



# EHRC GUIDANCE ON HARASSMENT AT WORK AND HOW DIGITAL REPORTING TOOLS CAN HELP

A joint paper by **Lewis Silkin**  
and **Vault Platform**

*December, 2020*

By **Lewis Silkin**

# The EHRC's harassment guidance and why it **still matters** in a pandemic

In January 2020, right at the very beginning of the Covid-19 pandemic, the Equality and Human Rights Commission (EHRC) published [guidance](#) for employers on preventing and dealing with sexual harassment and harassment at work.

While the guidance currently represents non-binding "best practice", employers should nonetheless pay careful attention. The fact that many office-based employees are now working from home does not mean that harassment isn't taking place. Online harassment was already a problem before the pandemic and is arguably especially difficult for employers to police.

There are suggestions that Covid-19 may have prompted incidents of racial harassment (for example, of people of Chinese ethnicity). Medical professionals, shop workers and employees working in other customer-facing occupations have reported an increase in harassment and abuse. In addition,



Richard Miskella, Joint Managing Partner, Lewis Silkin

as and when office workers begin to return to their workplaces, employers will need to take care to ensure appropriate behaviour. This could be challenging in a situation of hybrid working where groups (or even cliques) of employees go into work on certain days and not all managers are present.

Employment tribunals can consider the EHRC's guidance itself in harassment claims but, more importantly, it is expected to form the basis of a new statutory Code of Practice which will have greater legal force. A draft Code was originally expected before the end of 2020 but has been delayed by the pandemic. It is now possible the Code will come into force in 2021.

By **Vault Platform**

# How technology can turn compliance and culture into a **strategic asset**



Neta Meidav, CEO & Co-Founder, Vault Platform

When it comes to addressing injustice it's clear that doing the bare minimum required to comply with the law is no longer enough. Companies are pushed by public sentiment, government and regulator action, employee activism, and their customers to step up and adopt a multi-stakeholder approach that serves social purposes as well as investor demands.

This means seeking out injustice in all its forms - including harassment, bullying, and discrimination - and acting on it sincerely and effectively. The demand for affirmative action is being fuelled by global social movements such as Black Lives Matter and MeToo and is drawing significant attention to the intersection between the business functions of Compliance, Legal, and HR - specifically regarding the direction of a company's culture and whether the business and its employees act with integrity.

Public revelations of workplace harassment are not unusual and it's widely accepted that the reality is significantly worse than what is publicised. Almost half of all people who experience harassment at work don't report it, citing a lack of appropriate, effective, and secure reporting procedures as an effective barrier.

With the EHRC's technical guidance set to become code in 2021, employers should be acting now to ensure compliance and reap the benefits of a culture resistant to damaging behaviour.

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## A reminder - What is harassment?

Harassment is defined by the Equality Act 2010 as unwanted conduct which has the purpose or effect of violating someone's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. It is unlawful in certain defined circumstances, including when it is related to a protected characteristic (such as race, religion, age or sex) or when it counts as sexual harassment, which is when the conduct is "of a sexual nature".

In practice, what constitutes workplace harassment can sometimes be unclear to both employers and workers. What some employees see as harmless fun or banter, others might find unacceptable. Having a commonly-used language and set of definitions when referring to harassment can help by enabling individuals to recognise misconduct when they see it take place at work. For that reason, the EHRC guidance says that employers should make sure their policies explain what counts as harassment, using examples that make sense in the context of their business.

## What must employers do to prevent workplace harassment?

There is currently no positive legal duty on employers to prevent harassment, although the government is considering introducing one. Instead, an employer is legally liable for harassment committed by its staff in the course of their employment unless it can show that it took all reasonable steps to prevent it.

The guidance recommends the "reasonable steps" that employers should be taking if they want to establish this legal defence. We outline the key recommendations below but, in summary, employers need to be more proactive about safeguarding against harassment in a modern, post #MeToo world.

The EHRC emphasises that an employer will have taken all reasonable steps if there are no further steps they could reasonably have been expected to take. A tribunal 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 in question.

