CARE ENGLAND
The voice of care

Third-party harassment

A practical briefing for adult social care providers

A Briefing for Care England Members

November 2026

MEMBER BRIEFING · November 2026

Since 30 October 2026, adult social care employers have been subject to strengthened legal duties concerning workplace harassment. Employers must take all reasonable steps to prevent sexual harassment of their employees and may be liable for harassment by third parties where they have failed to take all reasonable steps to prevent it. This briefing explains the changes, their application in care settings and the practical measures providers can take to protect staff while maintaining safe, person-centred care. It provides sector-specific guidance rather than a definitive legal test and should be read alongside the relevant legislation and official guidance. [1,2,3,4]

01 What changes and what does not

- Since 30 October 2026, an employer must not permit a third party to harass an employee in the course of employment. Under the new provision, an employer permits this where harassment occurs and it failed to take all reasonable steps to prevent it. A previous incident or warning is not a statutory prerequisite. [1,2,3]
- Also from 30 October 2026, the existing proactive duty to prevent sexual harassment of employees was strengthened from reasonable steps to all reasonable steps. The preventative duty also covers sexual harassment by third parties. The new provision adds a route to employer liability for third party harassment across the relevant Equality Act categories. [1,2,3,4,5]
- Harassment may relate to age, disability, gender reassignment, race, religion or belief, sex or sexual orientation. Sexual harassment is separately defined. Pregnancy and maternity and marriage and civil partnership are not relevant characteristics for the specific harassment definition, though other discrimination protections can apply. [4]
- A one off incident can potentially meet the definition. An incident does not automatically prove that the employer failed to take all reasonable steps. The legal assessment is fact sensitive. [1,3,4]

The new third party provision refers to employees. The sexual harassment prevention duty also uses the Equality Act definition of employment. Providers should take advice on the position of agency workers, self employed workers and shared staffing arrangements, and protect everyone on site as a matter of safe practice. [1,4]

02 What counts as harassment

Under section 26 of the Equality Act 2010, unwanted conduct related to a relevant protected characteristic, or unwanted conduct of a sexual nature, is harassment if its purpose or effect is to violate dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. When deciding its effect, the law requires consideration of the employee's perception, the other circumstances and whether it is reasonable for the conduct to have that effect. Abuse, threats and physical aggression also require action even where the Equality Act harassment definition is not met. [4,6]

Third parties can include people receiving care, relatives, visitors, commissioners, CQC staff, NHS professionals, suppliers and contractors. Conduct may happen in person or online. A staff member employed directly by the provider is assessed under the existing law on employer responsibility for its own staff rather than the new third party route. Agency arrangements require attention to who employs the individual and which organisations control the risk. [1,3]

03 What all reasonable steps could mean for a provider

No exhaustive statutory checklist currently fixes the standard for social care. Acas says the steps depend on the organisation, sector and work, and recommends recording why a contemplated measure was not reasonably available. The Act allows later regulations to specify steps in relation to preventing sexual harassment. Providers should avoid promising zero incidents. The question is whether sensible measures appropriate to the foreseeable risks were actually implemented and reviewed. [1,2,3]

The EHRC's updated guidance confirms that this is an objective assessment, requiring employers to consider whether there are further reasonable measures they could take, alongside regularly reviewing whether existing protections are effective. [9]

- Map exposure by service and role: personal care, night shifts, lone visits, shared spaces, reception, transport, digital contact and external meetings. Include domestic, catering, bank and agency colleagues. Conduct a review of historic incidents to identify any recurring patterns or high-risk settings. Continue to review subsequent incident patterns and ask staff what they experience. [3,6]
- Keep a clear policy and reporting route, including an alternative where the line manager is implicated. Explain confidentiality, prompt response, protection from victimisation and how staff can obtain support. Train managers to act on informal concerns as well as formal complaints. This should also include senior or board-level oversight. Since 6 April 2026, qualifying disclosures about sexual harassment at work have also been expressly protected under whistleblowing legislation. Providers should ensure staff understand how to raise concerns and that reporting arrangements protect individuals from victimisation and other unlawful retaliation. [3,5,11,12]
- Give staff relevant induction and refresher training covering protected characteristics, sexual harassment, de-escalation, reporting, intervention and person-specific risks. Maintain records of training content, attendance and completion dates, and regularly review its effectiveness. In *Allay (UK) Ltd v Gehlen* (2021), the Employment Appeal Tribunal upheld a finding that previous harassment training had become ineffective and should have been refreshed. Check that training translates into practice, rather than relying solely on completion records or policy signatures. [3,6,10,12]
- Use staffing, supervision, buddy working, safe exit arrangements, call systems or alarms where the assessment warrants them. Consider role and rota changes with the affected employee, without routinely moving the burden onto them or reducing their opportunities. [3,6]
- Set expectations with families, visitors, external professionals and contractors. Agree routes for warning, supervised visits, alternative contacts and escalation to their employer. Contract terms can help where the provider has a contractual relationship. [3]
- Record incidents, action, ownership and review dates. Reassess after an incident, a change in needs or new information. A dated decision explaining why a control is ineffective, disproportionate or

outside the provider's lawful control is more useful than a generic assertion that the risk is unavoidable. [3,6]

