

Title: Whistleblowing protections against sexual harassment

Type of measure: Primary Legislation

Department or agency: Department for Business and Trade

IA number: DBT-037-24-CMRR

RPC reference number: ...

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## 1. Summary of proposal

1. This measure will add sexual harassment to the list of relevant failures under s.43B of the Employment Rights Act (ERA), that a worker can blow the whistle about and qualify for their employment protections.
2. The ERA provides protection and legal recourse for workers who 'blow the whistle'. A worker who blows the whistle, by making a disclosure in accordance with the criteria in the Act is making a "protected disclosure" and has the right not to suffer a detriment as a result of having made that disclosure, or if they are an employee, not to be unfairly dismissed. For a disclosure to qualify for protection, a worker who makes a disclosure must reasonably believe that they are acting in the public interest and that the disclosure tends to show a past, present, or likely future relevant failure falling into one or more of the following categories, listed under section 43B of the ERA:
  - criminal offences
  - failure to comply with an obligation set out in law
  - miscarriages of justice
  - endangering someone's health and safety
  - damage to the environment
  - covering up wrongdoing in the above categories
3. Currently, sexual harassment may be covered by the existing list of wrongdoings, as it could be a criminal offence, failure to comply with a legal obligation, or a health and safety issue. However,

through this policy measure, we aim to provide explicitly that sexual harassment can be the basis for a protected disclosure.

## 2. Strategic case for proposed regulation

4. A range of literature indicates that sexual harassment is among commonly raised categories of wrongdoing within organisations and with prescribed persons<sup>1</sup>. At the same time, some literature highlights challenges faced by workers in determining whether their concerns will qualify under the legislation<sup>2</sup>.
5. The economic rationale for Government intervention is first and foremost one of **fairness**. Making clear that sexual harassment is in scope of the whistleblowing legislation would help ensure that those blowing the whistle on cases of sexual harassment have legal recourse if they suffer detriment or dismissal as a result of blowing the whistle, if that qualifying disclosure is made by a worker in accordance with sections 43C to 43H of the ERA.
6. At the same time, the intervention would address the expectation gap as to whether these concerns will meet the criteria to qualify for protection (asymmetric information).
7. More broadly, by encouraging businesses to recognise sexual harassment as a serious matter and incorporating reports into whistleblowing policies and procedures, the policy could lead to improved working conditions and workplace culture. This could lead to positive externalities, such as wellbeing benefits, which could in turn benefit businesses.

## 3. SMART objectives for intervention

8. DBT's specific policy objective is to **address a potential barrier to blowing the whistle regarding sexual harassment**, by making it explicit that reporting sexual harassment can be a way to qualify for whistleblowing protections.
9. The desired outcomes are:
  - Workers have clarity that making a disclosure about sexual harassment can be a way to qualify for whistleblowing protections.
  - Workers are protected against detriment or dismissal as a result of making their disclosure and have access to a route of redress where these protections are infringed.

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<sup>1</sup> See for example: All Party Parliamentary Group on Whistleblowing (2019), Whistleblowing: The Personal Cost of Doing the Right Thing and the Cost to Society of Ignoring it; All Party Parliamentary Group on Whistleblowing (2020), Making whistleblowing work for society; David Lewis, Alessio D'Angelo and Lisa Clarke (2015), Industrial relations and the management of whistleblowing after the Francis report: what can be learned from the evidence?; Jan Stappers (2023), Navigating the whistleblowing landscape; Miloš Resimić (2021), Institutional arrangements for whistleblowing: Challenges and best practices; Minh Alexander and Clare Sardari (2018), Whistleblowers in Their Own Words What's wrong with UK; Protect (2020), The best warning system: whistleblowing during covid-19: An examination of the experiences of UK whistleblowers during a global pandemic; Protect, Slater & Gordon (2020), SILENCE IN THE CITY; Financial Conduct Authority (2022), Whistleblowing assessment survey 2022; Protect (2021), WORKPLACE WHISTLEBLOWING: WHY WE NEED A LEGAL DUTY ON EMPLOYERS; Barbara Culiberg and Katarina Katha Mihelič (2016), The evolution of whistleblowing studies: a critical review and research agenda.

<sup>2</sup> See for example: Care Quality Commission (2023), Listening, learning, responding to concerns: A review to identify improvements in how we learn from, respond to and act on concerns; David Lewis (2017), Whistleblowing and the law of defamation: Does the law strike a fair balance between the rights of Whistleblowers, the media and Alleged wrongdoers; David Lewis (2014), Is a public interest test for workplace whistleblowing in society's interest?; Eileen Chubb (2020), There is no ME in Whistle-blower.

- Workers are encouraged to report wrongdoing through whistleblowing channels and routes, such as to their employer or a prescribed person.

10. In addition, the policy aims to drive wider cultural change where the benefits of whistleblowing are recognised. For example, a positive impact could be that more employers recognise that sexual harassment is a serious matter and should be addressed within their internal whistleblowing frameworks.

## **4. Description of proposed intervention options and explanation of the logical change process whereby this achieves SMART objectives**

11. The preferred option is:

**Option 1: Modify the list of disclosures, and directly amend the list of relevant failures in relation to a qualifying disclosure to reference sexual harassment.**

Under this option, the list of relevant failures in relation to qualifying disclosures is amended via the Employment Rights Bill to explicitly reference sexual harassment, thus addressing a potential barrier to blowing the whistle regarding sexual harassment, by clarifying that reporting sexual harassment can qualify for whistleblowing protections.

