Executive Summary

We welcome the opportunity to provide additional evidence to the Women and Equalities Committee’s sexual harassment in the workplace inquiry on:

- details of any work that the EHRC has undertaken specifically on sexual harassment (rather than harassment and bullying more generally) since it came into force, including research, enforcement, monitoring and investigation
- an update on the EHRC’s work with regulators or other public bodies specifically on sexual harassment

Since its inception in 2007, the Commission has taken a range of action on sexual harassment. Before the Me Too movement revealed pervasive sexual harassment across a range of sectors, we dealt reactively with referrals for legal assistance and compliance, addressed legislative and policy issues and looked at sexual harassment in the context of our Financial Services Inquiry and Metropolitan Police Investigation.

When the Me Too movement began, we responded quickly to increase our focus on the issue and use the full range of the Commission’s power to tackle the problem. We published our recent report and recommendations, guidance for employers and we are undertaking intensive engagement with regulators and inspectorates. We have adopted a proactive enforcement strategy to identify legal cases we can fund and organisations where enforcement action may be appropriate.

Our work on sexual harassment in the workplace, detailed below, sits alongside the Commission’s other work programmes relating to employment. Our activity in areas such as pregnancy and maternity discrimination, bias in recruitment and selection, women on boards and the gender pay gap, like our work on sexual harassment, is focused on achieving workplaces where everyone including women can flourish and fulfil their potential.

Details of the work undertaken on sexual harassment since October 2007

Enforcement action

1. The Commission defines ‘enforcement action’ as any use by the Commission of the range of statutory powers including
   - investigations
   - inquiries
   - unlawful act notices
   - agreements
   - public sector duty assessments

2. The Commission’s current Compliance and Enforcement Policy commits us to encouraging compliance before we take any steps towards formal enforcement action. We undertake a substantial volume of compliance activity which usually
leads to a positive resolution without any need for the Commission to invoke its statutory powers.

3. The Commission may take compliance and enforcement action based on complaints from individuals and civil society organisations, information received from our work with other regulators, research or other sources of intelligence.

4. In all cases we will take into account the wider public benefit of any action, including value for money, and whether such action would accord with the published priorities in our current annual Business Plan.

5. Since 2012 the Commission has used a system of Legal Allocation Meetings which deal with allocation of all tasks and issues that may require consideration by the Commission’s legal team. This includes external enquiries or issues that may lead to regulatory, enforcement or litigation activity. Following initial assessment, allocated matters may be addressed as a compliance or enforcement matter, provided with litigation funding, signposted elsewhere, or closed on the basis that the matter cannot be appropriately addressed by use of our powers.

6. Before 2012 the systems used to log these issues do not allow for easy extraction of data.

7. Analysis of referrals to the Legal Allocation meetings show that:

   - In 2012 - of a total of 87 referrals, there were none relating to sexual harassment

   - In 2013 – of a total of 377 referrals, there was 1 relating to sexual harassment. We approved a request to fund an Employment Appeal Tribunal (EAT) case relating to sexual harassment which occurred prior to employment, between the claimant’s interview and actual start date. The case appealed an Employment Tribunal decision that it did not have jurisdiction to hear certain allegations of sexual harassment as they occurred before the claimant’s employment with the Respondent officially commenced. The EAT decided that pre-employment sexual harassment of the person was covered by the Act.

   - In 2014 - of 241 referrals there were none relating to sexual harassment.

   - In 2015 – of 324 referrals there was 1 relating to sexual harassment. A request was approved to fund a case relating to a university’s policy on how to handle complaints of sexual harassment.

   - In 2016 – of 273 referrals there was 1 relating to sexual harassment. The Commission wrote to an organisation which lost a sexual harassment case to ensure that the Employment Tribunal’s recommendation had been complied with.
• In 2017 – of 340 referrals there were 2 cases relating to sexual harassment.

  - We turned down a request for s.28 funding for a sexual harassment case by a male research fellow against a university as the request primarily related to the employment status of research fellows rather than any novel sexual harassment issues. Counsel was asked to inform us of the outcome of the case in order to assess whether our enforcement powers may be more appropriate.
  - We turned down a request for s.28 funding for a claim concerning constructive unfair dismissal, sexual harassment, sex discrimination and victimisation. This case would not have had a strategic impact as it was likely to settle due to the wealth of the respondent and, whilst against a high profile individual, we would not have been able to publicise our involvement due to the use of restricted reporting orders.

