extremely useful if you remember exact dates, as dates and timeframes are very important in employment law. Do not worry if you struggle to remember exact dates, just set out as much detail as possible.

Keep your records stored somewhere safe. Avoid making a record on your work devices as this will not be safe from your employer if they decide to act badly. Keep your records safe at home or on personal devices, and only give copies to your employer when you submit your grievance.

It is important to remember that if you take the perpetrator and/or your employer to court or the Employment Tribunal you will have to disclose these documents and recordings.

3.3 Can I make a covert recording of the harassment and/or discrimination?

A covert recording is done without the knowledge or permission of the person being recorded.

When you are being sexually harassed at work, you might have made or might want to make a covert recording as evidence to support a report or a potential legal claim.

This could be a recording of an incident of sexual harassment or a meeting relating to a report of sexual harassment. For example, you might want to record your grievance meeting.

There are benefits to covertly recording incidents or meetings at work, but there are also some potential risks. It is important to understand these to make an informed choice that is right for you.

The benefits are:

If asked to recall potentially distressing events, covert recordings can act as an evidential 'safety blanket' and might help you to remember events without becoming upset.

Your employer may be able to afford sophisticated legal representation, whilst you may not – so covert recordings could assist your case without having to incur legal fees.

Covert recordings can become useful evidence despite the risks if your claim proceeds to the Employment Tribunal. The recording will likely be disclosable.

The Employment Tribunal will decide whether the covert recording is admissible as evidence. Factors that they will consider are the relevance and value of the evidence and the overall fairness of the Employment Tribunal process.

If you recorded any harassment, the recording would likely be viewed as highly relevant and therefore admissible. Even if the recording missed out parts of the relevant event, it may still be ruled admissible as other forms of evidence, such as witness testimony, could be used to fill in the missing parts.

Another thing to consider when it comes to covert recordings and litigation is the role they can play in calculating compensation. For example, if you were to covertly record your employer and you were dismissed, your employer could argue that you contributed to your dismissal by making the recording, reducing your compensation were you to win. The likelihood of this will depend on the facts of your case and the nature of the recording.

The risks are:

The recording could contain evidence that would go against your case. Since the recording would be relevant to the case, a judge would be likely to order that it be disclosed in any resulting Employment Tribunal case. This could harm your chances of succeeding in your claim. In any litigation, you will be under a duty to disclose any relevant information to the other side (your employer), whether it helps or hinders your case.

There is a chance that making the recording could count as misconduct or a breach of the implied term of trust and confidence within your employment contract. This will depend on several factors:

- The nature of what you have recorded i.e., if you were to record a group business meeting, this could amount to misconduct if it involves the data of others or business secrets. If you claim that these are the very meetings where the harassment occurs, it is unlikely to be gross misconduct for you to make the recording;

- The reason you made the recording; and
- The fact that your recording may infringe on data protection rights.

If you bring your sexual harassment claim to the Employment Tribunal, there is a risk that a tribunal might decide that the covert recording shows that you acted dishonestly.

If you are considering making a covert recording or wishing to rely on a previously made recording as part of your claim, we encourage you to:

- Try to limit any dishonesty surrounding the recording so as to avoid lying if you are asked directly if you are recording, unless your safety would be put at risk;
- Consider whether it could amount to misconduct or a breach of an implied contract term before making the recording; and
- Weigh up the risk of possible dismissal before making the recording.

3.4 Data Subject Access Requests (DSARs)

You have a right to access the personal information being 'processed' about you by your employer or any other organisation that is processing your personal data. Processing means how they are using it, who they are sharing it with and where they got your data from. This includes, but is not limited to, emails discussing you, witness statements that mention you, your personnel file, and written warnings.

You can request access to your personal information by making a Data Subject Access Request to:

- Your employer
- A professional regulatory body
- A third-party investigation body e.g. a law firm.

DSARs are a useful tool to gain access to information that may have been withheld from you and to ensure the information held about you is accurate. The information disclosed to you can be used in legal proceedings against your employer. This information can also be useful when negotiating a settlement.

All companies must respond to your DSAR no matter their size. There is no small business exception.

To make a DSAR, you need to write to the 'data controller' for the organisation outlining the information you want to access. Your employer will be the 'data controller' as they are the entity that decided to collect and store your data. Many employers will have a data protection policy which will let you know who you can make the request to. If they do not, you should direct your request to your manager or someone senior within the organisation. **We have a template letter, visit Rights of Women – Get Information: Sexual Harassment at Work. You can also see a copy of this template in the Appendix of this guide.**

The organisation will then have **one month** to respond to your request, although this can be extended by two months (up to three months) for complex requests. The data is usually provided for free. If the organisation thinks the request is excessive, they can charge you a fee. The organisation may ask you for proof of identity. The time limit to respond starts when the fee is paid, or ID provided.

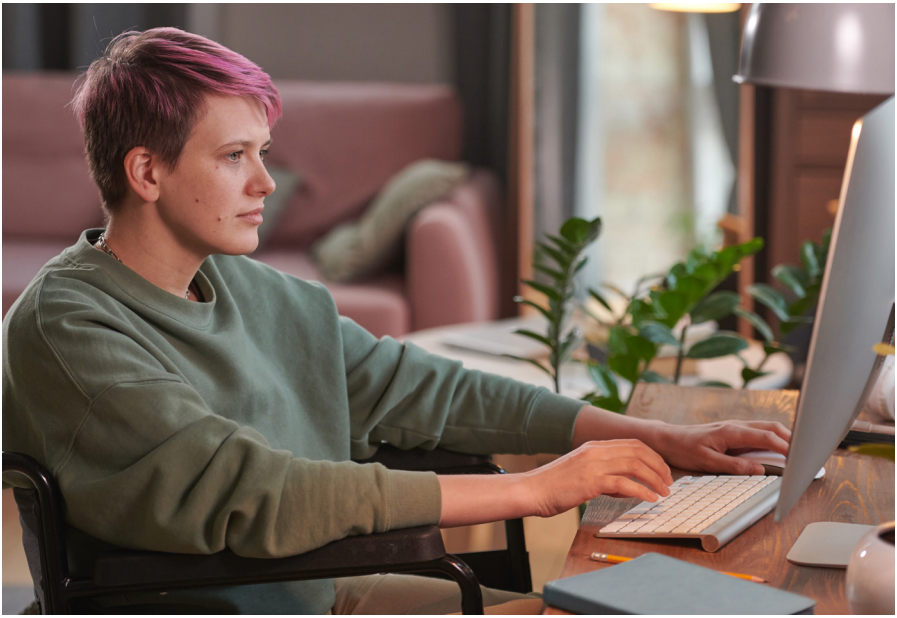
You do not have an unrestricted right to access the actual documents containing your data, just the data itself and enough context for the data to be meaningful. Often, organisations will usually cover up (redact) irrelevant or sensitive information, or information that discloses other people's identities before sending the information to you. They can do this, but it needs to be proportionate and if you believe they are redacting too much information, then you can say that to them. If you still believe that they are covering up relevant personal data, you can complain to the Information Commissioner's Office (ICO). For more information, see section 7.4.

You might want to use a DSAR to get access to specific documents that you know, or suspect, exist e.g., a harassing email chain involving you. You can specify documents that you wish to see. DSARs are time consuming and difficult for organisations to deal with. If you are specific about what you want to see there is more of a chance it will be sent to you if you avoid widening the scope of your DSAR too far.

You may ask for a wider search, as it can turn up information that you did not know existed. This can sometimes help in grievances, investigations, and settlement negotiations. A wide search may reveal data that you would rather not be seen by your employer, including any historic exchanges with other workers that you wish to keep private or may be used to accuse you of misconduct. **Think carefully about the scope of your DSAR as the information could help you but could harm you too.**

Employers are usually able to redact more information in DSARs than if they had to disclose the same document in the Employment Tribunal process. It can still be helpful to get a sense of the type of information they hold on you before deciding how to proceed. It will also give your employer an idea of the types of documents they will have to produce during disclosure if you bring an Employment Tribunal claim against them. This incentivises them to settle matters early.

For templates of Data Subject Access Requests, visit Rights of Women – Get Information: Sexual Harassment at Work. You can also see a copy of this template in the Appendix of this guide.



4. Informal Reporting

How you report harassment at work will depend on what happened, your type of employer, and how you feel most comfortable to report it. If you do decide you want to report the harassment, the usual first step is to make an informal report.

Whether making an informal report is a good option for you will depend on the size of your organisation, the type of harassment, the status and identity of the perpetrator, their position of power over you and how comfortable you are with speaking to others in your organisation.

It is up to you to decide if you think the harassment is something that can be addressed informally.

We understand that for many women the reality of their working situation means that there is little or no benefit in making an informal report. If you are in a situation where there would be no benefit to raising an informal report, or your safety would be at risk in doing so, then do not feel under any pressure to do it.

You do not have to begin the process of reporting sexual harassment with an informal report. Some employers might try to pressure you to deal with sexual harassment informally, sometimes directly with the perpetrator, even when you do not want to. Your employer should not do this, and you always have the right to bring a formal grievance even if your employer is pressuring you not to.

EXAMPLE

Katryna works part-time in a shop on her local high street. It is a small, family-run business, and there are only four employees: the owner, his wife, their son, and Katryna. Often, Katryna and the owners' son are the only two people in the shop. He begins to make inappropriate sexual advances towards Katryna and laughs when she asks him to stop.

Katryna does not feel comfortable reporting the harassment to her employer because her boss is the father of the perpetrator. She feels that he wouldn't take her complaint seriously and may even fire her. The fact that Katryna didn't feel able to report the harassment doesn't make the situation any less serious, and it does not mean that she hasn't been harassed. If Katryna takes her claim to the Employment Tribunal, it

is likely that the Employment Tribunal would consider it reasonable for Katryna not to have raised the matter internally first.

If you are in a situation where an informal report does not improve the situation, or where you do not feel comfortable making a formal report, you always have the option to bring a formal grievance.

How to make an informal report to your employer

If you are a member of a trade union, you could speak to a trade union rep or an official employed by a trade union, as they will be able to help you talk through your options and how to proceed. For more information about trade unions, see section 8.

You should check for your employer's Grievance or Equal Opportunities policy. This may advise you of specific steps you should take when making your report. You are not bound by law to make your report in this way; however, your employer may reject the grievance if it is not done in accordance with their policies.

If you have been sexually harassed at work, one of your options is to make an informal report to someone. This could be your line manager, someone in Human Resources (HR), or someone senior.

It is up to you to decide if you think the harassment is something that can be addressed informally. This will depend on the type of harassment, the frequency, how long it has been going on, the status of the perpetrator and what level of power they may have over you.

Some employers may suggest internal mediation, with a mediator helping to resolve issues. You should only agree to this if you are comfortable. You should **never** be pressured into mediation. For more information on mediation see section 9.

Meeting to discuss the informal report

If you think that an informal report might be enough to make the harassment stop, then you should arrange a meeting with HR or your line manager (or anyone you think is appropriate, but they should be senior enough to make a difference). You can say what has happened and suggest ways your employer can make sure that the harassment stops, and make you feel safe at work.

Examples of things you could suggest:

- Training for the perpetrator and the organisation.
- Requesting that the perpetrator is instructed to stop the unwanted conduct by HR or someone senior in the organisation.
- Changing either the perpetrator's working patterns or yours (only if you are willing) so you do not have to work together.
- Minimising communication and contact by instructing the perpetrator to have contact with you only when other people are present.

What you want to ask for is up to you, there are no 'rules' as to what you can ask for. Think of what might help, or you can ask the person you are reporting to what they think might help. If your requests are reasonable, your employer should consider them.

Your employer might try to convince you to have a meeting with the perpetrator present to discuss a resolution. They should not force you or arrange this without your permission. If you do not want your perpetrator to be present, then make this clear to your employer.

If you feel able to, it can be a good idea to try to resolve the harassment informally first. You do not have to do this, and an informal resolution might not be appropriate for you. It will all depend on your circumstances.

If you do decide that an informal report is not right for you, or you decide to make an informal report, but the harassment does not stop or increases, then you still have the option of raising a formal grievance.

5. Formal Grievances

5.1 Raising a grievance

A grievance is a formal complaint to your employer about problems you are having at work, including sexual harassment.

The purpose of a grievance procedure is for you and your employer to resolve issues at work, without the need to go to an Employment Tribunal. If you are an employee or worker, then you have a legal right to raise a formal grievance with your employer, regardless of whether there is an HR department or not.

Unfortunately, there will be circumstances where raising a formal grievance is not an option e.g., where the only person you could raise a grievance with is the perpetrator, and there is no HR department or other options. Employment Tribunals usually want you to have raised a formal grievance with your employer before bringing a claim. If the circumstances of your employment mean that it is not an option for you, then you do not need to raise a grievance before going to an Employment Tribunal.

The risk of not raising a grievance before pursuing a legal claim is that if you are successful at an Employment Tribunal, they might reduce any compensation awarded to you if they think it was unreasonable for you not to raise a grievance before bringing the legal claim.

