

Discussion Paper

Workplace Sexual Harassment & Abuse

Dublin Rape Crisis Centre

October 2021



About Dublin Rape Crisis Centre

The mission of Dublin Rape Crisis Centre (DRCC) is to prevent the harm and heal the trauma of all forms of sexual violence in Ireland. DRCC has been at the forefront of the Irish response to sexual violence for more than 40 years. That response includes:

- Running the National 24-Hour Helpline;
- Providing individual advocacy, counselling and other support;
- Accompaniment and support services for those attending the Sexual Assault Treatment Unit (SATU) and those reporting to An Garda Síochána or attending court;
- Building understanding and awareness on consent in sexual activity
- Data collection and analysis on trends and issues relating to sexual violence.

As a frontline service provider, we work with and support people who have been directly affected by sexual violence. We are also committed to eliminating its tolerance through education, awareness raising, advocacy and policy analysis. Through that work, we have gained insights into how engagement with the justice system can either assist a victim to access justice or re-traumatise them. That perspective has been included in this submission.

About A & L Goodbody

One of Ireland's largest and oldest law firms, A&L Goodbody is consistently ranked at the top of the Irish & European legal markets, covering all areas of law and with a strong international presence. It has an outstanding track record in providing pro bono assistance with more than 50,000 hours of pro bono legal hours done over the past decade. ALG is the only Irish law firm to hold the Business Working Responsibly Mark and is committed to driving positive change in the community.

About Máille Brady Bates

Máille is a solicitor specialising in Employment law. She is an Associate solicitor on the Employment team in Arthur Cox LLP and is currently on secondment to the Regulatory Decisions Unit of the Central Bank of Ireland. Máille holds a particular interest in rights-based work and employment equality law. Máille is a strong advocate for public-interest law and works with a number of charitable organisations on a voluntary and pro-bono basis to assist with governance and employment law matters.



Purpose

In compiling this discussion paper, DRCC aims to further illuminate the issue of sexual harassment and abuse in the workplace with a view to identifying whether there are more and better ways to address it which gives those who experience it access to justice and which promotes fair systems for all.

The central objectives of this paper are to understand the prevalence of sexual harassment and abuse in the workplace through the data collected in a 2018 survey of victims conducted by DRCC, present the current legal framework for sexual harassment and abuse in the workplace provided by A&L Goodbody, and provide thought-provoking proposals to combat the issue. This discussion paper is not meant to be a final solution to the issue of workplace sexual harassment and abuse. Rather, DRCC intends this to be launching point for increased engagement with key stakeholders. The ultimate goal is to explore and find alternative approaches and ways in which to strengthen existing mechanisms and build new ones for victims of workplace sexual harassment and abuse attempting to access justice.

Acknowledgments

First and foremost, the Dublin Rape Crisis Centre would like to offer our most sincere acknowledgments to the victims that came forward to participate in the 2018 survey on sexual harassment. Through their bravery and openness, they have enlightened research in the area of workplace sexual harassment. Their participation has and will continue to be integral to furthering the dialogue on the issue at large.

Continuing, the 2018 survey itself would not have been possible without the generous funding of the Community Foundation. The Community Foundation fundamentally believe in the equality for all in thriving communities. In particular, they have continuously proven their dedication to funding and working on projects in the area of sexual and domestic violence. Their involvement in this research displays a commitment to furthering the understanding of sexual violence, which is integral to the work and ethos of DRCC.

The engagement of A&L Goodbody for this research was graciously facilitated by PILA, the Public Interest Law Alliance, a public interest law network that seeks to engage the legal community and civil society in using the law to advance social change.

A&L Goodbody's legal research, synthesised by DRCC for this paper, gave us the comprehensive necessary framework and understanding of existing legal mechanisms in Ireland, as well as comparative data to allow us to progress our thinking. Their thorough examination of Irish law and practice formed a solid basis for the paper and is essential so that any reforms suggested are in line with existing law and practice.

Máille Brady Bates was integral to framing the critical analysis of this paper. With her contribution, DRCC was not only able to synthesize the A&L Goodbody research, but also produce thoughtful suggestions to further construct innovative mechanisms for victims of workplace sexual harassment and abuse to access justice.





A. Introduction

For millions, saying #MeToo since October 2017 has enabled victims and survivors, some for the first time, to name the harassment and abuse that they suffered. The #MeToo movement brought about a shift in the social climate, where stories of harassment or abuse were no longer pushed into the shadows. Rather, they were discussed openly, leading to victims and survivors finding solidarity with each other, while calling for effective remedy for the harassment or abuse they endured: including in instances of harassment or abuse that occurred in the workplace or professional settings. The movement was an empowering silence breaker that society desperately needed to ultimately condemn such behaviour and create safe work environments for all those in employment.

