

<b>MERSEYSIDE FIRE AND RESCUE AUTHORITY</b>			
<b>MEETING OF THE:</b>	<b>POLICY AND RESOURCES COMMITTEE</b>		
<b>DATE:</b>	<b>12 DECEMBER 2024</b>	<b>REPORT NO:</b>	<b>CFO/73/24</b>
<b>PRESENTING OFFICER</b>	<b>CHIEF FIRE OFFICER, PHIL GARRIGAN</b>		
<b>RESPONSIBLE OFFICER:</b>	<b>DIRECTOR OF PROFESSIONAL AND ORGANISATIONAL DEVELOPMENT, NICK MERNOCK</b>	<b>REPORT AUTHOR:</b>	<b>HEAD OF HUMAN RESOURCES, MIKE PILKINGTON</b>
<b>OFFICERS CONSULTED:</b>	<b>MIKE PILKINGTON, KEVIN JOHNSON, AMANDA CROSS</b>		
<b>TITLE OF REPORT:</b>	<b>WORKER PROTECTION ACT 2023 - PREVENTION OF SEXUAL HARASSMENT IN THE WORKPLACE</b>		

<b>APPENDICES:</b>	<b>APPENDIX A:</b>	<b>PODPOL 09 BULLYING &amp; HARASSMENT POLICY (UPDATED)</b>
	<b>APPENDIX B:</b>	<b>NFCC PCL BRIEFING – SEXUAL HARASSMENT</b>
	<b>APPENDIX C:</b>	<b>EHRC – EIGHT STEP GUIDE FOR PREVENTING SEXUAL HARASSMENT IN THE WORKPLACE</b>

### **Purpose of Report**

1. To update Members on the requirements of the Worker Protection (Amendment of Equality Act 2010) Act 2023 and the work streams established to meet our duties under the legislation.

### **Recommendation**

2. It is recommended that Members;
  - a) note the new duty on employers to take reasonable steps to prevent sexual harassment of Merseyside Fire and Rescue Authority employees in the course of their employment;
  - b) note the workstreams established to ensure the Authority meets its legal duty under the act and;

- c) approve the refreshed PODPOL 09 Bullying & Harassment Policy, subject to any significant changes that emerge from ongoing consultation with representative bodies being reported back as necessary.

## Introduction and Background

3. The Equality Act 2010 contains provisions to protect against both sexual harassment, and other forms of harassment related to protected characteristics, including the protected characteristic of sex. This has been amended by the new Worker Protection (Amendment of Equality Act 2010) Act 2023 which came into force on 26<sup>th</sup> October 2024.
4. This amendment has two main aspects:
- a) it creates a new duty on employers to take reasonable steps to prevent the **sexual harassment** of employees.
  - b) it provides that where if a tribunal finds an employer has failed to take reasonable steps to prevent the harassment, then it can increase the compensation award by up to 25%.
5. Harassment is defined in the Equality Act 2010 as:
- “unwanted conduct relating to a relevant protected characteristic which either violates the person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them”.*
6. The protected characteristics covered by this provision include age, disability, gender reassignment, race, religion or belief, sex, sexual orientation. Examples of unwanted conduct are:
- spoken words
  - written words
  - posts or contact on social media
  - imagery
  - graffiti
  - physical gestures
  - facial expressions
  - mimicry
  - jokes or pranks
  - acts affecting a person's surroundings
  - aggression
  - physical behaviour towards a person or their property
7. Sexual harassment is specifically different to harassment related to a person's protected characteristic of sex. It is defined as:
- “unwanted verbal, non-verbal or physical **conduct of a sexual nature** which has the purpose or effect of violating the recipient's dignity, or of creating an*

*intimidating, hostile, degrading, humiliating or offensive environment for the recipient.*

8. Examples of conduct of a sexual nature are:
  - sexual comments or jokes
  - displaying sexually graphic pictures, posters or photographs
  - suggestive looks, staring or leering
  - propositions and sexual advances
  - making promises in return for sexual favours
  - sexual gestures
  - intrusive questions about a person's private or sex life or a person discussing their own sex life
  - sexual posts or contact on social media
  - spreading sexual rumours about a person
  - sending sexually explicit emails or text messages
  - unwelcome touching, hugging, massaging or kissing
9. This new positive duty which requires employers to take reasonable steps to prevent sexual harassment of its workers (sometimes referred to as the 'anticipatory or preventative duty') only applies to sexual harassment and not harassment due to the protected characteristic of sex.
10. The duty is designed to transform workplace cultures by requiring employers to take positive and proactive reasonable steps to prevent sexual harassment of their workers. This includes from other employees, members of the public, visitors, suppliers, and contractors.
11. Appendix B is a copy of the briefing issued on 14<sup>th</sup> October 2024 by the NFCC People Culture & Leadership Hub with regards to the upcoming changes

### **Workstreams to meet the duty.**

12. The Equality and Human Right Commission (EHRC) consulted on revisions to guidance during summer 2024. This resulted in the publication on 26<sup>th</sup> September 2024 of updated 'Sexual Harassment and harassment at work: technical guidance'.
13. Appendix C provides an abridged summary focusing on eight key steps for employers to take to meet the duty. The recommended eight steps are as follows:
  - Step 1: develop an effective anti-harassment policy
  - Step 2: engage your staff
  - Step 3: assess and take steps to reduce risk in your workplace
  - Step 4: reporting
  - Step 5: training
  - Step 6: what to do when a harassment complaint is made
  - Step 7: dealing with harassment by third parties
  - Step 8: monitor and evaluate your actions

