Written submission from The Fawcett Society (SHW0030)

About us

1. The Fawcett Society is the UK’s leading membership charity campaigning for gender equality and women’s rights. Our vision is a society in which women and girls in all their diversity are equal and truly free to fulfil their potential; creating a stronger, happier, better future for us all.

2. We publish compelling research to educate, inform and lead the debate; we bring together politicians, academics, grassroots activists and wider civil society to develop innovative, practical solutions; we work with employers and in schools and we campaign with women and men to make change happen.

Introduction

3. In this submission, we highlight data that shows that the majority of women experience sexual harassment in the workplace, and evidence that women are often punished when they rebuff advances. This can take the form of being ostracised by their team members, being given extra tasks, and the withdrawal of support.

4. We then discuss perpetrators, with data showing that in the vast majority of cases, it is a male colleague, with a significant minority being a colleague with direct authority over the victim. Within this section we highlight the importance of recognising the prevalence of third party sexual harassment, such as that experienced by those working at the President’s Club charity event, and the need to legislate accordingly.

5. We then move to discuss actions that need to be taken in order to address sexual harassment in the workplace. Among these are the need to tackle harassment at its root via Relationships and Sex Education (RSE) which addresses gender norms and stereotypes, the need to place duties on private companies to take action to prevent discrimination and harassment, including publishing an action plan, and the need to improve access to justice for victims of sexual harassment.

The incidence of sexual harassment in the workplace

6. Sexual harassment in the workplace is pervasive, with the Hollywood and Westminster scandals having raised awareness of the issue in the past few months. These revelations did not, however, bring to light a new problem, but rather, shed light on an issue that already existed, and which creates misery for women and a humiliating and intimidating work environment.

7. According to a TUC/Everyday Sexism study on sexual harassment, 52% of women have experienced sexual harassment in the workplace and 80% did not report it to their employer. Nearly a quarter of the women had experienced unwanted touching, such as a

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hand on the knee or lower back. More than 10% of women reported experiencing unwanted sexual touching or attempts to kiss them.

8. Over the course of last year, we gathered evidence from stakeholders and sector experts as part of our Sex Discrimination Law Review, which was launched earlier this year. One lawyer (who asked to remain anonymous) gave examples of how some women were punished for refusing advances. She said that she had offered advice in cases where male managers gave female members of staff extra tasks and withdrew support when alleged sexual advances were rebuffed and where female members of staff were ostracised by team members as a result.4

9. The same lawyer said she had heard examples of male managers making sexual innuendos when supervising female members of staff. She told the review panel that a colleague had advised a woman who was given the promise of a pay rise in exchange for a “blow job”.5

10. Additionally, the Fawcett Society carried out qualitative focus groups and interviews with a diverse group of 72 young women and men aged 18 to 25, publishing the findings in our 2017 report ‘Sounds Familiar?'6 The report sets out what young women told us about the challenges they face, including sexual harassment and blame and lad culture, and provides new insights into the underlying attitudes which can be found in our society which may explain why progress on gender equality is so slow.

11. Sexual harassment and lad culture came up in every workshop with the majority of participants having experienced harassment or intimidation. Participants spoke about harassment as “everyday”, with the most frequently cited experiences being examples of unwanted sexual advances in public situations, such as in bars or parks, at school, or at work. Participants said if they did not manage the situation they knew saying “no” would not work and would lead to them being called a “slag” or “bitch” or could escalate into violence.

12. The qualitative and quantitative data presented here demonstrates categorically that sexual harassment in the workplace is pervasive. Action must be taken to curb this scourge.

Who are the perpetrators?

13. According to the TUC/Everyday Sexism report, the vast majority of perpetrators of sexual harassment are male colleagues, with 20% being either a direct manager or someone who had direct authority over the victim.7

14. Data from the TUC survey shows that the majority of those who suffer sexual harassment in the workplace do not report it, and of those who do, only 7% said it was dealt with satisfactorily. This demonstrates that there is a dual problem – lack of reporting, and lack of proper follow up by the employers. Employers must therefore ensure that proper reporting procedures are in place and that complaints are taken seriously and properly investigated.

7 TUC/Everyday Sexism (2016), Ibid.
15. However, women working in retail, hospitality, healthcare, care, transport, and many other sectors deal with clients, patients, and customers on a daily basis and currently have little protection from their employer when facing harassment. Third party harassment is also relevant where services or functions have been contracted out, where employees are working alongside others who have a different employer.