WHAT THIS DOESN'T MEAN

- **The duty does not mean that employers must guarantee that harassment will never occur. Liability depends on whether the employer took all reasonable steps to prevent the conduct.**
- **The duty does not automatically require the exclusion of residents, relatives or visitors. Any response must be proportionate and take account of the circumstances, including the provider's responsibilities towards people receiving care.**

04 When the behaviour comes from a person drawing on care

A diagnosis of dementia, learning disability or mental illness neither automatically excludes conduct from the harassment definition nor establishes that the person lacks capacity. Capacity is decision specific and time specific. Avoid treating a general capacity label or staff training as a legal defence. The employee's experience and all the circumstances matter. How tribunals will apply the new provision to particular care scenarios remains uncertain. [4,7]

Where a behaviour is connected to distress, pain, communication needs, confusion or an unmet need, review possible triggers with the person and those who know them. Record what happens, when, to whom and in what circumstances. Update the care plan and staff risk assessment together. Consider clinical review, communication changes, timing of support, staffing and a safe way to pause and call for help. Involve the person so far as practicable and make decisions affecting them lawfully and in their interests. [6,7,8]

Some behaviours may recur despite well designed care. A provider can acknowledge this without telling staff it is simply part of the job. Explain the residual risk honestly, ask the employee what support is workable, put controls in place, and revisit them when they do not work. Do not promise to exclude a resident, withdraw essential care or impose blanket restrictions without assessing care duties, capacity, proportionality, contract terms and safe continuity. Seek individual legal and clinical advice where these collide. HSE expressly says staff should not accept violence or aggression as a normal part of the job. [6,7,8]

05 An incident response that staff can use

- Make people safe first. Arrange immediate support, medical help or police assistance where necessary, and preserve relevant information.
- Listen without prejudging intent or outcome. Record the employee's account and the context, including witnesses, previous incidents, risks already known and immediate controls. Tell them who will follow up and when.

- Investigate proportionately. Involve the person receiving care appropriately, and distinguish a clinical or communication issue from behaviour by a visitor or professional who can be challenged directly.
- Decide and document short term and longer term measures. Consider supervision, changed contact arrangements, updated care planning, support for staff, a warning or restriction on a visitor, and escalation to another organisation.
- Check safeguarding, CQC notification, police and occupational injury reporting requirements where relevant. These are separate tests: neither every harassment allegation nor every episode of challenging behaviour automatically triggers each route. [6,8]
- Tell the employee what can be shared, review whether the response worked, and record why any requested measure could not be adopted. Avoid unnecessary personal or health detail in widely accessible logs.

Worked examples

Illustrative care setting scenarios for use with the Care England member briefing. These examples show decisions to consider, not guaranteed legal outcomes.

Example 1) Repeated racist language by a resident living with dementia

A worker reports repeated racist language during intimate care. The manager listens and records its impact, checks earlier incidents and the care plan, and considers possible triggers such as distress, pain, communication or timing. Staff and relevant clinicians help review the plan. It sets out approaches that may reduce distress, when a second worker attends, how staff can pause safely and whom they call for help. The manager agrees support and a review date with the worker, records remaining risk and explains any measure that cannot be taken.

The resident's diagnosis does not settle the harassment question or remove the need to act. Nor should the worker be told that the conduct is simply part of the job. The employee's experience, all the circumstances and the provider's actual steps require consideration.

Example 2) A relative sexually harasses home care staff

Two workers report sexual comments and unwanted touching by a relative during visits. The provider checks immediate safety and changes lone working arrangements while it investigates. It speaks with the person receiving care about maintaining safe support, records accounts, sets boundaries with the relative and considers different visit arrangements. Where additional staffing is needed, it asks the commissioner to consider the assessed cost and documents interim measures. It checks with staff whether the response works.

A policy or poster alone would not answer a known repeat risk. Any proposal to stop visits or alter care requires consideration of contractual duties, the person's needs and safe continuity, with legal advice where needed.