## **5. Summary of long-list and alternatives**

12. As this is a manifesto commitment, a long list of options was not considered. Nevertheless, consideration was given to non-regulatory options and the inclusion of Small and medium-sized businesses (SMBs) in the scope of the policy.

13. The option of using guidance to clarify that sexual harassment can be a relevant form of wrongdoing for the purposes of whistleblowing protection was considered. Guidance on sexual harassment whistleblowing is expected to be produced alongside the legal reform. However, guidance alone will not fully satisfy the policy objective of certainty and clarity, as the existing legislation does not clearly set out that a disclosure of information tending to show sexual harassment can be a qualifying disclosure. Relying on case law is not sufficient, as it can only provide a conclusive position for individual cases.

14. The preferred option will be applied to businesses of all sizes, including small and micro businesses, in line with the principle that all workers deserve protection when blowing the whistle on sexual harassment, irrespective of the size of the organisation they work for. While it is recognised that smaller businesses may face disproportionate challenges due to their limited resources, the broader societal benefits of increased worker security and fairness in the labour market justify the policy's scope. This is also a continuation of an existing policy approach.

## **6. Description of shortlisted policy options carried forward**

15. For the purpose of the analysis, the shortlisted options are:

**Option 0: Do Nothing**

- “Status Quo” or “no change” option from the current system, which would maintain the current list of topics for whistleblowing. While sexual harassment may be a relevant disclosure, this option would fail to meet the policy objective to make it clear that reporting sexual harassment can be a way to qualify for whistleblowing protections.

**Option 1: Modify the list of disclosures, and directly amend the list of disclosures to reference sexual harassment.**

- Under this option, the list of relevant failures in relation to qualifying disclosures is amended via the Employment Rights and Trade Union Bill to expressly reference sexual harassment.

## 7. Regulatory scorecard for preferred option

### Part A: Overall and stakeholder impacts

(1) Overall impacts on total welfare		Directional rating
<b>Description of overall expected impact</b>	<p>Workers who make disclosures about sexual harassment will benefit from increased job security. Those who are dismissed or suffer detriment as a result of the disclosure will benefit from settlement or tribunal awards if they bring a successful claim before the Tribunal. There will be negligible business costs associated with familiarisation and handling of additional Advisory, Conciliation and Arbitration Service (ACAS) and employment tribunal (ET) cases.</p> <p>There might be wider indirect impacts in the form of improved working conditions and workplace culture in businesses. This could lead to positive externalities for both workers and businesses.</p> <p>While the scale of benefits is uncertain, given small business costs and the potential for wider benefits, it is reasonable to assume the net impact will be positive.</p>	<p><b>Positive</b></p> <p><b>Based on all impacts (incl. non-monetised)</b></p>
<b>Monetised impacts</b>	n/a	n/a
<b>Non-monetised impacts</b>	As described under ‘description of overall expected impacts’	<b>Positive</b>
<b>Any significant or adverse</b>	It is recognized that smaller businesses may face disproportionate challenges due to their limited	<b>Positive</b>

<b>distributional impacts?</b>	<p>resources. However, it is noted that business costs are expected to be small.</p> <p>The policy has the potential to have a particularly positive impact on women, and especially younger women, who are more likely to be victims of sexual harassment.<sup>3</sup></p> <p>As business costs are expected to be small, it is reasonable to assume that, overall, distributional impacts will be positive.</p>	
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## (2) Expected impacts on businesses

<b>Description of overall business impact</b>	<p>Businesses will incur familiarisation costs as well as costs associated with additional early conciliation and employment tribunal cases. As the policy aim is primarily about clarifying existing law and confirming that sexual harassment is in scope, impacts on businesses are expected to be negligible.</p> <p>In addition, by encouraging businesses to recognise sexual harassment as a serious matter, the policy could lead to improved working conditions and workplace culture. This could lead to positive externalities, such as wellbeing benefits, which could in turn benefit businesses.</p>	<b>Negative</b>
<b>Monetised impacts</b>	n/a	n/a
<b>Non-monetised impacts</b>	As described under 'description of overall business impact'	<b>Neutral</b>
<b>Any significant or adverse distributional impacts?</b>	It is recognized that smaller businesses may face disproportionate challenges due to their limited resources. However, it is noted that business costs are expected to be small.	<b>Negative</b>

<sup>3</sup> ONS, [Experiences of harassment in England and Wales: December 2023](#), published 7 December 2023

### (3) Expected impacts on households

<b>Description of overall household impact</b>	Workers who bring a case forward, will potentially benefit from a settlement or tribunal award. However, there will also be associated costs with early conciliation and employment tribunal cases. The policy is also expected to have positive wellbeing impacts for those who experience sexual harassment and blow the whistle, via increased job security.	<b>Positive</b>
<b>Monetised impacts</b>	n/a	n/a
<b>Non-monetised impacts</b>	As described under "description of overall household impacts".	<b>Positive</b>
<b>Any significant or adverse distributional impacts?</b>	The policy has the potential to have a particularly positive impact on women, and especially younger women, who are more likely to be victims of sexual harassment. <sup>4</sup>	<b>Positive</b>

### Part B: Impacts on wider government priorities

<b>Category</b>	<b>Description of impact</b>	<b>Directional rating</b>
<b>Business environment:</b>  <b>Does the measure impact on the ease of doing business in the UK?</b>	As the policy is not expected to have any significant impact on labour costs, there is no expected impact on business investment and business environment.	<b>Neutral</b>
<b>International Considerations:</b>  <b>Does the measure support international trade and investment?</b>	<p>From a legal standpoint, the policy does not impact international trade as it is compliant with international obligations and does not have any implications for trade partners or foreign businesses operating in the UK.</p> <p>From an economic standpoint, the impact of the policy on labour costs is not expected to be such</p>	<b>Neutral</b>

