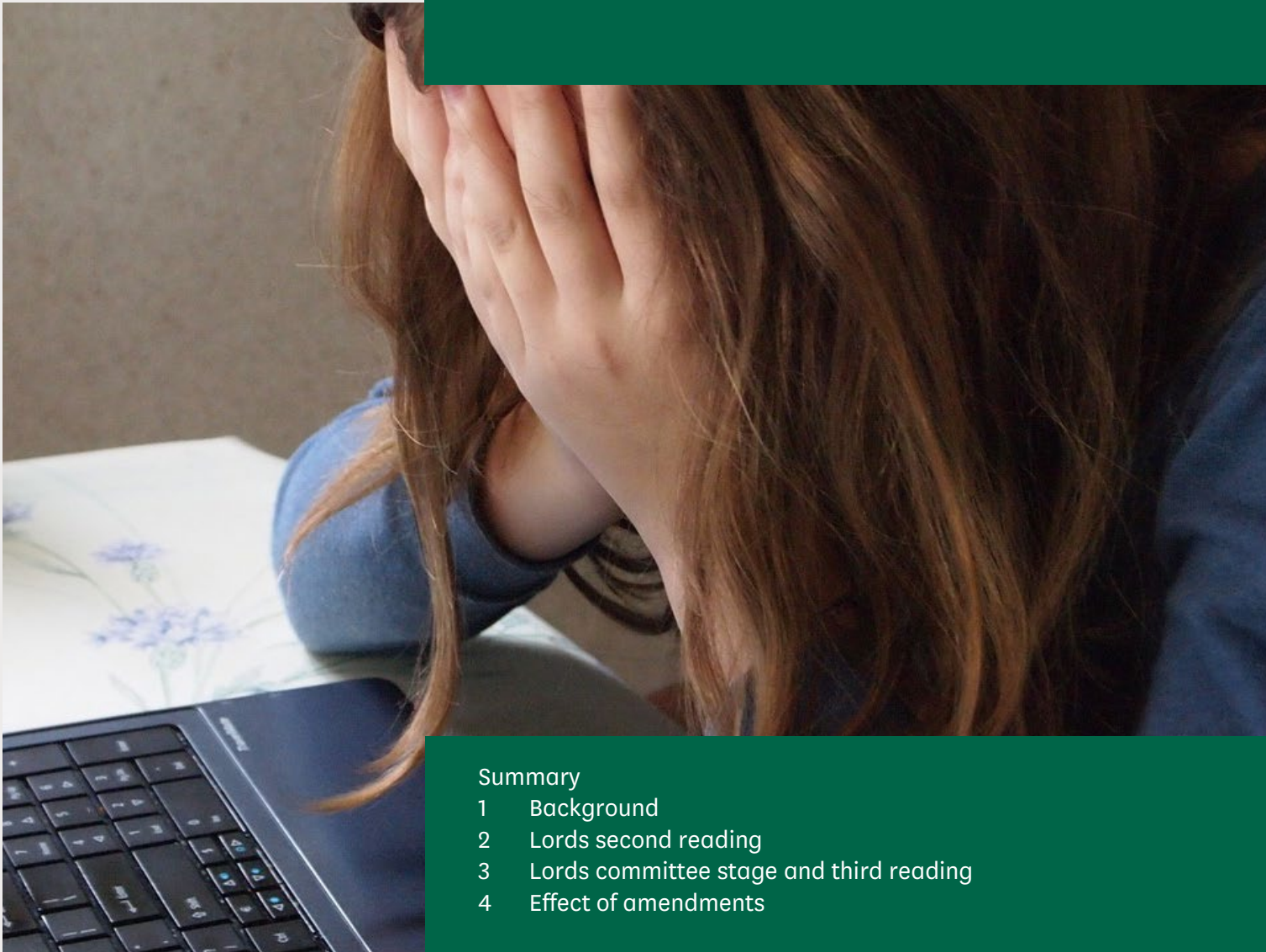


Research Briefing

12 October 2023

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Worker Protection (Amendment of Equality Act 2010) Bill - Lords stages and amendments



Summary

- 1 Background
- 2 Lords second reading
- 3 Lords committee stage and third reading
- 4 Effect of amendments

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Summary

The [Worker Protection \(Amendment of Equality Act 2010\) Bill 2022-23](#), Bill 28 of the 2022-23 session, was introduced on 15 June 2022 by Liberal Democrat MP Wera Hobhouse as a Private Member's Bill, presented to Parliament through the ballot procedure.