• 2018 – of 141 referrals to date, there have been 6 relating to sexual harassment.

  - We wrote to a law firm regarding the allegation that a non-disclosure agreement had been inappropriately used in relation to an allegation of sexual harassment. We are arranging a meeting with them to discuss the independent review that they have commissioned.
  - We have been in correspondence with Artista, the agency that provided hostess staff for the 2017 President’s Club Dinner and have recently met with Artista and their lawyers to discuss next steps.
  - Funding was agreed for a sexual harassment employment tribunal claim against a company in the financial sector, which has now settled. This case met the criteria within our strategic litigation policy as it highlighted the lack of interim relief available to women who have been sexually harassed, and aligned with our recommendations to introduce such relief.
  - We have assessed whether to conduct a s20 investigation in relation to a complaint of victimisation by a university employee who states that she was disciplined because she raised a complaint of sexual harassment against a colleague. A recommendation for action will go before our next prioritisation group meeting.
  - We assessed two further sexual harassment cases for legal assistance/funding under s28 but they did not meet the criteria for funding under our strategic litigation policy. They were first instance cases which would not therefore set a precedent and all were unlikely to proceed to an appellate level where they might do so as they did not deal with novel points of law. In addition, the prospects of success in the first case were felt to be low as the Claimant had, on the face of it been treated in the same manner as a male colleague who was the subject of the same disciplinary charges as her. Also, the claimant admitted some of the disciplinary charges against her but felt the sanctions was too harsh. News coverage to date had been salacious, concentrating on a consensual sexual relationship between the claimant and the male colleague who had been subject to the same disciplinary charges. We felt this would limit our ability to focus any
media coverage on the right aspects of the case. In the second, the enquirer’s concern appeared to be with the wages owed to her rather than sexual harassment itself.

8. In addition to responding to requests for assistance, we proactively monitor and follow up relevant Employment Tribunal (ET) decisions. Follow up from an ET case involving a male employee being sexually harassed by a male supervisor resulted in the Commission signing a s.23 agreement with Done Bros (Betfred). The agreement was signed in 2014 and ended in 2015. As a result of the agreement, Betfred have undertaken a full review of management practice in handling grievances and disciplinary proceedings. The retail senior management team have participated in equality and diversity training and attended a bullying and harassment webinar. Specific diversity training has been rolled out throughout its organisation and it has conducted classroom or webinar training for all recruiters on recruitment practices, including the use of their new structured interview and shortlisting process. To further raise awareness of rights and responsibilities under the Equality Act 2010, and to help evaluate their progress, they have also introduced the ‘area team audit’. These audits are completed across all shops and cover retail standards, responsible gambling compliance, security, equality and diversity.

9. In their final report Betfred thanked the Commission for the assistance given in helping them to raise the level of awareness and understanding of this important subject within the company. It maintains that the actions it has taken and measures put in place so far has helped create an environment where the principles of equality and diversity are promoted. It strongly believes that the further steps it will take in the future will enable the organisation to achieve and maintain consistency across its entire retail estate.

10. We are taking compliance action in relation to all employers who have been found liable for sexual harassment in the employment tribunal within the last twelve months, with a view to potentially taking enforcement action to ensure that their employees are better protected against sexual harassment where sufficient remedial action has not been taken, save where it is apparent that enforcement action would not be warranted or effective e.g. where the employer is in administration. From the eight successful sexual harassment claims, we are therefore following up with five of the employers concerned.

11. The Commission has not received and were not aware of the majority of the 92 sexual harassment cases received by the Equality Advisory and Support Service (EASS) between January and April, referred to by the minister in her evidence to the Committee. This may be because they were deemed not to be strategic by EASS. We will now request an overview of these cases and assess whether it would be appropriate to use our enforcement powers in relation to any of them.

Financial Services Inquiry

12. In 2009, the Commission published the report of an inquiry into sex discrimination and the gender pay gap in the finance services sector, undertaken using the
Commission’s power under section 16 of the Equality Act 2006. The inquiry found that women in some of the UK’s leading finance companies receive around 80 per cent less in performance related pay than male colleagues. This disparity is a major factor behind the massive gender pay gap in the finance sector, with far fewer women in senior roles than in other sectors. The Inquiry examined the underlying causes as well as collecting reports of a high level of sexual harassment in the sector, noting that even where good equality policies existed on paper, they did not always translate into good practice. The follow-up report, published in 2011, also focussed on the management of gender inequalities, highlighting the overt sexualising of women with career aspirations, which is commonplace in parts of the sector and making recommendations for change.