<sup>4</sup> ONS, [Experiences of harassment in England and Wales: December 2023](#), published 7 December 2023

	that export competitiveness or ability to attract FDI will be impacted.	
<b>Natural capital and Decarbonisation:</b>  <b>Does the measure support commitments to improve the environment and decarbonise?</b>	We expect that there is no or negligible impact on the environment, natural capital, and decarbonisation as a result of this policy. The regulation does not directly relate to environmental or decarbonisation goals.	<b>Neutral</b>

## 8. Monitoring and evaluation of preferred option

16. The preferred option considered in this Impact Assessment falls outside of the statutory post implementation review requirements under the Small Business Enterprise and Employment Act 2015, as it will be delivered through primary legislation.
17. However, the Government will conduct proportionate monitoring of the impact of the change to assess whether it is meeting the objective laid out in Section 4.
18. We expect this will be undertaken via monitoring of existing data sources (such as Employment Tribunal statistics) and targeted stakeholder engagement (such as representatives of workers, employer and employee groups). Consideration will be given to how the policy has impacted on protected characteristics as well as potential unintended consequences.

## 9. Minimising administrative and compliance costs for preferred option

19. The administrative and compliance costs are expected to be small to negligible for both businesses and households. Therefore, provisions for minimising administrative and compliance burdens have not been considered.

## Summary: Analysis and evidence

Price base year:

N/A

PV base year:

N/A

	<b>0. Business as usual (baseline)</b>	<b>1. Preferred way forward (if not do-minimum)</b>
<b>Net present social value</b> (with brief description, including ranges, of individual costs and benefits)	Used as baseline for the analysis.	Not quantified.
<b>Public sector financial costs</b> (with brief description, including ranges)	Used as baseline for the analysis.	Public sector financial costs (those associated with additional ACAS and Employment Tribunal cases) are expected to be negligible.
<b>Significant un-quantified benefits and costs</b> (description, with scale where possible)	Used as baseline for the analysis.	Workers who bring a case forward may benefit from increased job security and if they suffer detriment or are dismissed as a result of their disclosure may receive settlement or tribunal awards. There will be negligible business costs associated with familiarisation and handling of additional ACAS and employment tribunal cases.
<b>Key risks</b> (and risk costs, and optimism bias, where relevant)	Used as baseline for the analysis.	Workers who make disclosures about sexual harassment will benefit from increased job security. Those who are dismissed or suffer detriment as a result of the disclosure will benefit from settlement or tribunal awards if they bring a



		<p>successful claim before the Tribunal. There will be negligible business costs associated with familiarisation and handling of additional ACAS and employment tribunal cases.</p> <p>There might be wider indirect impacts in the form of improved working conditions and workplace culture in businesses. This could lead to positive externalities for both workers and businesses.</p> <p>While the scale of benefits is uncertain, given small business costs and the potential for wider benefits, it is reasonable to assume the net impact will be positive.</p>
<b>Results of sensitivity analysis</b>	Used as baseline for the analysis.	N/A

# Evidence base

## Problem under consideration, with business as usual, and rationale for intervention

20. According to ONS data<sup>5</sup>, a quarter (26%) of those who had experienced sexual harassment said they had experienced harassment at their place of work.
21. There are barriers to speaking up about sexual harassment. An online survey of 750 workers who experienced sexual harassment carried out by the Equality and Human Rights Commission<sup>6</sup>, found that half of the respondents did not report their experience of harassment due to a number of reasons, including:
- Fear that the organisation would not take the issue seriously
  - Belief that alleged perpetrators, particularly senior staff, would be protected
  - Fear of victimisation
  - Lack of appropriate reporting procedures
  - Inexperienced, unsupportive managers
22. In addition, some respondents described being threatened that their career could be damaged if they pursued their complaint or said they had been disciplined or lost their job as a direct consequence of reporting.
23. Similarly, a survey of over 1,000 women carried out by the Trade Union Congress<sup>7</sup>, found that 3 in 5 respondents experienced sexual harassment at work, but less than 30% reported the harassment to their employer due to fear of not being believed or taken seriously, or fear that reporting would negatively impact on their relationships at work or career prospects.
24. Toxic work cultures, sexual harassment, and the role of whistleblowing in addressing this has been raised by stakeholders and is referenced in the Treasury Select Committee's report *Sexism in the City*<sup>8</sup>, which recommended strengthening whistleblowing legislation to provide greater support to those reporting sexual harassment cases. The Women and Equalities Select Committee's report *Misogyny in Music*<sup>9</sup> also states that victims of sexual harassment lack clear procedures to report incidents.
25. A range of literature indicated that sexual harassment is among commonly raised categories of wrongdoing within organisations and with prescribed persons<sup>10</sup>. At the same time, some literature

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<sup>5</sup> ONS, [Experiences of harassment in England and Wales: December 2023](#), published 7 December 2023

<sup>6</sup> Equality and Human Rights Commission, [Turning the tables: Ending Sexual harassment at work](#), published 26 March 2018

<sup>7</sup> Trade Union Congress, [New TUC poll: 2 in 3 young women have experienced sexual harassment, bullying or verbal abuse at work.](#), published 12 May 2023

