



## Harassment in the headlines - what is it, really?

By **Philip Cameron** - 31 March 2021

There have been a number of high profile tales of harassment in the news over the last few years, most recently involving: the Royal Family and Meghan Markle (and the related fallout from the departure of Piers Morgan from GMB), Priti Patel and a number of civil servants, as well as the spat north of the border between Alex Salmond and Nicola Sturgeon which arises out of serious allegations of sexual harassment. Mental health is also high on the agenda in a way that it has never been before, not least because of the effects of Covid on work, unemployment and health: dignity and respect at work are in the spotlight as they have never been before.

Bullying and harassment are terms that we hear constantly. Whilst bullying has no legal definition, harassment has a very well known legal status and forms part of our anti-discrimination laws. (There is also a separate and different definition of harassment in the [Protection from Harassment Act 1997](#), which focuses on conduct causing alarm or distress.)

The Equality Act defines harassment as unwanted conduct that is related to a protected characteristic (sex, age, race, sexual orientation, etc). That conduct must have the purpose (that is there is an intention to harass) or effect (that is where there is no intention to harass such as when someone expresses an opinion or makes what they think is a harmless comment) of violating the dignity of a person or creating and intimidating, hostile, degrading, humiliating or offensive environment. There are also specific and related definitions of sexual harassment that includes engaging in unwanted conduct of a sexual nature related to gender reassignment or sex.

Harassment has a very broad meaning and the focus is first on what the person who feels harassed subjectively thinks. That person does not have to be the subject of the conduct or the comment: it is the taking of offence that is the trigger. A harmless remark to one person might be something deeply offensive to another because of, for example, a religious or philosophical belief. A comment about a gay colleague's sexual preferences can offend that person's straight colleagues; an atheist can be offended by anti-semitic remarks.

However, the fact that a person feels offended or humiliated is not the end of the matter - that does not show that there has been harassment in the legal sense. The legal test for harassment requires having regard to the other circumstances of the case as well as whether it is reasonable for that conduct to have that effect (that is, what would a reasonable observer think of the conduct or comments?). That is why it is difficult to know, without knowing much more, whether a comment from a member of the Royal Family



about the colour of someone's skin would offend against the legal definition of harassment. Very obviously it could, but set in context, it may not.

The landscape is further complicated by the issue of third party harassment and what exactly constitutes harassment during the course of employment. Many commentators were incredulous to hear that ITV would take no responsibility for the alleged bullying actions of Piers Morgan over Twitter. Disregarding the merits of any bullying/harassment allegations against Morgan and ITV's motives behind his swift exit, it may surprise many that employment law offers less protection than you would think in this particular scenario. Piers Morgan (as a self-employed freelancer) is classified as a third party in respect of harassment legislation and it is far more onerous to establish the vicarious liability of an employer in this regard. In fact, the specific provisions in the Equality Act were repealed in 2013! Further, as legal protections only apply 'during the course of employment', it would be complicated to argue how many of Piers' "tweets" (if any at all) actually constitute an act of harassment targeting an ITV employee during the course of said employee's employment - quite the headscratcher!

This issue may be clarified by the long-awaited results of a government consultation looking into strengthening this particular aspect of the legislation. Regardless of the law, Piers Morgan (and indeed ITV) have learnt the hard way that the court of public opinion often provides more financially and reputationally punishing judgements than any long fought legal battle.

Although harassment law can be incredibly complex, including conduct not just words, the moral of this story is: THINK BEFORE YOU SPEAK...(and ensure you have good legal advice).

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If you would like advice on harassment in the workplace please contact [Philip Cameron](#) or [Georgie Miller](#) or email [\[email protected\]](#).