#MeToo burst the walls of the dam which required people to stay quiet, to blame themselves, and to remain isolated. The dam burst for the usual reason dams burst: the lack of any adequate sluice gate or safety mechanism. This resulted in major institutional reflection on how such abhorrent behaviour could continuously permeate a wide range of work environments while seemingly going unnoticed or, truthfully, ignored. It appeared this reflection resulted in a deeply unsettling realisation. Commonly, victims and survivors that spoke out cited retaliation and fear of loss of employment as to why they did not feel safe reporting. Those that did choose to report often had their fears confirmed. In some instances, there were not even sufficient reporting mechanisms within their place of employment to report the issue.

It is important to note that, despite the #MeToo movement's validity and resonance with millions, there was also concern that "trivial" instances of harassment and abuse were being conflated with the serious. There was an objection to the #MeToo movement, on the grounds that incidents of sexual harassment which were labelled trivial were being talked about in the same category as rape. They all constitute sexual violence. They all relate to a lack of consent to the activity taking place. They can all have a seriously harmful impact on the victim of the harassment or abuse. This objection validated the ethos behind the movement, which was that any violation of consent should be taken seriously and anything to the contrary contributes to further sexual violence.



B. Overview of Research

To understand the issues that the #MeToo movement brought to light, it was imperative for Irish researchers to not only identify gaps in reporting mechanisms, but to also understand victim's lived experiences to propose the best possible reforms. This paper brings together the expertise of legal practitioners and the unique insight of victims as well as that of a victim-support NGO in regards to a victim's access to justice.

To begin such research, it is important to note that for many people, the effective remedy to complaints of sexual harassment or abuse is that which ensures that the abuse and the abuser is stopped. However, in the Irish system, it is difficult for some victims and survivors to report sexual harassment in places where an imbalance of power is at play.

To address this issue, DRCC asked A&L Goodbody to first conduct an analysis of what the law is in relation to reporting sexual violence and whether the current mechanisms constitute as an effective remedy in Ireland.

The legal research was then informed by a survey conducted by Dublin Rape Crisis Centre to examine the lived experiences of those who suffered harassment or abuse in the workplace to better understand how, and if, the identified reporting mechanisms worked in practice.

The following gives a brief overview of the research from both A&L Goodbody and Dublin Rape Crisis Centre.

a. Overview of A&L Goodbody Research

A&L Goodbody prepared a document entitled "*Sexual Harassment in the Workplace: The Legal Framework*" that detailed the current legal mechanisms in place to prevent harm and heal the trauma of sexual harassment in the workplace. This synthesis is prepared by DRCC who are responsible for how this summary of a much longer paper is presented.

i. Legal Framework Within the Workplace

There are two legislative frameworks in place that address sexual harassment within the workplace in Ireland. The first is the *Code of Practice on Sexual Harassment and Harassment at Work*, which gives practical guidance on how to prevent it and what an employer should do if it occurs.¹

The second is the *Employment Equality Acts 1998-2015* ("the Acts") that contains the statutory definitions of sexual harassment, which focus on the impact that the conduct or behaviour has on the victim. Under the Acts, employers have a legal responsibility to prevent and address sexual harassment in the workplace and to make sure that clear and

¹ [Equality Authority \(2019\), Code of Practice on Sexual Harassment and Harassment at Work](#)



adequate channels are in place to investigate allegations and address the issue when necessary. Unfortunately, employees may be deterred from reporting because they are fearful of repercussions that may follow for making a sexual harassment allegation. Specifically, they fear being labelled as a “trouble-maker,” dealing with unfavourable treatment, or even losing their job.

Nevertheless, an employer may be legally responsible and vicariously liable for sexual harassment carried out by clients, employees, customers, or business contacts. An employer is liable regardless of whether or not they knew about the acts of harassment as long as the harassment took place during the time of employment. However, there is a statutory defence that an employer can use. This defence allows an employer to not be liable for a claim of sexual harassment in the workplace if they can demonstrate that it took “reasonably practicable” steps to prevent and remedy sexual harassment. An employer cannot rely on an excellent workplace policy if it has not been implemented properly.

ii. Legal Framework Outside the Workplace

A victim of sexual harassment or abuse has other avenues available to them if they wish to make a claim outside of the internal complaint procedure of their workplace. A complaint must usually be made within 6 months of the alleged sexual harassment or the most recent occurrence of harassment. Such disputes are generally dealt with by an Adjudication Officer of the Workplace Relations Commission (“WRC”), or the employee can bypass that route and take their claim directly to the Circuit Court.

