



Close the Gap submission to the UK Government Women and Equalities Committee inquiry on sexual harassment in the workplace

March 2018

Executive Summary

- Sexual harassment, and male-oriented workplace cultures more widely, contribute to the gender pay gap and women's labour market inequality.
- Sexual harassment is widespread across the labour market, and particularly evident in sectors such as hospitality where young women and women in insecure work are at greater risk.
- Existing employer responses to sexual harassment are inadequate, and women experience significant barriers to reporting and to accessing justice.
- Employers must develop a specific policy on sexual harassment which includes a clear complaints procedure, clarity on potential sanctions, data gathering mechanisms, and provision for all staff training.
- Regulatory changes required include the reinstatement of employer liability for third party harassment, and the removal of requirement of two or more instances of harassment by a third party.
- Primary prevention interventions are a critical component of work to end sexual harassment, and must be included in strategic responses to sexual harassment by employers, government and other policymakers.

1.0 INTRODUCTION

- 1.1 Close the Gap is Scotland's women and labour market expert, and has 17 years' experience of working with employers, policymakers, trade unions, employees, and sectoral bodies to encourage and enable action to close the gender pay gap.

- 1.2 Women do not enjoy equality with men in Scotland, or in the wider United Kingdom. Gender inequality shapes women's lives, resulting in their different experiences of employment, their greater propensity to have caring roles, and their greater likelihood of being a survivor of sexual violence. Any work to tackle sexual harassment must be undertaken as part of a wider strategy to tackle gender inequality and must include primary prevention interventions to end sexual harassment.
- 1.3 Sexual harassment is a form of sex discrimination, a function of gender inequality, and part of the spectrum of violence against women. Sexual harassment impacts on women's performance at work, their propensity to apply for or be appointed to promoted posts, and their ability to move into or stay in male-dominated sectors and occupations. As such, sexual harassment and male-oriented workplace culture more broadly exacerbates the gender pay gap and occupational segregation. Close the Gap therefore welcomes the Women and Equalities Committee inquiry on sexual harassment in the workplace.

2.0 MAIN ISSUES

The prevalence of sexual harassment in the workplace

- 2.1 In the UK, more than half (52%) of women have experienced sexual harassment¹, with this figure rising to two thirds of women aged 18-24. Research by the TUC asked women about the different types of sexual harassment they had experiences, which ranged from unwelcome sexual comments to serious sexual assaults. A recent survey by ComRes generated similar results. Research by Zero Tolerance, which works in Scotland on violence against women, found that 70% of respondents had witnessed or experienced sexual harassment².
- 2.2 The available research paints a grim picture of the prevalence of sexual harassment in the UK, but it is likely that it is affected by under-reporting. Most women (80%) who experience sexual harassment in the workplace will never report it³. Women report a range of reasons why they do not report, including a fear of being blamed, not knowing how to report, or a fear of a backlash from colleagues or senior staff.

¹ TUC (2016) *Still just a bit of banter? Sexual harassment in the workplace in 2016*

² Zero Tolerance (2017) *Sexism is a waste: The need to tackle violence and misogyny in Scotland's workplaces*

³ TUC (2016) *Still just a bit of banter? Sexual harassment in the workplace in 2016*

Furthermore, many women do not recognise what has happened to them as sexual harassment due to the normalisation of sexual harassment in women's lives.

- 2.3 We know that women are significantly more likely to experience sexual harassment than men, and this holds across the spectrum of behaviours. Four in ten women (39.9%), compared to 18.1% of men, had experienced some kind of unwanted sexual behaviour⁴. Almost a third (30.3%) of women had experienced unwelcome jokes or comments of a sexual nature, while 11.5% of men had experienced this. At the most serious end of the spectrum, 3.4% of women had been seriously sexually assaulted at work (1.4% of men) and 13.5% of women had experienced a less serious sexual assault, e.g. groping (4.4% of men). In 90% of cases the perpetrator of the harassment was a man.
- 2.4 The reason women are more likely to experience sexual harassment than men is precisely because they are women. Sexual harassment is an abuse of power. Often the perpetrator is a line manager or someone in another senior position, and men are significantly more likely to be in these roles; however in cases where the perpetrator is a male colleague working at the same or a similar level sexual harassment is still a function of power, as women are in a position of decreased power relative to men in the workplace, and in wider society. Harassment often takes place in front of other colleagues, which intensifies women's humiliation, normalises sexual violence, and makes it even harder to report. These factors combine to exacerbate women's lack of power in the workplace.
- 2.5 Women with even less power in the workplace are at a higher risk of sexual harassment, in particular younger women, who are also more likely to be in junior positions, and women on insecure or zero-hour contracts. Both of these groups of women are also less likely to be members of a trade union, and therefore do not have the protection afforded by this. Women aged 18-24 are the group most likely to have experienced sexual harassment in the workplace⁵, and research has found that they are significantly more likely to have experienced particular types of sexual harassment, including threatening and offensive advances via the internet or text messages⁶. Younger women

