

Travlaw

# Sexual Harassment in the Workplace



Ami Naru

Partner, Head of Employment



@ami@travlaw.co.uk

 @naru\_ami



# The Equality Act 2010 prohibits three types of harassment;

- Harassment related to a protected characteristic (section 26(1))
- Sexual harassment (section 26(2))
- Less favourable treatment because the employee rejects or submits to unwanted conduct of a sexual nature or that is related to gender reassignment or sex





# The Worker Protection (Amendment of Equality Act 2010) Act 2023 (Worker Protection Act) is due to come into force on 26 October 2024



The Worker Protection Act will:

- Introduce a duty on employers to take **all reasonable steps** to prevent sexual harassment of their employees
- Give employment tribunals the power to **uplift discrimination compensation** by up to 25% where an employer is found to have breached the new duty to prevent sexual harassment



# What is Sexual Harrassment?

Sexual harassment occurs where both:

A engages in unwanted conduct of a sexual nature.

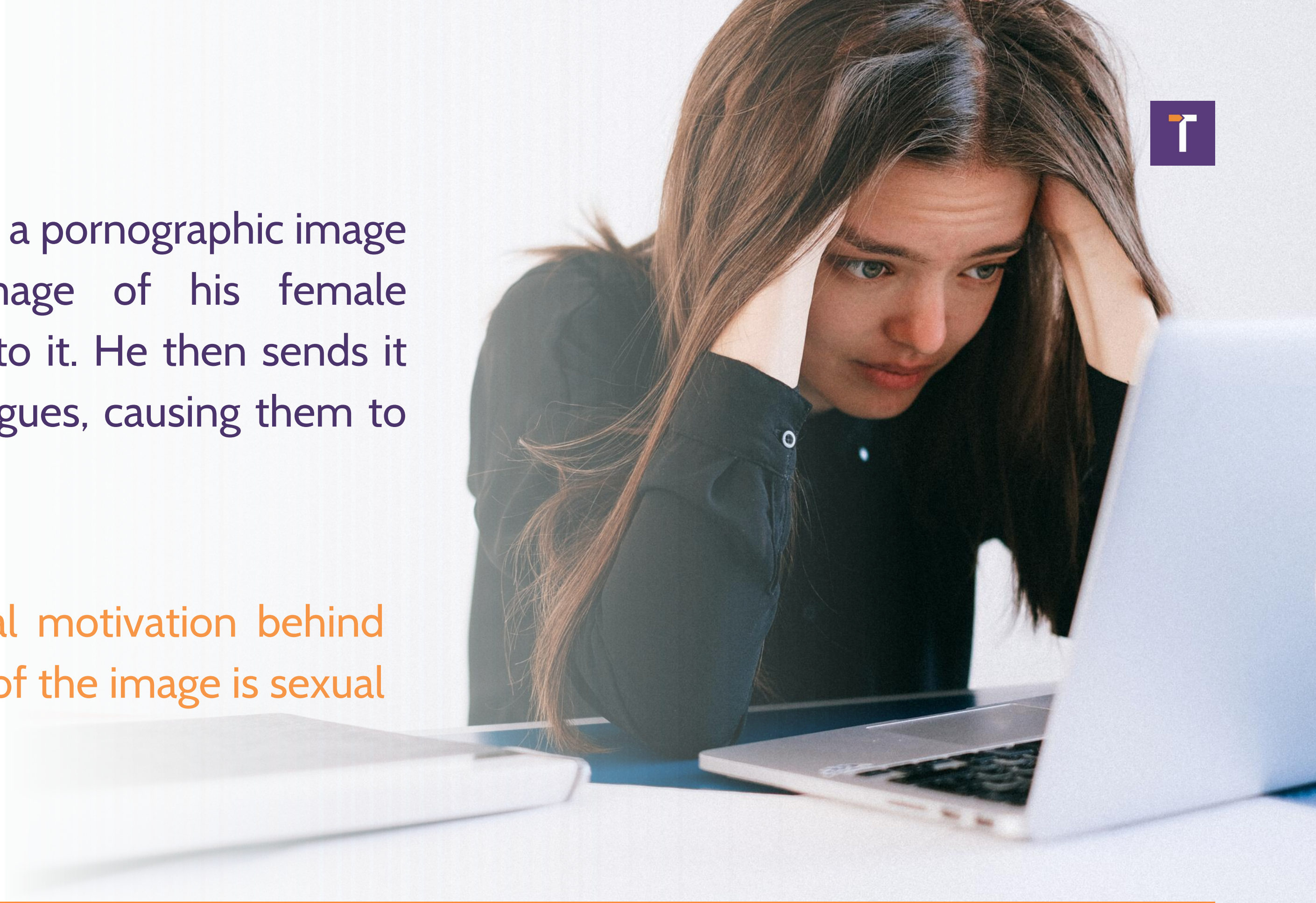
**AND**

The conduct has the purpose or effect of either violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

