Government
Equalities Office

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Members of the Danish Parliament have asked three questions concerning the United Kingdom's policy on harassment and employer liability for third party actions in the workplace.

As head of discrimination law in the Government Equalities Office – the Department responsible for equalities policy in Great Britain (Northern Ireland is responsible for its own legislation) - I offer the following responses to the questions posed:

1) **What are the experiences and conclusions from the British provision on the employer's indirect liability in sexual harassment cases?**

At the time of the repeal of the "third party harassment" provision in the Equality Act 2010 (section 40(2) to (4)), in October 2013[1], only one such case had been brought to the then Government's attention. Keen to reduce burdens on employers and believing that the Equality Act's wider harassment prohibitions offered sufficient protection to employees where someone other than the employer was the harasser, the decision to repeal the express prohibition was made by Parliament.

More generally, in terms of existing rules on indirect liability of employers relating to sexual harassment, section 26 of the Equality Act (link: http://www.legislation.gov.uk/ukpga/2010/15/section/26) sets out a broad definition that the UK Government believes would cover circumstances where the alleged harassment was not done by the employer but by someone else. Under section 40, this definition is used to prohibit harassment of employees at work. Courts and tribunals have to balance competing rights on the facts of a particular case where an action is brought by an employee. Despite the repeal of the third-party harassment provisions, an employee might argue that their employer's inaction in the face of third-party harassment itself amounted to an unlawful act, using the broad definition in section 26.

[1] See section 65 of the Enterprise and Regulatory Reform Act 2013.

In addition, on vicarious liability, anything done by an employee in the course of their employment is treated as having also been done by the employer (section 109(1) of the Equality Act), regardless of whether the employee's acts were done with the employer's knowledge or approval (section 109(3)). However, it can then be a defence for the employer to show that they took all reasonable steps to prevent third employees (for example middle managers) from acting unlawfully and will not be held liable (for example having a policy in place on sexual harassment which employees are aware of). Also, employers cannot be held liable for criminal offences committed by their employees.

2) **How has the provision affected the effort of the employers to prevent work-related sexual harassment?**

The Government has not researched this point, although independent bodies such as the Trades Union Congress have published reports that include references to this issue. Although the Government does not officially endorse the TUC's report, to assist the Danish Parliament, I attach a link to it:

https://www.tuc.org.uk/sites/default/files/SexualHarassmentreport2016.pdf

3) **How is the development in the number of incidents of sexual harassment?**

The Government does not collect the detailed data needed to answer this question. Not all incidents are reported and those that progress to employment tribunal are classified as "sex discrimination" with no sub-categories.

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