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**One man's banter - another  
woman's harassment?**

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# Harassment



- We're talking about....



Harassment



Harassment

1. *Going beyond the well-known guidance, how do you call out banter and tackle it?*
2. *At what point does it become harassment?*
3. *What if both parties have participated?*

## Banter



- *Banter*, n. The playful and friendly **exchange** of teasing remarks.
  - repartee, raillery, ripostes, sallies, swordplay, quips, wisecracks, crosstalk, wordplay
  - Late 17th century of unknown origin.
- *bants* (also bantz), pl. n.: (Brit. informal) playfully teasing or mocking remarks **exchanged** with another person or group; banter.
  - @bants; lolbantz

Let's not feel too smug...



## We're talking about...Section 26 Equality Act 2010



- Three types:
  - Unwanted conduct related to [protected characteristic]
  - Unwanted conduct of a sexual nature
  - Less favourable treatment of a worker because they submit to or reject sexual harassment or harassment related to sex or gender reassignment
- Conduct has purpose or effect of
  - violating victim's dignity, or
  - creating intimidating, hostile, degrading, humiliating or offensive environment for victim
- Views of victim override perpetrator's motives
- Victim need not have the characteristic
- One-strike principle for extreme offence

## #Them too .... other protected characteristics



- Age
- Disability
- Gender reassignment
- Marriage & civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

**“Just a bit of harmless banter ....”**



- Sexual Orientation
  - *Thomas Sanderson Blinds v English*
- Sexual harassment
  - *Unite the Union v Nailard*
  - *Reed v CF Fertilisers Ltd*
  - *Minto v Wernick Event Hire Ltd*
- Race/ethnicity
  - *Georges v Pobl Group Ltd*
  - *Basi v Snows Business Forms Ltd*
  - *Harper v Housing 21*
  - *Evans v Xactly Corporation Ltd*

## The #metoo revolution



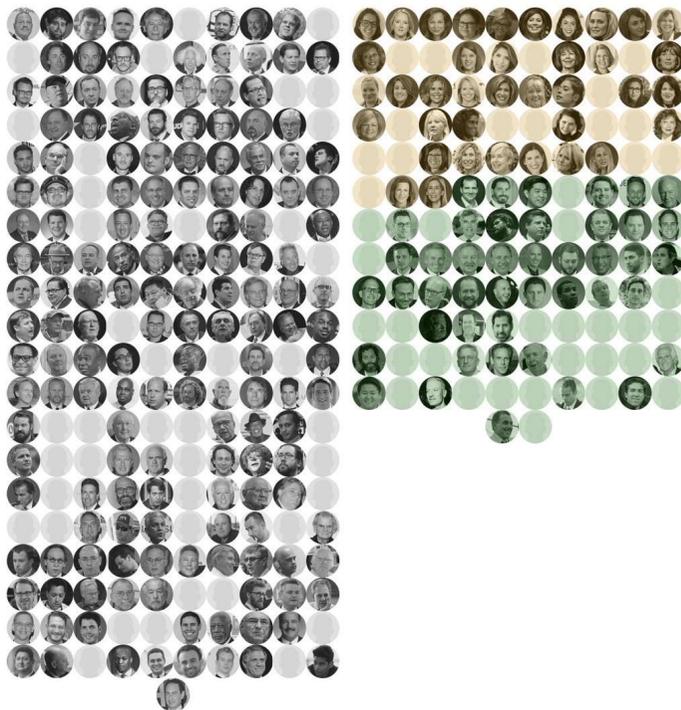
- Distinctions are important:
  - Harassment on grounds of sex may not be sexual harassment
  - But may still be discriminatory, subject to factual scenario



## Why LA gossip matters in London boardrooms



201 lost jobs or major roles 122 replacements: **53 women**  
and **69 men**



- Changing the face of, and faces in, our businesses
- Raising awareness and confidence to speak out
- Expectation of being taken seriously
- Reputational issues now more complex
- But only for gender equality?

When the gag's ripped off ...



June 2018



House of Commons  
Women and Equalities  
Committee

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**Sexual harassment in  
the workplace**

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## Recommendations

- Mandatory duty on employers + statutory code (enforced by EHRC)
- Early duties for public sector
- Public sector risk assessments
- Third party harassment – reinstatement
- Include interns & volunteers
- Awareness raising
- Sector regulators to take action

- Punitive ET damages
- One way costs awards
- 6 month limitation, paused for processes
- ET processes to reflect criminal trials
- Statutory questionnaires reinstated
- ET recommendations

## Recommendations

- Plain English confidentiality clauses
- PIDA to encompass sexual harassment complaint to police/regulator
- Offence to propose a confidentiality clause preventing or limiting protected/criminal disclosure
- Professional breach to use potentially unenforceable NDA

- Collect robust data
  - ET claims
  - Tri-annual national workplace surveys
  - Evaluations
  - Action plans

## The #metoo avalanche



### How to touch the untouchable

- Positive reporting obligations
  - *Bell v Lever Bros*
  - Fiduciary Duties
  - Duty of Fidelity
- Regulatory constraints
- Blow the whistle/raise a grievance/start a claim?
- Curb widespread use of inappropriate NDAs
- BUT trial by public opinion in an age of social media

Calling it out? Or just another  
"Feminazi"?



**It's all in the small print (for now at least)**