<sup>8</sup> House of Commons Treasury Committee, [Sexism in the city](#), published 5 March 2024

<sup>9</sup> Women and Equalities Committee, [Misogyny in music](#), published 30 January 2024

<sup>10</sup> See for example: All Party Parliamentary Group on Whistleblowing (2019), Whistleblowing: The Personal Cost of Doing the Right Thing and the Cost to Society of Ignoring it; All Party Parliamentary Group on Whistleblowing (2020), Making whistleblowing work for society; David Lewis, Alessio D'Angelo and Lisa Clarke (2015), Industrial relations and the management of whistleblowing after the Francis report: what can be learned from the evidence?; Jan Stappers (2023), Navigating the whistleblowing landscape; Miloš Resimić (2021), Institutional arrangements for whistleblowing: Challenges and best practices; Minh Alexander and Clare Sardari (2018), Whistleblowers in Their Own Words What's wrong with UK; Protect (2020), The best warning system: whistleblowing during covid-19: An examination of the experiences of UK whistleblowers during a global pandemic; Protect, Slater & Gordon (2020), SILENCE IN THE CITY; Financial Conduct Authority (2022), Whistleblowing assessment survey 2022; Protect (2021), WORKPLACE WHISTLEBLOWING: WHY WE NEED A LEGAL DUTY ON EMPLOYERS; Barbara Culiberg and Katarina Katha Mihelić (2016), The evolution of whistleblowing studies: a critical review and research agenda.

highlights challenges faced by workers in determining whether their concerns will qualify under the legislation.<sup>11</sup>

26. The Government intervenes in the labour market to extend employment rights for efficiency and equity reasons. A well-functioning labour market, which provides necessary rights and protections, provides workers with high quality jobs whilst also empowering business to operate competitively.
27. The economic rationale for Government intervention is first and foremost one of **fairness**. Making clear that sexual harassment is in scope of the whistleblowing legislation would help ensure that those blowing the whistle on cases of sexual harassment are protected from detriment or dismissal as a result of blowing the whistle, if that qualifying disclosure is made by a worker in accordance with sections 43C to 43H of the ERA.
28. At the same time, the intervention would address the expectation gap as to whether these concerns will meet the criteria to qualify for protection (asymmetric information).
29. More broadly, by encouraging businesses to recognise sexual harassment as a serious matter, the policy could lead to improved working conditions and workplace culture. This could lead to positive externalities, such as wellbeing benefits, which could in turn benefit businesses.

### Policy objective

30. DBT's specific policy objective is to **address a potential barrier to blowing the whistle regarding sexual harassment**, by making it explicit that reporting sexual harassment can be a way to qualify for whistleblowing protections.
31. The desired outcomes are:
  - a. Workers have clarity that making a disclosure about sexual harassment can be a way to qualify for whistleblowing protections.
  - b. Workers are protected against detriment or dismissal as a result of making their disclosure and have access to a route of redress where these protections are infringed.
  - c. Workers are encouraged to report wrongdoing through whistleblowing channels and routes, such as to their employer or a prescribed person.
32. In addition, the policy aims to drive wider cultural change where the benefits of whistleblowing are recognised. For example, a positive impact could be that more employers recognise that sexual harassment is a serious matter and should be addressed within their internal whistleblowing frameworks.

### Description of options considered

33. As this is a manifesto commitment, a long list of options was not considered. Nevertheless, consideration was given to non-regulatory options and the inclusion of SMBs in the scope of the policy.

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<sup>11</sup> See for example: Care Quality Commission (2023), Listening, learning, responding to concerns: A review to identify improvements in how we learn from, respond to and act on concerns; David Lewis (2017), Whistleblowing and the law of defamation: Does the law strike a fair balance between the rights of Whistle-blowers, the media and Alleged wrongdoers; David Lewis (2014), Is a public interest test for workplace whistleblowing in society's interest?; Eileen Chubb (2020), There is no ME in Whistle-blower.

34. The option of using guidance to clarify that sexual harassment can be a relevant form of wrongdoing for the purposes of whistleblowing protection was considered. Guidance on sexual harassment whistleblowing is expected to be produced alongside the legislative measure. However, guidance alone will not fully satisfy the policy objective of certainty and clarity, as the existing legislation may not be wide enough to cover every instance of sexual harassment as a relevant failure. Relying on case law is not sufficient, as it can only provide a conclusive position for individual cases.

35. The preferred option is expected to be applied to businesses of all sizes, including small and micro businesses, in line with the principle that all workers deserve protection when blowing the whistle on sexual harassment, irrespective of the size of the organisation they work for. While it is recognised that smaller businesses may face disproportionate challenges due to their limited resources, the broader societal benefits of increased worker security and fairness in the labour market justify the policy's scope. Additionally, this policy change aims to prevent potential abuses that may disproportionately affect workers in smaller businesses, where employment practices may be less formal.

36. For the purpose of the analysis, the shortlisted options are:

#### **Option 0: Do Nothing**

“Status Quo” or “no change” option from the current system, which would maintain the current list of topics for whistleblowing. While sexual harassment may be a relevant disclosure, this option would fail to meet the policy objective to make it clear that reporting sexual harassment can be a way to qualify for whistleblowing protections.

#### **Option 1: Modify the list of disclosures, and directly amend the list of disclosures to reference sexual harassment.**

Under this option, the list of disclosures is amended via the Employment Rights and Trade Union Bill to expressly reference sexual harassment, thus addressing a potential barrier to blowing the whistle regarding sexual harassment, by clarifying that reporting sexual harassment can be a way to qualify for whistleblowing protections.

