

Sex discrimination law: silencing the victim?

Recently, I complained to a national charity about their handling of a case of sex discrimination. The free speech issues were several: failure of due process; tort law to silence the weaker party; suppression of public debate.

This article provides background to my complaint. It highlights cultural changes that have occurred over two decades that threaten men's freedom of speech on gender issues.

Back in the 1980s, 'sexual harassment' was an offence where someone, usually a man, *knowingly* pursued another against their wishes or exploited them for sexual favours. Few people were troubled by this definition. Recently, as John Prescott has found out, press and politicians alike regard *consensual* sex as sexual harassment¹ and argue that it should be illegal².

On 25th May 2006, the military started an anti-harassment drive:³

Some 99% of the 9,384 servicewomen surveyed had witnessed "sexualised behaviour" in the past year...and one in seven women said they had suffered a "particularly upsetting" experience, including sexual assault.

As a researcher into gender issues, I had two reactions. Why only 99%? Were the other 1% blind? Not in the army surely! Secondly, given the 20:1 ratio between men and woman, the 'one in seven' claim for an 'upsetting experience' seemed reassuringly *low*. Nevertheless, the report talked up the problem of men's sexuality:

...jokes, stories, language and material offensive to women were widespread across all three armed services...

Whose definition of 'offensive' was used? The research participants'? Or the researchers'? Over the last two decades there has been a gradual shift from outlawing unwanted sexual behaviour to outlawing expressions of men's sexuality. The reporting of the Ministry of Defence study, like most media reports of gender research, gives no details about women's behaviour or its effects on men.

What We Know

It has been clearly established that nearly all women experience "unwanted sexual attention" at some time in their lives. More recently, studies were repeated with *both* sexes and it was found 94% of men also receive unwanted sexual attention. Surprisingly, a higher number of men (63% men v 46% women) reported unwanted sexual *intercourse*⁴. In the same way that polling both sexes has revealed that men and women are equally violent to each other in personal relationships⁵, so polling both sexes has shown women and men have roughly equal interest in, pleasure from, and problems with, sexual relationships.

Courtship research contradicts the 'common sense' disseminated by the media. While more women receive verbal approaches (a cultural by-product of women not *making* verbal approaches to men), it was also found that more men (93%) than women (82%) report being pursued while already in a relationship⁶. Other studies confirm women initiate between 60-90% of sexual relationships and use an array of non-verbal techniques that men respond to subliminally⁷.

The idea remains, however, that men are sex-obsessed while women are not. Even Professor Winston reinforced this view during the BBC's *Human Instinct* series by highlighting that 75% of men were prepared to have casual sex with a beautiful woman⁸, but not the reverse. In doing so he ignored the original study findings that equal numbers of women and men (50%) showed sexual interest in the other. The differences were in their approach to, not their desire for, sexual relations⁹.

Particularly worrying, however, is the high number and frequency of false allegations of sexual harassment, assault and rape reported in several studies¹⁰. These suggest that men are

as likely to be falsely accused of sexual misconduct as women are likely to be victims of it. Defining 'misconduct', however, is a moving target that varies with each generation and group. Nevertheless, men are subject to a double-jeopardy that does not apply equally to women.

A First Encounter

My first investigation of sexual harassment took place when Mary resigned and accused a co-worker, Brian, of sexual harassment¹¹. My colleagues elected me, together with a woman, to investigate the claim:

We did believe Brian was harassing people and therefore we did terminate his employment. However, in Mary's case the grounds were very thin as there was only one incident relating to the original accusation that held up. Even then, we felt instinctively uncomfortable dismissing him for what we felt was an infatuation with a woman who had as her starting point that 'all men are potential rapists'. Mary seemed to interpret mild behaviour as very threatening and we did feel that she over-reacted to Brian's attention.

The allegation was not that Brian had touched her, tried to kiss, make a pass or grope her, or anything of this kind. He had waited for Mary outside work because he wanted to walk with her to the train station. Mary had waited inside the office to avoid him. According to her testimony, when she left work he proceeded to "walk past" in a way that frightened her. He then "hung around" at the station. Mary felt intimidated. She rang the office and her colleague corroborated that she was distressed.

