Written submission from Andrew Shepherd (SHW0074)

Executive Summary

- Introduction about greater public awareness surrounding sexual harassment since Autumn 2017.
- Suggestion for a change in the law to protect the groups most vulnerable to sexual harassment in the workplace.
- Explanation as to why certain groups are more vulnerable to sexual harassment and indicators which illustrate how widespread the problem is in the workplace.
- A list of criteria that define the degree of seriousness of investigated sexual harassment cases.
- Discussion about the negative consequences of a continued failure to properly challenge and punish sexual harassment in the workplace, in particular on mental health and economic output.
- A more detailed recommendation for an amendment to existing legislation and potential additional legislative changes to protect the most vulnerable groups.
- Additional suggestion to enhance the regulatory structure to further monitor anti-harassment codes of conduct.
- A brief overview of how the criminal justice system could become more sensitive toward sexual harassment cases.
- Suggestion for more intelligent and sophisticated sex education in schools, colleges and universities, and anti-harassment training in the world of work.
- General conclusion regarding the need for change; to go further to protect the most vulnerable groups from sexual harassment in the workplace, education, civil organizations and the voluntary sector.

Personal introduction

1. My name is Andrew Shepherd and I am 42 years old. I have a Batchelor of Arts degree in politics from the University of York and I am currently employed by Royal Mail. My sister works in a managerial position and may have to deal with sexual harassment issues and cases in the future. I am concerned that there are particular groups who are more vulnerable to sexual harassment in the workplace and I believe they require extra protection in the eyes of the law. I am convinced a change in the law would help to deter further sexual harassment and promote gender equality and respect in the workplace. Also, it would help to reduce the negative effects that sexual harassment have on mental health and personal ambition, and the wider economy and health system.

Written submission

2. I would like to comment and make suggestions for change in moving ahead regarding the recently publicised issue of sexual harassment. It is a positive development that there is now greater public awareness about this issue. I would provisionally suggest that society is gradually becoming more civilised and less sexist, now that victims are slowly finding it easier to be able to have their say and alleged perpetrators are more likely to be held to account through codes of conduct, the media and the law. With the result that the accused are either found guilty and then disciplined or sentenced;
or on the other side found innocent and then cleared and exonerated. Yet there are probably many individuals who have been harassed and feel unable or incapable to report it and suffer in silence.

3. Although it is important to also recognise that some allegations may be exaggerated, taken out of context or false due to misinformation or vindictiveness, which can lead to profound distress and embarrassment for the accused. Furthermore, common sense should prevail, where physical contact has been alleged on a misunderstood or over-dramatised ‘one-of’ basis from many years ago.

4. However it does appear the problem is more widespread from many walks of life, than originally thought, as indicated by surveys conducted by pollsters, firms and broadsheet newspapers. This needs to be addressed as reflected by the number of female contributors sharing their grievances and irritation through the #metoo Twitter hashtag which has become influential across online social media. This viewpoint is supported by ‘Time’ magazine’s announcement that their Person of the Year 2017 title would be awarded not to the rich and powerful, but to the silence breakers. These are ordinary people and celebrities who have bravely whistleblown about harassment in the workplace and public life over the past few months. Some informed commentators argue that UK society has regressed from the egalitarian ideals of 1970s anti-discrimination legislation due to a culture of reactionary chauvinism, and a media and entertainment industry which has normalised and glorified over-sexualised images and contexts.

5. I think it is important to make the distinction between cases of harassment, which institutions and society should be taking more seriously now and in the future, and some incidents of sexual assault or sexual abuse, which sometimes have been categorised under the umbrella of harassment, but should be treated as a more grievous illegal offence and subject to serious criminal prosecution. Another point to recognise is that although the majority of sexual harassment is heterosexual, there are also some cases of adult homosexual harassment.

6. Debating the problem of workplace sexual harassment helps to publicise the issue but if this does not result in more permanent legislative and/or regulatory change then it could become fruitless. I think the recent controversy should be treated as an opportunity to push for a change in the law. This would help to reinforce and supplement existing anti-harassment laws and employers’ disciplinary codes of conduct, and provide a stronger legal framework for places of work where these are invariably overlooked.