#### **Summary and preferred option with description of implementation plan**

37. The preferred option is:

#### **Option 1: Modify the list of disclosures, and directly amend the list of disclosures to reference sexual harassment.**

Under this option, the list of disclosures is amended via the Employment Bill to expressly reference sexual harassment, thus addressing a potential barrier to blowing the whistle regarding sexual harassment, by stating that reporting sexual harassment can be a way to qualify for whistleblowing protections.

38. The preferred option will be given effect via primary legislation.

#### **NPSV: monetised and non-monetised costs and benefits of each shortlist option (including administrative burden)**

39. Workers who bring a case forward may benefit from increased job security. Those who are dismissed or suffer detriment as a result of the disclosure will benefit from settlement or tribunal awards if they bring a successful claim before the Tribunal. There will be negligible business

costs associated with familiarisation and handling of additional ACAS and employment tribunal cases.

40. While the scale of benefits is uncertain, given small business costs and the potential for wider benefits, it is reasonable to assume the net impact will be positive.

### **Costs and benefits to businesses' calculations**

41. Businesses will incur familiarisation costs as well as costs associated with additional early conciliation and employment tribunal cases. As the policy clarifies that sexual harassment is in scope of the law, impacts on businesses are expected to be negligible.

#### Familiarisation costs

42. The policy makes it explicit that sexual harassment is in scope of whistleblowing protections. Given that businesses should already be familiar with whistleblowing protection, we estimate the familiarisation costs to be negligible.

#### Costs associated with additional early conciliation and employment tribunal cases

43. Improved awareness of the fact that sexual harassment is in scope of whistleblowing protection could result in more cases being brought to ACAS and the Employment Tribunals. Businesses would incur legal costs as well as costs associated with early conciliation settlements and employment tribunal awards.
44. The latest available data suggests that in 2022/23 there were **2,694 Employment Tribunal claims for public interest disclosure**<sup>12</sup>. While there is no available data on the number of ACAS claims for public interest disclosure, based on data from October to December 2023, we assume that for every 100% claims ACAS receives, 32 proceed to Employment Tribunal<sup>13</sup>. As a result, a rate of cases that ACAS receives but where an ET1 submission is avoided from October to December 2023 (68%<sup>14</sup>), can be applied to the number of ET cases to provide an indicative estimate of the number of ACAS cases. This results in an estimated **8,419 cases to ACAS for public interest disclosure** in 2022/23. It is important to note that the rate at which an ET1 submission is avoided, is based on all ET jurisdictions and it is not specific to public interest disclosure. The actual number of ACAS claims could be higher or lower.
45. There is no data on the percentage of whistleblowing cases relating to sexual harassment. There is also no evidence on awareness of sexual harassment being in scope of the framework. As a result, it is not possible to confidently estimate the additional number of ACAS claims and ET cases resulting from this policy change.
46. Academic evidence<sup>15</sup> suggests that there is a wide range of relevant failures commonly raised within organisations and to prescribed persons, thus suggesting that sexual harassment only

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<sup>12</sup> Ministry of Justice, [Tribunals statistics quarterly: Main Tables, July to September 2023](#), published 14 December 2023

<sup>13</sup> ACAS, [Early conciliation and employment tribunal data for England, Scotland, and Wales: January to March 2024](#), published 4 June 2024

<sup>14</sup> ACAS, [Early conciliation and employment tribunal data for England, Scotland, and Wales: January to March 2024](#), published 4 June 2024

<sup>15</sup> See for example: All Party Parliamentary Group on Whistleblowing (2019), Whistleblowing: The Personal Cost of Doing the Right Thing and the Cost to Society of Ignoring it; All Party Parliamentary Group on Whistleblowing (2020), Making whistleblowing work for society; David Lewis, Alessio D'Angelo and Lisa Clarke (2015), Industrial relations and the management of whistleblowing after the Francis report: what can be learned from the evidence?; Jan Stappers (2023), Navigating the whistleblowing landscape; Miloš Resimić (2021), Institutional arrangements for whistleblowing: Challenges and best practices; Minh Alexander and

constitutes a small share of receipts for public interest disclosure. As a result, and also considering that some sexual harassment disclosures can already be in scope of whistleblowing protection, we would expect the number of additional ACAS claims and Employment Tribunal cases resulting from the policy change to be small.

47. It is also important to note that, as sexual harassment disclosures may already be in scope of the framework, the costs associated with instances where businesses were not compliant with the framework, would not be classified as business costs.
48. Analysis is included below for illustrative purposes only.

Illustrative analysis of business impacts

49. To illustrate the potential impact of the policy on ACAS claims and ET cases, we first estimate an illustrative number of yearly additional claims and cases resulting from the policy, based on the number of ACAS claims and ET cases from 2022/23 (as estimated in the previous section).
50. As there is no robust evidence on the share of public interest disclosures related to sexual harassment, we assume three scenarios – where the share of public interest disclosures related to sexual harassment is 1%, 5% and 10%. Considering the wide range of reasons why a worker can bring a public interest disclosure claim to ACAS (such as: criminal offences, failure to comply with an obligation set out in law, miscarriages of justice, endangering someone’s health and safety, damage to the environment, and covering up wrongdoing in the above categories), it is reasonable to assume that less than 10% of claims will relate to sexual harassment.
51. We then consider the extent to which the policy will lead to more victims of sexual harassment who qualify for public interest disclosure to raise a claim with ACAS. As there is no robust evidence on this, we assume three scenarios – 1%, 3% and 5% increase. As sexual harassment disclosures can already be in scope of whistleblowing protection, we consider these to be reasonable assumptions.
52. By applying these assumptions to the number of ACAS claims and ET cases estimated earlier in this IA, we derive a potential range of additional claims and cases. We estimate that additional ACAS claims could range from 1 to 42, and additional ET cases could range from 0 to 13.