These are the steps for raising a grievance:

1. Check if your employer has a grievance policy and if it tells you who to submit a grievance to. If your workplace does not have a grievance policy you will need to follow the Acas Code of Practice, see section 6.1.
2. Submit a written grievance.
3. Your employer should then appoint someone impartial to investigate to decide about your grievance (called the investigator). This should be someone senior and independent of the issues being investigated.
4. The grievance investigator should meet with you without unreasonable delay to discuss your grievance, sometimes known as a grievance hearing.
5. The grievance investigator should meet with other employees involved in the issues, including the perpetrator and any witnesses.

6. The grievance investigator should give you a written decision on your grievance, which will either uphold, partially uphold or reject your grievance (this is called the grievance outcome).
7. If you are unhappy with the outcome of your grievance, you should be able to appeal the decision.

EXAMPLE:

Catherine gets a job as a school teaching assistant. Soon after she starts, one of the male teachers starts to send her unsolicited texts. At first, the texts are innocuous but soon he begins to tell her he 'fancies' her and asks her to go on date with him. She feels uncomfortable and decides to raise a grievance.

Catherine finds her employer's grievance policy on the intranet site. It doesn't mention sexual harassment specifically, but it tells her who she should submit her grievance to. She writes an email to the relevant contact, making it clear that she is raising a formal grievance. She explains the perpetrator's actions in as much detail as possible, including the dates and times of all the incidents, screenshots of the conversation, details of how the incidents made her feel and the impact they had. HR appoints an independent grievance investigator. This will be someone in a more senior position than Catherine and should ideally be someone who doesn't work directly with either Catherine or the colleague who is making her feel uncomfortable.

If Catherine's grievance is upheld the perpetrator should be disciplined under any disciplinary procedure the employer has. If the decision-maker decides not to uphold the grievance, Catherine could appeal this decision. She should submit her appeal in writing and explain why she thinks the wrong decision was made. The appeal should be considered by someone who hasn't been involved in the investigation.

Where and how to submit a grievance – Internal grievance policy

Your employer should have a written grievance policy. If they do, then the first stage in raising a grievance is to check what it says. You should try to follow it if possible.

The policy details should be in your staff guide (if you have one), or you can ask HR for it (if you have an HR function). It could also be on the organisation's intranet (if you have one) or in your employment contract.

The policy should set out who you should submit your grievance to and the next steps and set out the timeline for concluding a grievance. The policy should be in writing and easy to find. Your grievance will need to be in writing, and we explain what you should include below.

Your employer's internal grievance policy needs to comply with the Acas Code of Practice on disciplinary and grievance procedures. This means that your employer's policy can provide greater protection to you as an employee than the Acas Code, but not less.

What if my employer does not have an internal grievance policy?

If your employer does not have a written grievance policy, you must follow the Acas Code of Practice.

You and the employer should follow the Acas Code throughout the grievance process. If either you or your employer unreasonably fails to comply, and you subsequently bring a successful claim, the Employment Tribunal has the power to increase or decrease your compensation by up to 25%.

Whether or not it is reasonable for you or your employer to follow the Acas Code will depend on the specific circumstances of your case. For example, a Tribunal may consider it reasonable for you to skip the grievance process if the perpetrator is the only person you could report the harassment to.

EXAMPLE

Callisto works for an online retailer as a customer care advisor. She is subjected to sexual harassment by a colleague, who continuously makes sexual jokes and touches her inappropriately.

There is a grievance process, and at the end of it, Callisto is told that her grievance was not upheld. She is not kept informed of the process and is not informed about her right to be accompanied to the grievance meeting. Her employer tells her that she has no right to appeal when she tries to appeal.

Callisto brings a claim for sexual harassment and victimisation. Considering all the evidence of the case, the Employment Tribunal decides that she has been sexually harassed and victimised. This means the Tribunal can order that Callisto's compensation be increased because her employer has failed to follow the Acas Code. The Acas Code says that

> *an employee should be kept informed about the process, has the right to be accompanied to any grievance meeting and says that employees must be given the right to appeal. Her employer has committed a breach of the Code and Callisto's compensation for the sexual harassment and victimisation may be uplifted by up to 25%.*

What should I put in my grievance?

Your grievance needs to be in writing, but beyond that, there is no set form that your grievance needs to take. Many women choose to submit their formal grievance in the form of an email, but it is up to you. To give you the best chance at getting a good outcome, we suggest that it should include the following information:

- At the top of the email/letter the wording 'Formal Grievance: Private and Confidential' (this is not a legal requirement but should make it clear that you want the matter to be handled formally).
- A summary of the harassment, discrimination, or bullying, containing as much detail as possible. This should include a description of the harassment itself, including details of who has been harassing you, what they have done, and the dates on which it occurred and what impact it had on you. If you can't remember exact dates, then put in dates as close as possible.
- If the harassment was spoken, try to quote exactly what was said. If it was written, include copies.
- Any additional evidence (e.g. screenshots, photos, call logs), but **see section 3.3 on convert recordings.** Be as precise as possible, especially with dates. In employment law, it is good to give as much detail as possible.
- Details of any witnesses to the harassment, so the employer can speak to them about what they saw. You should speak to potential witnesses before you name them; without doing so you risk that the witness may be unhelpful.
- Details of what you would like to happen next to resolve your grievance. You will not be bound by what you write here, but it will help your employer if you can set out some steps that you think would be appropriate. For example, a new way of working for you or the perpetrator, how you feel the perpetrator should be held accountable, or recommendations on how your employer can prevent you or your colleagues from being harassed in the future.
- A request for a commitment that you will receive a written report or letter at the end of the process.

To help you, we have a template grievance letter for you to use, visit Rights of Women – Get Information: Employment Law. You can also see a copy of this template in the Appendix of this guide.

For advice on what to include as evidence, please see section 3.

Is it possible to report sexual harassment anonymously?

We understand that you may be worried about what might happen if you report sexual harassment at work. It should be possible to report it anonymously, which can mean you could report the harassment in a way that does not reveal who you are and does not name the perpetrator (if naming the perpetrator is what worries you).

You have the right to report anonymously, but it might make it more difficult for your employer to investigate the harassment and take any further action if they do not know the identity of you or the perpetrator. You do not need to make a formal report for your employer to investigate. Just because it is an anonymous report, this does not mean your employer can ignore it.

Can I raise a grievance if I quit my job?

This depends on your employer's grievance policy. Some employers will not investigate the grievances of former employees. Once you have left, they do not have to investigate.

There is nothing to stop you from writing to a former employer to make them aware of the harassment and ask that they take action to stop it. However, they do not have to keep you up to date on your complaint after you leave the organisation.

If you plan on leaving your employer, you could ask for an exit interview to raise issues you have had, but they do not have to agree to this.

What should I do if there is no Human Resources (HR) department?

Even if your employer has no HR department or grievance policy, they are still required to follow the Acas Code of Practice, regardless of their size. You can refer to the Acas Code of Practice to understand the steps you need to take and can contact our Sexual Harassment at Work advice line on 020 7490 0152, see our opening hours at Rights of Women: Get Advice.

Unless your organisation has an internal grievance procedure that tells you who to report to, you should submit your grievance to your line manager (unless it is your line manager who is harassing you). If your line manager is harassing you, or you otherwise feel uncomfortable reporting to your line manager, then you can submit your grievance to their manager, or someone else senior within the organisation.

What should I do if I have no one I feel able to report the harassment to?

We often speak to women who work in situations where there is no realistic option to raise a formal grievance or report the harassment. This can be for many reasons, but we often see this issue arising in small or family-run businesses where there is no HR and no one other than the perpetrator to whom you could make the report.

In such a situation, the most important thing is your safety. If you do want to leave your job, you might want to consider a constructive dismissal claim. For more information on this, see our guide: Dismissals, Resignations and Redundancy. We understand that, for many women, leaving their job is not an option even when they are being sexually harassed. In a situation like this, and depending on the type of harassment, understanding your legal rights can help you communicate them to the perpetrator, which can sometimes help stop the behaviour.

If you do decide that you want to stay in your job, one of the benefits is that remaining employed means that you keep the protections that come with being an employee, and your employer will continue to have a duty to you, which falls away once you leave employment.

What safeguarding protections from the perpetrator can I ask for?

You have the right to feel safe at work. In the time between reporting sexual harassment to your employer and action being taken, you can ask your employer to put measures in place and take steps to protect you. If you feel your employer is subjecting you to a detriment or treating you less favourably because of any of these measures, see our guide Your Rights and Options.

Suspension

Your employer may decide to suspend the perpetrator from the office while the investigation is happening. Even if your employer does not suggest it, you can request that the perpetrator be suspended during the investigation process.

Suspension is not used as a punishment. It can protect staff when there are serious allegations.

Reduced contact

If your employer decides not to suspend them, you can ask your employer to reduce the amount of contact that you have to have with the perpetrator.

For example, you could ask that you or the perpetrator:

- Work from home
- Change your shifts or working patterns so that you are not working together
- Have your reporting line changed so you no longer report into the perpetrator
- Temporarily move projects or teams, so you do not have to work together
- Are instructed not to contact each other for the duration of the investigation
- Request someone else is included in your communications together

The Investigation

The purpose of the investigation should be to find out, based on the information the employer has available, if the harassment happened. It does not matter when the harassment occurred, even if it was a long time ago, your employer should still investigate what happened.

Your employer's objective in an investigation is not trying to prove guilt as to whether any sexual harassment happened or not, but to get balanced evidence from both sides by establishing the facts of what happened. You do not need to have made a formal report for your employer to investigate. Read the section on investigations in section 6.

5.2 The Grievance Hearing

The grievance hearing should be held within five working days of you raising the formal grievance. This meeting should give you the chance to explain your grievance and show your employer any evidence that you have. Your employer should also ask you questions.

The procedure must be fair, so your employer must consider evidence from all sides. You should be allowed enough time to prepare for the meeting.

If you would like, you can ask your employer to arrange for someone not involved in the grievance to take notes or act as a witness, however they do not have to agree to this.

You should let your employer know before the grievance hearing if you need an interpreter or any reasonable adjustments if you are disabled.

By law, you have the right to be accompanied to a grievance hearing. For more details, see section 5.2

How to deal with inappropriate interview questions

Ideally, it will be people who have the right training and experience who will be asked to investigate matters relating to sexual harassment. This could be someone who has had specialist training or at least specialist advice (from HR or the in-house legal team if you have them) about handling reports of sexual harassment.

The person interviewing you and any witnesses should ask questions that are relevant and focused on finding out the facts. **The investigator should not ask you inappropriate questions, for example relating to how much alcohol you may have consumed, how you behaved after any harassment or assault, what you were wearing, why you have not reported the harassment sooner, your sexual history or relationships with other colleagues or your mental health before the harassment.**

The investigator should not be asking any questions that make you feel as if they are judging or blaming you. Your employer is required to handle your report fairly and you deserve to have your report handled in a respectful and dignified way. If you feel that this has not taken place this could amount to sex discrimination, see Your Rights and Options for information.

If you are asked inappropriate questions, you should explain to the investigator that their questions are inappropriate as soon as possible. You are not required to answer those types of questions.

If the investigator keeps asking inappropriate questions, you can complain to HR or a more senior person in the organisation. You can also ask your employer to appoint another independent investigator. This does not need to be someone within the organisation, see section 6 on investigations.

What to do if my employer refuses to include people you've requested to be part of the investigation ?

Your employer should ask you if there are any witnesses and who you think should be interviewed as part of the investigation. These can be people who witnessed the sexual harassment or anyone you spoke to about it or who helped to support you after experiencing it. If you know that anyone else has been harassed by the perpetrator, they might also be a good person to include, but remember to be sensitive to the fact that they might not want to be included.

Explain to your employer why you think the people you have put forward should be included as part of the investigation. If the employer still refuses, ask them to explain in writing why they disagree with you.

EXAMPLE

Nora works in an office. Her manager has been making her feel uncomfortable for a while. He makes sexual innuendos, comments on her appearance and clothes, and touches her arms and back without her consent. Eventually, she raises a grievance. As part of the investigation, people she may wish to include as witnesses:

- *Anyone who has overheard the manager's inappropriate comments or seen his behaviour towards Nora. If more than one person overheard these comments, she should ask her employer to interview all of them to show that the behaviour has happened more than once.*
- *Her colleague, who has also been made to feel uncomfortable by the same co-worker's comments. Nora should first ask her colleague if she is comfortable with being interviewed as part of the investigation.*
- *Her friend from a different department who can give evidence about how the manager's behaviour made her feel. If she spoke to them about it when the behaviour first started, they would also be able to back her up when she tells her employer that this has been going on for some time.*

Your employer is not required to interview every person you have listed. If the investigator unreasonably refuses to interview someone, particularly a willing witness with relevant evidence, it can be a reason for you to say that the investigation has not been fair or objective. This would be relevant if you need to appeal the outcome.

Your right to be accompanied to grievances meetings

You have the right to be accompanied to a grievance meeting by a trade union representative, an official employed by a trade union, or a work colleague. You do not have to be accompanied, but you might find it helpful to bring someone who can take notes and give you emotional support. We recommend that you take someone with you wherever possible, they do not have to be 'on your side' necessarily, but anyone who you believe will help ensure the process is as fair and objective as possible will be useful to bring.