There were complexities, however. Mary was having a workplace affair with one of the company founders but could not persuade him to leave his existing life-long relationship. With hindsight, we should have considered the impact of this more closely. Mary was also receiving 'silent' phone calls and assumed Brian was making these. It is possible that her love rival made these calls, but we naively failed to consider this possibility. We did, however, report concerns to the directors:

We tried to raise the issues that we'd uncovered and got nowhere very quickly. My co-investigator left the company shortly afterward. When we concluded the behaviour was not *sexual* harassment against Mary, just general harassment of all staff, the women were argumentative. We'd done our job and should shut up and not rock the boat.

I was left feeling powerless and frustrated. The impact is evidenced by a book review I later posted to www.amazon.co.uk:

In 1993 I walked past Waterstones, in Oxford Street (London) and saw a presentation display of a book called "The Myth of Male Power". I thought "How could anyone write a book with such a ridiculous title?" Then I had the (mis)fortune to investigate a sexual harassment claim. What I learned about men and women...made me buy the book.¹²

From Personal to Professional

A decade later these experiences alerted me to the complexity of situations unfolding during my doctoral research. While in the field, I experienced what many people would now recognise as 'sexual harassment'. I was the subject of sexual jokes and innuendo. One female manager, quite uninvited, kept squeezing my bottom at a party while another climbed onto my lap and tried to kiss me. Even as a newcomer, some women talked 'dirty' in my presence. On a company day out, the group I was with teased men they passed about 'liking a good ride'. Even during induction sessions, one female manager drooled while talking about a male director with a butt 'as good as any male model'.

Did I feel uncomfortable? Sometimes. Once I felt intimidated. My manager in the field was a woman called Brenda. After suggesting an after work drink to discuss the research, she came into work with a low cut top and made obvious attempts to flirt. Brenda also invited me back to her house after a party, suggested a 'team meeting' that comprised a walk in the park, a trip to the pub, a meal out, then further drinks at her house. I tried to avoid being alone with her.

Other women were also attentive. One smiled frequently and I was drawn into conversation. She then took me by surprise by asking if I was a ‘management spy’. We started sitting together at management classes and I invited her for a drink afterwards. She declined, and behaved as if I was asking her out rather than seeking more information about her ‘management spy’ comment.

These behaviours (including my own) interested me so I noted them in my journal. Later, glaring inconsistencies became apparent. A comment by a middle-aged male worker regarding the short skirts of visiting schoolgirls triggered massive anger and a sacking. But when a *group* of adult women teased a 16-year-old schoolboy, it raised nothing more than laughter. Secondly, I found that Brenda had *discouraged* a male colleague separated from his wife for over six *months* from starting a sexual relationship while *encouraging* a female manager to pursue a relationship with her line manager only *weeks* after he had separated. The women in Human Resources were controlling, or at least influencing, the development of sexual relationships at work.

I started to ask questions about the impact of this on the development of the organisation. The reaction was immediate. Brenda took me to one side and suggested my invitation to a woman for a drink was ‘immoral’ and ‘unprofessional’. When I sought dialogue, the Managing Director (to my astonishment) supported Brenda and prevented any further research at the site.

Was there a pattern? Do men proactively seeking a dialogue on sexual equality run the risk of exclusion from organisations? Is this the mirror image of the behaviour that feminists seeking equality were subject to 20 years ago?

From Professional to Personal

Three years later, I had to conclude that it was. This time it was personal and the experience turned me from a researcher into gender equality into an advocate *for* a new gender equality debate.

Upon entering academia, I registered as self-employed and continued providing consultancy services to my customers while studying. The national charity in question was one such client. I then got involved in a project where I felt a female manager, while pleasant, was behaving coyly and displaying classic signs of chauvinism. For example, she:

- Teased me about “skiving” (while parenting), my typing skills, “stealing” from her desk, making her cups of tea/coffee.¹
- Dressed for a lunch outing in a sexually suggestive way, expected me to pay but not to do so herself, then made remarks in the office and e-mails about her intention to “bask in the garden” on holiday.
- Touched me in the office and deliberately stood close to me while wearing revealing clothing.
- Took offence when I responded to/and suggested these behaviours showed a questionable awareness of gender equality issues.

