

Sexual harassment – a level playing field

(First Published Business Independent, March 2011)

The recent sacking of former Sky Sports presenter Andy Gray and the resignation of his ex-colleague, Richard Keys, for making sexist comments about a female assistant referee have served as a useful reminder to employers and employees alike of the possible pitfalls of making sexist comments in the workplace.

Mr Gray was dismissed by Sky following his off air comments with Mr Keys and for further 'inappropriate' comments made to a female presenter. From an Employment Law perspective, it has brought sharply into focus the meaning of sexual harassment under the Equality Act 2010. This occurs where unwanted conduct related to sex takes place, which has the purpose or effect of violating another individual's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

It is not just the person to whom the comments were directed who could complain to an Employment Tribunal. Any employee who heard the comments and was offended could pursue a harassment claim. The fact there was no malicious intention behind the remarks is no defence to the person who made them – the wording in the legislation refers to "purpose or effect".

Even though the comments were made off air, they were still made in the course of employment and therefore Sky Sports, as the employer, could be held vicariously liable for them. In a wider context, employers should be aware that the Equality Act 2010 extended the scope of their potential liability to harassment of employees by third parties, such as customers, clients or contractors. An employer will not be held responsible unless it knows that its employee has experienced third party harassment on two previous occasions (although it does not matter whether the harasser is the same on each occasion) and it has failed to take all reasonable steps to prevent it from happening.

Employers should ensure that updated and comprehensive equal opportunities and anti-harassment policies are in place and that managers and other employees are trained on such policies. Policies should also be specifically drawn to the attention of third parties. Dealing with each act of harassment and addressing complaints fully under the appropriate procedures as they arise will also represent reasonable steps on an employer's part.



Hitchin Office, 7/8 Portmill Lane, Hitchin, Hertfordshire SG5 1AS
Tel: 01462 628888 | Fax: 01462 631233

Welwyn Garden City Office, Gate House, Fretherne Road, Welwyn Garden City, Hertfordshire AL8 6RD
Tel: 01707 887700 | Fax: 01707 887701

www.hrjlaw.co.uk