If you decide to be accompanied, you should tell your employer the name of that person promptly so that your employer can arrange the date and time of the meeting. If your companion is not available, your employer should rearrange the meeting to a time when they are available. Any meeting date change needs to be reasonable. The new date should not be more than five working days after the original date.

Unfortunately, you do not have a right to be accompanied by a family member or friend (unless they are also a colleague). However, if you are not a member of a trade union and do not have any colleagues who would be able to attend with you, you can ask your employer if you can bring a friend or family member instead. They do not have to say yes, but if you explain why you need the person with you, they may be more likely to say yes.

If you have a disability that means you need someone with you, and your employer is aware of this, then you can argue that having your friend or family member accompany you is a reasonable adjustment. If they still say no, this could be a failure to make reasonable adjustments under the Equality Act (a type of disability discrimination).

At the grievance meeting, your companion can talk to the investigator, reply on your behalf to anything the investigator says at the meeting, and speak with you during the meeting. However, your companion does not have the right to answer questions solely on your behalf, they can't speak if you do not want them to, and they are not allowed to prevent your employer from explaining their case.

Notes of grievance meetings

There should be someone in your grievance meeting taking notes. Your employer should appoint someone to do this (and if you have someone accompanying you, they can take notes too).

At the end of the meeting, your employer should give you a copy of the meeting record and the notes taken. You should review these carefully and agree that they accurately reflect what was said at the meeting. If you are confident that the notes accurately reflect the meeting, then you should sign them off. If not, you should explain to your employer where you think there are mistakes and ask them to correct them. If the person accompanying you has made notes, you could use them to check your employer's notes.

5.3 Outcomes

After the investigation has finished, your employer should give you a written outcome to your grievance. This should respond to each point that you raised in your grievance. The law does not set a particular time limit on when your employer must give you the outcome, but your employer must do it without unreasonable delay. If your employer has a grievance policy, it may set out a time they expect to respond.

You should read the outcome carefully and check that your employer has replied to each point raised in your grievance. You should think carefully about what your employer has said and if you have any questions you can ask to speak to the grievance investigator to discuss further.

The outcome should explain how to appeal if you are not happy with any of the findings and the deadline for submitting an appeal. You have the right to appeal, even if your employer does not tell you about it in the outcome letter. If you want to appeal the decision, it is a good idea to do this as soon as possible after receiving the written decision.

My employer will not tell me the outcome of the grievance

Some employers may refuse to tell you the outcome of the grievance, sometimes claiming that it would be a breach of their data protection obligations to the perpetrator. **If this happens to you, you can push back against your employer and explain that you have the right to a written outcome of your grievance.** You also have the right to appeal, which you will not be able to do unless your employer tells you the reasons for its decisions. It might help to send your employer a copy of the Acas Code of Practice on discipline and grievance procedures to help you explain why you want to be sent a written outcome. You should not have to do this, but unfortunately, it is sometimes necessary.

At some point, you may want to consider sending a Data Subject Access Request to your employer to obtain more information. For more information about Data Subject Access Requests, see section 3.4.

What disciplinary action can I expect for perpetrators of sexual harassment?

According to Acas Sexual Harassment 2021 guidance, if your grievance was upheld, that means your employer has decided the grievance was valid. This means your employer has enough evidence to recommend actions to resolve the situation and/or follow up with a disciplinary procedure and consider disciplinary sanctions against the perpetrator. Request to see your employer's disciplinary policy, if they have one, as this may set out disciplinary outcomes for sexual harassment. If they do not have one, they should follow the Acas disciplinary procedure.

Disciplinary action should be taken after a successful grievance is made. Acas says it is unlikely that the employer should need to investigate the complaint again. However, an employer may decide someone separate from the grievance should handle the disciplinary procedure, and they may want to investigate again or further. Bullying, violence, unlawful discrimination, and harassment are examples of serious or gross misconduct. Employees who do something that counts as gross misconduct may be dismissed. Employers are often entitled to dismiss them with notice as per their employment contract.

You should set out the outcome you would like in your grievance to your employer. What you suggest is up to you, but if you feel that you cannot continue working with the perpetrator, you should make that clear in your grievance. One option would be to ask for their dismissal.

An employer who does not seriously consider such a request and/or does not take any disciplinary action against a perpetrator may be found liable for the harassment. They are unlikely to be able to defend themselves by arguing that they took all reasonable steps to prevent the harassment if you bring a claim in the Employment Tribunal.

5.4 Appeals

If you are not happy with any of your employer's decisions about your grievance, then you have a right of appeal. If you want to appeal, then you should set out your reasons for your appeal in writing, being as specific as possible. If you think your employer got something wrong, you should explain

this. It is also important that you point out if any of your points have not been addressed in the outcome letter or at the grievance hearing.

EXAMPLE

Seun works as a store assistant at a supermarket. She raises a grievance against her colleague because he is harassing her.

The grievance investigator is also a store assistant. He is a good friend of Seun's perpetrator and works very closely with him and her. In his investigation, the investigator disregards a lot of Seun's evidence. He refuses to review the store's CCTV cameras and interview any of her colleagues who have witnessed the harassment. After the investigation has concluded and the investigator has prepared his report, he decides not to uphold Seun's grievance stating there was insufficient evidence to find in her favour.

Seun can appeal the outcome for several reasons: the investigator was not independent, he was not more senior than Seun or the perpetrator, and he did not consider all the relevant evidence. If Seun appeals the decision, her employer should appoint someone new and independent to handle the appeal and look at all evidence.

Once you have sent your appeal to your employer, they should select someone to hear your appeal (sometimes known as the Appeal Officer). This should be someone who was not involved in the original grievance investigation. As part of the process, you should be invited to a meeting with the Appeal Officer. You are entitled to be accompanied to the meeting with the appeal officer in the same way as the grievance meeting by a colleague or trade union representative. The Appeal Officer can look at all the existing evidence and choose to carry out further investigations, if necessary.

Once a decision has been made about your appeal, it should be given to you in writing as soon as reasonably possible. The decision should respond to each point made in your appeal. The appeal is the final stage of the process and there is no further right to appeal if you disagree with the appeal outcome.

The aim of the grievance process is for you to be able to continue in employment, with your report having been resolved and the harassment to have stopped. However, if this has not happened, and particularly if the harassment is continuing, you can consider bringing Employment Tribunal proceedings. Please see section 10 for more information.

5.5 Confidentiality

Your employer is supposed to keep your report of sexual harassment confidential.

If you are worried about people in your organisation knowing that you have reported sexual harassment, you can ask your employer to deal with your report on a confidential or even an anonymous basis.

Depending on the type of report you have made, the perpetrator may need to be told who you are as part of an investigation process so that they can fairly respond to the report. However, in many cases, your employer will be able to maintain some confidentiality for you, for example by:

- Only using your name during the investigation process where necessary
- Using codes in any report following the investigation such as 'Person A'
- Telling everyone involved that it is confidential and that they may face disciplinary proceedings if they breach confidentiality

5.6 Your Health

Sexual harassment can have a devastating effect on your mental and physical health. Some employers have an Employee Assistance Programme that you can contact to support you. Do not be afraid to ask for this support if it is available, or for regular check-ins with a colleague you trust.

Some employers will use their Occupational Health department/adviser to help them to design support for employees. If you think that you need further support because of a mental or physical health condition or disability, ask your employer to arrange a meeting or call with Occupational Health so that they can recommend how to support you through this process. If you do not have support services available within your employer, there are some support services available for you, see Rights of Women – Further Help.

5.7 What is the difference between a grievance and a disciplinary?

Some employers will try to treat a report of sexual harassment as a disciplinary process against the perpetrator, rather than as a grievance process. These are two different processes with different purposes. It is important that your employer is following the right one, or if appropriate both procedures.

A disciplinary procedure is used to investigate and address an employee's behaviour, so here that would be limited to the behaviour of the perpetrator.

A grievance procedure is used to address your specific concerns and issues, which could amount to a range a different issues, not just harassment, that you want to raise formally to your employer.

It is important to understand the difference because conducting a disciplinary process against the perpetrator may not address other elements of a grievance, for example issues about the culture or practices of the organisation which has allowed the harassment to happen in the first place.

You will have more rights if you bring a formal grievance and your employer follows the grievance process. This is because your employer has specific obligations to you directly as to how they should handle the grievance process.

In the grievance process, you should be kept informed of what is happening. You have the right to know the outcome and to appeal the outcome if you are not happy with it. If your employer follows the disciplinary process against the perpetrator instead of going through the grievance process, you will not necessarily know what is happening.

Most importantly, you will not have the right to know the outcome and will not have the right to appeal the outcome if you disagree with it. Your employer may even refuse to tell you the outcome of a disciplinary process against the perpetrator based on protecting their data.

In an ideal situation, a disciplinary process should happen **after** a grievance process if your employer finds that the harassment did take place. It is important to make sure that it happens after the grievance process and not instead of it.

If your employer tries to use the disciplinary process to address your grievance, you have the right to insist that they go through a formal grievance. If they fail to do this, it might be helpful to send them the Acas Code (set out above) and say that they need to follow that, as a minimum.

6. Investigations

6.1 The investigation procedure

When you submit a formal grievance about sexual harassment, your employer should find out everything they reasonably can about the matter(s) you have reported. This is known as an internal investigation.

You should start by familiarising yourself with Acas guidance on how employers should conduct workplace investigations and the EHRC Sexual Harassment and Harassment at Work Technical Guidance if your employer is investigating your sexual harassment report.

Your employer should run a proper investigation regardless of how many incidents of harassment you report. You do not need to suffer multiple incidents of sexual harassment before your employer can investigate. Your employer should still investigate even if you have potentially run out of time to make a claim to an Employment Tribunal.

The purpose of the investigation is to:

- Find out what happened;
- Make sure that a fair procedure is followed;
- Gather evidence from all sides (e.g. speaking to witnesses and the perpetrator); and
- Make findings of fact and potentially make recommendations as to what the employer should do next in response.

Your report of sexual harassment, and the subsequent investigation, should be kept confidential by your employer. There will likely be a certain number of people who need to know to assist with the investigation and grievance process, but this should be kept to a minimum. For more information, see section 5.5.

What is a fair procedure?

Your employer is under a duty to treat everyone involved in the grievance process fairly. The Acas 2021 guidance on sexual harassment states all employers should take reports of sexual harassment very seriously. Employers should handle any investigation in a way that's fair and sensitive to you, and sensitive to anyone who witnessed the incident/s.

The investigation is an opportunity for your employer to try to find out what happened. If your employer does not carry out a fair and reasonable investigation, any decisions it makes are likely to be unfair. If this is the case, then you could potentially bring legal action against them.

For the procedure to be fair, your employer needs to follow at least the minimum standards set out in the Acas Code of Practice. If your case ever reaches an Employment Tribunal, judges will look to see whether your employer has followed the Acas Code of Practice fairly and can award you an uplift of up to 25% additional compensation if it can be shown your employer did not.

What is reasonable in practice will depend on what has happened, and things like the size and resources of your employer will be considered in deciding what is reasonable.

What happens in an investigation?

What happens in an investigation will depend on the facts of the case and how the employer has been made aware of the harassment, for example:

- Whether you raised an informal or formal grievance complaint;
- Whether there are any witnesses; and
- Whether the harassment involved criminal acts and whether that should be reported to the police.

Answers to these questions will guide how your employer will respond to your report of sexual harassment, including which steps it takes to investigate what has occurred. For example, if you have raised an informal report, then your employer might not conduct a full investigation (you might, for example, prefer that they have a quiet word with the perpetrator). On the other hand, if you have raised a formal grievance with witnesses and other forms of evidence that compel your employer to act to protect the safety of its employees (including you), an in-depth investigation will likely be appropriate.

EXAMPLE

Linda works in a café as part of a small team. A colleague has taken a liking to Linda and has made a few comments about her appearance and keeps asking her to go on a date. She feels uncomfortable about this and would like him to stop but doesn't feel able to tell him. Instead, she may decide to raise the issue informally with her manager so that they can have a quiet word with her colleague on her behalf.

However, if Linda had asked the colleague to stop and he continues with his behaviour even though he knows she is uncomfortable, she may decide to raise the issue as a formal grievance. In this case, her employer should appoint someone to investigate her report. The investigator should speak to Linda and the perpetrator, speak to any witnesses and gather any other relevant evidence.

There are some key principles that your employer should follow when investigating your grievance:

- Investigations are fact-finding exercises only – they should not make any decisions about fault and what action should be taken (e.g. any disciplinary sanction such as the dismissal of the perpetrator) should not be made during the investigation stage.
- Investigations should ideally be done by people with experience in handling reports of sexual harassment, and they should be conducted by people who are independent of the facts and those involved in the matter to make sure that they are not biased.
- Usually, an employer will choose someone else who works for them, but if specialist experience is needed, or if no one is independent working for your employer, then your employer might choose an independent investigator.
- Your employer needs to do a reasonable investigation of the facts – this does not mean it needs to investigate every possible bit of evidence, but it should make sure that it looks at all the relevant issues that it reasonably can. If there is something you think your employer should be investigating, you can tell your employer.
- Your employer should make sure that the investigation is sensitive to the personal nature of the issues. It should also make sure that the investigation process is respectful of everyone's rights to confidentiality and to have matters dealt with sensitively.
- You should be told the next steps once the investigation is complete.