After hearing a claim for sexual harassment, the WRC can make one or more of four orders:

- (1) for equal remuneration and treatment in whatever respect relevant to the case;
- (2) for compensation;
- (3) to take a specified course of action;
- (4) for reinstatement or reengagement with or without an order for compensation.

iii. Relevant Case Law

Based on the cases referenced in the legal research, it is easy to understand why there are so many victims and survivors who do not report that they are being sexually harassed or abused in the workplace. In many of these situations, the complainants are being harassed, and are not aware of the policies or procedures in place for reporting sexual harassment, or are pressured into keeping quiet. For instance, in one case, there was an incident where the complainant felt pressured to apply antibiotic cream to her employer’s back and groin area and the employer caused her colleagues to contact her expressing their dissatisfaction about her complaints.² The WRC ruled in favour of the complainant. They did not find it credible that it was accepted by both parties that this was an act of assistance without sexual connotations.³ The WRC also found the complainant’s evidence to be credible and

² *A Worker v Food Service Provider* ADJ-00000458.

³ *Ibid.*



compelling and was corroborated by the text messages and witness statements. The Complainant was awarded €17,450 for their sexual harassment claim.⁴

In another case, the complainant waited two years to tell her employer that she was being sexually harassed by an independent contractor because the perpetrator was good friends with the managing partner, even though she felt unsafe as the issue escalated.⁵ However, when she did tell her employer, the managing partner was appointed as the investigator.⁶ The plaintiff took a case to the Circuit Court for breach of contract and breach of duty arising out of alleged sexual harassment by an independent contractor who provided services to the defendant.⁷ The Court held that the plaintiff had suffered a serious case of sexual harassment.⁸ Furthermore, the Court held that the investigation conducted by the employer was significantly flawed.⁹ The plaintiff was awarded €137,000 (reduced by 25% for contributory negligence, as she had been aware of the fact that she was being sexually harassed (in the legal sense) for two years prior to making her complaint).¹⁰

Moreover, there is a history of employers protecting perpetrators and pressuring complainants to keep quiet or disregarding the complaint entirely. For example, there was a case where the complainant was threatened with losing her job if she reported that she was being sexually harassed in the workplace and was subjected to a disciplinary procedure where her supervisor accused her of lying.¹¹ The complainant took a claim of sexual harassment and victimisation against her employer.¹² The Equality Tribunal held that the complainant was sexually harassed, and was subjected to “*the most appalling attack on her personal dignity*”.¹³ The complainant was awarded €21,000 (the maximum award of 2 years' remuneration). The Equality Officer noted that had he not been constrained by statute as to the amount of the award he could order, he would have ordered a significantly higher award given the severity of the treatment to which the complainant was subjected.¹⁴

Similarly, in another case, a complainant was inappropriately touched and kissed against her will by a colleague.¹⁵ She reported the harassment to her boss and her employer who both did nothing.¹⁶ She was forced to continue working with the perpetrator until the employer moved him to a sister restaurant.¹⁷ The complainant took a claim of constructive dismissal against her employer. The WRC held that the complainant was subjected to a

⁴ Ibid.

⁵ *ATKINSON V CARTY* [2005] 16 ELR 1.

⁶ Ibid.

⁷ *ATKINSON V CARTY* [2005] 16 ELR 1.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ *Ms A v a Contract Cleaning Company* DEC-E2004-068.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ *A CHEF V A RESTAURANT* ADJ-00005898.

¹⁶ Ibid.

¹⁷ Ibid.



relentless campaign of unwanted physical and verbal behaviour and that her boss more or less dismissed the perpetrator's actions as nothing more than "banter".¹⁸ The complainant was awarded €15,000 in compensation.¹⁹

Despite these challenges, victims and survivors of sexual harassment can still hold the employer liable for not making the workplace a safe environment, not investigating claims of sexual harassment properly, or for dismissing an allegation of sexual harassment. What is key to observe, however, is that despite the success of complainants in the courts, victims often fear coming forward and are, at times, deterred.

Independent Workers.

All of the above cases and indeed the reporting systems described are premised on an employer/ employee relationship where fixed rules apply and where there is internal and external systems for dispute resolution, even if those are flawed.

This leaves unresolved the situation of those who are not employees but are still in the workplace: those who are self-employed, contractors and other independent workers in the so-called 'gig economy'. While theoretically, workplace policies and procedures may apply to them, these workers may be even more vulnerable, more at risk and more reluctant to use existing procedures through their dependence on good will for their livelihood.