Was I ‘uncomfortable’ during this time? Sometimes ‘yes’, sometimes ‘no’. Like many women report¹³, sometimes this is flattering; at other times it is irritating. Sometimes I teased her back. Did I feel intimidated? Yes. Did I feel threatened? Not until I received a call saying my behaviour was ‘unprofessional’. Then I felt terrified for myself, my career, my marriage and my family.

What caused her to take ‘offence’? As the project concluded, I sent an e-mail to say:

It has been very enjoyable working with you, and I look forward to a productive relationship for as long as we continue working together! It is particularly pleasant working with someone who is intelligent, attractive and competent. Deadly combination that inspires me to give my best (pathetic male that I am).

¹ Formal Complaint 29th March 2006: Statement by Rory Ridley-Duff.

I still, however, can't work out if [your employer] only runs half a course in gender-equality or whether you are just too shy to know me socially? As for me, I have a strong marriage and we allow each other to enjoy friendships with both men and women....

She knew I had written a doctorate and a novel about sexual behaviour/harassment and was happily married with two children. I could not foresee that she would be 'distressed' by this message. A good friend, Dr Poonam Thapa (30 years an expert in sexual health) read the correspondence and urged me to challenge the allegation as strongly as possible. She felt the "strong marriage" comment may have led to feelings of rejection.

The charity's senior managers were not willing to entertain any other interpretation of the relationship than the one already given to them by the woman. No allegation was made. There was no hearing. There was no mediation. Like the unfortunate professor played by Anthony Hopkins in the film *The Human Stain*, I felt the allegation was "not just false, but spectacularly false". My requests for mediation provoked a solicitor's letter "strongly recommending" that I regard the matter as closed.

I visited two female solicitors. Neither showed any sympathy and informed me that I would struggle to bring a case under the Sex Discrimination Act 1975 because I was self-employed. Later, I found that this advice was completely false.

As I was working with Dr Poonam Thapa on a new book, we felt it would be therapeutic to write about the case. Not wishing to publish without giving parties a chance to comment, I sent a draft to the charity explaining that:

I have decided not to take any legal action...at this time. The issues raised by the case, however, are a matter of public interest and I discuss these in my latest book "Emotions at Work" (keeping the names of individuals anonymous). I would like to give the parties a chance to contribute their own opinions....

To avoid being accused of harassment (or even the perception of harassment) I am making this approach through [your solicitor]. I would be grateful if you can forward the enclosed chapter so that the parties above can consider contributing their own private views.

The response was swift, but from a *different* solicitor:

Our client demands that you undertake to remove the reference to it...on the basis that it is defamatory and unnecessary. Should you not accede to our client's request, then our client will take further action against you to prevent publication of the reference to it, or in the event that publication takes place, retraction of the publication. Further, our client will claim damages from you in addition to court fees and legal costs. Accordingly, it is not unforeseeable that you may be ordered to pay our client damages, costs, court fees and interest in a sum in excess of £50,000...

My income had already been halved. This rubbed salt into a deep wound. Eventually, after advice from friends, I made a formal complaint. The complaint was, unsurprisingly, rejected. In accordance with the escalation procedure, I requested that a member of the Board of Trustees (with no prior involvement) review all the evidence and decision. After three weeks without a reply, I phoned to check progress. The complaint had not been escalated. This seemed an appropriate juncture to exercise the right of free speech (as well as escalating the matter to the Charities Commission).

Implications

Recent international research has found that in the majority of sexual harassment cases, relationships are "almost always" consensual during the formative stages with "no undue pressure" being exerted by either individual¹⁴. The authors concluded that, in the *majority* of cases, harassment accusations take place when one or other party wants to terminate the relationship. Most accusations are unjustified. Frequently, the aim is to avenge emotional hurt or to hide the consensual nature of the relationship when others discover it¹⁵.

My research (and personal experience) supports this. False accusations should themselves be considered acts of sexual harassment and dealt with under the same legislation with the

same penalties. While the Sex Discrimination Act 1975 is well intentioned, it has been compromised by changes to the definition of what constitutes 'harassment'. We have also developed a cultural blindness to the nature and impacts of women's sexual behaviour by focussing almost entirely on men's.

