Introduction

- The National Education Union (NEU) brings together more than 450,000 teachers, lecturers, support staff and leaders working in maintained and independent schools and colleges across the UK.

- We welcome the opportunity to respond to this inquiry on sexual harassment in the workplace. We would also like to commend the range of work the Women and Equality Commission has done to bring attention to sexism and sexual harassment in the workplace, in public places and in schools.

- In this submission we highlight our own research on sexism in schools “It’s just everywhere.”\(^1\) We also draw upon the significant experience we have in working with and supporting teachers and other school staff across the country.

- Our key recommendations to address sexual harassment in schools and colleges are:
  - The Government should reinstate Section 40 of the Equality Act 2010 so that school/college staff are protected from third party harassment.
  - The Government should reinstate Section 124(3)(b) of the Equality Act so that employment tribunals are given the power to make wider recommendations for the benefit of the wider workforce, not just the individual claimant, in relation to discrimination claims.
  - Sexism, sexist language and behaviour and sexual violence should be given weight equal to other discriminatory treatment in the Ofsted handbook and guidance.
  - Initial Teacher Training should include training in recognising and tackling sexism for all trainee teachers.
  - Schools and colleges must have access to the necessary training and resources to truly upskill their workforce to prevent sexual harassment.
  - The DfE must ensure that RSE is given sufficient space in the curriculum and that the statutory guidance is accompanied by a well-funded package of support for schools, including ensuring RSE teachers have access to high quality professional development.
  - The DfE must change the current testing environment which is turning schools into Exam Factories\(^1\) where outcomes are based purely on numbers.
  - Schools must have a zero tolerance approach towards sexual harassment.
  - The time limit for bringing sexual harassment claims should be extended to at least six months.

\(^1\) National Education Union (NEU), UK Feminista (2017) "It’s Just Everywhere." A study on sexism in schools – and how we tackle it. NEU, UK Feminista.
- Crimes motivated by misogyny should be statutorily regarded as hate crimes.

- A clear prohibition against non-disclosure agreements in relation to discrimination and harassment is required to send a clear and consistent message to employers and to third parties that workers will be protected from sexual harassment in the workplace.

‘How widespread is sexual harassment in the workplace and has this increased or decreased over time?’

**Sexual harassment is commonplace in schools**

1. Sexual harassment is commonplace in schools and colleges. School/college staff experience various forms of sexist behaviour from students and staff. This can include sexist or sexual language, sexist bullying or sexual harassment. Teachers report experiencing comments about their appearance; sexual remarks; sexual gestures; unwanted physical attention and inappropriate touching.2.

2. In a small snapshot survey we did with women teachers in 2018, 75% said they had experienced sexual harassment at work; 50% reported inappropriate comments by staff and students and 30% had experienced inappropriate gestures or physical expressions.

3. Many teachers also work in an environment where they witness sexual harassment on a frequent basis. In our research “It’s just everywhere” almost one in three (32%) teachers in mixed-sex secondary schools said that they witness sexual harassment in their school on at least a weekly basis. 17% of primary school teachers have also said that they witness sexual harassment in their school at some point in their career.

4. These findings reflect the incidents of sexual harassment faced by students: over a third of female students at mixed-sex schools have personally experienced some form of sexual harassment while at school. Almost a quarter (24%) had been subjected to unwanted physical touching of a sexual nature while at school.

5. In an environment where female students are experiencing such high levels of sexual harassment it is not surprising that this has an impact on school and college staff work and wellbeing. Indeed, comments made by teachers in our research show the impact of sexual harassment on students and on themselves:

   “In class boys talk about girls' bodies and what they ‘would do to them,’ make female sex noises at the teachers and at girls, ask girls in class if a particular photo was them, have they got it shaved, what it looks like…” (Secondary school teacher)

   “Female teachers have been sexually assaulted by male pupils in corridors and classrooms. This often happens when there’s a crowd or disruption so that they are more likely to get away without getting caught or identified. Male

