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HOUSE OF COMMONS
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Public Bill Committee

WORKER PROTECTION (AMENDMENT OF EQUALITY ACT 2010) BILL

Wednesday 23 November 2022

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CLAUSES 1 to 6 agreed to.
Bill to be reported, without amendment.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

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Sunday 27 November 2022

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The Committee consisted of the following Members:*Chair:* IAN PAISLEY

Baker, Duncan (<i>North Norfolk</i>) (Con)	† Mackrory, Cheryl (<i>Truro and Falmouth</i>) (Con)
† Blackman, Bob (<i>Harrow East</i>) (Con)	† Mortimer, Jill (<i>Hartlepool</i>) (Con)
Blake, Olivia (<i>Sheffield, Hallam</i>) (Lab)	Osborne, Kate (<i>Jarrow</i>) (Lab)
Britcliffe, Sara (<i>Hyndburn</i>) (Con)	† Siddiq, Tulip (<i>Hampstead and Kilburn</i>) (Lab)
† Caulfield, Maria (<i>Parliamentary Under-Secretary of State for Health and Social Care</i>)	† Smyth, Karin (<i>Bristol South</i>) (Lab)
Colburn, Elliot (<i>Carshalton and Wallington</i>) (Con)	† Stafford, Alexander (<i>Rother Valley</i>) (Con)
† Drummond, Mrs Flick (<i>Meon Valley</i>) (Con)	† Whittome, Nadia (<i>Nottingham East</i>) (Lab)
† Hobhouse, Wera (<i>Bath</i>) (LD)	
† Jardine, Christine (<i>Edinburgh West</i>) (LD)	Bradley Albrow, <i>Committee Clerk</i>
† Johnston, David (<i>Wantage</i>) (Con)	† attended the Committee

Public Bill Committee

Wednesday 23 November 2022

[IAN PAISLEY *in the Chair*]

Worker Protection (Amendment of Equality Act 2010) Bill

9.25 am

The Chair: I have a few preliminary reminders: please no food or drink; switch your electronic devices to silent; and *Hansard* colleagues always appreciate having your notes emailed to them.

My selection and grouping list for today's sitting is available online and in the room. As you can see for yourselves, no amendments have been tabled. We therefore have a single debate on all the clauses.

Clause 1

LIABILITY OF EMPLOYER FOR HARASSMENT OF
EMPLOYEE BY THIRD PARTIES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 2 to 6 stand part.

Wera Hobhouse (Bath) (LD): Thank you, Mr Paisley. Before I go through the details of the Bill, I thank the Minister and Committee members for joining me to examine the Bill. I also thank the Government's Equalities Office and the Fawcett Society for their excellent work and support over recent months. It is wonderful to see such cross-party co-operation to ensure that this important legislation makes progress.

Workplace sexual harassment is a blight on our society. It remains widespread and vastly under-reported. Half of British women and a fifth of men have been sexually harassed at work or a place of study. Too many people have been left to suffer for too long. The question of whether employers have taken adequate steps to prevent sexual harassment arises only as a defence if an incident of sexual harassment has already occurred. Employers are therefore not required to take actions to prevent sexual harassment. That leaves individuals with the burden of challenging it.

The Bill, which passed its Second Reading last month, introduces two new measures to strengthen protections for employees against harassment. The first is the introduction of explicit protections for employees from workplace harassment by third parties, such as customers and clients. The second is the introduction of a duty on employers to take all reasonable steps to prevent their employees from experiencing sexual harassment.

I now turn to the Bill's substance, covering each of the six clauses. Clause 1 creates employers' liability for harassment of their employees by third parties. In particular, the clause amends section 40 of the Equality Act 2010, which already makes it unlawful for an employer to harass their employees or their job applicants, by inserting proposed new subsections 1A and 1B.

Proposed new subsection 1A will make an employer liable if they fail to take all reasonable steps to prevent the harassment of their staff from third parties in the course of their employment. That includes all types of harassment under the Equality Act, including racial harassment and harassment in relation to sexual orientation, as well as sexual harassment. Proposed new subsection 1B defines a third party as someone other than the employer or a fellow employee. That would include customers or clients. In practice, therefore, employers will now be legally required to consider the harassment risks that third parties may pose in their workplaces, and to take steps to protect their staff.