14. Officers have engaged with the EHRC directly over the new duty via recently organised NFCC 'Listen and Learn' sessions and as part of the 'Uniformed Services Equality Exchange', which is an EHRC project that brings together leaders from Fire, Police and the Armed Forces as part of equality learning and development events.
15. Based on this learning and the supporting guidance that's been issued the following actions (in line with EHRC recommendations) are in progress to ensure the authority meets its legal duties under the Worker Protection (Amendment of Equality Act 2010) Act 2023:
  - a) The Bullying & Harassment Policy has been updated to reflect the new preventative duty. This is supported by the creation of a new bespoke Service Instruction for the Prevention of Sexual Harassment in the Workplace. A copy of updated policy is included as Appendix A.
  - b) We have developed a mandatory and reportable e-learning module for all staff. This has been created and is currently going through final quality assurance before being implemented into our e-learning package 'Merseyfire Learn'.
  - c) We will communicate widely with all staff, line managers, volunteers, and secondees improving knowledge of the new requirements, the updated policies, and reiterating expectations with regards to employee standards of conduct and behaviour.
  - d) We are working with managers across the service to undertake preventive risk assessments and creating action plans to address any identified risks of sexual harassment, including via third parties. Local risk assessment templates have been created and will be completed as a priority. During the recent EHRC sessions it was suggested that a standardised risk assessment template may be provided to assist organisations with this work.
  - e) We are working with Strategy & Performance to develop key information to provide to contractors, partners and visitors outlining our organisational position, expectations and measures in place to prevent sexual harassment.
  - f) We are reissuing guidance for staff in relation to our independent, confidential, anonymised reporting line 'Safecall', and other avenues to report sexual harassment. This includes a Joint Statement signed by all our representative bodies support this reporting line.
16. Ensuring we meet our duty is an ongoing requirement and as such regular reviews and continual monitoring will be undertaken to ensure we are taking all reasonable steps to prevent sexual harassment. This will include regular reviews of complaints submitted, outcomes of any investigations and a review of data to analyse for any disproportionality in terms of protected characteristics.

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## **Equality and Diversity Implications**

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17. A full EIA will be completed covering the revisions to the Bullying & Harassment policy and the Prevention of Sexual Harassment in the Workplace Service Instruction. This will take account of any information that also arises as part of the departmental risk assessments.

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## **Staff Implications**

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18. Sexual harassment can happen to men, women and people of any gender identity or sexual orientation. It can be carried out by someone of the same sex, a different sex or a person of any gender identity.
19. An employee could experience sexual harassment from anyone they encounter because of their job, including:
  - a) someone they work with
  - b) a manager, supervisor, or someone else in a position of authority
  - c) someone high profile or influential
  - d) a customer, client, or member of the public.
20. Taking reasonable steps to prevent sexual harassment in the workplace is both a legal and moral necessity, in line with our existing values and behaviours framework (Employee Code of Conduct, Ground Rules, Leadership Message), and employee expectations.
21. Initial training will be via e-learning utilising Merseyfire Learn, should any additional training requirements be identified these will be addressed in line with existing service procedures.

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## **Legal Implications**

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22. Employers may be vicariously liable for the actions of their employees including harassment committed by an employee in the course of their employment. However, a legal defence is valid if the employer can demonstrate that they took all reasonable steps to prevent the harassment (the 'reasonable steps' defence).
23. An employer will have taken all reasonable steps if there are no further steps that they could reasonably have been expected to take. In deciding whether a step is reasonable, an employer should consider its likely effect and whether an alternative step could be more effective.
24. A tribunal or court may find that it would have been reasonable for an employer to take a certain step, even if that step might not have prevented the act of harassment.

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## **Financial Implications & Value for Money**

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25. If an employment tribunal is satisfied that the preventative duty has been breached, it may order the employer to pay additional compensation to the worker, ('compensation uplift').
26. The amount of the compensation uplift must reflect the extent to which the employment tribunal considers the employer has not complied with the preventative duty. It must be no more than 25% of the amount of compensation awarded to the worker under the Equality Act 2010.

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## **Risk Management and Health & Safety Implications**

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27. The Health and Safety at Work etc. Act 1974 (HSWA) may apply where workers are subject to third party violence while carrying out their work.
28. Under the Management of Health and Safety at Work Regulations 1999, employers are required to assess risks to their workers including reasonably foreseeable risks of third-party violence. Employers should identify reasonably practicable organisational measures to prevent or control risks from third party violence as appropriate.

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## **Environmental Implications**

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29. There are no environmental implications associated with this report.

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**Contribution to Our Vision:** *To be the best Fire & Rescue Service in the UK.*

Our Purpose: *Here to serve, Here to protect, Here to keep you safe.*

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30. People are key to enabling MFRA to achieve its vision and purpose. Taking positive pro-active measures to prevent sexual harassment in the workplace support our staff in working towards achieving our purpose.

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## **BACKGROUND PAPERS**

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NONE

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## **GLOSSARY OF TERMS**

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**EHRC**            Equality and Human Rights Commission