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2 National Union of Teachers (2007) *NUT Policy Statement on Preventing Sexual Harassment and Bullying*, NUT.
3 National Education Union (NEU), UK Feminista (2017) “It’s Just Everywhere.” A study on sexism in schools – and how we tackle it, NEU, UK Feminista.
pupils regularly make inappropriate comments to the 6th form girls.”
(Secondary school teacher)

6. While there is limited data on whether or not sexual harassment has increased or decreased over time for the school and college workforce (which is of concern to us), we believe that sexual harassment is allowed to flourish because it exists in an environment where sexism, including sexist language and sexist stereotypes are also commonplace. Even if teachers are not the intended targets of sexual harassment in schools, their witnessing of sexist behavior towards others can amount to sexual harassment for them.

7. There is evidence to suggest that the ways in which pupils express sexist and harmful behaviors are changing and the frequency in which they do so may be increasing. This may be linked to changes in technology and the online world’s role in shaping young people’s attitudes towards sex and relationships through, for instance, social media platforms, and through easy access to online pornography. Recent research for instance, confirms that social media is a key site where sexual harassment can be played out and where sexual harassment and sexual violence can be condoned and normalized. This in turn may have an impact on the way children and young people behave at school, particularly the way young boys behave towards girls and women teachers.

‘Who experiences sexual harassment in the workplace, who perpetrates it and what is the impact on different groups?’

Women teachers and female students disproportionately experience sexual harassment in the workplace

8. Sexual harassment disproportionately affects women teachers and young women and girls at school. Women teachers often face the brunt of sexualized remarks and comments about their appearance or be subject to sexist language from pupils (see above). Our report shows that 37% of girls experience sexual harassment compared to 6% of boys.

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4 Ibid (2017). 64% of teachers in mixed-sex secondary schools reported that they hear sexist language in schools on at least a weekly basis. Over a quarter of teachers (29%) report that sexist language is a daily occurrence.
5 See Project DeShame (2017) Young people’s experiences of online sexual harassment. Childnet, Save the Children, Kek Vonal and UCLan. In our research on sexism in schools 36% of secondary school teachers in mixed sex schools reported being aware of students being sent or exposed to pornography at school.
6 National Education Union (NEU), UK Feminista (2017) “It’s Just Everywhere.” A study on sexism in schools –
9. Women teachers are most likely to face sexual harassment from male students. They can also face sexual harassment from male colleagues and parents/guardians.

10. Sexual harassment is unlawful. The impact of sexual harassment is damaging to everyone who witnesses it. Sexual harassment, left unchallenged, perpetuates gender stereotypes which are harmful to girls and boys and in the long term to women and men. The impact on individual teachers’ who experience sexual harassment can be:

- Serious health problems, including anxiety and depression.
- Extended periods of work absence.
- Underperformance as a direct result of stress and loss of self-esteem.

‘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’

Changing workplace culture

Government

11. The Coalition Government’s ‘Red Tape Challenge’ removed a number of protections under the Equality Act 2010, including Section 40 and the employer’s responsibility to act if an employee is harassed by a third party, such as a pupil, parent or governor who is not employed by the employer. **We believe that this section should be reinstated in order to strengthen the rights of school staff.** **Without consequences for inaction, employers are unlikely to give priority to preventing sexual harassment in the workplace.**

12. **The Government should also reinstate Section 124(3)(b) so that employment tribunals are given the power to make wider recommendations for the benefit of the wider workforce, not just the individual claimant, in relation to discrimination claims.** Again, without a requirement to take action, employers will choose not to; they will 'take the hit' of losing one tribunal case for example and carry on without looking at their structures or procedures.