Investigation into the Metropolitan Police Service

13. The Commission carried out an investigation into unlawful harassment, discrimination and victimisation of Metropolitan Police Service (MPS) staff who made discrimination complaints. The report was published in September 2016.

14. This investigation was launched in response to concerns about the MPS’s treatment of Black and minority ethnic (BME), female and gay officers. It followed the Central London Employment Tribunal’s findings in the case of Carol Howard v Metropolitan Police Service – that the MPS had discriminated against and victimised Ms Howard in contravention of the Equality Act 2010.

15. The investigation focused on the MPS’s grievance and misconduct procedures. It was carried out under section 20 of the Equality Act 2006, which gives the Commission powers to investigate compliance with equality legislation when it suspects that an unlawful act may have been committed.

16. The investigation received evidence relating to sexual harassment and assault. The sexual assault of two female officers by a male colleague was the focus of a specific section of the investigation report which dealt with learning from mistakes. The section stated:

In order for an organisation to learn and progress it has to first acknowledge where mistakes have been made. When the Commission received evidence about how the MPS had handled complaints of serious sexual assault made by two female officers against a male officer in their team, it raised concerns that in this case mistakes made had not been acknowledged. These cases revealed failures in the way that they were handled by the MPS and they did not follow the SOPs in place at that time. Although the male officer concerned was eventually dismissed for gross misconduct because of these assaults, for a significant period of time after reporting the incidents the women who had been assaulted did not get the support and professional treatment routinely given to members of the public who report sexual assault. For many months, the MPS did not appear to have acknowledged to the women or their representatives that mistakes were made in handling these complaints. During an interview with the Commission one of the women stated that she had written to the Detective Chief Superintendent managing
the DPS at that time asking for his reassurance that this would never be allowed to happen again. She states that she never received a reply to her request. The Detective Chief Superintendent retired shortly afterwards. It is notable that during our investigation the MPS’s initial response in relation to these cases was to defend their behaviour, rather than accepting that mistakes were made and identifying learning. The MPS had asserted that because a live civil action case regarding this complaint was taking place at the time of our investigation this had prevented them from acknowledging any mistakes that may or may not have been made regarding the handling of these two cases.

The MPS have since provided the Commission with evidence from other cases of sexual assault by MPS personnel on MPS personnel where the correct process and policies had been followed. They also initiated an independent review of the handling of these cases and just prior to the publication of this report they were able to share with us the recommendations that have been made and implemented following on from the independent review.

17. The Commission is due to meet the Metropolitan Police Service in July for an update on progress.

Guidance

18. In 2017 the Commission produced practical guidance for employers on sexual harassment in the workplace. The guidance, which was updated to incorporate feedback given in WESC evidence in 2018, covers:

- definition and examples of what sexual harassment is
- the responsibilities of an employer
- what a sexual harassment policy should include
- how to put the policy into practice
- how to handle sexual harassment complaints
- criminal behaviour

19. Online guidance for individuals on employment rights, including sexual harassment in the workplace was last updated in 2015. Guidance for higher educational establishments covering sexual harassment and victimisation was developed in 2011 and updated in 2016.

20. The Commission is currently engaged in the early stages of developing a draft Code of Practice on Sexual Harassment in the Workplace, in line with the recommendations contained in our recent report, Turning the tables: ending sexual harassment at work. We expect to have a draft ready for public consultation by Autumn 2018.

Evidence Gathering

21. In December 2017, we asked for evidence from individuals who had experienced sexual harassment at work. We received 750 responses to an online survey. The
aim was not to describe the scale of the problem, but to draw on a wide range of experience to support practical solutions and potential improvements.

22. In December 2017 we also wrote to Britain’s largest employers to gather evidence on:
   - the systems, processes and safeguards in place to prevent workplace sexual harassment
   - any steps taken to ensure that all employees feel able to report instances of sexual harassment
   - specific steps taken to ensure that people who report sexual harassment are not victimised
   - plans to take further steps to prevent and respond to sexual harassment at work in the near future, and
   - examples of good practice.