Example 3) A visiting professional repeatedly demeans a care worker

A visiting professional repeatedly uses discriminatory language towards a care worker. The provider takes the worker's account, sets expectations for future visits, asks the professional's employer to investigate and agrees another contact route while the matter is addressed. The provider records its own action, checks whether the worker feels safe and escalates repeated conduct through the partner organisation's senior management. It does not treat external status as a reason to leave the concern with the worker.

06 Responsibilities across the wider system

Care England expects commissioners, ICBs, CQC and partner organisations to take comparable care over how their own staff and representatives treat provider employees. A provider should give a specific, evidenced account of an issue and ask the organisation to investigate, address repeat conduct and agree safe contact arrangements. This is a sector expectation, not a claim that the new Equality Act employer duty applies to every interaction between organisations in the same way.

Where a person's assessed needs mean safe care requires additional staffing, specialist input, equipment or an alternative setting, raise that promptly with the commissioner and relevant clinicians. Record the proposed control, why it is needed, its cost and any interim plan. Escalate a disputed or unfunded measure through the commissioning and safeguarding routes where appropriate. Funding pressure does not itself answer whether a step was reasonable, but evidence of requests, decisions and what the provider could actually implement will matter. [3,6,8]

07 What providers should do now

- Appoint an accountable senior lead and review the risks of third-party harassment with staff and their representatives.
- Review existing policies, induction, training, reporting arrangements, incident management and person-specific risk assessments to ensure they reflect the strengthened legal requirements.
- Identify recurring risks and establish appropriate controls, including escalation arrangements with commissioners and external organisations where necessary. Record decisions, actions taken and any outstanding resource requirements.
- Review the latest Acas and EHRC guidance, ensure managers understand their responsibilities and seek appropriate employment or care law advice in complex cases. [2,3,5,9]

08 How Care England can help

Care England members are able to access resources and support from our legal partners.

- **Anthony Collins**
- **Weightmans**
- **Hempsons**

Care England will continue to monitor these developments and update members as they happen.

> *This briefing provides general information and Care England's practical interpretation of the legal requirements in force as at November 2026. It does not constitute legal advice. The strengthened duties concerning sexual harassment and third-party harassment took effect on 30 October 2026. Providers should consult the latest official guidance and seek appropriate advice where individual circumstances involve contested allegations, restrictions on care or contact, safeguarding responsibilities or complex employment arrangements.*

09 Sources and further reading

[1] Employment Rights Act 2025, sections 20–22: https://www.legislation.gov.uk/ukpga/2025/36/contents

[2] Government implementation timetable, updated 25 September 2026: https://www.gov.uk/government/publications/implementing-the-plan-to-make-work-pay-and-employment-rights-act/plan-to-make-work-pay-and-employment-rights-act-timeline-update

[3] Acas, Third party harassment, updated 26 August 2026: https://www.acas.org.uk/employment-rights-act-2025/harassment-law-changes

[4] Equality Act 2010, section 26, definition of harassment: https://www.legislation.gov.uk/ukpga/2010/15/section/26

[5] EHRC, Employer 8 step guide to preventing sexual harassment, updated 30 October 2026: https://www.equalityhumanrights.com/employer-8-step-guide-preventing-sexual-harassment-work

[6] HSE, Sensible risk assessment in care settings and violence guidance: https://www.hse.gov.uk/healthservices/sensible-risk-assessment-care-settings.htm

[7] Government, Mental Capacity Act Code of Practice: https://www.gov.uk/government/publications/mental-capacity-act-code-of-practice

[8] CQC, Regulation 18 on staffing: https://www.cqc.org.uk/guidance-regulation/providers/regulations-service-providers-and-managers/health-social-care-act/regulation-18

[9] EHRC, Sexual harassment and harassment at work: technical guidance, updated 30 October 2026: https://www.equalityhumanrights.com/guidance/sexual-harassment-and-harassment-work-technical-guidance

[10] Allay (UK) Ltd v Gehlen [2021] UKEAT/0031/20/AT, Employment Appeal Tribunal judgment: https://www.bailii.org/uk/cases/UKEAT/2021/0031_20_0402.html

[11] Business.gov.uk, Whistleblowing protections: https://www.business.gov.uk/campaign/employment-changes/employee/whistleblowing-protections/

[12] Care England Smart Directory, Third-party harassment in care: what providers need to do now (supporter article): https://smartdirectory.careengland.org.uk/supporter-articles/third-party-harassment-in-care-what-providers-need-to-do-now

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