13. In strengthening the Equality Act the Government can play an important role in shifting the narrative that equality legislation is simply unnecessary bureaucracy or ‘red tape’ for employers, but can make a real difference to people’s lives, including protecting them from sexual harassment. In addition, government departments need to give a consistent message that sexual harassment is unlawful, that sexual harassment has no place in a twenty-first century working environment and that

**and how we tackle it.** NEU, UK Feminista.
sexual harassment must be challenged.

14. Sexism, sexist language and behaviour and sexual violence are not given equal weight in the Ofsted handbook and guidance. The guidance within "Inspecting safeguarding in early years, education and skills settings: Guidance for inspectors undertaking inspection under the common inspection framework" advises that inspectors should consider evidence that:

‘the setting takes effective action to prevent and tackle discriminatory and derogatory language – this includes language that is derogatory about disabled people and homophobic and racist language.’

15. We recognise that Ofsted Guidance for inspectors carries a great deal of weight with some head teachers and other school leaders. The absence of sexist harassment suggests that tackling sexual harassment and sexual violence in schools is not a priority for Ofsted. There is a risk that this suggestion results in less priority or weight being given to tackling any incident of sexual harassment in schools.

16. For schools, sexual harassment of staff will not be addressed unless a whole school approach is taken. Staff need to have access to training to understand what sexual harassment is and how they can address it when they experience or witness it from colleagues or pupils.

17. Many teachers, however, are not supported to tackle sexism or have the necessary training to take action to prevent it. For instance, just one in five (20%) of secondary school teachers has received training in recognising and tackling sexism as part of their Initial Teacher Training and only 22% of secondary school teachers have received Continuing Professional Development (CPD) in recognising and tackling sexism. This contributes to many teachers having a lack of confidence about how to challenge/ prevent sexual harassment and change workplace culture.

18. We believe if schools are to truly empower and upskill their workforce to prevent sexual harassment the Government must ensure schools have access to the necessary training and resources. This would help ensure all staff can understand and utilise the much welcomed DfE guidance on how to prevent sexual violence and sexual harassment between children in schools and colleges. Initial Teacher Training also needs to include training in recognising and tackling sexism for all trainee teachers.

19. It is critical that schools have capacity to build a curriculum in which students learn about sexism and sexual harassment and how to develop healthy and respectful relationships. The new statutory status of Relationships and Sex Education

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8 National Education Union (NEU), UK Feminista (2017) "It’s Just Everywhere." A study on sexism in schools – and how we tackle it. NEU, UK Feminista.
(RSE) must play an important role in developing pupils learning in this area. The DfE must ensure that RSE is given sufficient space in the curriculum and that the statutory guidance is accompanied by a well-funded package of support for schools, including ensuring RSE teachers have access to high quality professional development.

20. In addition, schools need to have the opportunity to explore how they can deconstruct sexism and challenge sexual harassment throughout the curriculum. Currently these opportunities are being squeezed out. For instance, the overly heavy focus on academic subjects and high workload was identified by almost 70% of teachers as barriers to tackling sexism. Teachers tell us that they no longer have time to get to know their pupils as individuals or to use subjects such as drama and art to explore their experiences of sexual harassment or sexual bullying in a ‘safe’ environment.

21. To help prevent sexual harassment that young people and teachers face, the DfE must change the current testing environment which is turning schools into ‘Exam Factories’ where outcomes are based purely on numbers.

Schools

22. Making a complaint of sexual harassment or challenging sexual terms used commonly in the classroom can be difficult for school/college staff. Reporting an incident can be difficult because staff fear it will not be taken seriously by senior leadership. Some teachers may also fear that their capability or competence would be questioned if they report ‘challenging pupil behaviour.’ In some cases, even when an incident is reported, little action is taken by the school to address it. This can lead many staff to feel powerless or have little confidence in the reporting and disciplinary process when they experience sexual harassment.

“I have been whistled at whilst trying to teach, and one extreme case where a boy pushed his crotch up against my back to intimidate me. The boy was removed from my lesson once and then I was asked to accept him back in.”
(Female secondary school teacher)

“There are no systems in place and a lack of support from SLT. This is at an all-boys school where sexism and poor attitudes towards female staff is rampant.”
(Secondary school teacher)

23. To create an environment in which sexual harassment is completely unacceptable, schools must have a zero tolerance approach towards sexual harassment where sexual harassment is addressed through school policy and in clear procedural guidelines which are consistently enforced and supported by senior leadership. Schools should seek input from union reps into the development of a sexual harassment policy. Employers should ensure that everyone working within their

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10 National Education Union (NEU), UK Feminista (2017) "It’s Just Everywhere." A study on sexism in schools – and how we tackle it. NEU, UK Feminista.
11 Ibid (2017)
organisations can use grievance procedures to raise concerns about discrimination and harassment at work, including those on zero hours or casual contracts, agency workers and contractors who may be employed by another organisation.