7. In particular I believe that young women of the 18 to 30 year old age bracket and 16 to 18 year old teenagers need and deserve special protection in the eyes of the law against sexual harassment in the workplace, education, civil organisations and charities. Young women are less likely to have the confidence, experience and worldliness to rebuke inappropriate advances or comments. And they are more likely to be traumatised and less able to cope in these situations than a more mature female worker or career woman would feel and act. Also young women are more likely to occupy positions more vulnerable to potential harassment, such as apprenticeships, internships, office secretarial and reception roles, or waitressing and bar work, for instance from a sleazy boss or forward customers. The way of the world as it is, some men are more attracted to young women, which may only amount to a brief, harmless flirtation, but in some cases, could lead to sinister, unwanted advances.
8. The following statistics illustrate how widespread the problem of sexual harassment in the workplace is. Research carried out on behalf of the Trades Union Congress in 2016 by pollsters YouGov has revealed that more than half of women claim they have been sexually harassed at some point during their working lives. Women aged 18 to 24, and women who worked in manufacturing, hospitality or leisure were more likely to complain of sexual harassment in the workplace than the average. Of those women that complained, 54% said the perpetrator was a colleague and 17% pointed the finger at a manager or supervisor. The YouGov poll found that 28% of women surveyed experienced sexual comments, 23% unwanted touching, 20% unwanted verbal sexual advances, 12% sexual assault (such as groping and kissing) and 1% had sadly been the victim of a serious sexual assault or rape. Another study by the law firm Slater and Gordon found that around 60% of women canvassed claimed a male colleague had behaved ‘inappropriately’ toward them. And almost 25% of women surveyed said a senior colleague had made a pass at them. A survey by the Daily Telegraph uncovered similar statistical patterns around the problem of sexual harassment in the workplace.

9. Young women should have the right to go to work each day without having to worry about persistent harassment. I am of the view that those found guilty of harassing young women should be subject to tougher civil and criminal penalties depending on the frequency and severity of the harassment. This would emphasise that the criminal justice system would treat such behaviours more seriously and therefore help to act as a deterrent against future abuse. Also it would underline the fact that young women need and deserve special protection and justice in the eyes of the law against sexual harassment in the workplace. Furthermore to recognise, that in the past, the weakest and youngest of those abused were more likely to have their voices ignored and that they should be heard, respected and given justice from now on. Some women find it difficult or impossible to report maltreatment from a harasser due to feelings of embarrassment and/or inadequacy, or the workplace dynamics of intimidation and/or bullying. According to the survey by Slater and Gordon, only 27% of women polled felt confident enough to officially report an incident of workplace harassment. Greater sensitivity and confidentiality in anti-harassment procedures are probably required to help resolve this impasse.

10. There are several criteria which law enforcers and administrators probably use and/or could consider using to determine the frequency and severity of sexual harassment in the workplace. First, the harassment may be direct, such as specific personal comments or physical contact, or indirect such as general remarks or comments made in passing. Second, the harassment might be on a regular basis – in other words persistent, unwanted flirtations or advances which become annoying, tiresome and uncomfortable for the victim – or irregular – occasional harassment sparked by specific circumstances. Third, the harassment could be premeditated – in other words pre-planned which is more likely to be manipulative and/or sinister – or spontaneous, an indiscreet faux pas in the heat of the moment. Fourth, and arguably the most important criterion, is whether the harassment is malicious – intentionally vindictive and/or nasty – or light-hearted but leading to unintentional distress. Judging an incident of sexual harassment on these scales, help to provide clarity as to whether it should be classed as severe, moderate or minor.

11. Left unchallenged and untreated, long term sexual harassment can lead to mental health problems which are particularly unpleasant and debilitating for the victim and are placing an additional burden on the National Health Service. In more serious cases, harassment victims can start to self-harm or even develop suicidal tendencies which may lead to tragic consequences. The
website twiningenterprise.org.uk refers to a recent Danish study which revealed “that employees who were sexually harassed by supervisors, colleagues or subordinates in the workplace may develop more severe symptoms of depression...”. Carol Landau, clinical professor of psychiatry and human behaviour and medicine at the Warren Alpert Medical School at Brown University highlights one conclusion of a summit of the American Psychological Association, that sexual harassment was a significant cause of the 2 to 1 gender difference ratio of women being diagnosed with depression. Sexual harassment in the workplace and “(its) impact on employee mental health are serious concerns for employers to tackle, especially as many do not report their experiences and the impacts can be far wider reaching than just depression, ranging from lost working days to suicide attempts” reflects the website twiningenterprise.org.uk.

12. Sexual harassment in the workplace is detrimental to the economy, because some female workers’ productivity can be undermined if they are victims, due to the mental strain from unwanted advances. Sometimes some women feel they have no alternative other than to resign from their job in order to be able to escape a harasser. This is a considerable setback to the lady’s career and earnings and means their skills and talents are lost by their employer and also a loss possibly to the wider business world. An example of the financial cost of sexual harassment in the workplace borne by a company is the fact that 21st Century Fox in the United States paid $45 million in the first quarter of 2017 to settle allegations of sexual harassment. The ongoing economic cost in the UK surrounding sexual harassment at work inevitably runs into billions of pounds due to its detrimental effects on individual performance and team cooperation and absenteeism, etc.