The Bill passed all Commons stages without opposition, though with Government amendments made to Clause 1 on report stage. For further detail on the background and Commons stages of the Bill, see the Library briefing [Worker Protection \(Amendment of Equality Act 2010\) Bill 2022-23: Progress of the Bill](#).

In the Lords, the Bill encountered opposition from backbench Conservative Peers, who tabled over 40 amendments ahead of committee stage. Due to a compromise agreement being reached between the Government, the Bill's sponsor and Conservative backbenchers, two amendments were ultimately accepted during committee stage, which significantly reduce the scope of the Bill, by removing Clause 1 entirely and removing the word "all" from Clause 2.

The Bill, as originally introduced, would have done two things. Firstly, Clause 1 would have created new liabilities for employers in cases of third party harassment of their staff, unless the employer took "all reasonable steps" to prevent it. This would have re-created protections similar to those that originally existed in the Equality Act 2010, but which were removed by the Enterprise and Regulatory Reform Act 2013.

However, the results of the amendments made at Lords committee stage is that Clause 1 was removed entirely and so no such liability would now be created by the Bill. The situation created in 2013 would remain, with employers having no liability for harassment of their staff by third parties.

The second thing the Bill would have done is through Clause 2, to create a new legal duty, enforceable by the Equalities and Human Rights Commission, for employers to take "all reasonable steps" to prevent sexual harassment of their employees in the course of their employment. As a result of amendments made at Lords committee stage, this duty would now only be to take "reasonable steps", not "all reasonable steps".

Whereas originally the Bill would have created protections against third party harassment on the basis of any of the protected characteristics in the Equality Act 2010, such as race, sex or disability, the remaining provisions in Clause 2 only relate to "sexual harassment", which has its own specific definition in the Equality Act.

1 Background

1.1 Background to the Bill

[Section 40 of the Equality Act 2010](#) prohibits employers from harassing their staff. [Section 26](#) defines harassment covered by the Act, as “unwanted conduct” that violates a person’s dignity or creates an “intimidating, hostile, degrading, humiliating or offensive environment” and which falls into one of three categories:

- unwanted conduct related to a relevant protected characteristic
- unwanted conduct of a sexual nature
- unfavourable treatment due to submitting to or rejecting “unwanted conduct of a sexual nature or that is related to gender reassignment or sex.”

The latter two categories are generally described as “sexual harassment” specifically, as opposed to more general harassment related to protected characteristics.¹

Section 109 of the 2010 Act states that employers may be vicariously liable for harassment carried out by their employees. Employers are therefore already liable where employees harass fellow staff, unless they can show they took “all reasonable steps” to prevent it.

However, since the repeal of subsections 40(2)-(4) of the Act in 2013, coupled with a 2018 Court of Appeal ruling *Unite the Union v Nailard*, employers are not generally liable where staff are harassed by third parties outside of the employer’s direct control, such as customers or suppliers.²

For further detail on the background, see the Library briefing [Worker Protection \(Amendment of Equality Act 2010\) Bill 2022-23: Progress of the Bill](#).

¹ Acas, [Discrimination at work: Harassment](#), 10 May 2023

² [Unite the Union v Nailard \[2018\] EWCA Civ 1203](#)

1.2

The Worker Protection (Amendment of Equality Act) Bill as introduced

The [Worker Protection \(Amendment of Equality Act 2010\) Bill 2022-23](#), Bill 28 of the 2022-23 session, was introduced on 15 June 2022 by Liberal Democrat MP Wera Hobhouse as a Private Member's Bill, presented to Parliament through the ballot procedure.

It was one of six ballot bills in the 2022-23 session concerning employment rights, introduced on the same day by different backbenchers, all of which received early Government support and which implemented different pledges made in the 2019 Conservative Party manifesto or in various consultation outcomes.³

The explanatory notes for the Bill were drafted by the Government Equalities Office, a unit of the Cabinet Office responsible for social equality.⁴

The Bill as originally introduced would have done two related things to increase protection for workers against harassment at work by third parties.

Firstly, it would create new legal liabilities for employers, by treating an employer as harassing their employee if the employee is harassed in the course of their employment by third parties (such as customers or clients) and the employer fails “to take all reasonable steps to prevent the third party from doing so”. This would allow workers to bring claims to an employment tribunal where they suffered such harassment.