No other conditions are attached to the third-party protection, and an employee will be able to bring a claim for third-party harassment after a single incident of harassment. The Bill therefore does not replicate the repealed "three strikes" formulation in the pre-2013 version of section 40 of the Equality Act, under which employers needed to know of two previous incidents of third-party harassment before they could be considered liable. The rationale is that there should be no distinction between being harassed by a colleague or a client when it comes to the legal liability of employers and to employees seeking recourse. The measure will also provide better clarity for both employers and employees, and avoid the unnecessary complexity arising from the "three strikes" formulation. The third-party harassment protection will be enforceable in two ways: first, by individuals bringing claims to the employment tribunal; and secondly, by the Equality and Human Rights Commission using its existing powers.

In cases where individuals are willing and able to bring claims to the employment tribunal, claims of third-party harassment will be considered in the usual way for work-related Equality Act claims. Compensation in such cases will be decided by the employment tribunal in the same way as existing Equality Act claims, which involve considering a number of factors, including financial loss and "injury to feelings".

Clause 2 inserts new section 40A into the Equality Act to create a new duty on employers to take all reasonable steps to prevent sexual harassment of their employees. The phrase "all reasonable steps" is well understood as it is a statutory defence in section 109 of the Equality Act. Employers currently can show that they have taken all reasonable steps to prevent the harassment or discrimination of their employees when defending such claims and will therefore be familiar with the concept. The provision is to make sure that employers will quickly get behind this legislation.

The Bill will not define "all reasonable steps" because what could be considered reasonable will vary between employers, taking into account factors such as their size, sector and specific circumstances. Tribunals are adept at applying the concept, which ensures that employers can take a proportionate approach appropriate for their circumstances. All that is to ensure that everyone—employees and employers—can get behind this legislation because it is about a culture change in our society.

David Johnston (Wantage) (Con): I congratulate the hon. Lady on getting her Bill to this stage.

On the point about culture change, I should say that a few weeks ago a 16-year-old in my constituency came to see me about negative behaviour from boys and men,

including rape jokes that the adults around her and her friends just dismissed as “boys will be boys”. That is the sort of thing that happens in the workplace, too. Does the hon. Lady agree that the earlier we educate boys about how to treat girls, the less likely they are to become men who mistreat women in the workplace?

Wera Hobhouse: I thank the hon. Gentleman for that intervention. Absolutely—this legislation should be a step in the right direction towards culture change. That cannot start too early; obviously, by the time someone is in the workplace they might already have started to take the wrong attitudes. Whenever we talk about sexual harassment, we always mention the importance of education and of starting early and understanding relationships and consents. That is the most important thing. We do not want legislation that creates a lot of criminals and offenders; it should encourage people to do the right thing and to have the right behaviour in all places in society, including the workplace.

The question of whether an action is reasonable is also familiar in domestic civil law: more specifically, in the Equality Act—for example, the duty on employers and service providers to make “reasonable adjustments” for disabled people. To help employers understand what is expected of them, the Government will be supporting the Equality and Human Rights Commission to develop a statutory code of practice on workplace harassment. A breach of the new duty will be enforceable in two ways. First, it will constitute an unlawful act under the Equality Act 2006, and therefore be enforceable by the Equality and Human Rights Commission under its existing powers. There are already good and reasonable laws in place, but sometimes people may not know that they exist. Employees in particular may not know that they have recourse to them. This legislation also reinforces our campaign to make sure that everyone knows their rights.

The EHRC may undertake strategic litigation, investigation and enforcement activity for any suspected breach of the new employer duty, regardless of whether an individual has submitted a legal claim to the employment tribunal. That is an important change, because previously that was not possible. The EHRC can act on its own behalf. That enforcement route removes the onus from the individual, who may not wish to bring legal action against their employer, and enables an employer’s systemic non-compliance with the duty to be addressed by other means. Again, that is about empowering our workforce to understand their rights and to ensure that the onus is not always on the individual. Secondly, the duty is enforceable by individuals bringing claims to an employment tribunal in certain circumstances. Clauses 3 and 4 set out the details of the duty’s enforcement.

Clause 3 amends section 120 of the Equality Act, which sets out areas where employment tribunals have jurisdiction to determine when a complaint is made. The clause provides that a claim for a breach of the duty cannot be brought as a stand-alone claim to an employment tribunal. That means that tribunals cannot consider individual claims for a breach of the employer duty, other than in cases where a sexual harassment claim has been upheld. The rationale is that to allow otherwise would risk broadening and complicating the duty’s scope beyond the intentions of the policy. For example, it might enable someone to bring a claim that

simply challenges a company’s perceived inadequate policy or training. This risks creating uncertainties for employers and undermining the policy aims.