From 1st October 2005 employers no longer had to consider each party's intent¹⁶. This obliges employers to act whenever a person complains about another employee. As the BBC press report said:

The European Equal Treatment Directive has extended the definition of sex discrimination to cover any act that leads to intimidation or degradation. The TUC said the changes would make employers more responsible and allow **female** workers a better chance of fighting against harassment [emphasis added].

Once again, the emphasis is on women's perspective, not both sexes. As a result, virtually any man's sexual behaviour can be made illegal *if a woman is offended by it*. Men, on the other hand, are vulnerable as never before. The most serious concern is that men cannot raise objections (or respond positively) to a woman's sexual advances without putting their careers, relationships and families at serious risk. My wife trusts me, but many wives/girlfriends believe 'there is no smoke without fire'. For those with low levels of trust, the result can be divorce and loss of access to children. In one case I reviewed for a recent book, the falsely accused man committed suicide before the complaint handler told him that the woman had admitted lying.

The official response to my complaint stated:

[We have] acted both lawfully and within [our] own internal policies and procedures. The decision to terminate your services was taken because of communications with which a staff member was unhappy and which were deemed to be inappropriate....

There is no evidence that any member of staff has breached the organisation's equal opportunities policy....

If this is a sincere response from a leading UK charity taking government money to advise on 'best practice' in employment, equal opportunity and governance, it stands as an enduring testament to the double-standards that now pervades our society.

Sexual behaviour should not be confused or equated with sexual harassment. Emotion is at the core of our existence and we cannot eradicate our feelings. Both men and women sometimes feel uncomfortable when they trigger each other's sexual feelings, but this is not sufficient reason to accuse another of harassment. We each have a responsibility to learn how to cope with sexual feelings without making others responsible. It seems that it is now women, in particular, who need to come to terms with the impacts of their sexuality at work.

I would like to see more tolerance shown to men, rather than less tolerance to women. The emancipatory goals of the women's movement were laudable, but it is time for men to take up the challenge and complete the journey. Harassment is a malicious behaviour and should not be constructed as some kind of accident or cultural misunderstanding. False allegations are also malicious. They cause harm and emotional hurt to whole families and social networks. This now needs explicit recognition in law. An accusation of sexual misconduct to silence equitable and democratic debate should be illegal.

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© Dr Rory Ridley-Duff, 2006. In 2005, Rory completed a three-year study into workplace governance. His findings, detailing the way that sexual dynamics impact on organisation development, were recommended for an Emerald Outstanding Doctorate Research Award by his research supervisor. This article draws on material from a forthcoming book called "Emotion, Seduction and Intimacy: Rethinking the Roots of Organisation Behaviour". To discuss issues with Rory e-mail roryridleyduff@tiscali.co.uk.

Notes

- 1 "Prescott ogled secretary from day he began the job", Mail on Sunday, 7th May 2006, Dominic Turnbull.
- 2 "Is sex at work illegal?", BBC News, 8th May 2006.
- 3 "MOD begins anti-harassment drive", BBC News, 25th June, 2006
- 4 Muehlenhard, C. L., Cook, S. W. (1988) "Men's Self Reports of Unwanted Sexual Activity," *Journal of Sex Research*, 2: 58-72.
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- 6 Schmitt, D. P., Buss, D. M. (2001) "Human mate poaching: Tactics and temptations for infiltrating existing relationships", *Journal of Personality and Social Psychology*, 80: 894-918.
- 7 Moore, M. (1985) 'Nonverbal Courtship Patterns in Women: Contact and Consequences', *Ethnology and Sociobiology*, 6: 237-247. Popular texts, such as Barbara and Allan Pease's book "Definitive Book on Body Language" state that courtship research consistently puts the figure at 90%.
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- 10 McDowell, P. (1985) "False Allegations", *Forensic Science Digest*, 11(4): 64.
- 11 For legal and ethical reasons, company and participant names from academic research papers have been anonymised.
- 12 Amazon review posted 23rd January 2003.
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