# What are **reasonable steps** to prevent harassment?

The guidance makes many recommendations, but we consider the most significant ones are the following:

- **Effective policies and procedures.** The guidance sets out best practice for what anti-harassment policies should contain. This includes clear examples of harassment and commitments to deal with it, including harassment which takes place outside of the workplace (for example, on social media) or which is committed by clients or other external third parties. Policies should not overemphasise the possibility of malicious complaints. The guidance stresses that policies need to be made freely available to workers, not just those who can access internal IT systems. (One suggestion is that employers could publish their policies on an easily accessible part of their external-facing website.) Policies should also be reviewed annually, taking account of feedback and lessons learned.
- **Central records.** The guidance recommends that employers create a centralised record of all harassment complaints in a level of detail that allows trends to be analysed. This could involve capturing dates, business area, roles of complainant and harasser, the type of harassment complained of and the outcome and reason for it.
- **Risk assessments.** These are an important new feature of the guidance. It recommends that employers carry out an assessment of the harassment risks in their organisation, potentially by using risk-management frameworks traditionally used in the workplace health and safety context. Assessments should identify the risks and the measures in place to minimise them. Risk factors may include, for example: power imbalances; job insecurity; lone working; the presence of alcohol; customer-facing duties; events that raise tensions locally or nationally; lack of diversity in the workforce; and workers being placed on secondment. The guidance places special emphasis on power imbalances and the need to address them. Workplace risk assessments have taken on a whole new significance during the Covid-19 pandemic, and it will be interesting to see if this approach to harassment now becomes more commonplace.
- **Proactive detection.** In the context of research showing how harassment remains prevalent and often goes unreported, the guidance puts the onus on employers to find out what is happening. It suggests a range of methods for doing this, including carrying out regular staff feedback surveys and giving workers ample opportunities to raise issues. The issue of detection has become harder in companies where employees are working remotely.
- **Training.** Employers should train all workers in the different types of harassment and victimisation and ensure the training is refreshed at regular intervals.
- **Guardians/champions.** The guidance says that employers should make sure there are nominated, trained workers who can support a complainant through the process of making a complaint. These could be members of the HR team or may be nominated guardians or champions within the workforce (for an example, see the Old Vic's Guardian's programme).
- **Reporting systems.** The guidance says that employers should consider introducing a reporting system that allows individuals to make complaints on either a named or anonymous basis, and which makes clear what the employer may do with the information provided. Many employers historically offered access to third-party hotlines, but those sorts of solutions often prove ineffective because they fail to allow for two-way communication.
- **Responding effectively.** A good anti-harassment procedure should tell workers how to make a complaint and define multiple channels for reporting, ensuring that workers are not required to report an incident to the perpetrator or someone they may not feel will be objective. Employers should offer a range of approaches to dealing with harassment, signpost sources of support and advice, and be clear that victimisation or retaliation against complainants will not be tolerated.
- **Reporting outcomes.** To be effective in encouraging those with complaints to come forward, the outcome of a formal complaint of harassment should be as transparent as possible. Wherever appropriate and possible, complainants should be told what action has been taken in response to their complaint.

## CONCLUSION

While complying with the EHRC's new guidance could be a step change for some employers, others are already adopting many of the recommendations. There are cogent reasons for employers to work towards compliance with the guidance before it becomes a legally-binding Code. This will not only put employers ahead of future regulation, but also help create a positive culture in which employees are genuinely empowered to speak up and employers are clearly equipped to respond.

by **Lewis Silkin**

## Vault Platform can ensure you meet EHRC guidance as it stands and the code when it comes into force by:

- 1 Enabling employees to securely report incidents of harassment in-name or anonymously through a highly accessible mobile app.
- 2 Creating a safe and confidential space for people within your entire business ecosystem to voice concerns internally instead of going to external channels like the press, social media, or regulators.
- 3 Introducing an enterprise-grade Resolution Hub for efficient case management, with innovative time-stamping, security, and two-way communication with anonymous reporters previously unavailable in legacy solutions.
- 4 Establishing a central case management system to keep records, investigate cases, and get a company-wide bird's eye view on the reporting and resolution of harassment.

# EHRC Technical Guidance in Focus

## Chapter 3. Victimisation

3.1. Fear of victimisation is one of the biggest barriers to people reporting harassment at work.

Vault Platform eliminates fear of victimisation and retaliation by giving employees a confidential way to speak up. Employees can choose to report in-name, anonymously, or with GoTogether™ - a feature that helps employees feel more secure by reporting the same perpetrator with others.



## Chapter 4. Taking all reasonable steps to prevent harassment

4.25. ...if an employer improved its reporting and investigation processes after a previous incident, this will help an employer to establish that it has taken preventative steps in relation to the current act of harassment.

Vault Platform solves the problem of “a lack of appropriate reporting procedures” as identified by EHRC. Simple and unintrusive to deploy, an implementation of Vault Platform can demonstrate that an employer has not only taken preventative steps but made every effort to ensure psychological safety and a “speak up” culture for its employees.