To further understand a victim's lived experiences when choosing to report or not, Dublin Rape Crisis Centre endeavoured in a survey to investigate if, why, and how victims and survivors chose to report.

b. Overview of Dublin Rape Crisis Centre Survey

i. Purpose

Dublin Rape Crisis Centre ("DRCC") was interested in examining the impact of the #MeToo movement and what victims and survivors of sexual harassment and abuse would consider to be effective avenues of redress. DRCC wanted to understand the lived experiences of those who had endured sexual harassment and abuse, including in the workplace. It wanted to hear from those who have reported or complained about sexual harassment, as well as those who had not, in a survey that took place over 4 weeks from 7 September to 5 October 2018.

The following is an overview of the methodology and findings of this survey:

ii. Methodology:

a. Respondents

¹⁸ Ibid.

¹⁹ Ibid



Some 952 individuals aged between 16 and 84 participated in this survey. Of these, 822 respondents self-identified as women, 120 as men, 4 as gender variant or non-conforming, and 6 did not report any gender identity. The majority of respondents lived in Ireland (94.4%), while 1.6% lived in the UK, 1.3% in the EU, 1.8% in North America, 0.8% in the rest of the world, and 0.1% did not specify their location.

b. Items

Respondents were provided with a series of multiple-choice items covering their experiences with sexual harassment and abuse. They were asked to provide some detail on the harassment or abuse (if experienced) and also whether they reported it either formally or informally. They were then provided with a small number of open-ended qualitative questions, depending on whether they had or had not reported the harassment or abuse. If they had reported the abuse, they were asked to provide some information on what they felt would have improved their level of satisfaction with the outcome. If they had not reported, they were asked what might have helped them to report and also what outcome they would have liked to have seen had they reported. Each of the open-ended items had a 50-word limit.

c. Data Analysis

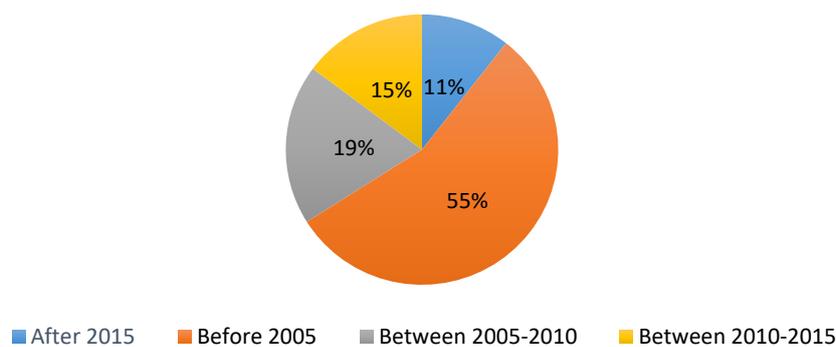
Data was screened prior to analysis for any hoax or incomplete responses. 12 responses were removed on this basis, leaving the final sample at **940**. Frequencies and percentages were generated for any quantitative or multiple-choice items. For the qualitative or open-ended items, a team of four DRCC staff members read through responses and recommendations and categorised

iii. Findings:

a. Experiences of Sexual Harassment

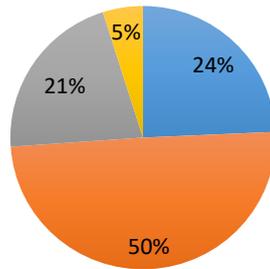
Of the 940 respondents, 712 reported having experienced sexual harassment (75.7%).

When did the sexual harassment begin?





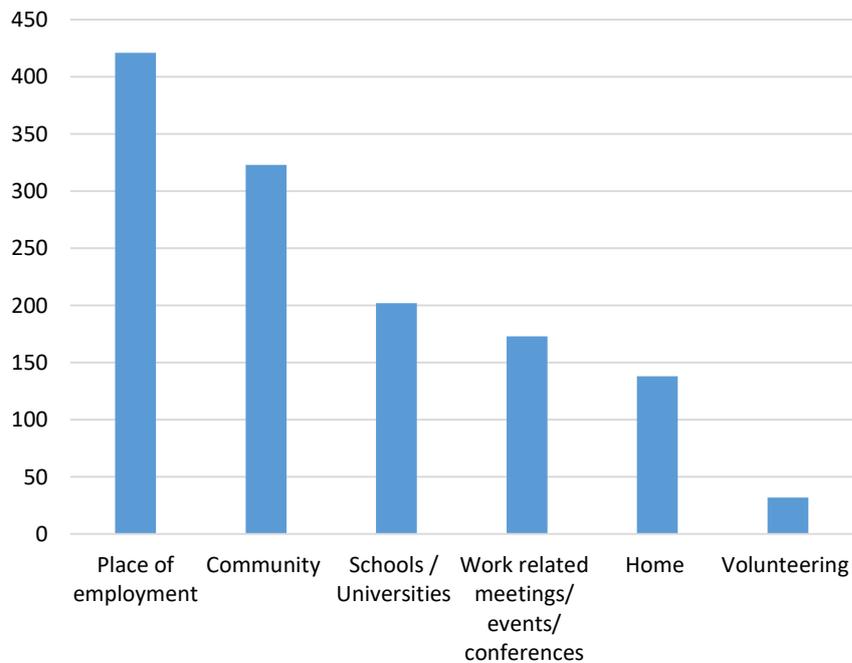
How long did the harassment go on for?



