



### **ACS Submission: Sexual Harassment in the Workplace**

ACS (the Association of Convenience Stores) welcomes the opportunity to submit evidence to the Government Equalities Office technical consultation on sexual harassment in the workplace. ACS represents 33,500 local shops and petrol forecourts including Co-op, McColls, BP and thousands of independent retailers, many of which trade under brands such as Spar, Nisa and Costcutter. Further information about ACS is available at Annex A.

Retailers would not disagree with the underlying aims of this consultation and many already work hard to embed inclusive workplace cultures where any incidents of sexual harassment are tackled robustly. There is a clear moral case to prevent sexual harassment – everyone wants to be treated fairly and with respect. There is also a clear business case – poor staff retention, morale and reputation as an employer if sexual harassment policies are not working effectively.

A new preventative duty must be accompanied with the EHRC Statutory Code of Practice defining ‘all reasonable steps’ to provide clarity about what actions can be taken by employers to prevent sexual harassment. Retailers would also welcome further statutory guidance on developing harassment policies and understanding best practice. We do not support new reporting requirements on retailers, which would require additional time and resource, without necessarily helping to compare employers or inform action plans. Retailers cannot control the conduct of all customers but can support employees in cases of third-party harassment – therefore knowledge of an alleged incident and not following the statutory guidance on reasonable steps to prevent harassment should be required before employer liability in these circumstances.

ACS is committed to tackling harassment and has brought together a Dignity at Work Charter for the industry, which has committed 39 organisations to strive to prevent harassment in the workplace<sup>1</sup>. ACS also provides a legal helpline for members on employment issues.

**For more information on this submission, please contact Steve Dowling, ACS Public Affairs Manager, via [steve.dowling@acs.org.uk](mailto:steve.dowling@acs.org.uk) / 01252 533009.**

**Q1 If a preventative duty were introduced, do you agree with our proposed approach? Yes/No/Don't know Please explain your answer, drawing on any evidence you have.**

If a new preventative duty is introduced, it must be accompanied with clear and practical statutory guidance from the Equality and Human Rights Commission (EHRC) on what constitutes ‘all reasonable steps’ an employer should take to sufficiently protect employees from sexual harassment. This approach will be necessary to provide clarity on how the law is interpreted, enabling retailers to review their policies and procedures on sexual harassment and defend themselves at employment tribunals based on enacting ‘all reasonable steps’

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<sup>1</sup> <https://www.acs.org.uk/dignity-work-charter>

and fully complying with the Code. This approach is also best to prevent case law leading the definition of 'all reasonable steps' and adding new requirements based on business size, as has occurred within discrimination legislation.

Reasonable steps included in the EHRC Code must be attainable for retailers of all sizes, including independent retailers without sophisticated HR functions. Most convenience retailers have set harassment policies detailed in staff handbooks, an identified contact point for colleagues to report harassment and a commitment to investigate all alleged offences. Multi-site retailers also typically train managers on harassment policies and where to signpost within the business where appropriate. We would support these steps forming the basis of reasonable steps to be outlined in the EHRC Code.

Beyond defining the reasonable steps for retailers to demonstrate legal compliance, the Government should also signpost towards best practice and publish more detailed guidance on managing reported offences. For example, retailers would value best practice on how to; investigate and record complaints, support victims, handle anonymously reported incidents, identify where alleged harassment may include criminal offences and utilise alternative dispute resolution procedures if requested and deemed appropriate.

**Q2 Would a new duty to prevent harassment prompt employers to prioritise prevention? Yes/No/Don't know Please explain your answer, drawing on any evidence you have.**

We understand the rationale for a new duty to make it clearer to employers they should proactively prevent sexual harassment, rather than only act after an alleged incident has been reported. The #metoo movement and BBC/ComRes survey have both highlighted the extent of sexual harassment across industries and a preventative duty could prompt some employers to ensure their harassment policies are 'lived policies'<sup>2</sup>. However, retailers are already motivated to prevent sexual harassment due to the detrimental impact of cases on workplace culture.