24. The use of social media and workplace equipment (e.g. work phones or laptops) should be taken into consideration when formulating policies on sexual harassment. The NEU recommends that every school and college have a robust policy on e-safety, which should cross-reference other policies dealing with bullying/harassment, behaviour, and child protection. It should include, and support, the whole-school or college community. In addition, it is important that schools and colleges make it clear that bullying, including cyberbullying of staff, is unacceptable.

25. All staff should know what the school’s policy and procedures are and their rights and responsibilities regarding workplace sexual harassment. In order to ensure staff feel able and confident to report sexual harassment at school (and to increase reporting), the trust management board, governing board or proprietor must ensure that the school/college:

- Records the incident;
- responds to an incident in a timely and appropriate manner, in accordance with the school behaviour policy or the school harassment/bullying procedure or the school grievance procedure or support the member of staff concerned to do so;
- provides appropriate personal support, or information enabling the victim to access appropriate personal support;
- provides information on the safe use of the school’s communications network. This should include guidance about how electronic devices issued to staff can and cannot be used, both on and off the premises;
- Where appropriate, contact the police or external agencies;
- Informs the target of the action taken, considers how the particular incident could have been prevented and reviews and adjusts policies and procedures accordingly.

26. Under section 149 of the Equality Act all public bodies including schools must have due regard to the need to eliminate discrimination and harassment of girls, to advance equality of opportunity for girls and to foster good relations between girls and boys. Further, employers with over 150 employees have the same duty in respect of their female and male employees. The duty to have due regard to the need to advance equality of opportunity for girls and women has several elements. This includes having due regard to the need to remove or minimise disadvantages girls/women or boys/men experience. It includes the need to take steps to meet the needs of girls/women that are different from the needs of boys/men.
27. The Equality and Human Rights Commission guidance on how public bodies should meet the public sector equality duty describes the degree of due regard that is required:

‘How much regard is ‘due’ will depend on the circumstances and in particular on the relevance of the aims in the general equality duty to the decision or function in question. The greater the relevance and potential impact, the higher the regard required by the duty.’

28. We believe that the duty on the DfE, local authorities, multi-academy trusts, school governing bodies and governing boards is to have a high regard to the impact of sexual harassment against girls and women in schools and colleges. We believe that this duty extends to a requirement to take robust steps to eliminate sexual violence and sexual harassment in schools and colleges.

29. Staff responsible for responding to complaints, i.e. department heads, senior leaders, human resources professionals and governors, should be equipped with the necessary training to understand sexual harassment, what constitutes sexual harassment, stalking and online harassment, relevant law and workplace policies, and how to respond appropriately to complaints.

30. These recommendations should be part of a whole school approach which looks at how to tackle sexism and sexual harassment amongst pupils. The three key components to a whole school approach are:

- An institutional framework: put in place a strategy; support it through school policy and drive it with leadership.
- Building staff capacity: equip teachers and all staff with the skills, knowledge and resources to understand, identify and tackle sexism, including through the provision of training opportunities.
- Empowering students: enable students to discuss and learn about sexism, to report incidents, and to work within school policies & procedures to take action for equality.

‘How can workers be better protected from sexual harassment by clients, customers and other third parties?’

**Protecting workers from sexual harassment by clients, customers and other third parties**

31. As above, we believe the Government should reinstate Section 40 of the Equality Act so that school/college staff are protected from third party harassment. We recommend that section 40 is reintroduced with an amendment so

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that it the duty is on the employer to act after a single prior incident of harassment.