- Multiple episodes over periods of time
- Multiple once-off incidents
- Once-off incident
- Single episode over a period of time

Where did the harassment occur?

When asked where the harassment occurred, participants were given the option to select one or multiple locations. Of the 712 who experienced harassment, 62.2% reported experiencing it in multiple contexts while 37.8% reported experiencing it in one context only. The number of respondents who reported experiencing harassment in each location is below:

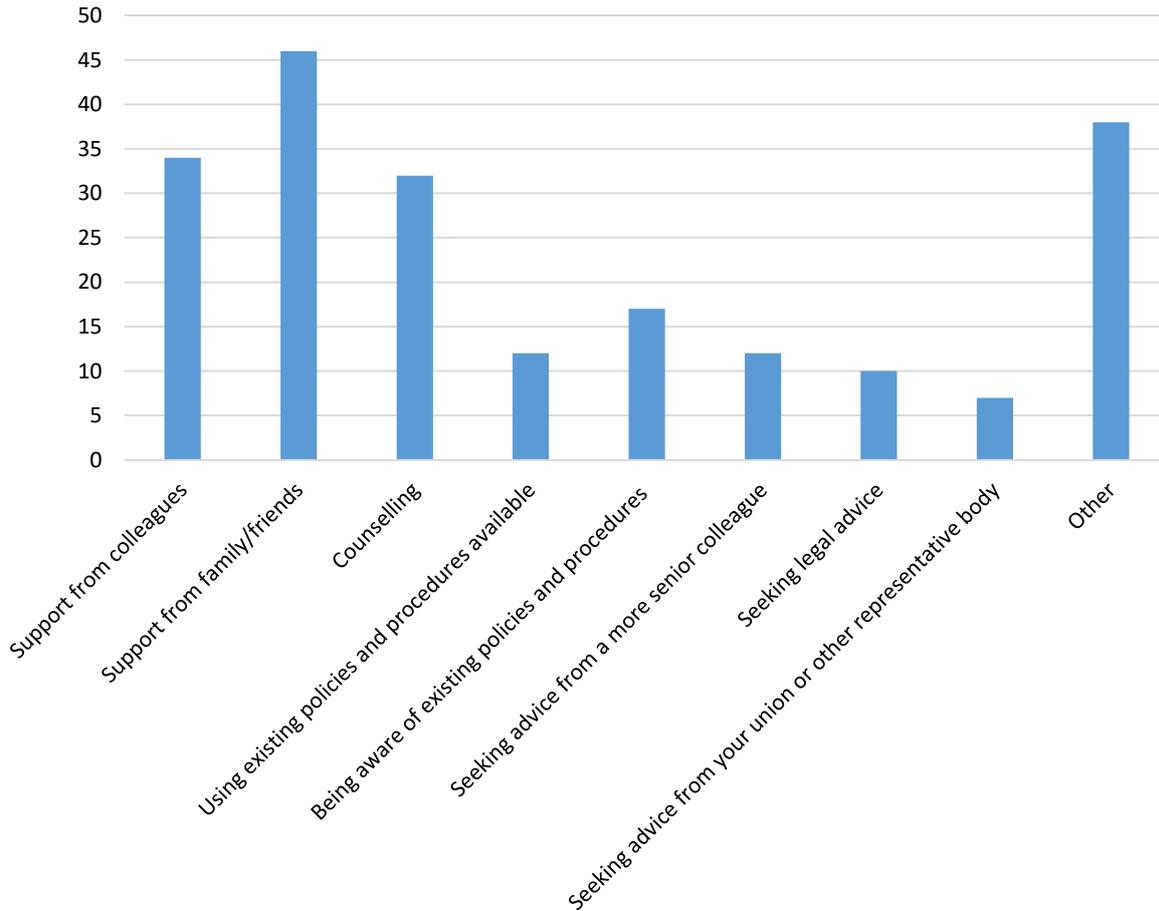


b. Reporting of Harassment

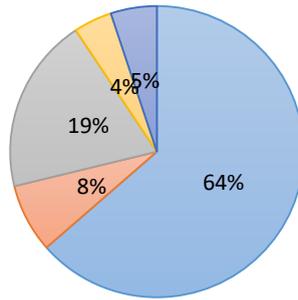


i. Respondents who did report (N = 118)