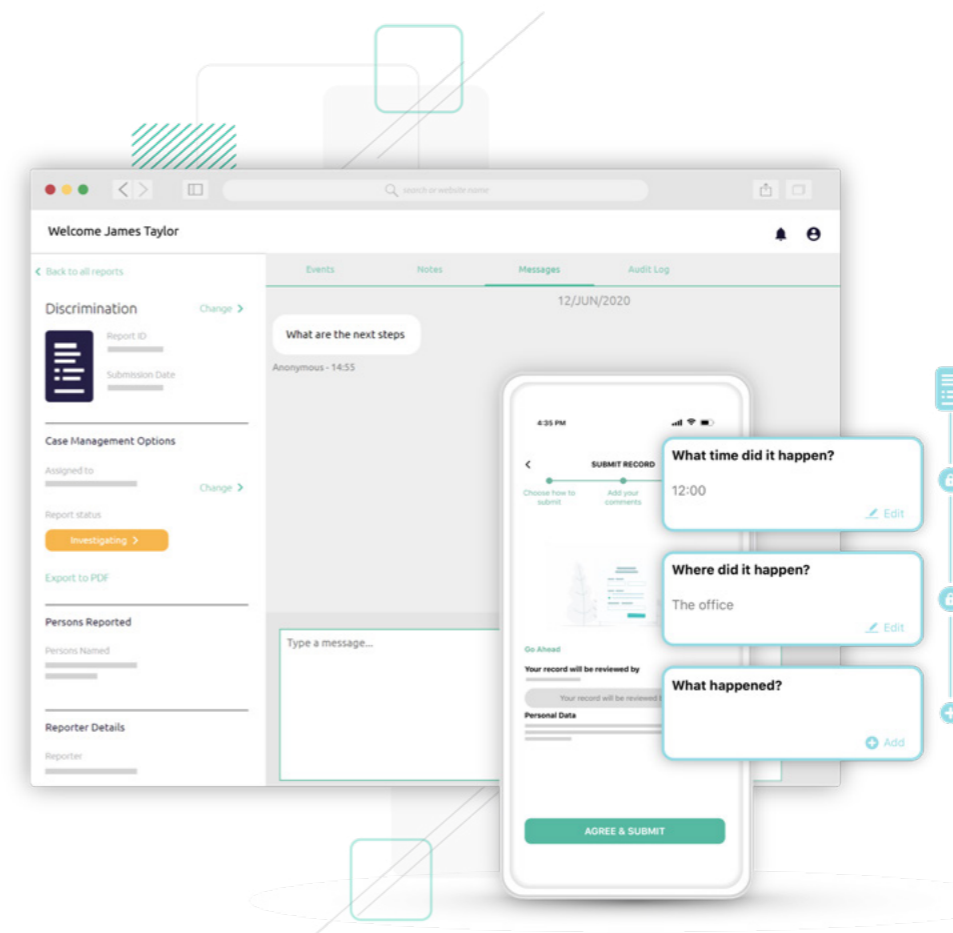
## Chapter 5. Taking steps to prevent and respond to harassment

5.3. Employers should continue to review whether there are any further steps it is practicable for them to take, considering ... the availability of new technology such as new reporting systems.

Vault Platform’s TrustTech solution introduces more accessible incident reporting, innovative time-stamping, security, and two-way communication technology unavailable in legacy solutions.

5.20. Employers should consider introducing an online or externally run telephone reporting system which allows workers to make complaints on either a named or anonymous basis...this will ensure that those complaints that would otherwise go unreported are captured.

Vault Platform is the new generation of reporting channels, fit for the digital revolution that the world of work is going through. Legacy solutions, such as anonymous reporting hotlines, have remained unchanged for decades and provide very little value. Vault Platform introduces an innovative two-way communication channel between the employee and the case manager, creating a safe and confidential space for employees to voice their concerns.

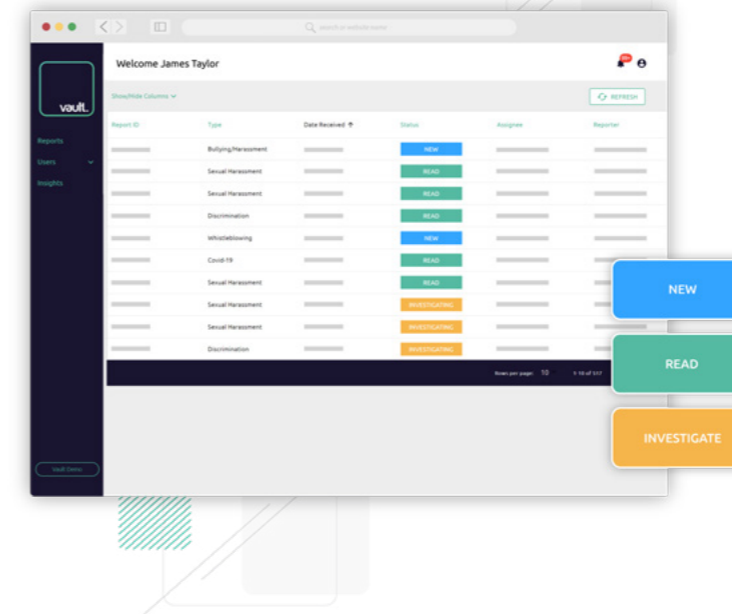


5.34. ...define multiple reporting channels for workers who wish to report harassment, to ensure that a worker is not required to report an incident to the perpetrator or someone who they may feel will not be objective.

