



Liability of landlords for harassment and victimisation

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Equality Act 2010

s.26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

- (a) A engages in unwanted conduct of a sexual nature, and
- (b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

- (a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,
- (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
- (c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

age;
disability;
gender reassignment;
race;
religion or belief;
sex;
sexual orientation.

27 Victimization

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.

- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act or rule.

- (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
- (4) This section applies only where the person subjected to a detriment is an individual.
- (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause

Anti-social behaviour and housing

- Injunctions; [s.1 Anti-social Behaviour, Crime and Policing Act 2013]
- Possession proceedings [HA 1985; HA 1988];
- Closure Notices/Orders [s.76/80 ABCPA 2013]
- Community remedies/ASB case reviews [Part 6, ss101-105, ABCPA 2013]

[non-exhaustive]

Unlawful eviction

- > Claims in contract/tort; [breach of quiet enjoyment, trespass to land, trespass to person, interference with goods]
- > Protection from Harassment Act 1997;
'course of conduct'
civil and criminal remedies
- > Prosecution under the Protection from Eviction Act 1977
- > Equality Act 2010?/Remedy if established?

33 Disposals, etc.

(1) A person (A) who has the right to dispose of premises must not discriminate against another (B)—

(a) as to the terms on which A offers to dispose of the premises to B;

(b) by not disposing of the premises to B;

(c) in A's treatment of B with respect to things done in relation to persons seeking premises.

(2) Where an interest in a commonhold unit cannot be disposed of unless a particular person is a party to the disposal, that person must not discriminate against a person by not being a party to the disposal.

(3) A person who has the right to dispose of premises must not, in connection with anything done in relation to their occupation or disposal, harass—

(a) a person who occupies them;

(b) a person who applies for them.

- (4) A person (A) who has the right to dispose of premises must not victimise another (B)—
- (a) as to the terms on which A offers to dispose of the premises to B;
 - (b) by not disposing of the premises to B;
 - (c) in A's treatment of B with respect to things done in relation to persons seeking premises.
- (5) Where an interest in a commonhold unit cannot be disposed of unless a particular person is a party to the disposal, that person must not victimise a person by not being a party to the disposal.
- (6) In the application of section 26 for the purposes of subsection (3), neither of the following is a relevant protected characteristic—
- (a) religion or belief;
 - (b) sexual orientation.

34 Permission for disposal

- (1) A person whose permission is required for the disposal of premises must not discriminate against another by not giving permission for the disposal of the premises to the other.
- (2) A person whose permission is required for the disposal of premises must not, in relation to an application for permission to dispose of the premises, harass a person—
 - (a) who applies for permission to dispose of the premises, or
 - (b) to whom the disposal would be made if permission were given.
- (3) A person whose permission is required for the disposal of premises must not victimise another by not giving permission for the disposal of the premises to the other.
- (4) In the application of section 26 for the purposes of subsection (2), neither of the following is a relevant protected characteristic—
 - (a) religion or belief;
 - (b) sexual orientation.
- (5) This section does not apply to anything done in the exercise of a judicial function.

35 Management

(1) A person (A) who manages premises must not discriminate against a person (B) who occupies the premises—

- (a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;
 - (b) by evicting B (or taking steps for the purpose of securing B's eviction);
 - (c) by subjecting B to any other detriment.
- (2) A person who manages premises must not, in relation to their management, harass—
- (a) a person who occupies them;
 - (b) a person who applies for them.

(3) A person (A) who manages premises must not victimise a person (B) who occupies the premises—

(a) in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;

(b) by evicting B (or taking steps for the purpose of securing B's eviction);

(c) by subjecting B to any other detriment.

(4) In the application of section 26 for the purposes of subsection (2), neither of the following is a relevant protected characteristic—

(a) religion or belief;

(b) sexual orientation.

108 Relationships that have ended

- (1) A person (A) must not discriminate against another (B) if—
 - (a) the discrimination arises out of and is closely connected to a relationship which used to exist between them, and
 - (b) conduct of a description constituting the discrimination would, if it occurred during the relationship, contravene this Act.
- (2) A person (A) must not harass another (B) if—
 - (a) the harassment arises out of and is closely connected to a relationship which used to exist between them, and
 - (b) conduct of a description constituting the harassment would, if it occurred during the relationship, contravene this Act.

109 Liability of employers and principals

- (1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.
- (2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.
- (3) It does not matter whether that thing is done with the employer's or principal's knowledge or approval.
- (4) In proceedings against A's employer (B) in respect of anything alleged to have been done by A in the course of A's employment it is a defence for B to show that B took all reasonable steps to prevent A—
 - (a) from doing that thing, or
 - (b) from doing anything of that description.

110 Liability of employees and agents

- (1) A person (A) contravenes this section if—
- (a) A is an employee or agent,
 - (b) A does something which, by virtue of section 109(1) or (2), is treated as having been done by A's employer or principal (as the case may be), and
 - (c) the doing of that thing by A amounts to a contravention of this Act by the employer or principal (as the case may be).
- (2) It does not matter whether, in any proceedings, the employer is found not to have contravened this Act by virtue of section 109(4).

- (3) A does not contravene this section if—
 - (a) A relies on a statement by the employer or principal that doing that thing is not a contravention of this Act, and
 - (b) it is reasonable for A to do so.

Third party harassment

Conteh v Parking Partners Ltd [2011] ICR 341

EAT

- > Employee subject to racial abuse by employee of another company operating in the environment in which she worked;
- > Brought under the RRA 1976 ['on grounds of' rather than 'related to' [EA 2010]];
- > Claimant asserted a failure to take appropriate steps by her employer and that this created an environment that amounted to harassment;

➤ Held that:

- > *'unwanted conduct'* could include inaction;

- > that the matter of inaction must have been taken on grounds of race, ethnic or national origins if it was to create the environment complained of such that harassment was established within the relevant section;

➤ **Unite the Union v Nailard [2019] ICR 28**
CA

- > Full-time union official raised allegations of sexual harassment against two lay elected officers;
- > Claim brought against the union, for those actions and in that in addition the failure of employed officials to protect her was harassment within s.26;

- > Considered/confirmed liability for actions of lay officials against third party [s.109(2)];
- > In order to establish harassment on the basis of inaction by the employed officials, any inaction had to be 'related to' sex. It is a matter of fact as to whether the conduct [inaction] is related to the protected characteristic.

Housing and harassment

Example:

- Local authority tenant;
- Key required to a communal area in a block of flats;
- Another tenant requires access to that area to read a meter;
- Local authority tenant holds the key;
- He is subject to unwanted racial behaviour when the other tenant seeks access.