16. Earlier this year, a Financial Times (FT) investigation into the now notorious ‘Presidents Club’ charity dinner shed light on the prevalence of third party sexual harassment, and how little legal protection workers have in this situation.\(^8\) The dinner was a men-only event and the FT reported that 130 employees were hired as ‘hostesses’, where the women were told to “wear skimpy black outfits with matching underwear and heels”. According to reports, some of the women were groped, sexually harassed, and propositioned, with some men “repeatedly putting hands up their skirts” and exposing themselves.

17. The case of *Burton v De Vere Hotels Ltd*\(^9\) involved two black waitresses clearing tables in the banqueting hall of a hotel, who were made the butt of racist and sexist jokes by a guest speaker entertaining the assembled all-male company at a private dinner. This case in particular demonstrates how sexual harassment can be intersectional in nature, with sexual harassment sometimes coinciding with racist or ableist discrimination. The case was decided in favour of the women, with the employer found to be responsible for harassment from third parties. This precedent was later reversed by the House of Lords in *Pearce v Governing Body of Mayfield Secondary School*.\(^10\)

18. As a result, section 40 was added to the Equality Act 2010, which provides for protection against third party harassment. However, section 20 was repealed by the Enterprise and Regulatory Reform Act 2013 following the Coalition Government’s “Red Tape Challenge”.

19. Some have argued that this provision is unnecessary, as section 26 of the Equality Act could be interpreted as covering third party harassment.\(^11\) However, there are conflicting Employment Appeal Tribunal decisions on this point.\(^12\) The differing interpretations of this provision means individuals cannot rely with certainty on section 26 to protect them against third party sexual harassment.

20. We therefore think that section 40 should be reintroduced, with one amendment. Under section 40, as originally drafted, an employer can be found to be responsible for third party harassment if they know of two previous incidents of harassment and have failed to take “reasonably practicable” steps to prevent the third party from harassing employees. However, we think that a single incident of harassment should be sufficient to require action from an employer.

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\(^8\) Marriage, M. (2018). ‘Men Only: Inside the charity fundraiser where hostesses are put on show.’ [https://www.ft.com/content/075d679e-0033-11e8-9650-9c0ad2d7c5b5](https://www.ft.com/content/075d679e-0033-11e8-9650-9c0ad2d7c5b5)

\(^9\) [1996] IRLR 596

\(^10\) [2003] UKHL 34


21. We understand that some provisions may need to be made to limit an employer’s liability in certain circumstances, such for those who work with people with severe mental health problems or cognitive disabilities, vulnerable children, or prisoners.

**Gender norms and stereotypes**

22. The prevalence of sexual harassment is in part due to persistent attitudes of blame towards women amongst a large minority in society, placing the responsibility with victims/survivors rather than the perpetrator. Data from a representative nationwide survey of over 8,000 individuals reported in Fawcett's *Sounds Familiar?* report asked respondents “if a women goes out late at night, wearing a short skirt, gets drunk, and is then the victim of a sexual assault, is she totally or partly to blame?” 13% 38% of all men and 34% of all women said that she is.

23. Older women (aged over 65) were particularly likely to blame her, with 55% of women aged over 65 saying she is totally (5%) or partly (50%) to blame compared to 48% of older men. 30% of women aged 18-34 and 40% of young men agree. 14% of men aged 18-34 say she is "totally to blame”.

24. This is not the majority view, with 70% of young women and 59% of young men saying a woman in that situation is “never to blame”. But the view that women are partly or totally to blame if they are sexually assaulted is held by a large and stubborn minority in society, it is not changing fast between generations, and it feeds the hostility and legitimises the harassment that young women in particular face.

25. These findings suggest that younger generations of men are polarised. The majority want equality for women and recognise the need for change, and are more likely than older men to hold progressive views. However, a significant minority are hostile to the idea of change. It shows us where young men can be allies for change, but also why we must address the underlying causes of sexism, discrimination and harassment.

26. It is essential that sexual harassment is tackled at its root through good quality Relationships and Sex Education (RSE), with dedicated time in the curriculum and high quality teacher training.