Vault Platform enables employees to select from a list of internal case managers in the organisation, avoiding the risk of having to report directly to their perpetrator. The app also provides multiple ways of reporting: Go Ahead, Go Anonymous and Go Together™, to enable different ways in which individuals may feel comfortable to speak up.

5.43. If a worker feels that an investigation is taking a long time, this can cause them to feel that their complaint has not been taken seriously or aggravate the stress and worry that they may experience while waiting for the outcome.

Vault Platform makes the investigation process more efficient. The investigator ('Case Manager') will receive a fully-fledged complaint/report and instant access to evidence, saving months of investigation time.



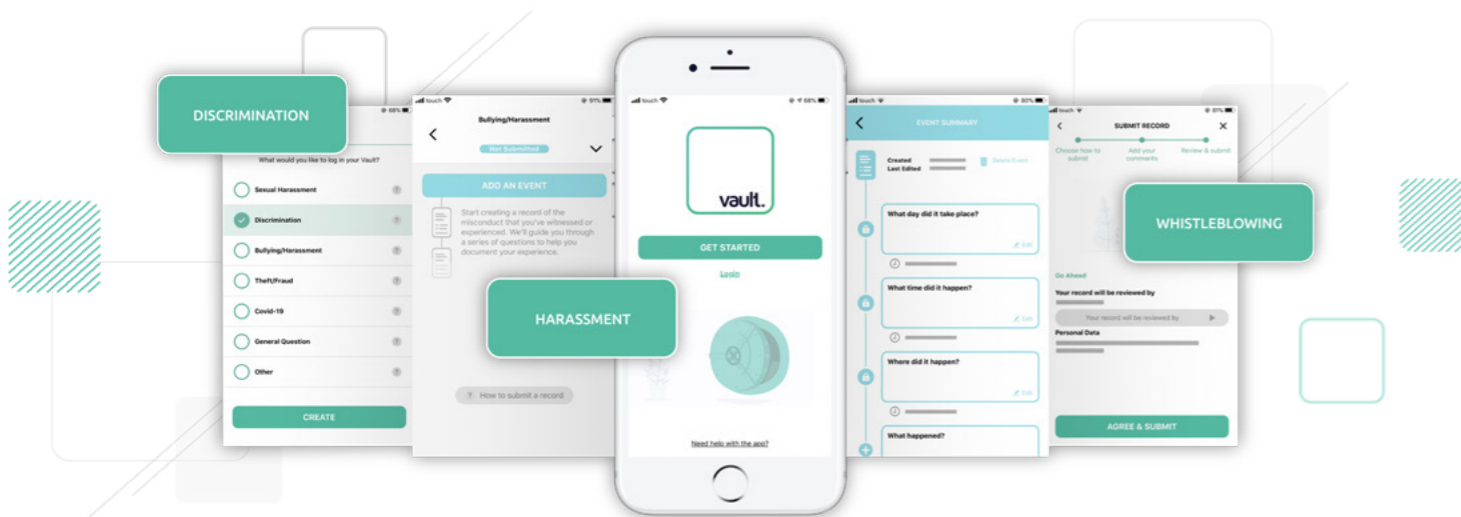
5.49. If a worker raises a complaint with the employer but asks them not to take the matter any further, an employer should still take steps to ensure that the matter is resolved. The employer should, for example: ... keep a record of the complaint and the worker's request to keep the matter confidential.

Vault Platform enables employees to indicate how they would like for the complaint to be handled. The Resolution Hub, which is the case management system for the employer, keeps the record, evidence and response log secure and confidential, and enables identification of patterns of harassment over time.

5.66. ...if a complaint is upheld then the complainant should be told what action has been taken..to address the specific complaint and any measures taken to prevent a similar event happening again in the future. If the complainant is not told what action has been taken, this may leave them feeling that their complaint has not been taken seriously or addressed adequately.

One of the reasons legacy reporting tools, such as anonymous hotlines, are ineffective is because there is no way to follow up and update the reporter or inform them of an outcome. Therefore, there is little incentive to submit a report.

Vault Platform enables reporting both in name and anonymously and acts as a secure communication channel between the employer and the case manager, preserving the reporter's anonymity should they desire.





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@vaultplatform  
vaultplatform.com