Secondly, it would also create a new legal duty for employers, to “take all reasonable steps to prevent sexual harassment” of their employees in the course of their employment. This is framed as a positive duty, enforceable by the Equalities and Human Rights Commission (EHRC), but applying only to sexual harassment cases – not other kinds of harassment. The Bill would allow employment tribunals to apply an uplift of up to 25% to employees' compensation in sexual harassment cases where the employer had failed to uphold this duty.

Commons stages

The Bill passed second reading in the Commons on 21 October 2022 and completed its committee stage on 23 November 2022 without amendment. It

³ The other such bills were the [Employment \(Allocation of Tips\) Bill 2022-23](#), the [Protection from Redundancy \(Pregnancy and Family Leave\) Bill 2022-23](#), the [Employment Relations \(Flexible Working\) Bill 2022-23](#), the [Neonatal Care \(Leave and Pay\) Bill 2022-23](#) and the [Carer's Leave Bill 2022-23](#). These have all now received Royal Assent.

⁴ [Worker Protection \(Amendment of Equality Act 2010\) Bill 2022-23, Explanatory Notes](#)

passed its remaining Commons stages without division on 3 February 2023, receiving support from across the House.⁵

Two substantive Government amendments were made at report stage in the Commons, with the effect of removing any risk of liability for employers in failing to prevent workplace conversations or the expression of opinions “on a political, moral, religious or social matter”. This would only apply providing those conversations were not directly targeted at the person in question, were not “grossly offensive” or done for the purpose of violating that person’s dignity or “creating an intimidating, hostile, degrading, humiliating or offensive environment”.

These amendments were accepted by the Bill’s sponsor, Wera Hobhouse MP, with some complaint over the Government having tabled the amendments at a late stage and some reservations following consultation with interested stakeholders, saying:

I urge the Government to listen to the concerns of the EHRC, which argues that the amendments could be more targeted and limited, and the National Alliance of Women’s Organisations, which worries that the amendments risk diluting these changes, which seek to make workplaces safer, fairer and more respectful not just for women but for everybody. I hope the Government will commit to ensuring the Bill’s smooth passage into law, working with all stakeholders who have voiced their concerns.⁶

Speaking for the Government at Commons report stage on 3 February 2023, Minister for Women Maria Caulfield reiterated the Government’s support for the Bill at that point, saying:

As the House is aware, the Government have provided their full support for the Bill throughout its passage. We believe that fundamentally everyone should be able to thrive in the workplace, without fear of harassment or violence, and the Bill helps to ensure that. The Government remain committed to this important piece of legislation and we hope it will continue to garner the strong cross-party support we have seen in its previous stages.⁷

For further detail on the Bill as introduced, and Commons stages up to committee stage, see the Library briefing [Worker Protection \(Amendment of Equality Act 2010\) Bill 2022-23: Progress of the Bill](#).

⁵ [Worker Protection \(Amendment of Equality Act 2010\) Bill: Stages](#)

⁶ [HC Deb 3 February 2023](#), c588

⁷ [HC Deb 3 February 2023](#), c585

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Lords second reading

The Bill was introduced to the House of Lords on 6 February 2023 and received its second reading in the Lords on 24 March.

The Bill's sponsor in the Lords, Liberal Democrat Baroness Burt of Solihull, opened the debate setting out the context of the Bill following the “#MeToo movement” and a 2020 survey by the Government Equalities Office which found that “nearly a third of all employees surveyed had experienced some form of sexual harassment in their workplace or work-related environment in the previous 12 months alone.”⁸

Baroness Burt directly addressed some concerns raised about the Bill which had led to the Government amendments made on Commons report stage, saying:

I understand that there were and are some concerns about the Bill's interaction with free speech. In particular, some have suggested that, as a result of the Bill, employers will feel that they need to take extreme steps to avoid liability for workplace harassment, including by shutting down conversations and valid expressions of opinion between third parties such as customers in a pub. However, noble Lords will note that, on Report in the Commons, a government amendment introduced into the Bill Clause 1(3), and proposed subsections (1C) and (1D) under Clause 1(2), to clarify for employers and the employment tribunal that such steps are absolutely not required. The amendment was accepted by Members in the other place, and I hope it assuages any concerns noble Lords may have in this regard, although I know that the Minister will speak to this when she makes her remarks.⁹

In contrast to the cross-party support for the Bill during its Commons stages, during this debate several Conservative peers spoke out against aspects of the Bill, particularly Clause 1, which would introduce the new liability on employers for third party harassment unless they took “all reasonable steps” to prevent it.