27. RSE must include teaching on gender stereotypes, such as boys as tough and non-emotional, girls as submissive and quiet, and norms against cross-gender friendships. Airing and deconstructing those stereotypes, alongside those connected with intersecting identities such as race/ethnicity, sexuality, disability, trans- and others, is vital in providing a grounding for the rest of the curriculum.

28. We would specifically want to see objectification broached, to open up discussion around how society and the media portray women as lacking in agency. We would also want to see discussion of how gender stereotypes are used to justify violence against women and girls (VAWG), as well as violence committed on the basis of other identities. We would want to include a discussion of VAWG, including DV, rape and sexual abuse, the impact they have, and how they are sometimes justified/victim blaming. It should make clear the impact of ‘lad culture’ and how everyday harassment creates an environment in which more severe forms of VAWG are normalised or enabled. It is vital that young people are taught that actions

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online including abuse and the use of sexist language have an impact just as they do offline, both in terms of impact on victims and in terms of legal ramifications.

29. Sexual consent must be addressed within the curriculum, in the context of what healthy relationships look like, and ideally with a positive focus on an ongoing process of consent – simply teaching “no means no” is not good enough.

**Duties on private companies**

30. Sexual harassment and sex discrimination are bad for business, and it is clear that their incidence is worryingly high. Promoting equality can no longer solely be the responsibility of the public sector.

31. The Public Sector Equality Duty under section 149 of the Equality Act obliges only public bodies and authorities to take steps to eliminate discrimination and harassment, advance equality of opportunity, and foster good relations between people with particular protected characteristics. Given the prevalence of sexual harassment in the workplace, the time has come to require larger organisations in the private sector to also take steps in their employment practices to prevent discrimination and harassment.14

32. The new duty should require organisations with 250 or more staff to publish a diversity and inclusion review of their workplace every three years. Organisations should also be required to report on their action plan to prevent discrimination and harassment and promote equality. Gender pay gap reporting similarly requires large employers to publish their gender pay gaps and adviseably, to have an action plan in place to address it. This new legal requirement would build on gender pay gap reporting and form part of an employer’s strategy for promoting gender equality in their workplace. For public sector employers it would be consistent with public sector duty requirements.

**Access to Justice**

33. The pursuit of equality is significantly undermined by the lack of access to justice; legal rights that cannot be exercised become devalued, ignored and seen as merely theoretical. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) removed many areas of civil law from the scope of legal aid, such as employment, meaning sexual harassment claims are no longer eligible for legal aid. The changes were meant to save £450 million per year15 but have saved almost twice that.16

34. This has led to those who cannot afford representation representing themselves. In a 2015 inquiry, the House of Commons Justice Select Committee found that there had been a rise in the number of litigants in person (litigants who are not represented by a solicitor or

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barrister) since the introduction of LASPO. The Committee also found that litigants in person are increasingly people who are least able to effectively represent themselves. They are therefore being denied effective legal representation. Among other key areas outside the scope of this inquiry, legal aid must be restored to cover employment cases, including sexual harassment cases.

35. Additionally, Employment Tribunals should regain the power to make wider recommendations to improve workplace practices in relation to discrimination claims. Section 124 of the Equality Act 2010 gave Employment Tribunals the power to make recommendations to benefit the wider workforce, not just the individual claimant. However, this provision was removed by the Deregulation Act 2015. Section 124 should be reinstated.

Summary

36. Evidence presented here shows that sexual harassment is pervasive, usually committed by male colleagues, but can also be committed by third parties for which employees enjoy very limited protection against. Sexual harassment is usually not reported, and is rarely dealt with in a satisfactory manner when it is.

37. It is therefore essential that section 40 of the Equality Act is reintroduced and amended to require employers to take action after one incident of sexual harassment rather than two. This would protect workers against third party sexual harassment.

38. Sexual harassment must also be tackled at its root, via good quality statutory RSE. We want to see RSE address gender norms and stereotypes, VAWG, consent, and sexual harassment.

39. The time has also come for large private employers to be required to publish a diversity and inclusion review of their workplace every three years and report on their action plan to prevent discrimination and harassment and promote equality.

40. Finally, legal aid for employment cases must be restored and section 124 of the Equality Act must be reinstated, giving them back the power to make recommendations to benefit the wider workforce, not just the individual claimant, in discrimination cases.

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