

The rail industry in the post #MeToo era: what should rail operators be doing?

In 2017, the #MeToo movement sent shockwaves across social media, prompting a renewed and urgent focus on sexual harassment in the workplace

No sector is exempt, and the rail industry must continue to be mindful of the risks which arise from unlawful workplace conduct.

The rail industry is faced with a number of unique challenges which make the identification and prevention of workplace harassment particularly complex.

Women make up just 16 per cent of the workforce across the rail industry with the vast majority (79 per cent) of women being in non-managerial roles, according to the 2015 Industry Survey from *Women in Rail*. Whilst steps are being taken to improve the diversity and gender balance of the workforce, with great work being done by groups such as Women in Rail, there is still much more to be done to create an industry that genuinely reflects the market it serves. This creates a hugely imbalanced workplace dynamic.

The sheer geographic spread and diversity of workplaces, coupled with the decentralisation and devolution of management, can invite gaps in accountability and oversight which enable poor practices to proliferate. Operating in this way requires trust that instructions and policies and procedures will be correctly and effectively disseminated, and implemented and adhered to by regional and local management teams.

Effecting meaningful change can be difficult in organisations with a large number of employees with long service

which can often be the case in rail. These employees will have experienced a marked shift in workplace culture during their careers and what was previously considered acceptable workplace behaviour at the outset of their career may not be regarded as such by today's standards.

Low-paid and casual staff, such as cleaners, train presentation staff and maintenance workers, have been found to be particularly vulnerable to harassment.

What's the legal position on workplace sexual harassment?

The Equality Act 2010 defines harassment as 'unwanted conduct related to a relevant protected characteristic or of a sexual nature that has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'.

Harassment can take many forms, from physical conduct or sexual advances to sexual comments, innuendo or the sharing of content or images of a sexual nature. Whilst harassment is often deliberate, it can be unintentional, meaning that harassment can take place without any negative intention on the part of the harasser, provided the victim's reaction is not unreasonable. Further, recent case law has shown that the 'it was only banter' excuse will not stand up to scrutiny in the Employment Tribunal.

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What are other large employers doing to tackle workplace sexual harassment?

Last month, following a highly publicised Employment Tribunal claim, Sainsbury's entered into a legally binding agreement with the Equality and Human Rights Commission (EHRC) requiring the supermarket giant to take all reasonable steps to prevent workplace sexual harassment amongst its 116,000 employees nationwide. The London bus company, Go-Ahead London, also entered into a similar agreement with the EHRC last year. These agreements, and the action plans set out within them, provide insightful guidance for rail operators due to the inherent structural and organisational similarities in the way in which these large national employers operate.

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Taking a zero-tolerance approach to sexual harassment

In order to protect employees from, and to mitigate the risks of, workplace harassment, rail operators should:

- Implement a robust, effective and unified anti-harassment and bullying policy. The policy must contain a clear

for harassment perpetrated against an employee 'during the course of employment'. This has been interpreted widely by the Employment Tribunal, and employers have found themselves liable for harassment which has occurred both outside of working hours and outside of the workplace, for example, at a work-related social event.

Whilst employers have a defence to vicarious liability where they can demonstrate that they took all reasonable

steps to prevent workplace harassment from occurring, this is a deliberately high threshold.

Depending on the facts, it is even possible for employers to face claims under health and safety legislation or the Equality Act 2010, as well as constructive unfair dismissal or personal injury claims, for harassment perpetrated by a third party, such as a contractor, or even a passenger.

Some extra News in brief...

HS2 uses new pioneering low carbon concrete to reduce carbon emissions in construction

As part of its ambition to build the most sustainable high speed railway in the world, HS2 contractors in London have begun using a new low carbon concrete product which provides a reduction of 42 per cent in CO₂ in comparison to a standard concrete. In addition, the remaining carbon emissions from using the concrete are offset to provide a CarbonNeutral® product, in accordance with The CarbonNeutral Protocol.

The product, used for the first time in London, has been supplied to HS2's enabling works contractor, Costain Skanska joint venture, and Lydon Contracting Ltd by global building materials manufacturer CEMEX, from their plant based in Wembley. After engineering carbon reductions into the concrete mix design, CEMEX calculates the embodied carbon generated from extraction and processing of raw materials, product manufacturing and distribution. The residual carbon is then offset, making the concrete carbon neutral from manufacture to use.

To achieve carbon neutrality, carbon is offset by the removal or reduction of emissions of carbon dioxide or other greenhouse gases from the atmosphere in order to compensate for emissions made elsewhere. CEMEX facilitates this by investing in projects which physically remove CO₂ where possible from the atmosphere, such as planting more trees or protecting against deforestation through an independently audited and verified project. This is done in accordance with international standards for carbon neutrality.

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procedure for dealing with allegations of sexual harassment. The document must be distributed to all staff whether they work at head office, at stations/ depots or on-train, and remain easily accessible and publicised within the organisation. The policy should not only cover sexual harassment perpetrated by a fellow employee, but also by passengers, contractors, suppliers and other third parties and should apply to all employees, consultants, contractors, casual workers and agency workers.

- Ensure safety protocols are in place for late night working whether on passenger services, in the depots or when closing stations.
- Set boundaries on what behaviours are

and are not acceptable by providing workplace specific examples.

- Identify and train a designated person who will be responsible for dealing with allegations of sexual harassment at each station, depot or other workplace, if possible.
- Conduct thorough and regular training across the entire workforce. It is vital that specialised training is provided for line managers and supervisors on how to conduct investigations into allegations. They must ensure evidence is gathered from witnesses and/or CCTV where available.
- Advise staff on how to deal with harassment via internal communications, as well as through formal policies.

Encourage staff to come forward and report incidents they have suffered or witnessed.

- Ensure that allegations of sexual harassment are dealt with promptly and taken seriously, even if not raised via formal channels.
- Provide support and protection to victims of workplace harassment and take swift and appropriate action against perpetrators. This will help to prevent 'rolling bad apples' moving within the industry. Criminal behaviour should be reported to the police.

Driving change

In recent years, unions and organisations operating within the rail industry have stated their commitment to improving workplace behaviour. Whilst such commitments are certainly encouraging, they are not enough alone to effect meaningful change. The rail industry has a vital part to play in promoting and maintaining working environments where harassment of any form is not tolerated; only then will we begin to see a perceptible shift in culture and behaviour.

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