Lord Hannan of Kingsclere (Con) suggested that existing protections against harassment were sufficient and raised concerns that the Bill intruded into the freedom of individual employers and employees to reach their own contractual arrangements.¹⁰

Lord Strathcarron (Con) argued that the Government amendments in the Commons were inadequate to address concerns about freedom of speech, saying “the solution is so draconian, and the size of the problem so

⁸ [HL Deb 24 March 2023](#), c2002

⁹ [HL Deb 24 March 2023](#), c2003

¹⁰ [HL Deb 24 March 2023](#), c2005

minuscule, that the free-speech aspect of the Bill fails the first and most elementary parliamentary test: is it really necessary?”¹¹

The Earl of Leicester (Con) likewise raised concerns that the Bill would lead to customers being subjected to “formal and binding HR-style rules that govern how they interact with employees”, adding that:

It is not an exaggeration to say that it is the most momentous and far-reaching piece of legislation currently before Parliament—yet it has received very little parliamentary scrutiny and provoked almost no debate in the public square.¹²

Lord Moylan (Con) also spoke in objection to Clause 1 of the Bill, raising similar free speech concerns. He also sought to contrast “reasonable steps” an employer might take with the Bill’s requirement to take “all reasonable steps” to prevent harassment, saying this could be hard for smaller businesses and that “in my view, the word “all” needs to be removed.”¹³

Speaking in favour of the Bill, Labour spokesperson Baroness Blake of Leeds drew attention to the previous protections against third party harassment that had existed in the Equality Act 2010, before they were removed in 2013 by the Enterprise and Regulatory Reform Act 2013. She noted the reasons why these had been removed:

because the Government at the time believed that protection was present elsewhere in the law. However, following a subsequent court case, the Government now accept that there is a gap in the law.¹⁴

Responding for the Government, Minister and Lords spokesperson for the Equality Hub, Baroness Scott of Bybrook, said that “It is with great pleasure that I reaffirm the Government’s support for the Bill”.¹⁵ Baroness Scott reiterated the importance of both of the main measures contained in the Bill, including the new third-party harassment protections. She attempted to address the concerns raised by Conservative Peers, saying “I reassure all noble Lords that the Bill will not inhibit free speech”, drawing particular attention to the Commons amendments to Clause 1:

Some of the concerns expressed are about the “what if” questions. It is right that we test and rigorously examine the scope of the Bill, but legislators can go only so far in predicting and accounting for every scenario. The amendment we have put in place signals to employers where their ceiling of action should be, and the Government trust that they are best placed to assess how to implement the law according to the business within which they operate.¹⁶

Baroness Scott also sought to address concerns about the impact of the Bill on business, saying “We do not believe that compliance with the Bill needs to

¹¹ [HL Deb 24 March 2023](#), c2005

¹² [HL Deb 24 March 2023](#), c2007

¹³ [HL Deb 24 March 2023](#), c2010

¹⁴ [HL Deb 24 March 2023](#), c2012

¹⁵ [HL Deb 24 March 2023](#), c2013

¹⁶ [HL Deb 24 March 2023](#), c2014

be onerous”¹⁷ and noting that the requirement to take “all reasonable steps” to prevent harassment mirrors language elsewhere in the Equality Act 2010, saying:

It is important to note that the concept of “all reasonable steps” has been in the Equality Act since its inception in the context of employers’ liability, and that it is well understood by employers and employment tribunals; this is nothing new. What is “reasonable” in any particular context is a question of fact for the tribunal.¹⁸

The Bill passed Lords second reading without division.

¹⁷ [HL Deb 24 March 2023](#), c2017

¹⁸ [HL Deb 24 March 2023](#), c2015

3 Lords committee stage and third reading

3.1 Ahead of Lords committee stage

Following second reading, a large number of amendments were tabled ahead of committee stage in the House of Lords.

These amendments were reported by the Financial Times on 24 April 2023 as an attempt to “time out” the Bill by obstructing its progress:

Long-awaited legislation to toughen up laws on sexual harassment in the workplace looks set to be shelved after a flurry of amendments from Conservative peers that has choked its progress through the UK parliament.

[...]