**Table 1. Estimated number of additional ACAS cases**

		Share of public interest disclosure cases related to sexual harassment		
		1%	5%	10%
Increased in the number of ACAS claims as a result of the policy	1%	1	4	8
	3%	3	13	25
	5%	4	21	42

Clare Sardari (2018), Whistleblowers in Their Own Words What’s wrong with UK; Protect (2020), The best warning system: whistleblowing during covid-19: An examination of the experiences of UK whistleblowers during a global pandemic; Protect, Slater & Gordon (2020), SILENCE IN THE CITY; Financial Conduct Authority (2022), Whistleblowing assessment survey 2022; Protect (2021), WORKPLACE WHISTLEBLOWING: WHY WE NEED A LEGAL DUTY ON EMPLOYERS; Barbara Culiberg and Katarina Katha Mihelič (2016), The evolution of whistleblowing studies: a critical review and research agenda.

**Table 2. Estimated number of additional ET claims**

		Share of public interest disclosure cases related to sexual harassment		
		1%	5%	10%
Increased in the number of ET cases as a result of the policy	1%	0	1	3
	3%	1	4	8
	5%	1	7	13

53. By applying a unit cost<sup>16</sup> associated with handling each case of £310 for ACAS cases and £6,000 for ET cases, we derive the annual costs below. We thus estimate up to £13,000 annual costs to businesses for ACAS claims, and up to £78,000 annual costs to businesses for ET cases.

**Table 3. Costs to employers (excluding awards)**

	ACAS claims	ET cases
Average legal cost of one case	£310	£6000
Number of claims/cases	1-42	0-13
Total annual cost	£310 - £13,000	£0 – £78,000

<sup>16</sup> Based on DBT internal analysis based on ACAS research, and the 2018 Survey of Employment Tribunal applications revised to take account of the change in the distribution of claim jurisdictions received since the abolition of fees in August 2017.

54. Businesses will also incur costs associated with ACAS early conciliation settlements and ET awards. As there is no available data on the mean and median settlements for cases of public interest disclosure, we cannot calculate the business costs. However, given the small number of cases, it is expected to be very small. Data from 2020-21<sup>17</sup> suggests that 33% of claims are settled through ACAS early conciliation. The same data suggests that 3% of claims proceed to and are successful at hearing. Based on this evidence, the policy could result in up to 14 additional early conciliation settlements. The impact on ET awards would be negligible (less than 1 case).
55. It should be noted that the costs above do not take into account the fact that at least some cases would involve non-compliant businesses. It is plausible to assume non-compliance for ET cases where the claimant was successful at hearing. However, as mentioned above, a high share of cases are settled via early conciliation. The fact that a case has been settled, does not necessarily imply that the business was not compliant. As it is not possible to confidently reflect non-compliance in our analysis, **the figures above should be considered an illustrative upper estimate of the legal costs to businesses.**

### Benefits to businesses

56. By encouraging businesses to recognise sexual harassment as a serious matter, the policy could lead to improved working conditions and workplace culture. This could lead to positive externalities, such as wellbeing benefits, which could in turn benefit businesses.

### **Impact on small and micro businesses**

57. The preferred option is expected to be applied to businesses of all sizes, including small and micro businesses, in line with the principle that all workers deserve protection from detriment or dismissal as a result of blowing the whistle. While it is recognised that smaller businesses may face disproportionate challenges due to their limited resources, the broader societal benefits of increased worker security and fairness in the labour market justify the policy's scope.
58. While there is no data on the incidence of sexual harassment disclosures in small and micro businesses, the lack of transparent reporting procedures and designated HR departments in small businesses can make it more difficult for victims to come forward. In fact, 45% of employees surveyed in the UK have to report misconduct in-person to their line manager<sup>18</sup>. This may put victims of sexual harassment at smaller businesses at greater risk of retaliation, especially if the perpetrator is a manager or owner, as in three-quarters of sexual harassment cases<sup>19</sup>. This makes it all the more important to have clear protections for workers that blow the whistle on sexual harassment at small and micro businesses.

### Employment Tribunal Experience

59. While there is no evidence on prevalence of SMBs among cases of public interest disclosure, smaller businesses are generally less likely to have previous experience of employment tribunal cases in general and with a smaller number of claims, compared with larger businesses. For example, in businesses employing fewer than 25 staff, 16% had dealt with other claims in the previous two years, comprising 9% who had dealt with one previous claim and 7% with two or

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<sup>17</sup> Ministry of Justice, [Tribunals statistics quarterly: Main Tables, July to September 2023](#), published 14 December 2023

<sup>18</sup> Personio, Survey of 150 employers and 350 employees from UK companies; London, published 4 September 2023

<sup>19</sup> Equality and Human Rights Commission, [Turning the tables: Ending sexual harassment at Work](#), published 26 March 2018



more claims. In comparison, in businesses with 250 or more employees, 79% had dealt with other claims in the previous two years: 10% had dealt with one, 37% with 2-5 claims, 19% with 6-10 claims and 14% with more than 10 claims<sup>20</sup>. As a result, we do not expect significant disproportionate impacts on businesses from additional ACAS claims and Employment Tribunal cases.