Can previous reports of sexual harassment against the same perpetrator be taken into account?

This will depend on the circumstances and your employer's policies on how it treats reporting information.

This means that there is not a general assumption that your employer will take into account information about the perpetrator's previous conduct. However, the form that information takes may be relevant. For example, a witness giving a statement as part of an investigation that the perpetrator did the same thing to

them may be relevant. If, on the other hand, information about the perpetrator's previous conduct was provided to the employer as part of an informal report with no one willing to discuss it at that time, your employer may not be able to take this information into account and still carry out a fair procedure.

Ultimately, your employer will need to conduct a balancing exercise between your right to a fair investigation and the same right that the perpetrator has to a fair process. Your employer should not, however, forget that it is under a duty to investigate your grievance fully and that it is under a duty to provide you with a safe workplace, free from sexual harassment.

How long should an investigation take?

If your employer has decided to investigate your grievance, they should start as soon as possible.

An investigation should be completed as quickly as possible whilst also ensuring that the procedure is fair. The length of an investigation will depend on the facts of your specific grievance and how many people need to give information.

You should check your employer's policies to see if they have any timescales for investigations in their grievance and disciplinary policies.

The person who is investigating should give you a timescale. If there are any delays, these should be explained to everyone involved and written in the investigation report.

Will the COVID-19 pandemic impact an internal investigation?

The laws relating to sexual harassment at work, along with the Acas Code of Practice on disciplinary and grievance procedures, still apply during the COVID-19 pandemic. Your employer cannot use any crisis as a reason not to continue internal investigations of reports.

The Acas Code and all of the rights mentioned in this guide still apply. Any meetings or investigations can be held online if participants cannot attend in-person and must be done without delay.

Investigators

Your employer has a duty to run a fair investigation. **The investigator should ideally be independent and free from bias, and your perpetrator should not be directly involved in conducting the investigation.** In smaller

organisations with no HR function, your employer's choice of investigator may unfortunately be limited. In such circumstances, what is appropriate will depend on who is available to investigate.

You could request that your investigator be someone who has previous experience in investigating sexual harassment. If there is no one employed by your employer with experience, you could try to request an external independent investigator (for example, barristers sometimes conduct internal investigations in workplaces), but your employer is not under any duty to agree to your request.

The right to be accompanied

You have the right to be accompanied to any grievance meeting. You have the right to be accompanied by a work colleague, a workplace trade union representative or an official employed by a trade union.

You do not usually have a legal right to be accompanied by anyone other than those listed above however, by law, your employer must make reasonable adjustments if you have a disability. If you have a disability, your employer should consider allowing someone else to attend if you would prefer, such as a support worker or a family member who understands your disability. If they fail to do so, this could amount to a failure to make reasonable adjustments under the Equality Act.

6.2 The standard of proof

Your employer is supposed to decide **'on the balance of probabilities', which means they must decide whether it was *more likely than not* that the sexual harassment took place**. This is called the standard of proof.

Employers do not need to prove that the harassment *definitely* happened. The standard of proof in employment law is different from criminal law, where it must be shown 'beyond a reasonable doubt' that a crime was committed.

If you believe that your employer is looking for absolute proof then you should raise this point with them. This includes situations where it is your word against the perpetrator's word.

6.3 Witnesses

Your employer should interview witnesses who are:

- Able to give relevant evidence
- Willing to come forward
- Employed or engaged by the employer
- If appropriate and permitted under the employer's policy, no longer employed or engaged by the employer

Your employer should make it clear to the witnesses that they will not suffer any harm for helping with the sexual harassment investigation. If witnesses do suffer any bad treatment for helping, then this may be victimisation as defined by the Equality Act 2010. Ideally, your employer should encourage any witnesses to speak up.

If any of your witnesses are women and are worried about contributing to an investigation, they can **contact our Sexual Harassment at Work advice line on 020 7490 0152, see our opening hours at** Rights of Women: Get Advice.

Ideally, witnesses should be allowed to have some support when they go to any investigation meetings such as being allowed to bring a colleague or trade union representative to the meeting. However, there is no legal right for a witness to be accompanied and whether to allow this will be up to your employer.

All witnesses who contribute to your investigation should be told only what they need to know to allow them to provide relevant information for the investigation. Your employer should make sure that this is done in a way that does not compromise the sensitivity or confidentiality of matters. Notes of any investigation meeting(s) should be taken and sent to the relevant witness(es) for their comments before they are used as evidence.

Requesting copies of witness statements

Under the General Data Protection Regulation (GDPR), you have the right to request access to information that your employer holds on you (whether manually or on a computer). Amongst other things, this means that you can request copies of the written evidence collected during the grievance investigation (through a subject access request). It can be particularly helpful if you are not satisfied with the outcome of your grievance to see the evidence on which the decision was based. To find out more about data subject access requests, see section 3.4.

Your employer might try to use GDPR as a reason not to let you see documents that contain information about another person (third party data). This blanket approach is not appropriate and your employer should not automatically refuse your request. There are exemptions to data protection rules, and your employer should consider permitted exemptions that relate to its obligations to you which may allow some disclosure of others' data.

Things that your employer can do to anonymise a document include:

- Blank out the witness name and any other information by which they could be identified (e.g. job title);
- Edit the statement to hide the identity of the witness (without changing the important information included in the document); or
- Where there are several witness statements, prepare a summary of the information from the statements.

Your employer will ultimately have to decide whether it considers it reasonable to show you a witness statement or other document. This should involve your employer balancing your right to know what information they hold about you against a witness's right to privacy.

6.4 Can my employer still investigate my grievance if it is a criminal matter?

Yes. Sometimes an employer will insist they cannot investigate because it is a criminal matter, or that you must report it to the police because they are the ones who can investigate, or that they cannot investigate until after the police have investigated.

You do not need to report to the police if you do not want to and this should not affect your employer's decision to investigate the matter.

Even if you have reported the sexual assault or rape to the police, the Acas sexual harassment guidance states that your employer is unlikely to have to wait for the criminal process to finish before it can investigate your report and, if appropriate, carry out a workplace disciplinary procedure against the perpetrator.

Before conducting its investigation, your employer can liaise with the police to ensure that any internal investigation will not prejudice the criminal process.

6.5 Investigations and disciplinary procedures

If your grievance is successfully upheld, your employer may decide to take disciplinary action against the perpetrator. If your employer has a specific policy for handling sexual harassment reports, it may say that they should investigate your report first as a grievance and with any follow-up disciplinary procedure being used after the grievance investigation.

Your employer can insist on conducting a separate investigation as part of the discplinary process.

Note that Acas sexual harassment guidance recommends that one investigation is carried out regarding a grievance and any follow-up disciplinary procedure. If your employer does not have a policy that sets out how this process should work, you may wish to alert your employer to this guide if you would like to assert that another investigation is unnecessary.

7. My employer is withholding information and data from me – what are my rights?

The Data Protection Act 2018 and General Data Protection Regulation (GDPR) mean that your employer needs to have a legal basis, or a good reason, to collect, use or share personal information. This includes when dealing with sexual harassment grievances and disciplinaries of perpetrators.

You can find the Data Protection Principles on the ICO website.

7.1 Data protection during the grievance/ disciplinary process

When handling your grievance, your employer should keep the matter as confidential as possible, limiting both the number of people who are aware of the grievance and the information that each of the people who are aware of the grievance have access to.

The confidentiality should go both ways, so while the process is ongoing your employer should not reveal information to anyone who does not need to know and, equally, both you and the perpetrator should keep the process as confidential as possible. One possibility is to work together with your employer to produce a list of people who need to be involved in the grievance, and what information they need to know.

You can request to see the information that your employer has about you, for example a witness statement in your grievance proceeding. Your employer might try to refuse this request on the basis that it contains information about a third party, but this should not be a blanket excuse not to disclose information to you.

Your employer should consider anonymising the information you have requested to allow you to see it. If your employer is unsure wheather they can disclose the information, they can seek the third party or a witness's consent to disclose the information.

In addition to any data protection laws, you may be bound by a term of your employment contract, the employment guide or your employer's instruction to maintain confidentiality during the grievance process, any breach of which

may lead to disciplinary action. It is important to read your contract and the employer's grievance and anti-harassment policies and seek agreement with your employer to disclose information, which may be prohibited by these policies.

You are always permitted to disclose information to a lawyer, trade union representative, criminal justice agencies, or health specialists without permission from your employer.

7.2 Data protection after the grievance/ disciplinary process

If you have reported sexual harassment to your employer, they may be concerned that reporting outcomes, such as disciplinary actions taken against the perpetrator, may be a breach of the confidentiality obligations that it owes to the perpetrator.

Your employer may tell you that they cannot provide you with certain outcome information because they are concerned about breaching data protection rules. However, while your employer must comply with data protection principles, they should not simply assume that disclosing data about a perpetrator will amount to a breach of the data protection rules.

Generally, if your employer has been clear from the outset that outcomes may be disclosed, and if it has considered what grounds it has for disclosing important information to you, and acts proportionately in disclosing any personal data, it will not be breaching data protection rules by informing you of the outcome of these processes.

Your employer should take steps to enable disclosure of the outcomes of your grievance to you. This is because all employers should, as a minimum, comply with the Acas Code of Practice for Disciplinary and Grievance Procedures. This means the outcome of a grievance should be communicated to you in writing without unreasonable delay, and where appropriate, set out what action the employer intends to take to resolve the grievance. You should be informed of your right to appeal if you are not content with the action taken. Always check what the employer says they will do in their contracts and policies.

Your employer should record its decision as to whether the outcome can be disclosed or not and its reasons for that decision.

Ultimately, your employer will need to conduct a balancing exercise of your rights against the rights of the perpetrator to decide what information to disclose to you. This should always be done on a case-by-case basis. In any event, your employer should not use data protection rules as a blanket excuse not to disclose information to you.

7.3 Data Subject Access Requests (DSAR)

You have a right to access the personal information being processed about you by your employer or any other organisation that is processing your personal data, including how they are using it, who they are sharing it with and where they got your data from. This includes, but is not limited to, emails discussing you, witness statements that mention you, your personnel file, and written warnings. Also see section 3.4.

You can request access to your personal information by making a Data Subject Access Request (DSAR) to your employer and/or to a regulatory body and/or a third-party investigation body e.g. a law firm. This is a useful tool to gain access to information that may have been withheld from you and to ensure the information held about you is accurate.

The information disclosed to you can be used in legal proceedings against your employer. This information can also be useful when negotiating a settlement.

To make a DSAR, you need to write to the data controller for the organisation outlining the information you want access to. The data controller will be your employer. We have a template letter for you to use, visit Rights of Women – Get Information: Sexual Harassment at Work. You can also see a copy of this template in the Appendix of this guide. The organisation will then have one month to respond to your request, although this can be extended by two months (up to three months) for particularly complex requests.

The data is usually provided for free however, if the organisation thinks the request is excessive, they can charge you a fee. The organisation may ask you for proof of identity. The time limit to respond does not start until the fee is paid or ID is provided.

You do not have an unrestricted right to access the actual documents containing your data, just the data itself and enough context for the data to be meaningful.

Often, organisations will cover up (redact) irrelevant or sensitive information, or information which discloses other people's identities before sending the information to you. They can do this, but it needs to be proportionate and if you believe they are redacting too much information, then you can say that to them. If you still believe that they are covering up relevant personal data, you can complain to the ICO. For more information, see section 7.4.

You can specify documents that you wish to see if you want specific evidence. DSARs are time consuming and difficult for organisations to deal with, so if you are specific about what you want to see there is a chance it will be sent to you to avoid you widening the scope of your DSAR.

You may ask for a wider search, as it can turn up information that you did not know existed, which can sometimes help in settlement negotiations. However, a wide search may reveal data that you would rather not be seen by your employer, including any historic exchanges with other workers that you wish to keep private or may be interpreted as misconduct. Think carefully about the scope of your DSAR as the information could harm you as well as help you.

Employers have a wider scope to redact information in DSARs than in disclosure as part of the Employment Tribunal process, but it can be helpful to get a sense of the type of information they hold on you before deciding how to proceed. It will also give your employer an idea of the types of documents they will have to produce during disclosure if you bring an Employment Tribunal claim against them, which can sometimes incentivise them to settle matters early.

7.4 If your employer or other organisation fails to comply with data protection rules

You can complain to the ICO if you have had trouble accessing your personal data or if you think your employer has mishandled your data or misapplied an exemption.

You must do this within three months of the breach, otherwise the ICO may decide not to investigate your report.

You can complain about your employer's handling of data at ICO.org.uk: Make a complaint.

If the organisation has been found to have been in breach of data protection rules, they could be forced to pay very large fines, so complaining to the ICO should concern them.

