Written submission from a member of the public (SHW0015)

Executive Summary
- Victims of harassment are reluctant to report it
- Sexual harassment appears to be very widespread
- Sexual harassment is about power and dominance
- Sexual harassment creates a toxic work environment and means that women can't progress
- The initial hearing of sexual harassment cases cannot be left to the company, who is not impartial
- An independent body to investigate sexual harassment cases prior to tribunal, with the power to make recommendations for improvement, should be established
- Keep tribunals free of charge, particularly for sexual harassment cases
- Allocate a grant or fund to help with legal costs associated with pursuing justice
- All settlement agreements containing non-disclosure agreements should be signed by an impartial body, who provides advice to both employer and employee on their rights, merits of a claim, obligations, and the ramifications of signing a settlement agreement.

Summary of submitter
This document is submitted by a Chartered Member of the CIPD, a HR professional focussed mainly in the technology sector. I submit this document as a private individual, and do not represent any organisation. My reasons for submission are that I have experience of both managing sexual harassment cases as a HR professional, and of making a sexual harassment and assault complaint to an ex employer which was not handled properly. I believe this gives me a unique perspective.

Paragraph 1 – How Widespread is sexual harassment, and has it increased or decreased over time?

I don't believe that there has been a significant change in the amount of sexual harassment which has and is happening in the workplace, over the last decades. What seems to have changed is that certain sections of society (mainly women) are now less accepting of bad behaviour, but often remain powerless to do much about sexual harassment when it happens to them.

It's well known that most privately owned SME businesses in the UK are led by male boards, and there are fewer women in senior managerial roles. When incidents of sexual harassment are reported, HR departments (if they exist) can be undermined, the sufferers of the harassment not believed or told there is no evidence for their claim. There is frequently a stronger drive to maintain the status quo, than to deal with the harassing behaviour. Reporters of harassment can be seen as troublemakers or liars, and all too often find themselves unemployed after reporting these incidents. This reinforces the reluctance of the harassment victim to report it.

As to how widespread it is, based on my experience, I believe it is very widespread. The seriousness of harassment varies greatly, from still unpleasant, but easier to dismiss objectification, to assault and bullying. That said, objectification can easily lead to more serious
behaviour if not curtailed early on, something most employees are reticent to do, especially when comments are coming from their boss.

Every company that I have worked for in the last 17 years has had issues with senior male staff abusing their power towards female (and occasionally male) staff in a sexual way. I don't believe that this was unique to the businesses I worked in, but rather indicative of a wider societal problem.

**Paragraph 2 - who experiences sexual harassment in the workplace, who perpetrates it and what the impact is on different groups**

I can only speak from my own experience, but from what I have seen generally female (though men do suffer this too) staff, of all levels of seniority, suffer sexual harassment in the workplace. Generally they are preyed on by more senior male colleagues. Sexual harassment can be used as a means of asserting dominance over a woman, controlling her, and exercising the perpetrator's own power – in other words of bullying her using sexual harassment.

The perpetrators generally, but not exclusively, are male, and usually in more senior roles to the people they select to harass. The victims are often people that the perpetrators see as threats.

As to the impact it has on other groups, it reinforces a toxic culture within a business, where sexism is seen as acceptable and not punishable, particularly when this behaviour is carried out by senior management. Senior management should be setting examples for behaviour to the rest of the workforce, but by treating women in a demeaning way, or allowing and enabling women to be treated this way, they are undermining the contribution of women. Women in the workforce generally are less likely to feel secure, and to push themselves forwards for promotion, they may feel belittled, afraid, trapped, and it can lead to mental health issues. It dis-enables women from succeeding and stifles their professional growth. For male colleagues, they may be encouraged to behave this way themselves, or those of a better character may simply see women colleagues withdrawing and not participating, without much understanding of why. They may learn to ignore sexism rather than calling it out.

**Paragraph 3 - actions that the Government and employers should be taking to change workplace culture to prevent sexual harassment, give people more confidence to report sexual harassment, and make this issue a higher priority for employers**

The current system of raising an internal grievance, which management and/or HR hears, followed by a tribunal, isn't working. HR departments are employed by business owners, so in small or medium sized businesses, are often unable to be impartial or handle complaints fairly, as management will pressure them for answers. Where no HR function exists, management teams are frequently ill-equipped to deal with these issues themselves, particularly where complaints may involve members of the management team or the business owner him or herself.

The tribunal system, although now free, is still costly in terms of legal fees. If an employee is not a member of a union, which most people in private companies are not, this is a hard expense to bear. Citizens Advice Bureau do give free advice, but their lines are incredibly busy and hard to reach during working hours (the online portal does not seem to ever be available), and the few charities which provide help for sufferers of sexual harassment, are often inundated.