More than [40 amendments have been added](#) by Tory backbench peers in recent days, which would weaken or dilute the main obligation of the relevant bill, for example by excluding “vexatious, frivolous or malicious” claims. In effect, this will “time out the bill” given how little parliamentary time is allocated to private members’ bills.¹⁹

The article quoted concerns from Jemima Olchawski, chief executive of the Fawcett Society, saying the Government “should be seriously getting behind the only serious legislative change we’ve seen in Britain to come out of the #MeToo movement”, as well as from TUC general secretary Paul Nowak, saying it would be “utterly shameful” if the Government allowed the Bill to fall under pressure from backbench Conservative peers.²⁰

The article also quoted the Bill’s original sponsor, Wera Hobhouse MP, saying that Prime Minister Rishi Sunak had promised the Bill his support, adding:

If the government is serious about stopping sexual harassment in the workplace they have two options, either put pressure on the rebels in the Lords to withdraw the amendments . . . or take it on as a government bill.²¹

¹⁹ Financial Times, “[Tougher UK legislation on workplace sexual harassment set to be shelved](#)”, 24 April 2023

²⁰ As above

²¹ As above

3.2 Lords committee stage

Lords committee stage took place on 14 July 2023. The debate was opened by Lord Hannan of Kingsclere (Con) who rose to oppose Clause 1 standing part of the Bill, saying:

as a result of constructive talks among interested parties on all sides, I rise in the expectation that Clause 1 will not be part of the final legislation.²²

Three other Conservative peers also spoke against Clause 1 of the Bill, the clause which would create the liabilities for third party harassment.

A separate amendment, by Baroness Noakes, proposed to amend the Clause 2 requirement on employers to take “all reasonable steps” to prevent sexual harassment to become instead a requirement to simply take “reasonable steps”, removing the word “all.”

On behalf of the Labour Party, Baroness Thornton raised concerns about the removal of Clause 1, asking “If Clause 1 is removed, how do the Government propose to deal with, or reinstate, protections for workers against harassment by third parties like customers?”²³

Baroness Thornton also raised questions about the proposed removal of the word “all” from Clause 2, saying:

As I recall from the discussions about this in other legislation, “all reasonable efforts” is an expression that is used in other places in the legislation and in this Bill. I have always thought that that word was there as much to protect employers and others as anything else—it is not superfluous. So can the Minister explain the implications of removing it from the Bill and what ramifications that might have for the rest of the legislation that covers this area?²⁴

The Bill’s sponsor, Baroness Burt of Solihull (LibDem), expressed disappointment in the amendments, but accepted they were necessary in order for the Bill to progress, saying:

The amendments proposed today will change and ultimately attenuate the provisions of the Bill, but I am a firm believer in not allowing the perfect to become the enemy of the good. While it is disappointing that the Bill as sent to us will be changed by these amendments, I recognise the need for compromise in order to retain its core purpose, while allowing it to progress and reach the statute book. Noble Lords and I have reached an understanding whereby we can assure the passage of the preventative duty in respect of sexual harassment in exchange for accepting the amendments we are discussing today.²⁵

²² [HL Deb 14 July 2023](#), c2028

²³ [HL Deb 14 July 2023](#), c2031

²⁴ [HL Deb 14 July 2023](#), c2032

²⁵ [HL Deb 14 July 2023](#), c2033

Responding for the Government, Minister and Lords spokesperson for the Equality Hub, Baroness Scott of Bybrook welcomed the compromise that parties had reached on the issue and accepted the changes, saying:

I thank noble Lords for raising the risks to free speech and the potential impact on burdens for business that the Bill could bring by introducing employer liability for third-party harassment and requiring all reasonable steps.²⁶

Both amendments were agreed to and the Bill, as amended, was reported as amended without division.

3.3 Lords third reading

Lords third reading for the Bill took place on 12 September 2023. The Bill's sponsor, Baroness Burt of Solihull (LibDem) spoke in support of the Bill, noting that its passage "has been somewhat of a challenge", adding:

The Bill will not return to the Commons as it was when it first arrived in your Lordships' House but, in essence, it will still protect workers from sexual harassment and it will impose a duty on employers to take reasonable steps to ensure that their employees are protected.²⁷

Baroness Blake of Leeds (Lab) spoke briefly to express support for the Bill as a "step in the right direction".²⁸ For the Government, Baroness Scott of Bybrook noted "the Government's ongoing support" for the Bill, adding that:

this Bill now strikes the right balance between protecting free speech and tackling harassment. While there has been much debate and amendments have been made to the Bill, I think we can all agree that workers should feel safe and be free from sexual harassment in the workplace.²⁹

The Bill passed, as amended, without division.