8. Trade Union Support

A trade union, often called a 'union', is an organisation of workers who have come together to maintain and improve the working conditions of their employment. Most trade unions operate independently of employers but maintain close relationships with them. Usually, trade unions are organised by industry or sector and are structured as a network of local branches with representatives, known as 'reps' in workplaces.

If you want to get the benefits and support of a trade union, then you will need to join one. This will cost you money, usually through monthly subscriptions. The cost will vary depending on the union and your working status. Concessions are usually available.

One of the main benefits of union membership is the security that comes from working together to address workplace issues. Your employer cannot stop you joining a union and you do not need to inform them that you have done so. If your workplace already recognises a union or several of your colleagues are in the same union, it is best to join that same one, so your collective power is stronger. You can still access a union's support, even if the union is not formally recognised by your employer.

If you are unsure which trade union to join, you can use the Trade Union Congress 'union finder'.

8.1 What support can I expect from a trade union?

If you are a member of a trade union, it can support you by raising issues on your behalf at work. Sexual harassment is one of the areas that trade unions can assist their members with.

Your trade union can support you by raising grievances on your behalf. You have a legal right to be accompanied in your grievance or disciplinary hearing and appeal meeting by a trade union representative, whether that trade union is recognised by your employer or not. In some circumstances, your trade union might be able to fund legal claims in the Employment Tribunal or in the civil courts.

If you want support from your union in bringing an Employment Tribunal claim, it is important to contact the trade union within the three-month time limit for

bringing a claim in the Employment Tribunal. If you contact your union after this time limit has passed, the support they can provide may be more limited.

Can I join a trade union for support after the harassment has happened?

You can join a union at any time, but unfortunately most trade unions will not offer support for issues that happened before your membership started. **It is a good idea to join a union, just in case there is ever a problem in the future.** A trade union will usually ask you to have been a member for at least four weeks before you can receive the union's full support.

Will a trade union definitely take on my case?

A trade union will usually provide full legal support if, after an assessment of the information and evidence you provide them, they decide that your case is likely to succeed in the Employment Tribunal, the legal costs are proportionate to the value of the case and/or the case has a wider benefit to the membership.

If the results of the legal assessment are that your case is unlikely to succeed in the Employment Tribunal, the trade union may still give you practical advice about how to proceed.

To give yourself the best chance of putting forward a claim that is likely to succeed, it is important to have a written record with a timeline of the harassment and, where possible, supporting documents such as any grievances raised, responses from your employer and any evidence of the harassment.

A trade union will usually give this information to their internal employment lawyers for the legal assessment to decide whether your claim is likely to succeed in the Employment Tribunal. If new evidence comes to light, for example through a data subject access request, then you can provide this to your trade union later. For more information on data subject access requests, see section 3.4.

My trade union rep isn't helping me, what can I do?

A trade union rep will usually be one of your colleagues who is also a member of the union at your workplace, who has voluntarily taken on the responsibility of being the union representative at that work site. They are not paid by the trade union to do this work, but they can represent and advise you in a sexual harassment case.

You should contact your trade union directly if you are not happy with the support you are getting from your trade union rep. The Trade Union Congress has resources for reps on Protection from Sexual Harassment.

8.2 What if the perpetrator is in the same trade union as me?

It should not matter if the perpetrator is in the same trade union as you, you are still entitled to their support as long as you meet their requirements. Your union should provide both you and the perpetrator with separate reps, and it should make no difference if the perpetrator is in the same union. If it becomes an issue, or you are uncomfortable about any aspect of the situation, you should contact your union (for example, your branch officer or geographical group leader) to address this. If you feel as if your rep is not providing you with appropriate support, then you can ask for another one.

9. Mediation

What is mediation?

Mediation is a way of resolving a workplace conflict. Your employer might suggest mediation to try to resolve the sexual harassment without having to go through the Employment Tribunal process.

A trained mediator's role is to act as an impartial person who facilitates discussions between two or more people involved in a dispute to help them reach an agreement on how to move forwards. The mediator will oversee the process, but any agreement will need to come from you and the other party or parties involved.

Mediation focuses on how to resolve the situation, not if the harassment did or did not happen. It is usually used after informal talks have failed to resolve an issue. It is an alternative to going to an Employment Tribunal.

It is not always appropriate to use mediation in sexual harassment situations, and your employer should not pressure you into agreeing to it. Remember that the point of mediation is to encourage you to speak to the perpetrator, which may not be appropriate to your situation; for example, it might be too traumatic for you to be expected to speak to the perpetrator, even via a mediator.

Who is the mediator?

The mediator should be an independent third party, and you should feel comfortable with who is appointed. Even if there is someone in your workplace who is trained in mediation, they are unlikely to be truly independent, so it is a good idea for the mediator to have no connection to your workplace. There are some individuals who work as mediators, and some external organisations provide mediation services.

If possible, you should ask to be involved in the process of appointing the mediator. If your employer is paying (which they should), they may try to use that as a reason for them to have the final say over who is appointed. However, for the mediation to work you need to be confident that the mediator is a neutral third party so if you are uncomfortable with who is appointed it is a good idea to say so. We recommend that you make sure the mediator has been specifically trained in mediation.

What does mediation involve?

Mediation is a process run by a specialist mediator where you are encouraged to discuss the situation to try to reach a settlement. It is up to all the people involved to agree who should attend the mediation.

You will usually have your own private room, as will the perpetrator. It is possible to conduct mediation online. The job of the mediator is to move between the rooms to encourage you both to talk about ways of resolving the problem that you are both comfortable with. Sometimes in mediation you might be asked to have a face-to-face discussion with the perpetrator, but you do not have to agree to this if you do not want to and the mediator will be there to make sure you are both able to speak.

You can stop the mediation process at any time if you are unhappy with it. You then might have the choice of going through your employer's internal processes (e.g., the grievance procedure). For more information on grievances, see section 5. You might have the option of bringing a claim in the Employment Tribunal if you are within the time limit. For more information on the Employment Tribunal, see section 10.

Even if you decide to bring a claim in the Employment Tribunal, you can take part in a mediation process at any time before the final hearing. Starting mediation does not stop Employment Tribunal proceedings if they have already begun.

If tribunal proceedings have already begun, Acas conciliation would normally be more appropriate. Early Conciliation is a process that is like mediation but is normally used when you are already planning to bring a claim in an Employment Tribunal, or where you want to protect your position to bring a claim if your time limits are running out. For information on Acas conciliation, see section 10.3.

If you and the perpetrator do not come to an agreement during the mediation (and there is no obligation on you to reach an agreement), you cannot be forced into a settlement or into anything you are uncomfortable with.

Your employer should pay for the cost of mediation. This is not a legal requirement, but if your employer is encouraging you to try mediation, then it is not fair to expect you to pay.

Advantages and disadvantages of mediation

Advantages:

- The mediation process is voluntary, so you cannot be forced into it, it is confidential, less costly and more flexible than an Employment Tribunal.
- **Mediation can let you speak freely and explain how you have been affected by the harassment.** If the mediation goes well, it might also provide an acknowledgment of the hurt that the harassment has caused you.
- There are non-financial remedies available, for example an apology.
- **Mediation is completely private and confidential**. If you do not come to an agreement the contents of the mediation cannot be discussed at the Tribunal.
- **Mediation can lead to a quicker outcome compared to the Employment Tribunal process (which can take years).**

Disadvantages:

- **Mediation is not legally binding.** Unless you take additional steps, you will not come out of a mediation with a legally binding agreement.
- **Mediation does not always result in a resolution.** You may find yourself in a situation where you have gone through an emotionally difficult process without any form of resolution at the end of it.
- **Unlike in the Employment Tribunal, there is no disclosure process.** This means that the perpetrator and/or your employer could withhold information that would otherwise come to light in an Employment Tribunal.

Why is mediation rarely used in cases of sexual harassment?

Sexual harassment at work usually needs a more formal and structured investigation to find out facts, which is not what mediation is designed to do.

Mediation is a voluntary process, and for it to work properly you and the perpetrator will both need to take part willingly. We understand it can be difficult, and often unrealistic, in sexual harassment cases.

Mediation can also be a demanding and stressful process. If you want to try mediation, you might be able to agree that that the mediation can only take place if your employer does not expect you to discuss your experiences with the perpetrator.

If you do decide to try mediation, then you can arrange to meet the mediator before the process starts and agree the ground rules that you feel comfortable with. A good mediator will be flexible about the way the mediation is run and

will consider your feelings and how hard the process might be on you. You might be able to ask to have a friend or family member attend the mediation with you for moral support.

EXAMPLE

Susie works as a receptionist in a large office. At an office Christmas party, Susie was sexually assaulted by a colleague, which was a traumatic and frightening experience. While Susie could go to the police about her report, she has also reported the matter to her employer. Mediation would not be appropriate here because this is a scenario where a serious act has taken place; a finding should be made, in the criminal justice system if this is pursued by Susie, and by her employer. Mediation is often not suitable where a serious incident has taken place, and a formal decision is required.

Resources for Mediation

DRAW – Dispute Resolution Assistance at Work

The DRAW mediation service helps people sort out their work problems without going to the Tribunal.

Civil Mediation Council

The Civil Mediation Council provides a Mediator Search tool.

10. Employment Tribunal Process

This section provides an overview of the Employment Tribunal process. **Before making an Employment Tribunal claim, you should try to resolve the issue with your employer first, if this is possible for your circumstances, as that is what the Employment Tribunal process will encourage you to do. However, you do not need to do this to make an Employment Tribunal claim.**

10.1 What does the Employment Tribunal do?

Employment Tribunals hear cases and make decisions on matters to do with employment disputes. Although an Employment Tribunal is not as formal as a court it must comply with rules of procedure and act independently. There are fifteen Employment Tribunals across England and Wales and your case will be located at your local one.

The point of making an Employment Tribunal claim is to see if they will uphold your claim. If they do, they will consider what award to make, which is called a 'remedy', which can have financial and non-financial aspects to it.

Examples of claims heard by the Employment Tribunal:

- Unfair dismissal
- Wrongful dismissal
- Discrimination (race, sex, disability, religion or belief; sexual orientation, age, maternity or paternity leave/pay)
- Sexual harassment
- Equal pay
- Deductions from wages

Examples of claims heard by civil courts:

- Accidents at work
- Restrictive covenants
- Contract claims for non-payment of wages
- Wrongful dismissal claims and other contract claims.

It's important to remember when considering whether to bring an Employment Tribunal, if your case does go to a final hearing the Employment Tribunal decision may be published on the Gov.uk website: www.gov.uk/employment-tribunal-

decisions. It is also useful to check here if your employer has any recent or similar claims against them that may give you an indication of your employer's appetite to litigate and into how your claim might go.

If you have a disability or special circumstance you can contact the Employment Tribunal office dealing with your case to discuss any adjustments you may need, as they have a duty to convert documents to Braille or larger print or pay for sign language interpreters.

10.2 Tell Acas you are making a claim

You must tell Acas first if you want to make a claim to an Employment Tribunal. Acas is an impartial, non-departmental government body that provides free and independent information and advice to employees and employers on all aspects of workplace relations, disputes and employment law.

When you tell Acas that you want to make the claim, you are the 'Claimant'.

The other parties to the dispute will be your employer and potentially also your perpetrator. They are referred to as 'Respondents'.

You will need to provide the names and addresses of the people or organisations involved. You can find these details on your payslip, contract, or letter of employment.

You must tell Acas about your claim.

You will then have two options:

1. Try their free Early Conciliation service (recommended).
2. Decide against Early Conciliation. You will get a certificate which you will need to make a claim in the Employment Tribunal.

You can call Acas on 0300 123 1100 for more information but they do not offer legal advice so for legal advice **contact our Sexual Harassment at Work advice line on 020 7490 0152, see our opening hours at Rights of Women: Get Advice.**

You do not need to contact Acas to start Early Conciliation if any of the following apply:

- You are part of a group of people who are making a claim together, and one of the other people has already contacted Acas and included you in their group claim;
- You are seeking interim relief;
- You work for the security services.

10.3 Early Conciliation

If you want Early Conciliation, Acas will contact you for details about the dispute with your employer. The process is explained here: www.acas.org.uk/early-conciliation/how-early-conciliation-works. If you begin Early Conciliation Acas will contact your employer to let them know you have started the process. Once they have all the relevant information, such as whether you have access to a telephone, they will assign you to a 'conciliator'.

The conciliator will speak with you (or your representative) and your employer about the dispute. It is used as a way for an independent person to help you and your employer reach an agreement or settlement to avoid going to the Employment Tribunal.

The process is free, voluntary and takes place over the phone. The process is also confidential. Anything you tell Acas cannot be discussed with the individual or the organisation your claim is about without your consent and cannot be used in an Employment Tribunal without your consent.

Acas is impartial and it is not part of the Employment Tribunal.

In some circumstances, Early Conciliation can offer a quicker and easier solution than going to the Employment Tribunal. Early Conciliation can last up to six weeks, whereas Employment Tribunal claims can take years.

If your employer declines Early Conciliation, Acas will give you an Early Conciliation Certificate which you will need if you want to proceed to a claim in the Employment Tribunal.