Of the 118 who did report, 39% said they reported using formal procedures (i.e., to an internal or external contact, including the Gardaí, legal professional, union, manager, HR department, or other). 50% said they reported informally while 11% said they were unsure. When asked what factors helped them in their decision to report, respondents provided the following reasons (they could select more than one):



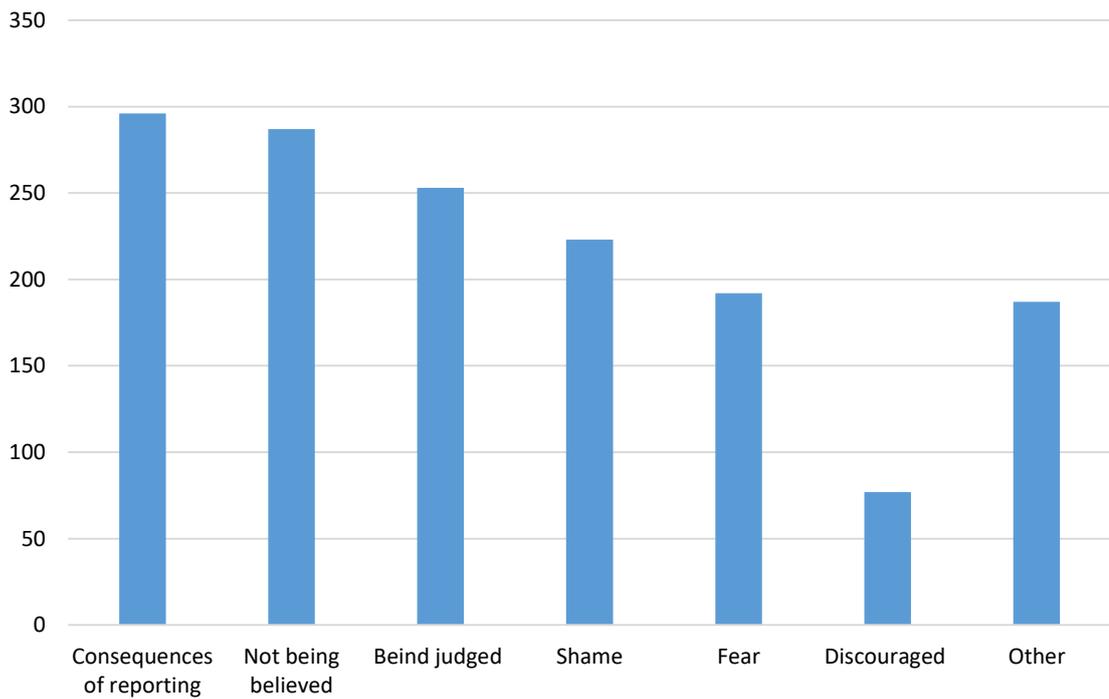
ii. Satisfaction with Outcome of Reporting



■ Not satisfied
 ■ Satisfied
 ■ Somewhat satisfied
■ Very satisfied
 ■ Does not apply

iii. Respondents who did not report (N = 591)

The majority who experienced harassment did not report their harassment (591). Respondents provided the following reasons for not reporting (again, they could select more than one):





C. Conclusion: Proposed Reforms and Next Steps

The #MeToo movement instigated a cultural awakening on the pervasive nature of sexual harassment and abuse. Since it launched, there have been several reminders, in Ireland and elsewhere that sexual harassment and abuse, particularly in the workplace, is still a damaging reality. It is now time to shift the focus to the future and provide research-based reforms to best aid access to justice in Ireland for those who are victims of, and who survive such sexual harassment and abuse.

These reforms should be rooted in improving the accessibility and effectiveness of workplace sexual harassment reporting mechanisms but may need to go well beyond them, as a result of their limited impact to date. With support from the legal framework provided by A&L Goodbody and the data gathered by Dublin Rape Crisis Centre on the lived experiences of victims and survivors of sexual harassment and abuse, there are a number of general reforms that could improve reporting mechanisms in Ireland.

a. Possible Reforms/ Improvements

i. Anonymous Reporting *a. Helpline*

To begin, a possible reform could be to establish an anonymous helpline for employees and professionals to report sexual harassment or abuse. This tool could not only enable victims and survivors to come forward anonymously, but also provide confidential legal advice and information to aid them should they choose to use external mechanisms to report the matter. This is important as case law has proven it is not necessarily the courts and their judgements that deter reporting regarding workplace harassment and abuse, rather it is the victim's fear of repercussion or stigma and their uncertainty of the reporting mechanisms at their disposal.