⁴ <http://www.comresglobal.com/polls/bbc-sexual-harassment-in-the-work-place-2017/> accessed March 2018

⁵ TUC (2016) *Still just a bit of banter? Sexual harassment in the workplace in 2016*

⁶ EU Agency for Fundamental Rights (2014) *Violence Against Women: An EU wide survey*

are also less likely to feel able to report sexual harassment as they are less likely to have worked with their employer for a long time, and consequently fear they may lose their job as a result.

- 2.6 TUC research on women's experiences of job insecurity found that the erosion of job security and increasing casualisation of work has created a climate where women feel unable to take action against a colleague or employer for fear of repercussions e.g. being denied shifts⁷. This compounds the disadvantage faced by women in the gig economy, where they are already some of the lowest paid workers. Women in casualised and precarious work are also less likely to feel able to risk compromising their ability to earn because of their greater likelihood of having caring responsibilities and a concomitant need for a regular income.
- 2.7 Young women are more likely than older women to be employed in insecure work, but also more likely to be employed in low-paid, service-related sectors and occupations where they are more at risk of sexual harassment from clients and customers, e. g. hospitality and retail. In these sectors and roles there is an element of 'emotional labour' which is required to be performed as part of the job, which carries with it an expectation of maintaining friendly and pleasant relationships with customers. This expectation tacitly permits the excusal of sexual harassment as 'banter' or to be expected from certain clients or customers, and functions as a barrier to reporting as reports are unlikely to be taken seriously. The recent high-profile incident at The President's Club⁸ where 'hostesses' were groped and harassed by attendees is an example of this, with the young women involved forced to sign NDAs in advance explicitly because of the expectation that such behaviour would arise.
- 2.8 Occupational segregation is also a factor. Research has shown that women working in male-dominated workplaces are more likely to experience sexual harassment⁹. It has also been suggested that sexual harassment is more commonplace in workplaces which feature significant patterns of vertical occupational segregation¹⁰. Occupational segregation results in women's concentration in undervalued, low-paid

⁷ TUC (2015) *Women and Casualisation: women's experiences of job insecurity*

⁸ <https://www.ft.com/content/075d679e-0033-11e8-9650-9c0ad2d7c5b5> accessed March 2018

⁹ European Commission (1999) *Sexual Harassment at the Workplace in the European Union*

¹⁰ TUC (2016) *Still just a bit of banter? Sexual harassment in the workplace in 2016*

work, and lower grades of organisations, and is one of the key causes of the gender pay gap. That gender segregated workplaces are more fertile grounds for sexual harassment creates another barrier to women's progression, making it harder for women to stay in male-dominated environments, and entrenching women's economic inequality.

- 2.9 Sexual harassment in the workplace is not a case of 'a few bad apples' and discussing it in terms of individual bad behaviour makes it more difficult to tackle. It is vitally important to frame sexual harassment as part of the continuum of violence against women, which is both a cause and a consequence of gender inequality, and as a structural inequality that women face at work. Action to address sexual harassment can only be impactful if it forms part of a wider plan of action to tackle gender inequality in all its forms.