If you and your employer are unable to reach an agreement in this time, you will always have at least one month after the end of the Early Conciliation period to make your claim to the Employment Tribunal. You may have more than one month because starting Early Conciliation extends the deadline for bringing a claim.

It can be advantageous to begin Early Conciliation even if you do not want to proceed all the way to the Employment Tribunal. This is because the Early Conciliation process pauses the three month time limit to bring a harassment or discrimination claim for one month, which can allow you more time to come to a settlement or to assess if you want to proceed to the Employment Tribunal if necessary. See section 10.4 for more information on time limits.

When you have finished the Early Conciliation process, you will receive either a document called a COT 3 (if you have settled the claim) or an Early Conciliation Certificate (if you do not reach a settlement).

COT 3

If you reach an agreement with your employer to settle your case through the Early Conciliation process, this will be recorded in a COT 3.

This is an agreement that records the terms of your settlement. **Once you have reached this agreement with the conciliator, it cannot be changed.** You need to be sure that you are happy with the terms before agreeing to them as one of the terms will almost certainly be a waiver of your right to bring your claim before an Employment Tribunal. This will, most likely, be in exchange for a sum of money.

Unlike with private settlement agreements, you will not need to get independent legal advice for the COT 3 to be legally binding. It is therefore very important that you are sure you understand the terms of settlement and are happy with them. You are entitled to get legal advice on the terms if you wish, but the agreement will be binding once you agree to it, regardless of whether you have obtained legal advice.

Early Conciliation certificate

If you and your employer are unable to reach an agreement, then you will be given an Early Conciliation certificate. You should check that the certificate has the following information:

- The correct names and addresses for both you and your employer
- The date you first contacted Acas
- A unique reference number (you will need this for your Tribunal claim form)
- The date that Acas sent the certificate
- A statement saying how the certificate was sent to you.

It is important that all the information on your Early Conciliation certificate is correct. If any of this information is incorrect or missing, then you should contact your conciliator as soon as possible.

You will need an Early Conciliation certificate, and specifically your reference number, to make a claim to the Employment Tribunal. To start your claim, you will need to include your reference number in the form you fill out at the beginning, which is called ET1. See section 10.5.

Tips for the Early Conciliation Process

If you do not already know, work out how much your case might be worth and how strong your case is. This will help you in negotiations, and when considering any proposed settlement amount.

Make sure you have any relevant documents available and be clear about any relevant dates. This will help strengthen your case and your negotiating power. Documents that might be helpful include your contract of employment, any relevant emails, and (if possible) a timeline showing dates of incidents.

10.4 Time Limits

You must usually bring your claim for sexual harassment and many related claims (e.g., discrimination, unfair dismissal) within **three months minus one day from the last act of harassment**. This date is called the 'limitation date'.

If you are claiming redundancy pay or equal pay, you have six months minus one day to start Early Conciliation.

You must make sure that Acas receives your Early Conciliation request before the end of the limitation date.

If you miss the deadline for starting Early Conciliation, then you will also be late for bringing an Employment Tribunal claim. You will then lose your right to bring a claim, which may weaken your position when discussing the situation with your employer.

Employment Tribunals have the discretion to allow claims that are out of time when they consider it 'just and equitable' to do so. This is at the discretion of the Tribunal and should not be relied upon.

When you start the Early Conciliation process with Acas, your limitation date gets extended so that there is enough time for the Early Conciliation process to take place. Early Conciliation can last up to six weeks. If you and your employer are unable to reach an agreement in this time, you will always have at least one month after the end of the Early Conciliation period to make your claim to the Employment Tribunal. You may have more than one month because starting Early Conciliation extends the deadline for bringing a claim.

Time limits can be complicated, and it is important to get it right, so we recommend you take legal advice on this matter.

Depending on your circumstances, it can be advantageous to file an ET1 form even if you are unsure about pursuing the claim. By filing the ET1 you can protect your legal position and not be timed out to enact your legal rights. It can also strengthen your position in a settlement negotiation, see section 11 for more on Settlement Agreements.

10.5 Making a claim to the Employment Tribunal

The Tribunal process is started by you (the employee) submitting an ET1 form.

You do not have to pay a fee to make a claim.

The ET1 requires the following details:

- Names and addresses of employee and employer;
- Acas Early Conciliation number (reference number);
- Details about your employment, such as salary and start date;
- Details of the claim, setting out the full facts and legal complaints.

Your ET1 will be reviewed by the Employment Tribunal. If your claim is accepted, the Tribunal will send the form to your employer. Your employer will have 28 days to submit their formal response to the claim using a form called ET3. The ET3 will include whether they will be resisting your claim, either in whole or in part.

This will have commenced the Employment Tribunal process. You are still able to settle the claim at anytime during the Employment Tribunal process. It is worth noting that there are severe delays and backlogs in the Employment Tribunal which means unfortunately claims can take months or even years to conclude.

11. Settlement Agreements

A Settlement Agreement is a contract with your employer used to resolve disputes including about sexual harassment at work. If you agree to a settlement agreement, it will usually mean that you are paid a sum of money and in return, you agree not to bring an Employment Tribunal claim against your employer about the sexual harassment.

Settlement Agreements are used to end a dispute you have with your employer, either before or during an Employment Tribunal claim. Employers offer to pay settlement sums so that they do not have to deal with the time, cost, and potential embarrassment of an Employment Tribunal claim. This means that you have the power to negotiate, as your employer may want to avoid you bringing an Employment Tribunal claim.

It is common for a settlement agreement to be used if you are leaving your job, but that does not have to be the case. Settlement agreements can therefore give you some financial security if you are in a position where you feel you cannot carry on working there after being sexually harassed.

It is worth noting that in this section we look at private settlement agreements. **Settlement agreements can also be reached using an Acas Conciliator (called a COT3). For more information, see** section 10.3.

11.1 What is needed for a Settlement Agreement?

Settlement agreements need to meet certain criteria to be legally binding when settling employment law claims. The following things are needed to make a settlement agreement legally binding:

- You must have been advised about the terms of the settlement agreement by an independent lawyer/insured trade union representative (one that is not associated with your employer);
- The settlement agreement must be in writing; and
- There must be an actual dispute to be settled between you and your employer.

You should be given a reasonable amount of time to read and understand the settlement agreement. According to Acas guidance, this should be at least 10 days (you do not need to take all of this time, but you should be able to if you want to).

You must get independent legal advice on the settlement agreement to make sure the terms are reasonable and you understand them. It is not a legal requirement that you get advice on the amount, but you should if you can. Your adviser should advise on any Non-Disclosure Agreement (see section 11.2).

Your employer should pay for this legal advice as part of the terms of the settlement agreement. Usually, they will agree to pay a specific amount towards the legal advice. This is usually between £350 and £500 (plus VAT) but can vary and this can be negotiated.

Terms of a settlement agreement

Your settlement agreement should contain the following terms:

- Names and addresses of the parties involved.
- Termination Date (if applicable).
- How much money you are being paid to settle the claim(s).
- Details of any outstanding contractual payments including notice pay, holiday entitlement, expenses and any associated employment benefits if applicable.
- A clause setting out that typically the first £30,000 of any termination payment is payable without deductions for tax and national insurance (This is called a taxation indemnity, and your adviser should be able to explain this to you).
- Details about the return of property to your employer and confidential information (if applicable).
- Confidentiality provisions.
- Confirmation that neither you nor your employer can say anything disparaging about the other (this must be mutual).
- A waiver of claims. This sets out that you agree to waive/withdraw all employment claims against your employer. This is often supported by an Appendix/Schedule which sets our every claim that you will waive by signing.
- Claims that are not waived by signing the agreement:
  - personal injury not arising from any of the claims
  - pension rights and
  - enforcing any breach of the agreement.
- If your employment contract contains restrictive covenants (e.g. an agreement not to compete with your employer or not to solicit clients), your employer may want those repeated in the Settlement Agreement (if you are leaving the job).
- Details of your legal adviser, who will usually sign a certificate to confirm:

  - they have explained the terms and effect of the Settlement Agreement
  - they have an up-to-date practising certificate and indemnity insurance
  - that they have not given any legal advice to your employer.
- The agreement will usually state that your employer will contribute financially to your legal fees for taking advice about the Settlement Agreement.
- You should push for the agreement to confirm that your employer will provide you with an employment reference. You should agree and set out in the agreement what the reference will say. This will mean that you know ahead of time what your employer will say in any reference to a potential employer.
- The agreement can include agreed wording that your employer will use to communicate your exit from the employer (if applicable).

Once a Settlement Agreement is signed by you and your employer it becomes a binding contract. Until it is signed, it is what is known as 'without prejudice' which means it cannot be used in court or in an Employment Tribunal.

You should never be pressured into signing a Settlement Agreement. If your employer does anything to try to pressure or force you into signing then the agreement will probably not be deemed validly legally binding.

'Without prejudice' negotiations

You should ensure that discussions with your employer about the settlement terms are 'without prejudice' negotiations. These are 'off the record'. They cannot be disclosed during tribunal or court proceedings if negotiations are unsuccessful.

Both you and your employer can speak freely and suggest compromises. What is said cannot later be used against you in an Employment Tribunal. Conversations about settlements are not automatically 'without prejudice'. Conditions must be met:

- There must be an ongoing dispute between you and your employer and both parties are trying to achieve resolution (e.g., a grievance);
- The communications must be marked 'without prejudice'; and
- The discussions must be a genuine attempt to resolve the dispute.

'Without prejudice' negotiations are usually used to agree that your employer will pay you a sum of money to leave employment with them and you will not bring or carry on with a legal claim against them.

How do 'without prejudice' negotiations start?

If the employer wants to start without prejudice negotiations, they will invite you to a 'without prejudice' meeting. If you agree, your employer will explain the reasons for the discussion and its proposed financial settlement. It is common for employers to give you a letter marked 'without prejudice' to set out an offer. Your employer should also explain what will happen if you do not accept the offer. This should not be a threat. You should be given time to consider the offer and take legal advice.

Can I start 'without prejudice' negotiations myself?

You are within your rights to ask your employer to have 'without prejudice' negotiations, but this is less common. Your employer will probably see this as a sign that you are seriously considering leaving and/or bringing a Tribunal claim.

Given the imbalance of power between you and your employer, you might want to start any 'without prejudice' conversations by way of a letter (marked 'without prejudice'). If you want to do this, then you should set out the reasons why you want to negotiate, and the terms on which you are willing to settle.

What is 'open' correspondence?

You might hear your employer, or their legal representatives, talk about 'open' correspondence as well as 'without prejudice' correspondence. 'Open' correspondence is any conversation, letter, email etc which does not have 'without prejudice' protection. For example, you might want to send a letter to your employer raising a grievance or resigning from your job – this would not be 'without prejudice' and can be referred to by a judge in an Employment Tribunal.

This can be helpful for you, especially if your employer is being unreasonable. If you have written to your employer raising a formal grievance or made other reasonable requests that it has not complied with then it might be useful for a judge to see that correspondence, so you would not want those documents to be 'without prejudice'.

When does 'without prejudice' protection not apply?

There are some circumstances where a document that would otherwise have 'without prejudice' protection can be used in an Employment Tribunal.

This does not happen very often, for example, when 'without prejudice' negotiations:

- Uncover fraud, misrepresentation or undue influence (e.g. unfair pressure on you to sign something).
- Demonstrate further victimisation or intimidation of you for raising a sexual harassment or discrimination claim.
- Show evidence of perjury (lying to the court), blackmail or other clear wrongdoing or criminal behaviour.
- Are evidence that you have acted reasonably in trying to mitigate your losses by settling with your employer.
- Show something which both you and your employer agree should be admitted in Employment Tribunal or court. An example of this is communications which are 'without prejudice save as to costs'. This is where correspondence can be shown to a judge after a case has finished, when the Tribunal need to decide who should be responsible for paying legal costs.

What does 'subject to contract' mean?

If you have a draft of a contract but the terms are still being negotiated, it will probably be marked as 'subject to contract'. This means that the contract is not yet binding. It is possible for a document to be both 'without prejudice' and 'subject to contract' when terms are still being negotiated. This is so that both you and your employer know that any settlement offered still needs to be put into formal, written, and agreed terms.

Protected Conversations

Your employer might ask you to have a 'protected conversation' to discuss the matter. A protected conversation allows for a conversation to take place between you and your employer, but its existence or contents are not disclosed to an Employment Tribunal in the event of a subsequent dispute. It is a similar concept to 'without prejudice' talks, but there does not need to be an existing dispute between you and your employer for a protected conversation to take place.

Unlike with 'without prejudice' talks, 'protected conversations' only apply to cases of unfair dismissal. It is therefore unlikely that your employer will attempt this in matters of sexual harassment, as you may still have claims under the Equality Act. However, if you are out of time to bring your discrimination claims then this may be an avenue your employer attempts to pursue.

Your employer needs to act fairly towards you for a 'protected conversation' to work. If an Employment Tribunal believes that your employer has behaved improperly then evidence of the conversation may become admissible. Examples of improper behaviour include bullying, intimidation and

putting pressure on you (e.g., not giving you time to consider what they have proposed).