A key function of convenience retailers' HR functions are to nurture workplace culture to meet organisational values. A workplace environment that values difference, is free from hostility and based on tolerance boosts productivity and helps achieve higher levels of job satisfaction. This is particularly true in the convenience sector, where three-quarters (72%) of colleagues are female and colleagues work in small teams – the average store employs 8 people, 71% of whom work up to 30 hours per week<sup>3</sup>. Retailers increasingly promote their sociable workplace cultures to attract and retain staff, as it becomes more difficult to compete on financial packages as employment costs rise. Harassment and discrimination policies are an important part of protecting employees and workplace cultures.

**Q3 Do you agree that dual-enforcement by the EHRC and individuals would be appropriate? Yes/No/Don't know If 'no', please explain your answer, drawing on any evidence you have.**

We accept that individuals and the EHRC should be able to enforce sexual harassment legislation. Poor employment practices exist elsewhere in the labour market so individuals should be allowed a clear route to complain if their employer does not act on a complaint. Claims by individuals provide a sufficient deterrent for convenience retailers who operate

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<sup>2</sup> <https://www.comresglobal.com/polls/bbc-sexual-harassment-in-the-work-place-2017/>

<sup>3</sup> ACS Local Shop Report 2019

within a relatively unionised sector. Usdaw provides significant support to colleagues proceeding with harassment and discrimination cases.

Effective enforcement of employment regulations is dependent on the culture of the enforcement body. For example, HMRC's enforcement of the National Minimum Wage regulations has alienated retailers by providing inadequate guidance on its interpretation of the regulations and publicly naming and shaming retailers for technical breaches caused by genuine error, even where there is no employee detriment and retailers have acted quickly to comply. Conversely, the Pensions Regulator provides extensive support and guidance for all employers, also hosting training events and working in partnership to ensure compliance before enforcement powers are used. We would urge the EHRC to adopt an appropriate balance between guidance and enforcement which promotes best practice effectively. If the Government decides to proceed with establishing a single enforcement body, enforcement should aim to transfer within the remit of the single body.

**Q5 Are there any alternative or supporting requirements that would be effective in incentivising employers to put measures in place to prevent sexual harassment? Please provide evidence to support your view.**

Convenience retailers are already motivated to prevent sexual harassment (see Q2). This explains why retailers adopt zero-tolerance approaches to sexual harassment and wider whistleblowing and harassment policies that protect employee anonymity. Beyond setting out policies, multiple retailers in the sector proactively train store managers to manage people effectively and build relationships based on mutual trust. This means promoting awareness of policies with colleagues, recognising that if an incident occurs, an employee is most likely to go first to their direct manager before being signposted to HR.

We understand that the root cause of sexual harassment often derives from power imbalances in the workplace, for example where senior roles are held by predominantly older men and junior roles by younger women. All eligible convenience retailers are now submitting annual reports on their business' staffing structures in accordance with the gender pay gap regulations, most of which demonstrate lower pay gaps than the average reporting employer. In recent years, retailers have also taken on new reporting responsibilities on modern slavery and auto-enrolment, with ethnicity pay reporting expected shortly.

Another reporting requirement on sexual harassment would require significant time and resource from eligible retailers, without necessarily divulging credible data to either inform action plans or make comparisons with other employers in the sector due to the low rates of complaints. Developing new reporting requirements for independent retailers, most of whom do not have in-house HR expertise, would also be ineffective due to their size.

**Q6 Do you agree that employer liability for third party harassment should be triggered without the need for an incident? Yes/No/Don't know Please explain your answer, drawing on any evidence you have.**

ACS has worked proactively to prevent third party harassment across the industry and launched the Dignity at Work Charter earlier this year<sup>4</sup>. The Charter recognises that retailers have workplace policies to safeguard employees, but that harassment can occur in external settings such as industry events or when dealing with customers or suppliers. The Charter identifies habits that advance inclusion and has committed 39 organisations to strive towards

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<sup>4</sup> <https://www.acs.org.uk/advice/dignity-work-charter>

a harassment free environment. We also provide a legal helpline for members on employment issues.

A balance needs to be struck between protection for employees and recognising the unpredictability of individuals which is outside the employer's control. Therefore, employer liability for third party harassment should only be triggered when an incident has occurred and the employer has known about the incident to reflect that retailers cannot control the conduct of all members of the general public. Repeat offences from customers should not occur as retailers would ban that customer from entering the store again, if convicted. Retailers should be required to 'know' about an alleged incident. 'Ought to know' would introduce unnecessary subjectivity, for example on whether an incident should have been seen on CCTV when many CCTV systems automatically wipe unsaved footage within a few days.