²⁶ [HL Deb 14 July 2023](#), c2033

²⁷ [HL Deb 12 September 2023](#), c789

²⁸ As above

²⁹ [HL Deb 12 September 2023](#), c790

4 Effect of amendments

The Bill, as originally introduced, would have done two things. Firstly, Clause 1 would have created new liabilities for employers in cases of third-party harassment of their staff, unless the employer took “all reasonable steps” to prevent it. This would have re-created protections similar to those that originally existed in the Equality Act 2010, but were removed by the Enterprise and Regulatory Reform Act 2013.

However, the results of the amendments made at Lords committee stage is that Clause 1 was removed and so no such liability would now be created by the Bill. The situation created in 2013 would remain, with employers having no liability for harassment of staff by third parties.

The second thing the Bill would have done is through Clause 2, to create a new legal duty, enforceable by the EHRC, for employers to take “all reasonable steps” to prevent sexual harassment of their employees in the course of their employment. As a result of amendments made at Lords committee stage, this duty would now only be to take “reasonable steps”, not “all reasonable steps”.

4.1 Commentary on amendments

David Lorimer, Legal Director at Law firm Lewis Silkin, published an article on the amendments on 21 July, noting that the third party harassment provisions had been “scrapped” and the duty to prevent sexual harassment “watered down”.

On the removal of the third party harassment liability, the author expressed the view that there were advantages and disadvantages to this amendment removing Clause 1:

The advantage of this approach is that it avoids the somewhat convoluted amendments previously introduced by the government relating to overheard conversations about political, moral, religious or social matters. This would have been difficult for employers to operate in practice and would have caused confusion with the general established test for harassment. It will undoubtedly be disappointing, however, for those who feel that the current law does not adequately protect workers (and women in particular) from harassment by third parties.³⁰

³⁰ David Lorimer, “[Worker Protection Bill update – third party harassment scrapped?](#)”, Lewis Silkin, 21 July 2023

On the question of removing the word “all” from the “reasonable steps” requirement, he noted that “It is currently unclear what effect the removal of the word “all” will have on enforcement of this provision.” The Bill would still allow an uplift of 25% to compensation for sexual harassment cases where an employer has failed to take these reasonable steps. However, he noted that this may face difficulties in enforcement in practice due to the removal of Clause 1 of the Bill:

However, the uplift to compensation can only apply if an employee succeeds in a claim against their employer, which will no longer be available for cases of third party harassment.³¹

TUC general secretary, Paul Nowak, was quoted in The Independent on 14 July saying the amendments to the Bill “let down working women”, adding:

Ministers promised to bring in new laws to tackle sexual harassment at work by customers and patients. It is disgraceful that they’ve given in to Tory backbenchers and let down working women across the country. Every day we hear stories about sexual harassment in our workplaces. Many women in frontline jobs – like shop workers and GP receptionists – suffer regular abuse and harassment from patients and customers. This new law could have put the onus on employers to keep their staff safe from this type of abuse. They have abandoned working people – again.³²

Rachel Suff, senior policy advisor for employment relations at the Chartered Institute for Personnel and Development (CIPD), was quoted in People Management saying there was a “strong case for reforming the law to make more explicit employer liability for harassment by a third party”, adding:

Our view, on balance, was that it should be sufficient in any new law that a single incident of harassment has previously occurred for employer liability to apply for third-party harassment. It’s therefore disappointing if this provision is not taken forward.

We fully support the principle that employers should take their preventative responsibilities more seriously in relation to protecting employees from harassment at work.

However, we don’t believe that a new statutory duty on employers to prevent harassment at the present time would necessarily prompt more employers to prioritise prevention. Employers are already responsible for protecting employees from harassment at work and taking reasonable steps to prevent this.³³

³¹ David Lorimer, “[Worker Protection Bill update – third party harassment scrapped?](#)”, Lewis Silkin, 21 July 2023

³² The Independent, “[Measures to tackle workplace harassment to be watered down after compromise](#)”, 14 July 2023

³³ People Management, “[Amendments to worker protection bill mean employers will not be liable for third-party harassment](#)”, 19 July 2023

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