The wider context: women's labour market inequality

- 2.10 Women do not enjoy equality with men in Scotland, nor in the United Kingdom, and women's labour market inequality is a cause and a consequence of this gender inequality. Gender inequality in employment is a cradle to labour market issue that requires a strong commitment from government if it is to be successfully addressed. Women continue to have a very different experience of the employment to men. This manifests in a range of ways including:

- Women's employment is concentrated in low-paid, undervalued jobs such as admin, retail, cleaning and care work.
- Only 37% of directors, managers and senior officials are women.¹¹
- Three-quarters of part-time workers are women.¹²
- Women working part-time are paid on average 32% less than men working full-time.¹³

¹¹ Close the Gap (2016) *Gender pay gap statistics*

¹² Ibid

¹³ Ibid

- 2.11 Disabled women¹⁴, black and minority ethnic (BME) women¹⁵, Muslim women¹⁶, lesbian and bisexual women¹⁷, trans women¹⁸, refugee women¹⁹, young women²⁰, and older women²¹ experience different, multiple barriers to participation in the labour market, and to progression within their occupation. Across the labour market, disabled women, and some groups of BME women are more likely to be under-employed in terms of skills, and experience higher pay gaps. Disabled, BME and lesbian, bisexual and trans women are more likely to report higher levels of discrimination, bullying and harassment.
- 2.12 The gender pay gap is the key indicator of women's persistent inequality at work, and the very different labour market experiences of men and women. The overall pay gap in the UK is 17 per cent, when comparing the average hourly pay of all men and all women, excluding overtime.²² In Scotland it is 15 per cent.²³ The pay gap is caused by occupational segregation, where men and women do different types of work, and different levels of work; inflexible working practices which make it difficult for women with caring responsibilities to participate in the labour market, particularly at senior levels; and discrimination in pay and grading systems.

Action required to change workplace culture to prevent and tackle sexual harassment

- 2.13 It is important that sexual harassment is framed as part of the continuum of violence against women, and to recognise that action to address sexual harassment can only be impactful if it forms part of a wider plan of action to tackle gender inequality.

¹⁴ Leonard Cheshire Disability (2014) *Realising the rights of women and girls with disabilities*

¹⁵ Scottish Parliament Equal Opportunities Committee (2016) *Removing Barriers: Race, ethnicity and employment*

¹⁶ House of Commons Women and Equalities Committee (2016) *Employment Opportunities for Muslims in the UK*

¹⁷ Stonewall (2014) *The Double-Glazed Glass Ceiling: Lesbians in the workplace*

¹⁸ House of Commons Women and Equalities Committee (December 2015) *Transgender equality*

¹⁹ Scottish Refugee Council (2014) *One Step Closer*

²⁰ YWCA Scotland (2016) *Status of Young Women in Scotland*

²¹ Scottish Commission on Older Women (2015) *Older Women and Work: Looking to the future*

²² ONS (2017) *UK Labour Market Statistics*

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation2digitsofoccupation> accessed March 2018

²³ Close the Gap (2016) *Gender pay gap statistics*

- 2.14 Most women (80%) who experience sexual harassment in the workplace will never report it²⁴. Women report a range of reasons why they do not report, including a fear of being blamed, not knowing how to report or even that they could report it, and a fear of negative consequences for them in the workplace which may impact on their relationships at work or their career. Many women lack of confidence in reporting procedures, having seen other cases reported by colleagues being mishandled or simply dismissed.
- 2.15 Many women feel that a report of sexual harassment in the workplace will not be taken seriously, and this is not surprising. Sexual harassment begins early in girls' lives, with an increasing prevalence of sexualised bullying in schools, compounded and enabled by the hyper-sexualisation of young girls by the media²⁵. For many women, sexual harassment is something that happens to them many times in their lives, from catcalling in the street while they are walking home from school or to their place of work, to groping or indecent exposure on public transport, to unwelcome advances from colleagues or managers in their workplaces. Many forms of sexual harassment have become so normalised or minimised that women are resigned to their experiences not being taken seriously, and so they do not report.
- 2.16 It is therefore essential that action to tackle sexual harassment focuses on encouraging and enabling reporting, on ensuring employers have adequate policies in place, and that the effectiveness of those policies is monitored, and on challenging workplace cultures which normalise sexual harassment and minimise its impact.

Recommendations for employers

- 2.17 Employers should have in place a specific policy on sexual harassment. Many employers include sexual harassment as part of a wider equality and diversity policy; however in practice this often amounts to little more than a cursory mention of sexual harassment as a behaviour that would fall under the policy. A standalone sexual harassment policy, which contains a clear commitment to zero tolerance of sexual

²⁴ TUC (2016) *Still just a bit of banter? Sexual harassment in the workplace in 2016*

²⁵ <https://www.engender.org.uk/content/publications/Engender-submission-on-bullying-and-harassment-in-schools.pdf> accessed March 2018

harassment in the workplace, is best practice, and demonstrates that the employer recognises the seriousness of the issue.