Clause 4 concerns the compensation awarded by an employment tribunal for a breach of the new employer duty. It inserts new section 124A into the Equality Act. It provides a new remedy for breaches of the employer duty in cases where the tribunal has upheld a claim involving sexual harassment and ordered compensation to be paid. The new section provides that the employment tribunal must consider whether and to what extent an employer has also breached the new duty created by clause 2. As a result, the duty will be considered automatically by an employment tribunal following any successful sexual harassment claim where compensation was awarded.

In practice, that means that in each sexual harassment case brought to the employment tribunal where the tribunal has found in favour of the victim and awarded compensation, it must then consider whether there has also been a breach of the employer duty—whether the employer failed to take all reasonable steps to prevent the harassment from occurring. That would also include cases of third-party sexual harassment.

If the tribunal finds that a breach of duty has occurred, the employment tribunal judge may order an uplift of up to 25% of the compensation awarded. The exact amount of the compensation uplift is at the tribunal’s discretion, but it must reflect the gravity of the breach. This means that the tribunal’s decision will consider the specific circumstances of each workplace and avoid overall disproportionate awards.

Clause 5 relates to the enforcement of the new employer duty by the Equality and Human Rights Commission. It makes some consequential amendments to ensure that the Equality Act 2006 works properly with the new duty.

Clause 6 provides that the Bill extends to England, Wales and Scotland. It does not extend to Northern Ireland, where employment law and equal opportunities are devolved. It also sets out that the Bill will come into force one year from the day it is passed, which will ensure that employers have sufficient time to understand the new legislation and take any appropriate action to comply with the new measures before they are enforced.

Employers will be supported in this transition through the Equality and Human Rights Commission’s new statutory code of practice on workplace harassment, which will improve employers’ ability to engage with their existing duties and help them to understand whether they have taken all reasonable steps to prevent harassment. The Government also plan to publish their own advice for employers in due course.

We have turned a blind eye to workplace sexual harassment for far too long. This Bill will help to prevent harassment, protect victims and change the culture around victim blaming. Obviously, the Bill is not enough on its own to tackle workplace sexual harassment. However, it is a step in the right direction in protecting employees from harassment at work. I hope it will continue to get the support it deserves. I thank all members of the Committee, the Government Equalities Office and the Government for supporting the Bill.

Karin Smyth (Bristol South) (Lab): It is a pleasure to serve under your chairmanship, Mr Paisley. I commend the hon. Member for Bath for bringing this Bill forward. That is a lot of work, and it is difficult, but it is great to be able to work across the Committee to do it.

The statistics about how many women in customer-facing roles in particular face sexual harassment are shocking. I think most of us who have been in that position recognise the gravity of that. It has been a pleasure to serve on the Committee. I recognise the serious nature of this legislation, and I wish the hon. Lady well with the passage of the Bill.

Christine Jardine (Edinburgh West) (LD): I commend my hon. Friend the Member for Bath for bringing forward this Bill, which is particularly important in stressing the employer's liability. Most of us—most women, certainly—have faced some sort of sexual harassment in the workplace at some point in our careers, and one of the main issues was that it was much easier to solve it quietly or sweep it under the carpet because the employer had no liability to act. This Bill is a great step forward in tackling workplace sexual harassment and changing that culture, which is so insidious. We must recognise it and ensure that action is taken.

Tulip Siddiq (Hampstead and Kilburn) (Lab): It is a pleasure to serve under your chairmanship, Mr Paisley. I rise to support the Bill, but I also want to say a few words about the hon. Member for Bath. She was elected in 2017, a few years after me, and has been a doughty champion for women's rights. This is not the first time she has brought such a Bill to the House. In 2018, she introduced a very good private Member's Bill about upskirting and the things that we turn a blind eye to. That private Member's Bill was supported by the then Prime Minister, the right hon. Member for Maidenhead (Mrs May), and the extent of cross-party support demonstrates how strong the Bill was.

The hon. Member for Bath has worked really hard on abortion rights as well as on eating disorders, which are becoming more of an issue in society. They have always been an issue but are highlighted now more than ever because of the effect of social media. Another strand of her work is on violence against women. Even though we are not in the same party, I am very proud that she is in Parliament, because these issues are important for women and for society, and we have to fight for them and legislate on them, as all Members have said.

Sadly, a lot of young women have come to believe that sexual harassment is an unavoidable fixture of the workplace, and that is not how it should be; I will come on to talk about LGBTQ workers and women in the workplace who come from ethnic minority backgrounds. I am also supporting the Bill on behalf of our children who have not yet come into the workplace, so that when they do they will, hopefully, not have to see, experience or be a victim of sexual harassment.

It has been 16 years since the #MeToo movement started and five years since it was relaunched on social media. Here we are, 16 years later, still trying to legislate against harassment. I am not sure whether we should be celebrating, but it feels like it has taken a very long time to get here. The fact that we are here probably should be celebrated; at least we are doing something about the issue.