### **Costs and benefits to households' calculations**

60. The policy is also expected to have positive wellbeing impacts for those who experience sexual harassment and blow the whistle, via increased job security. Workers who suffer detriment and dismissal as a result of making a protected disclosure and bring a case forward, will potentially benefit from a settlement or tribunal award. However, there will also be associated costs with early conciliation and employment tribunal cases.

#### Wellbeing impacts

61. Workers who blow the whistle on cases of sexual harassment will benefit from protection if they are subjected to detriment or dismissal as a result of blowing the whistle and having access to a route of redress through the Employment Tribunal if these protections are infringed. Evidence indicates that this policy may positively impact wellbeing among those who blow the whistle on sexual harassment, and therefore their physical and mental health.

62. A survey of over 1,000 women carried out by the Trade Union Congress<sup>21</sup>, found that 27% of women who reported experiencing sexual harassment reported they wanted to leave their job but couldn't, and 18% left their job as a result of the treatment.

63. By providing clarity on the topics included in whistleblowing protection, the policy will help ensure that those who blow the whistle on sexual harassment are protected from detriment and dismissal, thus improving their job security.

64. It is important to note that the evidence on how job security affects wellbeing is complex. Evidence suggests that job quality is also linked to wellbeing. While defining job quality is complex, job security is generally considered a key component of job quality, including by the Taylor Review<sup>22</sup>. The Business in the Community (BITC) *Seizing Momentum: Mental Health at work* 2018 report<sup>23</sup> surveyed over 4000 employees and found that 66% say that their mental health and wellbeing is affected by their personal job insecurity.

#### Impacts associated with additional early conciliation and Employment Tribunal cases

65. As mentioned, improved clarity and awareness that sexual harassment is in scope of whistleblowing protection could result in more cases being brought to ACAS and the Employment Tribunals. Workers who bring a case forward, will potentially benefit from a settlement or tribunal award. However, there will also be associated costs with early conciliation and employment tribunal cases.

66. In line with the analysis presented above, we expect aggregate benefits from additional settlements and awards to be small given the expected number of additional cases resulting from the policy.

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<sup>20</sup> Department for Business and Trade, [Survey of employment tribunal applications 2018](#), published 9 July 2020

<sup>21</sup> Trade Union Congress, [New TUC poll: 2 in 3 young women have experienced sexual harassment, bullying or verbal abuse at work.](#), published 12 May 2023

<sup>22</sup> Department of Business and Trade, [Good work: the Taylor review of modern working practices](#), published 17 July 2017

<sup>23</sup> BITC (2018), *Seizing the Momentum: Mental Health at Work* 2018 Report

67. For **illustrative purposes**, we can apply the legal costs to claimants<sup>24</sup> for ACAS claims and ET cases (£140 and £2,600 respectively) to the estimated number of additional claims. This results in up to £5,800 annual costs to claimants for ACAS claims, and up to £33,800 annual costs to claimants for ET cases.

**Table 4. Costs to claimants (excluding awards)**

	ACAS claims	ET cases
Average legal cost of one case	£140	£2600
Number of claims/cases	1-42	0-13
Total annual cost	£140 - £5,800	£0 – £33,800

68. As mentioned earlier in this IA, it is not possible to estimate the benefits to households associated with ACAS early conciliation settlements and ET awards.

### **Business environment**

69. As the policy is not expected to have any impact on labour costs, there is no expected impact on business investment and business environment.

### **Trade implications**

70. From a legal standpoint, the policy does not impact international trade as it is compliant with international obligations and does not have any implications for trade partners or foreign businesses operating in the UK.

71. From an economic standpoint, as the policy is not expected to have any significant impact on labour costs, we do not expect the policy to have any impact on trade. Furthermore, the preferred option will not introduce requirements on foreign-owned companies that go above and beyond those which are UK-owned.

### **Environment: Natural capital impact and decarbonisation**

72. We expect that there is no or negligible impact on the environment, natural capital, and decarbonisation as a result of this policy. The regulation does not directly relate to environmental or decarbonisation goals.

### **Other wider impacts**

#### Wider economic impacts

73. An online survey of 750 workers who experienced sexual harassment carried out by the Equality and Human Rights Commission<sup>25</sup>, found that some respondents described a significant negative impact on their physical and mental health as a result of the manner in which their complaint was

<sup>24</sup> Based on DBT internal analysis based on ACAS research, and the 2018 Survey of Employment Tribunal applications revised to take account of the change in the distribution of claim jurisdictions received since the abolition of fees in August 2017.

<sup>25</sup> Equality and Human Rights Commission, [Turning the tables: Ending Sexual harassment at work](#), published 26 March 2018

handled. Similarly, a survey of over 1,00 women carried out by the Trade Union Congress<sup>26</sup>, found that 45% of women who reported experiencing sexual harassment reported a detrimental impact on their mental health.

74. By encouraging businesses to recognise sexual harassment as a serious matter, the policy could lead to improved job quality, via improved working conditions and workplace culture, which would benefit all workers.

75. While it is difficult to estimate the extent to which these benefits would be realised, there is generally good evidence on the relationship between job quality and productivity, with respect to health, safety and psychosocial wellbeing, as well as social support and cohesion<sup>27,28</sup>.

#### Public sector impacts

76. In line with our earlier assessment of the impact on early conciliations and employment tribunal cases, we expect the impact on ACAS and the Employment Tribunals to be negligible.