## Example;

A male worker alters a pornographic image by pasting an image of his female colleague's face on to it. He then sends it to their other colleagues, causing them to ridicule her.

There was no sexual motivation behind this act, but the use of the image is sexual in nature



## Example;



A female worker has a brief sexual relationship with her supervisor. The worker tells her supervisor that she thinks it was a mistake and doesn't want the relationship to continue. The next day, the supervisor grabs the worker's bottom, saying "Come on, stop playing hard to get".

Although the original sexual relationship was consensual, the supervisor's conduct after the relationship ended is unwanted conduct of a sexual nature.

# Less favourable treatment for rejecting or submitting to unwanted conduct;



This type of harassment occurs when:

a worker is subjected to unwanted conduct

- of a sexual nature
- related to sex, or
- related to gender reassignment

**AND**

The unwanted conduct has the purpose or effect of;

- violating the worker's dignity, or
- creating an intimidating, hostile degrading, humiliating or offensive environment for the worker, and
- **the worker is treated less favourably because they submitted to or rejected the unwanted conduct.**

## Example;



In the previous example, the worker responds to the supervisor's behaviour by saying, 'Get off me, I'm not playing hard to get!' After that, the supervisor starts to make things more difficult for the worker, giving her more work to do than others and being more critical of her work.

The supervisor is treating the worker less favourably because she rejected his unwanted conduct.

# Conduct 'of a sexual nature' includes a wide range of behaviour, such as



- sexual posts or contact on social media
- spreading sexual rumours about a person
- unwelcome touching, hugging, massaging or kissing
- suggestive looks, staring or leering
- displaying sexually graphic pictures, posters or photographs

# Conduct 'of a sexual nature' includes a wide range of behaviour, such as



- sexual comments or jokes
- sexual gestures
- propositions and sexual advances
- intrusive questions about a person's private or sex life, or a person discussing their own sex life
- sending sexually explicit emails or text messages
- making promises in return for sexual favours