9.45 am

Imagine being in the shoes of a young woman who has just entered the workforce and fallen victim to an unwanted sexual advance from a colleague in the office. I was that woman once. We might think that her employer would expect her to report the perpetrator, but we all know that that is much easier to say than actually do. As most victims of sexual harassment will know, she will feel the heavy burden of proof on her shoulders, and she may worry that reporting the incident will harm her career prospects as a young woman. She may also just think that no one will believe her. That weighs on a lot of young women's minds. They think, "No one will believe me if I say this, because my employer is so much more powerful."

If the woman involved is a woman of colour, gay, disabled, or a migrant—she may be all four—she is likely to feel an even heavier weight on her shoulders due to the intersectional nature of sexual harassment. Among some of those worst affected by sexual harassment are ethnic minority LGBTQ+ women, over half of whom have reported unwanted touching.

Wera Hobhouse: I thank the hon. Member for her powerful speech. Does she agree that the new provision in the Bill that individuals do not need to go through an employment tribunal procedure and can have recourse to the law in other ways is an important step forward?

Tulip Siddiq: Absolutely. I think it will go some way to addressing some of the issues I have outlined about women not wanting to go through the very difficult process of proving what has happened, and they will be treated more fairly. That is the justification for the Bill, so I absolutely agree.

I know quite a lot about this topic, but when I was researching the Bill the scale of sexual harassment experienced by sections of the workforce really shocked me as I read the statistics. Half of women and seven out of 10 LGBTQ+ workers have experienced some form of sexual harassment at work. That affects workers across industries, including retail, the NHS and financial firms—and right here in Parliament, as we know. We cannot pretend for any longer that sexual harassment is an individual concern that can be responded to ad hoc. As the statistics tell us, we face an institutional problem that requires an institutional response.

For years now, we have been encouraging victims of assault to speak up. That was the very crux of the #MeToo movement. We need to continue this work so that everyone feels able to report harassment, and we should not wait for people to become victims and perpetrators before we act. The reality is that the most powerful weapon we have against sexual harassment is prevention. I am very grateful to the hon. Member for Bath for setting out in the Bill the duty of care that the employers have to their employees. I am grateful that she is proposing an entrenched enforcement of this duty.

Cherilyn Mackrory (Truro and Falmouth) (Con): Does the hon. Lady agree that often in this place sexual harassment can be put down to banter and lively conversation, and that often the victim can be seen as somebody who is spoiling the fun? Does she agree that the Bill sends a powerful signal to employers and employees as to what appropriate behaviour is?

Tulip Siddiq: The hon. Member is absolutely right. Indeed, the hon. Member for Wantage made an observation about how rape jokes were just treated as part of the culture and a bit of banter. For someone who has a young daughter, it really does fill me with dread to think that rape jokes have become part of culture. The hon. Member for Truro and Falmouth is right to say that the victim looks like a person who cannot enjoy a joke or be light-hearted about it, but it is not light-hearted for people who have experienced something like that or know people who have and know the reality on the ground. There needs to be culture change.

I am grateful that this Committee is not all women, because I do not think it is just the responsibility of women to make advances on legislation like this. I am glad there are men in the room, and I am glad they are being supportive.

Wera Hobhouse: Is it not true that men can often feel quite uncomfortable but also feel like they have to be in it together? Does she agree that the Bill will strengthen men in their attitudes towards women?

Tulip Siddiq: I agree with the hon. Lady. The truth is that this is about culture change—and legislative change. I am grateful for the Bill because it empowers employers to take their duty of care to their employees seriously. Employees will respond by returning increased profits, productivity and motivation, so it will help the workforce economically as well—for anyone who doubts the importance of such measures.

The Bill on its own will of course not achieve the transformation that all workers need. This is not a silver bullet—I am sure the hon. Member for Bath agrees—because much more remains to be done. The Labour party is committed to creating safe, equal and fair workplaces where everyone succeeds, regardless of their gender or background. Among other things, the Labour party has been working on its new deal for working people. In that policy, we hope to tackle workplace discrimination and inequalities as a priority.

The Bill sponsored by the hon. Lady is the chance to make some progress right now. We owe that to victims of sexual harassment. Over the years, many of us have said, “Me too!” When the movement emerged, I was so shocked, because nearly every friend I spoke to and every family member turned around to say to me, “Me too!” I wondered whether I had met even one person who had not had that experience. That is a shocking statistic, which I hope we can change as we move forward.