77. For **illustrative purposes**, we can apply the legal costs to the Exchequer<sup>29</sup> for ACAS claims and ET cases (£170 and £2,400 respectively) to the estimated number of additional claims. This results in up to £7,140 annual costs to claimants for ACAS claims, and up to £31,200 annual costs to claimants for ET cases.

**Table 5. Public sector costs**

	ACAS claims	ET cases
Average legal cost of one case	£170	£2400
Number of claims/cases	1-42	0-13
Total annual cost	£140 - £7,140	£0 – £31,200

#### Public sector equality duty

78. The Equality Act 2010 protects against unlawful discrimination based on the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity

<sup>26</sup> Trade Union Congress, [New TUC poll: 2 in 3 young women have experienced sexual harassment, bullying or verbal abuse at work.](#), published 12 May 2023

<sup>27</sup> Health, safety and psychosocial wellbeing; job design and the nature of work; and work-life balance; voice and representation; terms of employment (which includes job security); social support and cohesion.

<sup>28</sup> Bosworth D and Warhurst C (2021), [Does good work have a positive effect on productivity? Developing the evidence base](#), Warwick Institute for Employment Research

<sup>29</sup> Based on ACAS. [Acas Annual report and accounts 2023-2024](#). 2024; Employment Tribunal data- Total receipts by jurisdiction- 22/23

- Race
- Religion or belief
- Sex and sexual orientation

79. The Department for Business and Trade is subject to the public sector equality duty (PSED) set out in the Equality Act 2010. It requires public bodies to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not, and
- Foster good relations between people who share a protected characteristic and those who do not

80. An equality analysis is an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups, and to estimate whether such impacts disproportionately affect such groups.

81. The policy has the potential to have a particularly positive impact on women, especially younger women, with the Government survey on sexual harassment<sup>30</sup> finding that approximately three times more women (8%) than men (3%) experienced at least one instance of sexual harassment in the last year.

82. The likelihood of experiencing sexual harassment was highest among younger age groups. This was particularly the case for women, with 23% of those aged 16 to 24 and 16% of those aged 25 to 34 experiencing some form of sexual harassment in the previous year compared with 5% of those aged 35 and over. There was a similar pattern among men with 8% of the youngest 16 to 24 age group experiencing sexual harassment in the last 12 months, compared with 2% of men aged 25 years and over.

83. It is worth noting though that whistleblowing protections apply to the worker making the report, even if they are not the ones directly affected by the wrongful behaviour.

84. While data on other protected characteristics is limited, the Government Equalities Office's 2020 Sexual Harassment Survey<sup>31</sup> found that 43% of lesbian, gay, bisexual and transgender (LGBT) people had experienced sexual harassment in the workplace in the last 12 months (2019-2020), compared with 28% of heterosexuals. This is in line with findings in the survey conducted by the Trade Union Congress in 2019, covering over 1,000 LGBT people on their experience of sexual harassment at work<sup>32</sup>, revealed that nearly 7 out of 10 of LGBT people and almost one in eight LGBT women who responded had been sexually harassed at work. The report also suggests that LGBT workers might face additional barriers to reporting as doing so may mean revealing their sexual orientation and/or gender identity.

85. The same Government Equalities Office's survey found a higher incidence of responses among ethnic minorities (32% of respondents compared to 28% for white people) and those with limited disability (44% compared to 25% for people with no disability).

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<sup>30</sup> ONS, [Experiences of harassment in England and Wales: December 2023](#), published 7 December 2023

<sup>31</sup> Government Equalities Office, [2020 Sexual Harassment Survey](#)

<sup>32</sup> Trade Union Congress, [Sexual harassment of LGBT people in the workplace](#), published 17 May 2019

86. A quarter (26%) of those who had experienced sexual harassment said they had experienced harassment at their place of work, where a workmate or colleague was the second most common victim-perpetrator relationship (12%). As such, taking steps towards protecting those who experience harassment in the workplace could contribute to reducing sexual harassment, advancing equality of opportunity, and fostering good relations with regard to sex, and potentially other protected characteristics.
87. To date, there is no evidence to suggest that this policy will have specific impacts on people with other protected characteristics. If further evidence is identified, we will consider the implications for policy.
88. The rationale for focusing on sexual harassment is one of strategic alignment with Government priorities, including the Make Work Pay Plan's commitment to "strengthen protections for whistleblowers, including by updating protection for women who report sexual harassment at work", as well as wider Government priorities to create and maintain workplaces and working conditions free from harassment.
89. The option of including other forms of harassment will be kept under review. While out of scope of this assessment, it is noted that sexual harassment is not the only form of harassment workers can experience. According to ONS data<sup>33</sup>, 7% of people aged 16 and over reported experiencing at least one of the forms of non-sexual harassment asked about within the last 12 months. While the data does not allow determination of the nature of the harassment, some evidence suggests that workers experience harassment in the workplace related to sexual orientation, race, religion or belief, age and disability, and pregnancy and maternity<sup>34</sup>.

## **Risks and assumptions**

90. Due to lack of granular evidence on the reasons behind public protection disclosures, this IA cannot confidently estimate the impact of the policy quantitatively. Nevertheless, these are expected to be small, and the analysis included in this IA, including illustrative analysis of potential impacts, is deemed proportionate to the expected impact of the policy.

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<sup>33</sup> ONS, [Experiences of harassment in England and Wales: December 2023](#), published 7 December 2023

<sup>34</sup> Equality and Human Rights Commission, [Sexual harassment and harassment at work: technical guidance](#), published 15 January 2020