11.2 'Non-Disclosure Agreements' (NDAs)

Your employer might want to use an NDA to prevent you from sharing certain information if you are settling a sexual harassment claim, by contractually obliging you to keep it confidential.

NDAs are sometimes also called confidentiality agreements or confidentiality clauses and it is commonplace for employers to insist on them being included in Settlement Agreements.

They can be used either in a wider contract such as an employment agreement or a Settlement Agreement or can be a separate, standalone contract. You may sign an NDA in an employment contract as part of starting a job.

A confidentiality agreement in your contract that seeks to stop you from pursuing a claim based on an act of discrimination that happens after you sign the contract would not be enforceable.

Your employer should be very careful about using NDAs, as they have historically been used to silence women and to cover up abuse. We know that NDAs often create confusion as to what you can and cannot say and can make some people fearful about what will happen if they do speak up. Because of this, NDAs have come under scrutiny and now need careful consideration before being signed.

An NDA cannot stop you from:

- Whistleblowing
- Reporting a crime to the police

NDAs should also not be used:

- As a first step in addressing your report of harassment
- When they are not needed
- To stop you from reporting harassment, discrimination, or abuse
- To cover up criminal behaviour or misconduct
- To avoid addressing problems in a workplace
- To mislead someone (e.g., as to what they are allowed to report at work)

If I sign an NDA, can I never speak about what happened?

It is important to understand that even if you sign an NDA, you are not prevented from disclosing the terms and existence of a Settlement Agreement to the following people:

- The police in respect of a crime that has been committed (e.g., sexual assault or other forms of sexual violence);
- Any regulator if you work within a regulated profession (doctor, solicitor, accountant etc);
- Any medical professional from whom you are seeking counsel or treatment;
- Immediate family (on the basis that they understand their duty of confidentiality);
- An insurer for you seeking financial support under any insurance policy.

You are not prevented from making a whistleblowing report (known as making a protected disclosure) by signing a settlement agreement. For more information on whistleblowing, see our guide Your Rights and Options.

Many confidentiality clauses in settlement agreements, which are usually standard documents, are now out of date and overly restrictive. If you are being asked to sign one, you can discuss it with a trade union representative, lawyer or other appropriate advisers to ensure the carve-outs listed above are made clear in your settlement agreement. **For advice, contact our Sexual Harassment at Work advice line on 020 7490 0152, see our opening hours at Rights of Women: Get Advice.**

Your employer should never put you under pressure to sign an NDA. You should be given time to read and think about it and talk about it with your trade union representative or legal adviser. If you do decide to sign, you should always be given a copy of the signed agreement to keep for your records.

An NDA will also not be enforceable if you were forced or pressured into signing it (this is called being under duress).

You should also look at, or have your legal adviser look at, the wording of the NDA to make sure that it covers both you and your employer. That will mean that neither you nor they will be able to speak about the terms of the agreement, not just you.

If you breach an NDA, for example, if you tell people (other than those listed above) about the terms and existence of the agreement then you could be

committing a breach of contract. This might mean that your employer could sue you for any financial loss they suffer because of the breach. If you have signed an agreement that contains an NDA, you should be careful about speaking to the media about anything contained in the agreement.

If you are 'bad-mouthed' by your employer within your area of expertise/ industry, or find yourself missing out on job opportunities because of derogatory comments, the first step would be to raise it with a legal adviser to challenge a potential breach.

For more guidance about NDAs in sexual harassment cases, see the Equality and Human Rights Commission's guidance on The Use of Confidentiality Agreements in Discrimination Cases.

What if I need an employment reference from the employer in the future?

Employer references tend to be generic and standardised. They may only contain details such as your start date, end date and job title. Some will confirm a reason for leaving i.e. 'redundancy'. Most employers only expect to see a standard and factual reference confirming dates of employment and the role for a potential candidate as that is what most employers are willing to give.

You can agree on the form of any future references in your settlement agreement. The benefit of this is that it becomes part of the contract, and a breach of contract could be enforced if your employer then gives you a negative employment reference or one that is different from the words agreed in the contract.

12. I cannot afford a lawyer – what should I do?

Do I qualify for Discrimination Legal Aid?

Legal aid is available for legal advice or assistance if you unable to pay for a lawyer. The money comes from the Government and is administered by the Legal Aid Agency. There are strict rules and tests which determine your eligibility for legal aid, which we cover below. The Legal Aid Agency applies rules about who can qualify for legal aid related to discrimination law which are complicated.

Legal aid is available for discrimination cases which fall under the Equal Pay Act 1970 and the Equality Act 2010 (which includes sexual harassment) if you have been discriminated against at work because of any of these protected characteristics:

- Age
- Disability
- Gender reassignment (being transgender)
- Marriage and Civil Partnership
- Race
- Religion or belief
- Sex
- Sexual Orientation or
- Pregnancy

Legal aid is always available for the following cases, where:

- Direct discrimination, see Your Rights and Options;
- You have experienced discrimination regarding more than one protected characteristic; and
- An employer's practices discriminate against you.

Legal aid for legal representation is available to provide legal advocacy in the civil courts and the Employment Appeal Tribunal. It is **not** generally permitted for legal advocacy before an Employment Tribunal.

The Means Test

For most types of discrimination cases the Legal Aid Agency will assess whether you are financially eligible for legal aid. This is known as the '**means test'.** You

will need to provide evidence of all your **income** (such as wages and benefits) and any **capital** (such as savings, properties and shares, life insurance).

The Legal Aid Agency will then make certain allowances for rent, if you work, have children or other dependents. The remaining figure is considered your disposable income. They will also deduct set amounts from any capital you own.

If your disposable income is higher than £733 per month or your capital assets are higher than £8,000, then the Legal Aid Agency will classify you as **not** being eligible for legal aid.

However, if you are married, in a civil partnership or maintained by another individual the Legal Aid Agency will take your partner's or that person's income into account as general rule. However, where the case is against that person, their income will not be counted.

It is important to note that if you receive benefits such as:

- Income support
- Income based, jobseekers allowance
- Universal Credit
- Guarantee credit element of pension credit

You will be 'passported' past the income-based means test and only your capital assets will be assessed.

If your income and capital is below the specified amount, then you will pass the means test but may have to pay a financial contribution towards your legal aid. The Legal Aid Agency will tell you if you need to make financial contributions. This will be either as a lump sum out of your assets or a monthly payment from your income. If you are paying a financial contribution towards your legal aid either from your income or your capital, then the payments should be made to the Legal Aid Agency. Your solicitor should provide you with regular updates (at least once every six months) on the costs of your case. You will need to keep the Legal Aid Agency informed about any change in your financial situation.

To work out if you meet the criteria you can use the eligibility calculator on the Ministry of Justice's website.

For information about financial contributions, you can look on the Legal Aid Agency civil legal aid eligibility key card.

The Merits Test

The Legal Aid Agency will look at the strengths and weaknesses of your case and consider things such as:

- The chances of your success at the Employment Tribunal. If your chances of success are low, then it is unlikely that you will be granted legal aid.
- Whether the likely legal costs for your case are proportionate or reasonable compared to the benefit you may gain from succeeding in your case.
- Whether you are likely to win more than the money spent on your case (for example, if you are claiming £2,000 from the other party and your legal costs are likely to be £3,000 then the merits of your case are low).
- Whether a reasonable person who could afford to pay their own legal fees would use their own money to pay for the case.

It is possible that you may get legal aid at the start of a case where it appears reasonable to continue to argue your case and your chances of success are reasonably good. But as the case goes on, the merits of legal aid continuing could decrease. For example, you may not get legal aid to continue to a final hearing if there are expert reports that make recommendations contrary to what you hope to achieve.

Types of legal aid

The Legal Aid Agency will limit the amount and type of legal work that your solicitor can do on your case depending on what type of case you have and what stage it is at.

For example, the Legal Aid Agency may pay your solicitor to write to the other side on your case and try to negotiate an agreement, but not pay them to go to court with you.

Your solicitor should explain the different types of legal aid available and what limits the Legal Aid Agency has put on the support they can give. If you are not sure, you should ask your solicitor.

The statutory charge

The statutory charge describes the way in which the Legal Aid Agency can reclaim money they have spent on your representation. The amount the Legal Aid Agency paid towards your legal fees will be treated as a loan until it is repaid.

The statutory charge will arise in cases where you have recovered or preserved a financial interest e.g.:

- If you gain any money, property, or assets from the other party
- If you keep any money, property, or assets from the other party because of the legal proceedings

If it is property that you have gained or kept then you may be able to delay repayment through the Legal Aid Agency 'registering a charge' on the property.

This means that the Legal Aid Agency will secure its loan against the value of your home (like a mortgage). The charge will be 'registered' (or recorded) at the Land Registry. You will be required to repay the loan and any interest to the Legal Aid Agency when you sell the home. You should make sure you check the interest rate charged on the loan as it is normally higher than any bank charges.

If it is money that you have gained or kept then you will be asked to repay your legal costs as soon as possible after the case ends. The Legal Aid Agency will only accept a delay in repayment if you wish to buy a home with the money you are awarded. In such cases the Legal Aid Agency will 'register a charge' on your home (see above).

At the end of the case your solicitor should send a copy of the bill to you before sending it to the Legal Aid Agency. You have the right to comment on the costs and potentially challenge the bill if you think it is too high. The bill will then be sent to the Legal Aid Agency to be assessed before the solicitor is paid.

Exceptional Case Funding (ECF)

If you are not eligible for legal aid for a reason other than failing the means test but your case is exceptional, then you can apply for 'Exceptional Case Funding'.

This is assessed on a case-by-case basis by the Legal Aid Agency. It will only be granted where failure to do so would be a breach of your human rights or the UK's international duties. For example, if you do not meet the criteria explained above but are not able to represent yourself because you struggle to understand English or have a particular vulnerability that means you would find it very difficult. Alternatively, your case may raise complicated issues that you do not know how to deal with.

You can ask a legal aid solicitor to make an application for Exceptional Case Funding for you. The Civil Legal Advice service can help you find a discrimination legal aid solicitor: www.gov.uk/civil-legal-advice.

If you cannot get assistance, it is possible to make an application for Exceptional Case Funding to the Legal Aid Agency yourself using the online forms. If you are granted legal aid, then you will need to find a solicitor who does legal aid cases to take your case, sometimes known as a legal aid solicitor.

For more information see the Gov.uk website: www.gov.uk/guidance/legal-aid-apply-for-exceptional-case-funding.

Failure to provide information to the Legal Aid Agency

It is important that you provide information or documents requested by the Legal Aid Agency within any set timescales and that you inform them if there any changes to your financial situation.

If you fail to do so, the Legal Aid Agency may cancel your legal aid funding and you may be required to pay back some or all your legal aid costs.

What if you are not eligible for legal aid?

If legal aid is not available to you then your options are to pay for legal advice yourself, seek alternative sources of advice or information or represent yourself.

For further information on legal aid, contact the Legal Aid Agency or **contact our Sexual Harassment at Work advice line on 020 7490 0152, see our opening hours at** Rights of Women: Get Advice.

There are some ways of getting free legal advice if you cannot afford a lawyer. Please see section 1.2.

Appendix

Template for raising a grievance

[*Insert Date*]

Dear [*insert the name of your employer/HR manager/line manager*],

I am writing to raise a formal grievance about unreasonable and unlawful treatment that I have been subjected to.

My grievance is about [*sex harassment/sexual harassment/sex discrimination*] that I have been subjected to. I would like you to investigate these allegations as a grievance under the [*your organisation*] grievance policy (if possible attach or link to the policy).

I would also like you, as my employer, to take appropriate and prompt action to stop the behaviour being reported and to remedy it. The name[*s*] of the perpetrator[*s*] *is/are* [*insert their full names and job titles/departments they work in*], a defined by the Acas sexual harassment guidance and the Equality and Human Rights Commission Sexual harassment and harassment at work guidance.

My grievance is set out below, where I describe the behaviour that constitute [*sexual harassment/sex harassment/sex discrimination*].

1. I am employed as [*insert your job title*]. My work and role involves [*set out the details of your role and the work that you do*].
1. On [*insert date(s)*], [*describe the events that took place.*].

[*Below are some tips to help you set out your grievance:*

- Describe the events in chronological order and include times/dates/timelines.
- Include the full names of any individuals involved in the events, including the full name of the harasser/discriminator and any witnesses to the events.
- If possible, quote specific words or phrases that were used during any meetings or discussions.