The Bill is what we owe to our workers, present and future, and to our children. It heartens me to see so much cross-party support. Once again, I applaud the hon. Member for Bath for using the opportunity; she could have chosen any topic under the sun, but she chose this topic. I applaud her for championing it.

The Parliamentary Under-Secretary of State for Health and Social Care (Maria Caulfield): It is a pleasure to serve under your chairmanship, Mr Paisley.

I thank all hon. Members present for their forthright support for the Bill, which is echoed by the Government. As the shadow Minister, the hon. Member for Hampstead and Kilburn, pointed out, in particular we thank male colleagues who have come along and supported the Bill

from the start, because that sends a strong message to the country that not only is there cross-party support, but that both male and female MPs support the legislation.

I thank the hon. Member for Bath for sponsoring this important legislation. As has been said, this is just one of many campaigns that she has run to protect women’s rights, especially on violence against women and girls. The Bill is a follow-on to her legacy in that space. Today, she set out clearly that workplace harassment is a pervasive issue, which should not be tolerated in modern Britain.

Sadly, however, as my predecessor referenced on Second Reading, an experimental survey by the Government Equalities Office in 2020 exposed that nearly three quarters of the UK population have experienced sexual harassment in their lifetime, with nearly a third of people in employment experiencing some form of sexual harassment in their working environment within the past 12 months. Those figures are, unfortunately, not surprising.

The Equality Act 2010 already provides employees with legal protection against workplace harassment, but the measures in the Bill take a significant step forward. The Government believe that such a shift will not only provide increased legal security for employees, but instigate wider cultural change by motivating employers to prioritise prevention and, ultimately, to improve workplace practices and culture.

I will shortly address the points made by hon. Members today, but I will first outline the Government’s ongoing commitment to change in this space, and in particular to the measures in the Bill. In 2019, in response to an inquiry by the Women and Equalities Committee, the Government consulted on the legal protections to do with sexual harassment in the workplace. The consultation exercise included a public questionnaire, alongside the technical consultation, and received more than 4,000 responses detailing people’s lived reality of harassment in the workplace, as we have heard so much about.

Listening carefully to the experiences and opinions shared, the Government committed to a package of new measures aimed at reducing incidences of workplace harassment. That includes the two legislative measures being brought forward in the Bill: explicit protections for employees from workplace harassment by third parties, such as customers and clients; and a duty on employers to take all reasonable steps to prevent their employees from experiencing sexual harassment.

Those measures were announced in July 2021 and continue to form a key part of the Government’s national strategy for tackling violence against women and girls. We therefore welcome the fact that the hon. Member for Bath is taking the measures forward in her Bill. In supporting the Bill, we look to honour the commitments that the Government set out last summer and to deliver real change for workers and working culture across the UK.

I want to point out that clauses 2 to 6 are about sexual harassment specifically, but I highlight the fact that clause 1—the employer liability for harassment—will require employers legally to consider harassment risks that third parties may pose. However, that will apply to all types of harassment, not just sexual harassment. It will include racial harassment, harassment in relation to disability or any other type. That is an important step forward as well.

[Maria Caulfield]

To conclude, I reiterate my appreciation of the hon. Members present today. It is good to see such cross-party support in this space for this new legislation, which we hope will have a profound impact on working culture, and further protect and support employees at risk of harassment in the workplace. Support for the Bill is not isolated to this room, and I also thank the numerous organisations, individuals and parliamentarians who have been involved in the development of the new measures. Those include, but are certainly not limited to, the Government Equalities Office, the Fawcett Society, the Equality and Human Rights Commission and the Women and Equalities Committee. The last of those, along with the Joint Committee on Human Rights, sent a letter in support of the new legislation to the hon. Member for Bath. We hope to see such a collaborative spirit maintained as the Bill continues its progress through Parliament. Personally, I look forward to working with the hon. Lady to ensure that it does.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clauses 2 to 6 ordered to stand part of the Bill.

The Chair: Before I put the final question to report the Bill to the House, I offer the sponsor of the Bill the opportunity to say a few thank yous.

Wera Hobhouse: My first thank you is to you, Mr Paisley, as Chair of the Committee. I again thank all members of the Committee, the Minister, the Government Equalities Office and everyone who has campaigned to ensure that this important change in the law goes forward. I look forward to further co-operation and further steps in the right direction to ensure that harassment of all sorts—as the Minister pointed out—is ultimately a thing of the past. We have a long way to go, but today is a good day and in the right direction.

The Chair: I, too, congratulate the hon. Lady on sponsoring the Bill and getting it to this stage.

Bill to be reported, without amendment.

9.58 am

Committee rose.