13. The Confederation of British Industry and Trades Union Congress have policies on anti-harassment grievance procedures and they speak openly about finding solutions to the sexual harassment problem, but perhaps they could do more. The Director General of the CBI, Carolyn Fairbairn, has said:

“Businesses take the treatment and welfare of their employees very seriously.
But sexual harassment is often hidden and can take many forms. It takes committee leadership to ensure the workplace is free from sexual harassment.”

The CBI has recommended clear and confidential anti-harassment reporting procedures and codes of conduct to challenge these inappropriate behaviours. It also promotes greater diversity and inclusiveness across the UK workforce together with a better supportive culture to reduce the prevalence of sexual harassment in the workplace. The trade union, Unison, has fought a campaign to overturn employment tribunal fees introduced by the Cameron Clegg coalition government. This resulted in a ruling in the UK supreme court in July 2017 which decided that the fees were excessive and an unconstitutional denial of access to justice and deemed an undermining of the rule of law. This legal victory for Unison has hopefully achieved affordable public access to employment tribunals to help settle amongst other workplace disputes, harassment allegations.

14. I should mention I have some interest regarding this issue, because my younger sister has a managerial career working for an auditing company. She has had to sort out problems involving managing other members of staff but fortunately as far as I am aware not had to deal with sexual harassment in the workplace issues. I have experienced some verbal rudeness and sarcastic comments in my workplace, which it could be argued amount to borderline verbal harassment, so I know how this can feel uncomfortable.
15. I have read a report on the BBC News website which helps to explain the current legal situation regarding sexual harassment that is not specifically a criminal offence in itself. However the inappropriate and unwanted behaviours and communications which amount to sexual harassment can be outlawed by various legislation. These laws include various postwar Sexual Offences Acts, the Protection from Harassment Act 1997 and the Malicious Communications Act 1998. I have read that the Sex Discrimination Act 1975 was modified to establish sexual harassment as a form of discrimination in 1986. This along with other anti-discrimination legislation has been incorporated into the Equality Act 2010 which legally protects people from discrimination in the workplace and in wider society. The Equality Act defines sexual harassment as an ‘unwanted conduct of a sexual nature which is disrespectful to an individual’s dignity or ‘creates an intimidating, hostile, degrading or offensive environment’. Allegations and investigations into cases of historic harassment carried out before October 2010 are supposed to be covered by anti-discrimination legislation older than the Equality Act 2010.

16. Although the Equality Act is supposed to legally protect, amongst other things, anyone being sexually harassed in the workplace, maybe this Act of Parliament could be modified to recognise the vulnerability of particular groups to being harassed and specially defend and empower them. An amendment to the Equality Act 2010 to provide special legal protection for 18 to 30 year old women and 16 to 18 year old teenagers against sexual, physical or verbal harassment in the workplace, education and civil and voluntary organisations I believe is justified. Those found guilty of harassment under these circumstances would then be subject to tougher penalties. I think that a specific legal amendment to protect young women in the workplace would be more effective than a further zero tolerance pronouncement against harassment, whose benefit would be diluted by its generality and replication within existing legislation and disciplinary codes. I realise that a legal alteration would take time to manufacture, debate and pass as law, but it would be worth it in the long term to condemn sexual harassment against young women as a social wrong.

17. Some informed commentators believe that misogynistic behaviours should be formally criminalised as a hate crime. If there was agreement to make this a law, then all of the associated negative behaviours bound up in sexual harassment in the workplace would be deemed illegal and morally dubious.

18. Another suggestion to protect older teenagers from harassment and abuse, which deserves consideration, is to raise the age of consent to 17 or 18. After all, judging by different British economic and social criteria, adulthood has not been reached by the individual until they are at least 18 years old. This could help to dissuade unwanted advances from older men who should know better. Also it would help to protect teenagers who are psychologically vulnerable going through adolescence and are not yet fully responsibly able to protect themselves.

19. I have learnt there is a European Union directive on the definition and prohibition of sexual harassment from 2002 and a Council of Europe Convention designed to condemn and resolve violence against women signed in 2011. These institutional safeguards may help as a guide to British lawmakers whilst the UK is still technically a member of the European Union and even after the completion of Brexit.