# Duty on employers to prevent sexual harassment of workers



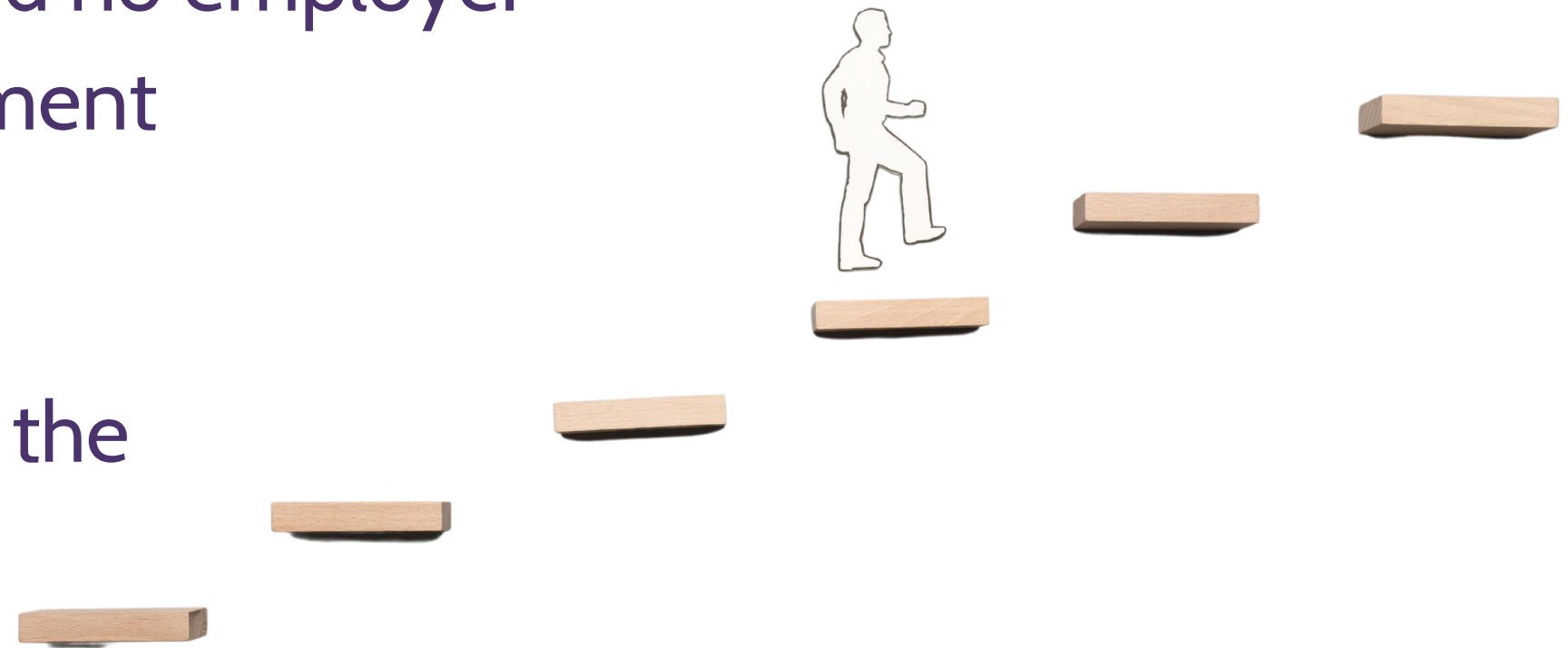
- a preventative duty
- anticipatory duty
- designed to transform workplace cultures by requiring employers to take positive and proactive reasonable steps to prevent sexual harassment of their workers



## Reasonable steps;



- What is reasonable will vary from employer to employer.
- The law does not list specific steps an employer must take – but regulations to follow outlining what may constitute reasonable steps”
- **All** employers must take action and no employer is exempt from the sexual harassment preventative duty.
- **Objective test** and will depend on the facts and circumstances of each situation.





# Regulations may specify what are to be regarded as reasonable steps.

The steps that may be specified include:

- Carrying out assessments of a specified description.
- Publishing plans or policies of a specified description.
- Steps relating to the reporting of sexual harassment.
- Steps relating to the handling of complaints.



## Steps that could be taken;

- Sexual harassment policy
- Consultations with unions/work place representatives
- Staff training
- Zero-tolerance approach
- Reporting
- Investigations
- Risk assessments
- Workplace champions
- Monitoring complaints/outcomes
- Third-party harassment



# An employer should;



- consider the risks of sexual harassment occurring in the course of employment
- consider what steps it could take to reduce those risks and prevent sexual harassment of their workers
- consider which of those steps it would be reasonable for it to take
- implement those reasonable steps

# Factors that may increase the risk of sexual harassment



- a male-dominated workforce
- gendered power imbalances (for example, where most junior staff are female and most senior managers / leaders are male)
- working alone with a third party
- night working
- a workplace culture that permits crude / sexist 'banter', or other disrespectful behaviour
- workplaces that permit alcohol consumption
- lone or isolated working
- an insecure / casual workforce

# Factors that may increase the risk of sexual harassment



- a failure to respond appropriately to previous reports of sexual harassment
- no policies or procedures to prevent or respond to sexual harassment
- an expectation that workers will attend social events / conferences outside of the workplace or stay away from home overnight (particularly if alcohol is being consumed)
- there may be risks that only affect one job role or worker - these should still be considered and addressed
- workers that have more than one protected characteristic, for example, disabled people, ethnic minorities and people from the LGBT community are more likely to experience sexual harassment than people who do not have these protected characteristics



## Sexual harassment at work can;

- Lead to costly settlements, expensive litigation and high-profile departures of senior management.
- Damage an employer's reputation and have an adverse effect on employee and customer relations.
- Adversely affect recruitment and employee retention
- If an employment tribunal finds that a worker has been sexually harassed and has ordered the employer to pay compensation to the worker, it must consider if and to what extent the employer has complied with the preventative duty. Can uplift compensation up to 25%