As an alternative, the government should look at setting up an independently funded body to deal with sexual harassment investigations. This would be fair to both the complainant and the accused
(This may well be something that ACAS could do). Should the independent body find in favour of the complainant then companies should be given a warning, and measures for improvement. Employees could then proceed to tribunal if they so wished.

Leaving the hearing of a grievance with the company simply isn't working. I say this from personal experience, having myself raised a complaint for sexual harassment and assault, against a senior Director, who was the best friend of the company's CEO. The issue was not investigated other than asking the Senior Director if he had done it, then the company officially branding me a liar when the Senior Director denied it, and making the continuance of my role untenable.

**Paragraph 4 - how workers can be better protected from sexual harassment by clients, customers and other third parties?**

As in the above paragraph, an independent body, perhaps ACAS, should be allocated the responsibility for investigating complaints. In this case, the complainant could make a complaint against a either the employer of the third party, client, or customer, and his/her own employer, or where there was no external employer, a named individual and also his/her own employer.

As with the current tribunal system, complainants should have the right to bring claims against named individuals as well as companies, once the independent body investigating the initial complaint had completed their process.

**Paragraph 5 - the effectiveness and accessibility of tribunals and other legal means of redress and what can be done to improve those processes**

The abolition of tribunal fees has helped to make tribunals more accessible, but I understand that it is intended to reintroduce some form of charge for seeking legal redress, in the future. Given that many sufferers of sexual harassment are forced to leave their jobs, and therefore in financial hardship already, adding a cost to the seeking of justice, seems somewhat unfair. When this is coupled with the cost of legal advice and representation at tribunal, many people are unable to pursue justice, even those on higher salaries. It is true that unions exists and some insurance policies do cover legal costs, but this is not the case for everybody, and to rely on this as a means to people getting justice for a societal problem, seems a poor way of managing it.

Citizens Advice Bureau is hard to access, particularly for those who are working fulltime, and the few charities that operate in this area are stretched beyond their means.

These factors combined mean that for many sufferers of sexual harassment, they are unable to seek redress, and are simply forced to either continue to endure harassment in a role, or find a new job, with the perpetrator remaining unpunished. This is not a good situation.

Instead, I would suggest that the government recognise that this a real and serious problem in many workplaces today. Sufferers of harassment should be given free access to an independent body, such as ACAS, to deal impartially with their complaint. As ACAS does currently, a settlement agreement could be discussed if that was what both parties wished. If not, then the matter could be escalated to tribunal stage. A means tested grant could be offered to sufferers of sexual harassment, but in order to stamp out this damaging and harmful behaviour, the grant should be significant.

**Paragraph 6 - the advantages and disadvantages of using non-**
disclosure agreements in sexual harassment cases, including how inappropriate use of such agreements might be tackled

Speaking from personal experience of having raised an internal grievance for sexual assault and harassment, which the company did not take seriously, I can say that non-disclosure agreements are sometimes used as a threat against employees. I was told that I must sign a settlement agreement for no money, or I would be “bad-mouthed”, not given a reference, and my new employer would be called and told about the harassment claim. From this I think it's possible to see that companies are not always using non-disclosure agreements fairly, and are treating them as gagging clauses, or in my case blackmailing and threatening employees into silence, at the risk of damaging the employee's future career unless they sign a non-disclosure agreement.

The advantage of non-disclosure agreements is that they provide closure to the issue. If a sufferer of sexual harassment can not afford to pursue justice, then she/he may have little choice but to agree to a settlement agreement, which pays them for their silence. Likewise, if a company is genuinely not responsible for the behaviour of an individual employee who perpetrated harassment, and deals responsibly and properly with an offender, then it may be better for their reputation and the rest of the workforce's morale, to simply close the matter off with a non-disclosure agreement.

Currently, any settlement agreement that an employee signs has to be counter signed by an employment solicitor, who is supposed to give them advice on the merits of any claim they might have. Without the counter signature of the employment solicitor, acting on the employee's behalf, a settlement agreement, containing a non-disclosure clause, would be invalid. Unfortunately, as is sometimes the case, not all employment solicitors are interested in the wellbeing of their clients, and are simply concerned with processing an agreement and the receipt of a fee. It's also relatively easy for an organisation to find a friendly solicitor to sign off an agreement for an employee, or to offer only a tiny legal contribution to the employee, so that they are unable to pay the solicitor to do anything more than just sign it. Again, there are a few charities that give free legal advice, but this is not easy to obtain, due to over-subscription of their services.

My recommendation would be that in sexual harassment cases, all settlement agreements had to be counter signed by an impartial external body, which is not funded by either the employer or the employee. Both parties should be given clear and neutral advice on the situation, and be allowed to make a decision on what their best options are.

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