20. Perhaps an alternative to a legal change would be for a public body or a number of public bodies to monitor and help to regulate the effectiveness of employers’ disciplinary codes of conduct and
non-disclosure agreements and employment tribunals in issues and disputes over harassment allegations and cases against younger women across the British economy and society. Employers’ codes of conduct and employment tribunals have a judicial, compensatory and educative role which probably require better overseeing to maintain their fairness and authority. The advantages of new regulation would be to make existing disciplinary structures and legal redress hopefully work better without resorting to the potentially laborious process of an underlying change to the law. However I think the original legislative option would probably be more preferable in the long term, as it would be more practicable, less ambiguous, more permanent and enshrined in law. Or maybe a legislative change and a regulatory change could both be achieved without being contradictory and antagonistic against each other. If a change in the law regarding sexual harassment against younger women could be achieved maybe its enforceability and related issues could be overseen by an independent counsel. Maybe more emphasis should be placed in increasing the public awareness regarding non-disclosure agreements (NDAs) and out of court settlements, which resolve harassment disputes, to help avoid the stressfulness of confrontation in employment tribunals and court actions. And also perhaps steps could be taken at an institutional level to improve the fairness of NDAs for both sides.

21. A change in the law regarding sexual harassment in the workplace could help to reform the culture of the justice system to go further to protect the anonymity and interests of harassment victims in the courts and tribunals. It is also important to reaffirm that the anonymity of the accused must be respected until a verdict is reached, to spare individuals from unfair damage to their reputation and resulting distress. Furthermore every verdict reached in courts and tribunals should not be influenced by political correctness or contemporary culture through these institutions maintaining their independence.

22. Another area where change could be considered is in the education system. Teaching good social manners and how to treat women and girls in particular with reasonable respect should be included in the personal and social education curriculum for school children and college goers. Students need to be taught to be critical and sensitive toward biased and exploitative public images of women in the fashion and pop industries and elsewhere. This combined with employers’ in-house training schemes and focus groups which help to re-educate attitudes and approaches toward occupational harassment, and governmental encouragement for workplaces to adopt these schemes where they are not yet present, will help to make a difference.

23. One other area which requires further parliamentary and governmental investigation, related to your committee’s inquiries, is the sexual harassment and cyber-bullying conducted by online trolls through social media and e-mail. This specifically relates to sexual harassment in the workplace due to examples of harassers abusing office email, corporate email and/or firms’ social media accounts to bully their victims. It should not be overlooked that abusive messages can also be communicated by telephone at work or at home. The problem of policing the abusive aspects of the internet is a big one and will need detailed agreement and co-operation at an international level to work properly. However as some UK politicians have suffered as victims of the disgusting and cowardly online abuse perpetrated by social media trolls, maybe Parliament, having a direct interest in this, will try to go further to help curb this problem.
24. I appreciate that the Women and Equalities Select Committee is determined and methodical to
discuss and analyse the issue of sexual harassment in detail and equality issues as well, reflected by
previous inquiries and hearings. Specifically this is demonstrated by the wide range of professionals
and experts your committee have invited to speak on this issue already, such as the Managing
Director of People and Infrastructure at the CBI and the General Secretary of the actors’ guild,
Equity. I am confident that your committee will be more committed to debate and intervene to push
for parliamentary and governmental action on the issue of sexual harassment in the workplace
ahead of other organisations and individuals.

Conclusion

25. I should emphasise in reiteration that young women are worthy of special legal protection
against sexual harassment in the workplace, education, civil organisations and the voluntary sector.
This is because of their vulnerability in this regard due to their likelihood to hold junior occupational
and organizational positions, lack of worldliness, lack of confidence and experience, and being at
increased risk from attracting male attention. The preponderance of these risk factors are reflected
in the sizeable number of young women reporting sexual harassment at work in surveys. When
young women feel safer and more comfortable at work and in other aspects of public life, it will help
to make British society healthier, fairer and more equal, and allow the UK economy to become more
productive and efficient.

26. One of the fundamental points regarding an argument concerning sexual harassment in the
workplace, is less about splitting hairs as to what constitutes contemporary or historic harassment,
but more going further, going a lot further, to defend vulnerable women and some gay men from
the fear of persistent and intimidating sexual harassment in a workplace or other familiar setting
orchestrated by individuals who are more powerful and manipulative than them. Any reform to
improve the respect shown toward young women in the workplace and public life would be
welcomed, through additional, more targeted grievance procedures and socio-cultural education, be
it modest and incremental or somewhat more ambitious. However the time may be right, if possible,
to seize the moment and demand more radical legislative change against sexual harassment in the
workplace. If a change to the law and/or improvement in the regulatory structure could be achieved,
then something more long lasting and worthwhile will have positively developed out of the recent
media storm.

I would feel pleased if my written submission could help to make a positive difference on the issue
concerned.

May 2018