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Sexual harassment at work

Peter Forster

See also *Personal View on*
p 962

In a recent survey of 132 employers almost half said that cases of sexual harassment had been reported by employees during the previous year. In most cases the complaints had been upheld.¹ Although affecting both sexes most cases of harassment at work affect women. Earlier surveys in Britain support the view that a substantial proportion of women have been sexually harassed at some time during their working lives. Similar findings have been reported by researchers in other European countries.²

In the United States a survey of 25 000 federal employees produced a remarkable 85% response rate and showed that 42% of women (and 14% of men) had experienced some form of uninvited and unwanted sexual attention at work.³ Sexual harassment allegations increased by 40% in the three months after Anita Hill's charges against Supreme Court nominee Clarence Carter in October 1991. In June navy secretary Laurence Garrett resigned amid a furore of publicity over claims that at least 26 female naval officers were sexually assaulted by drunken male pilots and navigators during a conference in Las Vegas. Such findings as these have led one commentator to conclude "sexual harassment is a problem in virtually every organisation and that a substantial proportion of working women are the recipients of unwanted sexual attention at work."⁴

The real question seems to be not whether sexual harassment is a problem but how much of a problem it is. Among medical staff anecdotal evidence of harassment exists in the hospital service as well as in general practice. At their conference in Cardiff this year the pressure group Women in Medicine launched a national survey to discover the extent of sexual harassment in the NHS (western Europe's largest employer of women). This coincided with the introduction in March of an enabling agreement between NHS management and unions seeking to outlaw sexual (and racial) harassment.

What is sexual harassment?

Sexual harassment is a particularly antisocial and unacceptable form of behaviour which until 15 years ago was largely unrecognised. Although a commonplace experience for working women, sexual harass-

ment was considered a trivial issue and of only peripheral concern to employers.

The term emerged in the United States during the 1970s and in the intervening years has become recognised both in the United States and Britain as an important industrial relations and legal issue. The recently adopted European Commission code of practice on the subject defined sexual harassment as "unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of women and men at work."⁵

The European Commission's definition encapsulates the subjective character of sexual harassment whereas the definition adopted in the NHS Whitley agreement is more specific. Harassment is defined here as "action, behaviour, comment or physical contact which is found objectionable or which causes offence. It can result in the recipient feeling threatened, humiliated or patronised and it can create an intimidating work environment."⁶

Many misconceptions are held by both men and women about what constitutes sexual harassment. Its essential characteristic is that it is unwanted by and unwelcome to the recipient and needs to be distinguished from acts of mutual flattery, flirtation, or harmless romantic behaviour. The *Industrial Relations Review and Report* survey lists a range of actions which most respondents said they would define as acts of sexual harassment if an employee were to complain about them (box 1). It is often an employer's failure to recognise the unwelcome and unwanted aspects of a harasser's behaviour which leads to harassment being trivialised and not taken seriously.

Consequences of sexual harassment

Introducing the new NHS agreement in March on harassment at work, Virginia Bottomley said "Many do not know how to cope with harassment. Some eventually leave the workforce and this is a tragedy both for the individual and for the health service. Every employee, male as well as female, has the right to respect and dignity at work." Only in recent years have the consequences of sexual harassment at work become apparent. Most literature on the subject refers to costs—direct and indirect—to recipient and employer.

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Box 1—Actions that may constitute sexual harassment¹

- Unwanted physical contact such as unnecessary touching, patting, or pinching of another employee's body
- Demands for sexual favours in return for promotion
- Unwelcome sexual advances or propositions
- Continued suggestions for social activity outside the workplace after it has been made clear that such suggestions are unwelcome
- Offensive flirtations
- Suggestive remarks, innuendos, or lewd comments
- Display of sexually suggestive pin ups or calendars
- Leering or eyeing up a person's body
- Derogatory remarks which are gender related
- Sexual assault
- Offensive comments about appearance or dress that are gender related
- Sexist or patronising behaviour

But effects on the recipient include irritability, anxiety, tension, depression, deterioration of personal relationships, hostility, sleeplessness, fatigue, and other symptoms of stress at work.