- Provide as much information as possible about the background including the nature of the conversations/interactions, any acts that took place or comments that were made. Include details such as the way in which the person said it, any innuendos or gestures and any subtle details.
- *Describe how the events made you feel, for example, if the incidents create an intimidating, hostile, degrading, humiliating or offensive environment for you to work in.*
- *Describe the impact these incidents have had on you (and is continuing to have on you), in terms of your health, your emotional wellbeing, your ability to perform your job, your confidence at work, any impact upon your personal relationships etc.*
- *If you have already resigned due to the course of conduct described in the paragraphs above, make sure you describe the collective events that led to the final event and describe the last straw that led you to resign. This description is necessary for a constructive dismissal claim, where you need to evidence that you resigned in response to a series of breaches of contract or a "course of conduct" by your employer, which when looking at the events collectively, amounts to a breach of the implied term of trust and confidence. The "last straw" is the final incident in the chain of events that led to you resigning.*]

2. The conduct described above was unwanted and [*of a sexual nature or related to my sex* [*or the sex of another person,* [*insert the person's name*]]. The conduct [*had the purpose or effect of violating my dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for me*].
3. I have evidence in the form of [*give details if appropriate, for example, refer to any emails, text messages, WhatsApp messages, voicemail messages you may have*].
4. I would like the following action to be taken:

   - A grievance meeting to be held as soon as possible – please send me a meeting invitation and a copy of the [*your organisation*] grievance policy
   - An investigation to take place into the events that occurred and a finding to be made in relation to my complaint
   - [*Describe other immediate or longer term action that will protect you from the perpetrator, for example, requesting for the perpetrator for the perpetrator to be transferred to another area or department, for you to not have further one-to-one contact with the perpetrator, or any other remedial action you can think of that is reasonable*].

Please let me know when I will receive an invitation to a meeting to discuss my grievance and confirm the next steps in the process.

I would like to be accompanied at the meeting and will let you know who my chosen companion is when I receive the invitation to the meeting.

Yours sincerely,

[*insert your full name and role*]

Grounds of complaint (for the ET1) for sex harassment or sexual harassment (and constructive dismissal, if you have resigned)

[*The words in square brackets, bold and italics allow you to insert and delete the words that are right for your own case*]

1. I [*am/was*] employed by [*insert the name of your employer*] from/since [*insert the date that you commenced employment*] to [*insert the date that your employment ended, if it has ended*]. My employer, the Respondent, is [*briefly describe your employer's business*].
2. I [*am/was*] employed as [*insert your job title*]. My work and role involved [*set out the details of your role and the work that you did for your employer. If it is relevant, include details relating to the work environment (i.e details of an intimidating, hostile, degrading, humiliating or offensive environment), your relationships with colleagues/your manager/other parties (set out the workplace relationship between you and the harasser), and any other relevant details here that will help the Employment Tribunal to understand your workplace and the individuals involved in the events that took place*].
3. I was subjected to the following conduct which amounted to [*sex harassment/sexual harassment*]:

[*Below are some tips to help you set out your grievance:*

- Describe the events that were sex *or sexual harassment in chronological order and include times/dates/timelines*
- *Provide as much information as possible including the dates the events occurred, the full names of the harasser and any other individuals who were present and witnessed the events*
- *Describe the nature of the conversations and if possible, quote specific words or phrases that were used during any meetings or discussions*
- *Describe any acts that took place or particular comments that were made. Include details such as the way in which the person said it, any innuendos or gestures and any subtle details.*
- *Describe how the events made you feel, for example, how the incident(s) created an intimidating, hostile, degrading, humiliating or offensive environment for you to work in.*
- *Describe the impact these incidents have had on you (and is continuing to have on you), in terms of your health, your emotional*

wellbeing, your ability to perform your job, your confidence at work, any your personal relationships etc.
- *If this paragraph is long, feel free to split it into several paragraphs or sub-paragraphs. It is best to give each separate incident its own paragraph or sub-paragraph*]

4. [*If you resigned due to the behaviour described in the paragraph(s) above, make sure you describe the collective events that led to the final event and describe the 'last straw' that led you to resign. This description is necessary for a constructive dismissal claim, where you need to show that you resigned in response to a series of breaches of contract or a 'course of conduct' by your employer, which when looking at the events together, amounts to a breach of your employment contract (a breach of the implied term of trust and confidence). The 'last straw' is the final incident in the chain of events that led to you resigning*].
5. The conduct described above was unwanted and [*of a sexual nature or related to my sex* [*or the sex of another person,* [*insert the person's name*]]]. The conduct [*had the purpose or effect of violating my dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for me*].
6. On [*insert the date*], I raised a grievance about this conduct which I sent to [*insert the name of the person the grievance was sent to and their job title*]. The grievance contained the following details [*outline the details of your grievance or refer to the incidents described in paragraph(s) XX above*].
7. I was invited to attend a grievance meeting on [*insert the date of the grievance meeting*] which was conducted by [*insert the name of the individual who heard your grievance and their job title*]. [*include any other details relating to the grievance process that you want the tribunal to be aware of. For example, was there a long delay before you received a response to your grievance? Was the person hearing the grievance biased in any way? Were you asked inappropriate questions? Were there any flaws in the grievance process that lead you to believe that the grievance was not handled fairly or independently? Were you invited to a grievance meeting at all? Were you given the opportunity to be accompanied at the meeting by a colleague or trade union representative?*]
8. I received a written response by email/letter dated [*insert the date*] which [*did not uphold my grievance/did not deal*] with my grievance in a satisfactory way. The grievance outcome was as follows. [*Describe the details of the grievance outcome and why it was not dealt with satisfactorily.*]

9. On [*insert the date*], I appealed against the outcome of the grievance. My appeal was on the following grounds: [*include details about your appeal*]. [*If you did not appeal the outcome, state that you did not appeal the outcome of the grievance and the reasons why.*]
10. [*If you resigned from your employment, include the following details – On* [*insert the date*]*, I resigned* [*with/without notice*], in response to the [*sex/sexual harassment*] [*and the failure to deal properly with my grievance*]. [*Insert any other details that are linked to your claim for sex/sexual harassment that you would like the Employment Tribunal to know.*]
11. I believe that the [*sex harassment/the sexual harassment*] [*and my employer's failure to deal with my grievance*] constituted a fundamental breach of trust and confidence, entitling me to resign with immediate effect.
12. [*If you sent written questions to your employer about any the incidents, include the following paragraph* – On [*insert date*] *I sent to my employer a list of questions in accordance with the procedure set out in the Acas guide to asking and responding to questions on discrimination in the workplace.* My employer [*did not reply/has failed to adequately reply*] [*OR my employer's answers support my claim for* [*sex harassment/sexual harassment/sex discrimination because*] [*set out the details on how your employer's response supports your claim*].]
13. If the Employment Tribunal finds that any act or omission complained of occurred more than three months before its receipt of this claim, or is outside of the extended limitation period following participation in Acas early conciliation, and that such act or omission is not part of a continuing act under section 123(3)(a) of the Equality Act 2010, I state that it would be just and equitable in the circumstances for the tribunal to extend time for submission of my claim under section 123(1)(b) because [*include details of why the claim was submitted late, for example, were you too ill or suffering from depression/waiting for the outcome of the grievance process in the hope of an amicable resolution, if your employer played a part in the delay, etc*].
14. I have been affected in the following ways: [*include details here of the emotional impact that your employer's behaviour has had on you*]. I [*have/have not*] found alternative employment since the date of my dismissal.
15. I seek the following remedies:
    a. Compensation for financial loss and injury to feelings.
    b. An award of aggravated damages [*include this request for aggravated damages award where your employer has acted in a high-handed, malicious, insulting or oppressive manner, for example, where there was malice or bad intention on the part of your employer*].

c. [*if you have suffered personal injury, then include the words 'compensation for personal injury'.*]
d. [*if you resigned in response to your employer's actions, include the words 'compensation for constructive unfair dismissal'.*]
e. [*if your employer did not respond to your grievance, or failed to deal with your grievance adequately, or did not offer you the right of appeal, or did not comply with any part of the Acas Code of Practice on Disciplinary and Grievance Procedures, then include the following words – An uplift of up to 25% to the compensation awarded by the Employment Tribunal because of the Respondent's unreasonable failure to comply with the Code of Practice.*]
f. Interest at the appropriate rate.
g. [*That the Employment Tribunal make the following declaration[s]: [insert the declaration that you would like the tribunal to make, for example, that there was sexual harassment/sex harassment/sex discrimination].*]
h. [*If you would like the Employment Tribunal to make recommendations, for example, that your employer provide an agreed reference to you, or that your employer apologise to you for the acts complained of etc, include the following wording – That the employment tribunal make the following recommendation[s]: [include details of the recommendations you are asking for].*]

[*Insert Date*]

Data Subject Access Request (DSAR) Template

Your email address

[*Today's date*]

[*Insert your employer's address*]

Dear [*Insert name – a contact in your HR department, if possible*],

DATA SUBJECT ACCESS REQUEST UNDER DATA PROTECTION LAW
I am writing to make a data subject access request under data protection law.

I [*am/was*] employed by [*insert the name of your employer*] as [*insert your role and the department you work(ed) in*]. My dates of employment are from [*insert date*] until [*the current date/if you are no longer with the employer, insert the date when you left your employment*].

I understand that you hold and process data about me.

SCOPE OF MY REQUEST
I understand that [*insert the name of your employer*] processes a wide range of personal data about me. However, this request is confined to data concerning:

- Allegations about [*sexual harassment/sex discrimination/other allegations/ incidents that took place etc*]
- [*If you think your employer holds data about other matters that you would like to obtain a copy of, for example, notes of meetings that you had with certain individuals, emails about incidents that happened etc, insert the details in these bullet points*]
- [*If relevant – CCTV footage situated at* [*location*] *taken on* [*dates*]]
- My personnel file.

LOCATING THE PERSONAL DATA
I envisage that several individuals at [*insert the name of your employer*] may process personal data in connection with the matters described above. Some of the data processed will be in the form of emails (including sent, received, deleted and archived emails) and word-processed documents. These documents and emails can easily be identified with online search tools.

In relation to emails, you may limit the search to emails between [*insert the names of individuals that you know will have sent and received emails about the allegations*] during the period [*insert dates, ensuring that the search dates are wide enough to capture the emails sent during the timeline of events*]. However, in relation to the [*sexual harassment/sex harassment/sex discrimination/other allegations/description of other incidents*] set out above, please ask [*insert the same names of the individuals who are listed above in this paragraph*] whether any of them is aware of other individuals who are likely to have exchanged emails containing personal data relating to me. If so, please let me know who those other individuals are and search the emails of any individuals identified as well as those individuals I have mentioned above.

REQUEST FOR FURTHER INFORMATION

[*If an event happened or decisions were made by your employer but you do not know who took the decisions or who was involved in the incident, you could include the following wording*:] I have mentioned above those individuals who I believe may have processed data about me. However, I am also concerned about [*a decision that was taken that* [*insert details of the decision/*an event that happened when [*describe the event*]]. Please could you inform me of which individuals were involved [*in the decision-making in relation to that process in the event described above*] so that I can decide whether to make a more specific subject access request in relation to that situation].

VARIATIONS OF MY NAME

My full name is spelled [*insert your name*]. However, sometimes my name is also spelled as [*insert the variations on your name,*]. I am also referred to as [*insert any other names or nicknames*]. I would like you to search for each of these variations, particularly when searching email records and other word-processed documents. I would also like you to search against my initials of [*insert your initials, although note that a reasonable search against your initials may be difficult for your employer to do depending upon what your initials are e.g. an email search against "XR" will retrieve fewer emails than a search against the initials "HR". However, it is worth including your initials here and waiting for your employer to explain if they cannot perform the search based on your initials, and the reasons why*].

INFORMATION TO SUPPLY

Once you have identified personal data within the scope of this request, please provide a copy of the information constituting personal data to me [*include details of whether you would like printed out copies or if you would like the copies in an electronic format e.g. on a USB stick*]. You will also need to:

- Provide a description of the data and the categories of personal data concerned.
- Explain the purposes for which the data is processed.
- Identify the source or sources of the data.
- Set out to whom the data has been disclosed or may be disclosed, including recipients in third countries or international organisations.
- Set out, where possible, the envisaged period for which the data will be stored, or, if not possible, the criteria used to determine that period.
- State whether there has been any automated decision-making using the data, including profiling, and if so, any meaningful information about how any decision was based, as well as the significance and the envisaged consequences for me of such processing.

CONFIRMATION OF MY IDENTITY

I assume you are aware of who I am. However, to avoid any doubt or delay, I enclose a copy of my [***driving licence***] [***passport***] to confirm my identity.

If you do not normally deal with data subject access requests, please pass this letter on to your data protection officer or relevant staff member as soon as possible.

I look forward to hearing from you in relation to the above request within one month of receipt of this request [***give the specific date which is one month away***], as required under data protection law.

Yours sincerely

[*insert your full name and role*]

Acknowledgements

We are grateful to the women survivors of sexual harassment who have contributed to this work. We would also like to thank ROSA Justice and Equality Fund and TimesUP UK who have supported this work since 2018. We are particularly grateful to our volunteer team of legal advisers and Legal Advisory Group of 11 expert women who have supported the service to develop since its inception. It has truly been a collaborative effort driven by our shared desire to challenge the culture of sexual harassment experienced by women, support women who experience it and work towards a society where women enjoy equal treatment, safety in the workplace and are fully empowered to utilise their legal rights.

This handbook has been written by women for women as an accessible guide to the law. We hope you can use it on your journey to unpack and explain the law, your rights and options in a unique and resource aimed directly at women survivors of sexual harassment in the workplace.

September 2022

RIGHTS of WOMEN
helping women through the law