32. **We also believe that the Government should also reinstate Section 124(3)(b) so that employment tribunals are given the power to make wider recommendations to the employer in discrimination cases.**

‘How effective and accessible are tribunals and other legal means of redress and what can be done to improve those processes?’

The effectiveness and accessibility of tribunals and other legal means of redress

33. The TUC report ‘*Still just a bit of banter?’* called for the abolition of tribunal fees. The report found that:

‘the introduction of employment tribunal fees in 2013 has created an often insurmountable hurdle for women wishing to pursue a claim of sexual harassment. Women trade union members may be able to rely on their union to meet the £1,200 fee required to pursue a sex discrimination claim but many women who are not members of trade unions find themselves priced out of justice. While it is not possible to determine the number of tribunal claims for sexual harassment from the government data, it is possible to determine the number of claims for sex discrimination (sexual harassment is under the jurisdiction of sex discrimination) and the number of claims fell by 76 per cent from 2012/13 (before fees were introduced) to 2014/15. The impetus for employers to tackle discrimination in the workplace is diminished if they know that there is little likelihood of victims of discrimination pursuing a claim at tribunal.’

34. We welcomed the Supreme Court decision in *R (on the application of UNISON) v Lord Chancellor* 2017 which forced the Government to end employment tribunal fees. The impact on women's access to justice was abhorrent and we would oppose vehemently any proposal to re-introduce such invidious provisions.

35. We believe that reinstating the statutory equality questionnaire would encourage employers to take earlier steps to stop sexual harassment in the workplace. Further, we believe that fewer cases would need to be taken to tribunals if statutory recognition were to be given to union equality representatives.

36. **Our experience in supporting teachers in sexual harassment claims leads us to recommend that the time limit for bringing such claims be extended to at least six months.** The impact of sexual harassment in the workplace can be devastating. It can have a significant impact on health and the capacity to undertake normal day to day functions. Women and men who experience sexual harassment in the workplace need the opportunity to recover from their ordeal before they embark on

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13 TUC (2016) ‘*Still just a bit of banter?’*
the journey for justice. The current time limits for taking a harassment claim are not sufficient to facilitate recovery and justice. At least 6 months is needed for this process.

37. We would also call for an extension of the protection from harassment to the protected characteristic of pregnancy or maternity. We have evidence from our women members that they are being asked about their family plans during interviews; such conduct is discriminatory and can amount to harassment. Also, EHRC research\textsuperscript{14} has found that younger mothers were significantly more likely to experience bullying and harassment at work during pregnancy compared to older mothers.

38. We believe that the fact that the law currently treats hate crimes relating to different protected characteristics inconsistently gives out a message that hate crime against women need not be taken seriously. Crimes motivated by misogyny are not currently statutorily regarded as hate crimes. We would support the assertion by the Fawcett Society that:

‘Hate crime against women and girls is a cause and consequence of gender inequality and should be treated as unlawful. It is important that the hate crime in question is misogyny hate crime, not gender hate crime, recognising the direction of the power imbalance within society. This would be consistent with the one-directional nature of transgender or disability hate crime\textsuperscript{15}.’

‘What are the advantages and disadvantages of using non-disclosure agreements in sexual harassment cases, including how inappropriate use of such agreements might be tackled?’

**Non-disclosure agreements**

39. Sexual harassment in the workplace is unlawful and there are only very limited circumstances in which a worker can legally sign away their rights to complain about sexual harassment. The only lawful device to do this is a settlement agreement under which a worker must have received legal advice on the consequences of signing an agreement. We are wholly opposed to the misuse of non-disclosure agreements to sign away statutory protections and to allow employers and third parties to engage in sexual harassment with impunity. A clear prohibition against non-disclosure agreements in relation to discrimination and harassment is required to send a clear and consistent message to employers and to third parties that workers will be protected from sexual harassment in the workplace.

**March 2018**

\textsuperscript{14}EHRC (2015) *Pregnancy and Maternity Related Discrimination and Disadvantage: First Findings.*