One model of the proposed reform is that used by Transparency International Ireland ("TII"). TII is a member of the Whistleblowing International Network which connects and strengthens civil society organisations that defend and support whistle-blowers. TII operates a whistleblowing helpline Monday to Friday, 10am- 6pm with trained staff and volunteers. They also have various reporting mechanisms through which whistle-blowers can safely get in touch: Freephone helpline; secure report form; encrypted e-mail; post; and using the Signal messaging app.

TII offers the following services to whistle-blowers:

- information;
- referral advice;
- advocacy and support on key concerns that provide the greatest public service; and



- access to free legal advice where appropriate via the Transparency Legal Advice Centre.

If a similar resource was offered by the Workplace Relations Commission or an independently established organisation, it could prove a useful tool in supporting and empowering victims and survivors to report workplace sexual harassment and abuse. Should the WRC be in a position to facilitate such a helpline, for example, the helpline could operate unilaterally alongside the WRC's existing services.

b. Anonymous Reporting App

Another possible reform is the use of online apps to report sexual harassment or abuse in the workplace. The app may shift the focus away from the victim by placing a focus on employer accountability and internal investigations. The proposed app could be related to existing models of anonymous reporting mechanisms such as the University College Dublin's Report and Support tool or the TII's use of the Signal app. Similar to these tools, the proposed app could ensure, *inter alia*, that:

- (1) complaints – which would otherwise go unreported – are captured;
- (2) employers are provided with the opportunity to inform complainants about the safeguards and supports that can be put in place if the complainant decides to take a complaint further; and
- (3) employers are enabled to address the matter and take action on general safety mechanisms as required.

It is important to note that these mechanisms are not designed to report harassment or abuse in the traditional sense; rather, they are used for data collection purposes. Patterns, trends, and workplace compliance issues can be monitored and collected to create reports on individual workplaces or trends across particular industries. This kind of reporting allows victims and survivors of harassment to come forward, avoid any fear or stigma by remaining anonymous, and hold perpetrators and ultimately employers accountable.

Limitations of anonymous reporting.

However, questions about who is accountable and liable for downstream consequences remain. Generally, employees do not understand that their allegations cannot be taken at face value and do not automatically result in disciplinary action against the named perpetrator, even if the report was made non-anonymously.

Another concern that has been raised involves the level of detail that an app or helpline can generate to form a report. Specifically, if an app fails to deliver an individualised report that contains the necessary detail to lead to an investigation, an employer may be unable to take meaningful action to address the problem. Moreover, the data collected through the app could be used against the employer in future litigation to prove that the employer had direct knowledge of harassment occurring in the workplace.



Some other factors to consider when utilising apps or helplines as a means to anonymously report workplace sexual harassment and abuse are as follows: who receives and reviews the information from the app; how will the reviewer be trained to assess and follow through on harassment complaints; is the data that is being collected regularly reviewed; and what level of responsibility does an employer have to promptly address and investigate any report of harassment in the workplace from anonymous reports.

ii. Leveraging Existing Employment Law Mechanisms for Monitoring, Reporting and Enforcing Compliance with the Law as a Basis for Law Reform

a. Viewing Workplace Sexual Harassment or Abuse as a Workplace Health and Safety Issue rather than a Discrimination Issue

Whilst the above-mentioned mechanisms might have a place in addressing broad workplace sexual harassment or abuse, further reflection should also be given to the expansion of how these issues are viewed within the current employment legislation landscape. Traditionally, sexual harassment or abuse in the workplace is seen as an equality issue, while bullying is a health and safety matter. This position was recently re-enforced by the new *Code of Practice on the Prevention and Resolution of Workplace Bullying*.²⁰ However, this categorisation of bullying versus sexual harassment and abuse is a topic that is currently under consideration in other common law jurisdictions. The Australian Human Rights Commission issued a report on foot of the results from its National Inquiry into Sexual Harassment in Australian Workplaces in 2020.²¹ The report recommends a shift to management of sexual harassment and abuse as a workplace health and safety issue rather than a discrimination issue.

b. Creating a Multi-Pronged Holistic Approach Based on Existing Legal Mechanisms

Legal precedent exists for the monitoring, reporting and enforcement of other workplace issues (e.g. protected disclosures, workplace inspections under the Organisation of Working Time Act, and health and safety matters). Such legal precedents may be a helpful starting point from which to consider more creative, effective and holistic means of addressing cultures of workplace sexual harassment and abuse.