Counsellors point out that people who are sexually harassed are often those least able to protect themselves. They may be young, lacking in interpersonal skills, shy, and inhibited. People in these categories may already have low self esteem and sexual harassment may further inhibit their ability to develop self confidence.⁷ A new guide on combating sexual harassment, from the Department of Employment, shows how sexual harassment can reduce morale and imposes considerable costs on employers in terms of impeded efficiency, increased sickness absence, and ultimately loss of experienced employees (adding to costs in terms of recruitment, training of replacement staff, etc).⁸ Sexual harassment also has serious and expensive legal implications.

Legal considerations

Until recently the legal consequences of sexual harassment were uncertain. The 1975 Sex Discrimination Act does not specifically cover harassment. However, it does provide that a person discriminates against a woman if "on the grounds of sex he treats her less favourably than he treats or would treat a man," resulting in the complainant suffering a detriment—that is, dismissal, denial of job related benefits, or "any other detriment".

The courts have interpreted this as including within the definition of "treatment" conditions in the work environment. In a landmark case in 1986 the judge said, "Sexual harassment is particularly degrading and is not acceptable" and "it must have been the intention of Parliament to include such treatment within the sex discrimination legislation." Where sex discrimination is proved the remedies include a declaration that discrimination has occurred, an award of compensation (including a separate award for injury to feelings), and a recommendation that the employer take action "to obviate or reduce the adverse effect on the complainant."

The seriousness with which the law treats sexual harassment is reflected in the level of compensation awarded. Since the 1986 case the number of claims brought to industrial tribunals has steadily increased. Latest figures show that since 1986 the tribunals have decided 97 sexual harassment cases, 53 of which were

successful.¹⁰ Compensation awards have ranged from £109 to £7000. In cases settled before reaching a tribunal, awards of up to £15 000 have been made. Separate awards for injury to feeling have ranged from £100 to £8925.

Employers who commit or permit acts of sexual harassment may also be held to breach the contractual terms relating to mutual trust and confidence, entitling employees to resign and treat themselves as constructively dismissed.

European Commission code of practice

Recent European measures provide the strongest incentive to date for employers to develop a proactive approach to sexual harassment at work. They follow a European-wide survey and report which highlighted the extent of the problem throughout the community and showed the paucity of legal measures to deal with it.¹¹ Although not binding in themselves these measures are intended to supplement the Equal Treatment Directive.¹²

In practical terms the measures mean that industrial tribunals in Britain will be bound to take the code of practice into account in relevant cases. The code of practice aims at raising awareness of the unacceptability of sexual harassment and provides practical guidance to employers and employees and recommends measures to deal with harassment (box 2).

John Major's launch last year of Opportunity 2000 represented Britain's contribution to an EC wide campaign aimed, among other things, at promoting a better balance between the sexes in employment. As an original signatory to the government initiative the NHS Management Board has implemented measures designed to give effect to the proposals contained in the code of practice. This follows Mrs Bottomley's launch last June of the Women in the NHS initiative, which aimed at improving the recruitment and retention of women in the NHS.

Welcoming the new agreement for dealing with harassment at work, Mrs Bottomley said, "this agree-

Box 2—European Commission code of practice on sexual harassment

The code recommends employers should:

- Issue a policy statement which expressly states that all employees have a right to be treated with dignity, that sexual harassment at work will not be permitted or condoned, and that employees have a right to complain about it should it occur
- Communicate effectively to all employees the organisation's policy to ensure that employees are treated with dignity
- Give managers (including supervisors) a particular duty to ensure that sexual harassment does not occur in work areas for which they are responsible and provide specialist training in the subject

If harassment has occurred the code says:

- Employers should designate someone to provide advice and assistance to employees subjected to sexual harassment
- A formal complaints procedure should specify to whom the employee should bring a complaint, and it should also provide an alternative if in the particular circumstances the normal grievance procedure may not be suitable
- Violations of the organisation's policy should be treated as a disciplinary offence and the disciplinary rules should make clear what is regarded as inappropriate behaviour at work

Box 3—General Whitley Council regulations

All health authorities and trusts should:

- Provide a clear statement of what is considered to be inappropriate behaviour at work
 - Make clear that the policy applies to all grades and levels of employees
 - Declare that harassment will be treated as a disciplinary offence
 - Explain that such behaviour may in certain circumstances be unlawful (for example, under the Sex Discrimination Act and Race Relations Act)
 - Describe how to get help and, where necessary, complain about harassment
 - Make plain that allegations about harassment will be taken seriously and confidentially by management at every level and that there will be no victimisation of any employee making or helping someone else to make a complaint
 - Emphasise that members of staff carry responsibility for their own behaviour under the policy
- (Source: Section 48, paragraph 5 of General Whitley conditions of service)

ment underlines our commitment to eradicate sexual and racial harassment at work and demonstrates our insistence that all NHS staff are treated equally. This helpful framework guidance forms an important part of the General Whitley Council's continuing pursuit of equal employment opportunities.^{11,13} As an enabling agreement the new arrangements set out the policy framework for health authorities to follow (box 3).

The new arrangements provide for sexual harassment to be considered as a disciplinary offence. The agreement recognises that in many cases women may be dissuaded from coming forward and that by its nature harassment may make the normal channels for handling grievance complaints difficult to use. Therefore in the first instance employees subjected to

harassment are advised to seek advice, support, and counselling in confidence and without obligation to take a complaint further. Only when the complaint cannot be resolved informally should the employee bring a formal complaint. Employing authorities are asked to consider whether their existing grievance and disciplinary procedures are flexible enough to cope with complaints of harassment and, in particular, to cover the situation where the complaint concerns a line manager. Importantly, health authorities and trusts are expected, under the guidance issues on Opportunity 2000, to monitor and report back on progress under the agreement.

Sexual harassment in any form is unacceptable and degrading. It can be attributed to outmoded attitudes and sex role stereotyping of men and women. It is also associated with the abuse of power and position in the work environment. In hierarchal work structures like the NHS it is often endemic. For this reason the Whitley Agreement on harassment should be widely welcomed, as recognition of the issue and as representing a significant step forward in tackling the problem in the NHS.

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ANY QUESTIONS

Are there any methods available to measure the amount of cigarette smoke in the atmosphere of a room?

Direct measurements of cigarette smoke in the atmosphere of a room are difficult. Particulates are not specific to tobacco smoke. Nicotine, which tends to cling to surfaces, and vapour phase components such as carbon monoxide may also arise from other sources. Perhaps the best method is to use people who do not smoke as a means of monitoring. Such people will breathe in ambient air contaminated with tobacco smoke and convert the nicotine in the air to cotinine. Unexposed people should have no cotinine in their urine. Urinary cotinine concentrations greater than 5 µg/l would indicate appreciable exposure to tobacco smoke in the air. Blood cotinine concentrations have a half life of about one day, so that cotinine measurements will be influenced by exposure over the past few days as well as exposure within a given room. —NICHOLAS WALD, *professor of environmental and preventive medicine, London*

Why do beekeepers who are taking certain drugs react more severely when they are stung?

Bee venom is a complex mixture of pharmacologically and biochemically active substances that act as toxins, so bee stings are painful to normal people and often give rise to considerable local erythema and swelling in the absence of

IgE antibody. Certain components of the venom also act as allergens to sensitised (allergic) people and may cause massive local oedema and occasionally severe systemic reactions. Allergy to bee venom is common, and beekeepers are at increased risk of being stung.

Type I allergic reactions may be enhanced by β blocking drugs, and severe episodes of anaphylaxis have been reported in patients taking β blockers.¹ β Adrenergic receptors normally control the release of allergic mediators. β Blockade interferes with this regulatory mechanism by competition with endogenous catecholamines and also with the effect of β adrenergic drugs given to treat anaphylaxis. This effect has been repeatedly observed with insect sting allergy.²

Two anecdotal cases of systemic reactions after insect stings during treatment with non-steroidal anti-rheumatics have been reported.³ The possibility of an enhancement of a systemic type I reaction through non-steroidal anti-inflammatory drugs, which are known to interfere with metabolism of arachidonic acid, should be borne in mind because metabolites of arachidonic acid are important mediators of anaphylaxis. —DEREK O WILLIAMS, *associate specialist, London*

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