This approach, in addition to the preventative duty and new guidance on sexual harassment between employees within the business, would provide greater protection for employees and fairness for employers.

**Q7 Do you agree that the defence of having taken 'all reasonable steps' to prevent harassment should apply to cases of third party harassment? Yes/No/Don't know  
Please explain your answer, drawing on any evidence you have.**

Yes. Convenience retail is a business-to-consumer sector and this is a necessary protection for retailers who should not be automatically liable or responsible for the conduct of all customers entering the business premises. A reasonable step for third party harassment could include issuing premises bans to customers who have previously been found guilty of colleague harassment in the shop. However, it is extremely difficult to bring together defined 'reasonable steps' that retailers can take to prevent harassment from customers over whom they have no control.

**Q15 Are there any further interventions the Government should consider to address the problem of workplace sexual harassment?**

See Q3. Convenience retailers would welcome training events and workshops on sexual harassment to be delivered via the enforcement body.

## Annex A

### ABOUT ACS

The Association of Convenience Stores lobbies on behalf of over 46,000 convenience stores across mainland UK on public policy issues that affect their businesses. ACS' membership is comprised of a diverse group of retailers, from small independent family businesses running a single store to large multiple convenience retailers running thousands of stores.

Convenience stores trade in a wide variety of locations, meeting the needs of customers from all backgrounds. These locations range from city centres and high streets, suburban areas such as estates and secondary parades, rural villages and isolated areas, as well as on petrol forecourts and at travel points such as airports and train stations.



### WHO WE REPRESENT

#### INDEPENDENT RETAILERS



ACS represents almost 19,000 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to Government policy discussions.

These stores are not affiliated to any group, and are often family businesses with low staff and property costs. Independent forecourt operators are included in this category.

#### SYMBOL GROUPS AND FRANCHISES



ACS represents over 14,000 retailers affiliated with symbol groups. Symbol groups like SPAR, Nisa, Costcutter, Londis, Premier and others provide independent retailers with stock agreements, wholesale deliveries, logistical support and marketing benefits.

Symbol group forecourt operators and franchise providers like One Stop are also included in this category.

#### MULTIPLE AND CO-OPERATIVE BUSINESSES



ACS represents over 13,000 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, McColls and others.

Unlike symbol group stores, these stores are owned and run centrally by the business. Forecourt multiples and commission operated stores are included in this category.

### THE CONVENIENCE SECTOR



In 2019, the total value of sales in the convenience sector was £40.3bn.

The average spend in a typical convenience store transaction is £6.38.

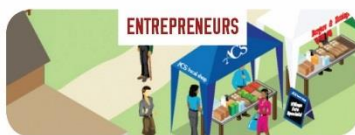


There are 46,388 convenience stores in mainland UK. 71% of stores are operated by independent retailers, either unaffiliated or as part of a symbol group.



The convenience sector provides flexible employment for around 405,000 people.

18% of independent/symbol stores employ family members only.



19% of shop owners work more than 70 hours per week, while 17% take no holiday throughout the year.

70% of business owners are first time investors in the sector.



Convenience stores and Post Offices poll as the two services that have the most positive impact on their local area according to consumers and local councillors.

78% of independent/symbol retailers have engaged in some form of community activity over the last year.



Between August 2018 and May 2019, the convenience sector invested over £633m in stores.

The most popular form of investment in stores is refrigeration.

### OUR RESEARCH

ACS polls the views and experiences of the convenience sector regularly to provide up-to-date, robust information on the pressures being faced by retailers of all sizes and ownership types. Our research includes the following regular surveys:

#### ACS VOICE OF LOCAL SHOPS SURVEY

Regular quarterly survey of over 1,200 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of tracker questions and a number of questions that differ each time to help inform ACS' policy work.

#### ACS INVESTMENT TRACKER

Regular quarterly survey of over 1,200 independent and symbol retailers which is combined with responses from multiple businesses representing over 3,000 stores.

#### ACS LOCAL SHOP REPORT

Annual survey of around 2,400 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 7,556 stores. The Local Shop Report also draws on data from HIM, IGD, Nielsen and William Reed.

#### BESPOKE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.

For more information and data sources, visit [www.acs.org.uk](http://www.acs.org.uk)