- 2.18 Employer policies on sexual harassment should contain clear reporting structures with accessible information on how to report, timescales for investigation, and a list of possible sanctions including information on how these are applied. Policies should also include procedures to protect people who report from further victimisation or other negative consequences in the workplace. All policies and procedures should be focused on protecting the individual who has experienced sexual harassment and place the responsibility for investigation clearly on the employer and not the reporting party. Policies on sexual harassment should provide for complaints being made confidentially and collectively, as this is likely to increase reporting.
- 2.19 It is essential that employers use clear and regular communications to all staff to make them aware of the organisation's zero tolerance policy of sexual harassment, and how to report. All staff should receive training on sexual harassment to raise awareness of unacceptable behaviours at work, the causes of sexual harassment, and so that all staff understand it is their responsibility to report sexual harassment if it is witnessed. Senior staff and those people management responsibilities should also receive training on implementing the sexual harassment policy, including how to manage complaints. It is best practice to include communication and training on sexual harassment as part of employee inductions. HR officers who may provide support to investigating managers in sexual harassment cases should receive regular training to ensure they are able to provide high quality advice and ensure adherence to policy and reporting procedures, and appropriate use of sanctions.
- 2.20 Employers should gather data on sexual harassment in their workplaces, including quantitative data on reporting and investigation outcomes, and qualitative data, e.g. through staff surveys and focus groups, on the implementation of policy. This data should be monitored and used to determine whether policies and procedures are being implemented as intended, and to track culture change.
- 2.21 Employers should also be required to publish a regular report on sexual harassment in their workplace, the effectiveness of their policies, and what action they are taking to address it.

Recommendations for government

- 2.22 The government should gather data on sexual harassment in the workplace at regular intervals to monitor the prevalence of sexual harassment and should report their findings including a commitment to take relevant action. While there are numerous surveys and pieces of research which provide a picture of sexual harassment in the workplace, there is currently no national data on sexual harassment which risks undermining the case for concrete action to address it. The Australian Human Rights Commission, for example, gathers data on sexual harassment at work and uses this to inform interventions²⁶. A specific category of sexual harassment for tribunal claims would support better data gathering and analysis, alongside requiring employers to report on the number of complaints received and the outcomes thereof.
- 2.23 Perpetrators of sexual harassment are also often third parties. Women who work in the hospitality, leisure, healthcare and care sectors, and in customer-facing roles, frequently face harassment from clients and customers, and have little protection from their employer. Employer liability for third party harassment, which was previously provided for in the Equality Act 2010, should be reinstated. We also call for the removal of the requirement for two or more instances of harassment by a third party which currently acts as a barrier to women who have experienced sexual harassment accessing justice.
- 2.24 Close the Gap does not agree with the use of NDAs in cases of workplace sexual harassment. NDAs are a form of silencing, preventing women from being able to discuss their experience with others, which is an important part of the process of recovery from trauma. They are used as a principal method of protecting the employer, with little consideration of the impact on the reporting party, and the cloak of secrecy involved may increase the risk of the perpetrator reoffending, in the absence of wider knowledge of the incident. NDAs represent a barrier to culture change in employers, by allowing them to place greater priority of protecting their public image than protecting their employees.
- 2.25 It is critical that work to tackle sexual harassment must include primary prevention interventions, and must be undertaken as part of a wider strategy to tackle gender inequality. Primary prevention interventions

²⁶ <http://www.abc.net.au/news/2017-11-05/sexual-harassment-survey-to-examine-workplaces/9119062>
accessed March 2018

as a means to tackling violence against women is recognised in Scotland's violence against women strategy, *Equally Safe*²⁷. *Equally Safe* recognises that gender inequality is a root cause of violence against women and girls, and that the inequality women face in the workplace reduces their financial independence, restricts their choices in employment, and in life, and therefore creates a conducive context for violence against women, including sexual harassment.

²⁷ Scottish Government (2016) *Equally Safe: Scotland's Strategy to prevent and eradicate violence against women and girls*