23. We also shared our guidance on sexual harassment and the law, asking employers to delegate responsibility for ensuring a shared understanding and effective implementation of this guidance to a senior HR representative.

24. We selected large employers across a wide range of sectors (for example, business, government, public and third sectors, and academia), while we also focused on sectors where evidence suggests sexual harassment is more likely to occur, such as those that use younger workers, agency staff, and imbalanced employment power structures such as internships. We received responses from 234 employers. They revealed a picture of inconsistent practice, elements of which highlighted why the experiences described by individuals continue to occur.

25. The evidence from individuals and employers formed the evidence base for our report, *Turning the tables: ending sexual harassment at work*.

**Other activity**

26. The submission to the JCHR highlighted the good practice from Wales of developing workplace policies on VAW – [Domestic abuse: workplace policies and managing and supporting employees](#).

27. It also recommended other interventions that are about the culture shift towards women that ought to prevent sexual harassment, so PSHE, tackling pornography : [EHRC response to JCHR inquiry](#).

28. We facilitated the visit of the UN Special Rapporteur on Violence Against Women in 2015 who adopted many of these recommendations in her report: [Report of the Special Rapporteur visit to UK](#) and we delivered a statement at the UN Human Rights Council welcoming her report.

29. We influence government and parliament to ensure the Equality Act 2010 included the provisions on third party harassment and the power for Employment Tribunal’s to make wider recommendations, which would have benefitted victims
of sexual harassment. We advised against the Government’s decision to repeal these provisions, and have advocated for their reinstatement ever since. We are on the advisory board of Fawcett’s Sex Discrimination Law Review.

**Update on our work with regulators or other public bodies specifically on sexual harassment**

30. The Commission has offered support and guidance to the Charity Commission in relation to their enquiries into the conduct of the Presidents Club Trustees. The Commission has been asked to contribute to their final report and will do so.

31. We wrote to the Gambling Commission regarding media reports of sexual harassment and sex discrimination at the Ice Totally Gaming Conference and met with them in May to discuss this matter. The Gambling Commission are not responsible for regulation of those responsible for the issues highlighted in the news reports, but have nevertheless taken action to ensure that such events are not repeated at next year’s conference.

32. We have engaged with the Bar Standards Board to discuss preventing improper use of non-disclosure agreements. The Bar Standards Board will look at providing barristers with a reminder of how their regulatory obligations impact on the use of NDAs in the short term, and consider providing further guidance in the longer term.

33. We have spoken at training and events with professional organisations, including the British Medical Association.

34. In Scotland, we have engaged with the Scottish government around the policy steps that can be taken in the devolved context.

35. In Wales, we recently ran a series of three events with ACAS, at which we provided participants with an overview of law on sexual harassment and our work in this area. We have also met with relevant ACAS officers to discuss mutually supportive approaches to our respective work on sexual harassment in the workplace.

36. We met officials from the Health and Safety Executive (Head of EU Policy and International Coordination; Violence & Harassment Policy Official; Stress Management Policy Official) to discuss sexual harassment in the workplace and the current approach of the Commission and HSE in this area. As a result of this meeting the HSE have been invited to a roundtable with regulatory bodies, inspectorates and ombudsman the EHRC is holding on the 6th July. We will also be writing to the HSE following the meeting to outline the Commission’s view on the implications of the recent EAT case, *Unite the Union v Nailard*, on protection from third party sexual harassment. The letter will also follow up on other areas covered in the discussion relevant to the HSE’s approach to this issue.

37. The RIO Forum is a group of regulators, inspectorates and ombudsmen with an interest in human rights and equality. It is facilitated by the Commission and meets quarterly to share knowledge and experiences of embedding human rights
into practice. Building on the engagement generated by the Forum we have arranged a roundtable of inspectorates and regulatory bodies which will take place on 6th July. The roundtable will prove an opportunity for relevant bodies to share knowledge and identify areas of potential collaboration, with a specific focus on experience of embedding steps to address sexual harassment at work into regulatory activity and any plans for new work in this area.

38. We met with the clerk of the House of Commons, David Natzler, to discuss what is being done to tackle harassment of House of Commons staff. We will shortly meet Dame Laura Cox as part of her official inquiry. The Commission was also represented on the recent Parliamentary Advisory Group on Sexual Harassment.

June 2018