In addition to the current complaint mechanism under the Acts, this multi-pronged approach could:

²⁰ [The Industrial Relations Act 1990 \(Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work\) Order 2020](#) .

²¹ [Respect@Work: Sexual Harassment National Inquiry Report \(2020\)](#) .



- allow for various reporting avenues for individuals (including one where anonymity may be maintained up to a certain point - akin to protected disclosures);
- allow for personal injuries claims to be taken as sexual harassment or abuse cases, akin to current workplace bullying cases;
- place a duty of prevention and reporting on both employees (i.e. colleagues) and employers, akin to a health and safety issue;
- create workplace allies, akin to the “Contact Person” envisioned by the 2020 Code on Workplace Bullying or “Safety Reps” under health and safety legislation; and
- put in place various enforcement mechanisms by way of inspections, spot checks, fines, prosecution of offences and public publication of non-compliant employers to tackle industry-wide cultures akin to similar provisions under health and safety legislation and the Organisation of Working Time Act.

iii. Outlawing the Use of Non-Disclosure Agreements in Workplace Sexual Harassment Cases

The Department of Children, Equality, Disability, Integration and Youth (“CEDIY”) has commissioned research into the area of non-disclosure agreements (“NDAs”) in cases regarding sexual harassment or abuse.²² This is an agreement requiring the claimant not to disclose some or all details of a settlement made to conclude a claim. Minister Roderic O’Gorman said the research would be conducted to ensure “we are properly identifying and addressing this issue” while not preventing an individual employee from making their own choices.

Senator Lynn Ruane has introduced legislation to ban NDAs across all sectors in relation to claims of workplace sexual harassment or abuse. At the time of writing, her *Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021* is before the Seanad.²³ As initiated, the Bill envisages that an employer may only enter into an NDA with an employee who has experienced or made allegations of sexual harassment or unlawful discrimination where the employee expressly requests such an agreement. In such instances, the agreement may only be entered into provided it

- does not adversely affect the health and safety of a third party or the public interest;
- is of a set and limited duration; and
- provides the relevant employee with the option to waive their confidentiality in the future.

²² [The Irish Time \(2021\), Non-Disclosure Agreements: People are Terrified to Speak Out Against Them.](#)

²³ [Employment Equality \(Amendment\) \(Non-Disclosure Agreements\) Bill 2021](#)



In the past, NDAs have been cited as means of augmenting protection for the victim. However, these claims have not been substantiated by research. If NDAs are eliminated in relation to workplace allegations of harassment or abuse, a victim's access to justice may still be enhanced by ensuring:

- visibility of sexual harassment or abuse in the workplace, which can instigate further information gathering for investigations;
- accountability of employers to uphold thorough and effective investigations into claims of sexual harassment or abuse in the workplace; and
- protection for the victim's employment.

b. Next Steps:

These proposals and this paper are DRCC's current first steps to spark discussion and advance proposals which better permit those who have experienced sexual harassment and abuse in the workplace to effectively seek and receive redress, respecting the rights of due process and fair hearing for all involved.

We propose to elaborate and develop the issues and proposals raised in this paper at a webinar in Autumn 2021 where the focus will be on whether these proposals, or others, are technically and legally feasible and, equally important, whether they may be effective.

Following that, we will seek to build a volunteer expert group which might further develop useful mechanisms or systems, with a view to suggesting law reform, to be followed by a further paper in due course and engagement with those who can bring about the necessary reforms to further aid victims' access to justice.

An expert working group could consider the following non-exhaustive list:

- utilise the research outlined in this paper and feedback from readers/ attendees at the webinar to identify any further gaps in the accessibility and effectiveness of reporting mechanisms in Ireland;
- examine the proposed reforms and review their validity within the Irish context; and
- offer other possible reforms by considering:
 - how to leverage existing legislative mechanisms for reporting, monitoring and enforcing other types of workplace issues; and
 - alternative solutions such as an anonymous reporting helpline and/or app.
- test the applicability and effectiveness of the proposed reforms
- engage in a conference of key stakeholders to disseminate the findings of the applicability and effectiveness of the proposed reforms



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Anyone affected by issues raised in this paper/research can call the **National 24-Hour Helpline at 1800 77 8888**, for free & in confidence.

Online chat support is available Mon-Fri, 10am-2pm at drcc.ie