

Women and Equalities Committee

Oral evidence: [Sexual harassment in the workplace](#),
HC 725

Wednesday 16 May 2018

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[Watch the meeting](#)

Members present: Mrs Maria Miller (Chair); Tonia Antoniazzi; Angela Crawley; Vicky Ford; Eddie Hughes; Jess Phillips; Tulip Siddiq.

Questions 275–366

Witnesses

[I](#): Sue Coe, Principal for Work and Employment, Equality and Human Rights Commission; Elizabeth Prochaska, Legal Director, Equality and Human Rights Commission.

[II](#): Dr Rachel Fenton, Senior Lecturer, Law School, University of Exeter; Kathryn Nawrockyi, Consultant and campaigner on gender inequality, bullying, harassment and sexual misconduct; Yvonne Traynor, Chief Executive Officer, Rape Crisis South London.

Written evidence from witnesses:

- [Equality and Human Rights Commission \(SHW0057\)](#)
- [Equality and Human Rights Commission \(SHW0069\)](#)
- [Rape Crisis England and Wales \(SHW0045\)](#)

Examination of Witnesses

Witnesses: Sue Coe and Elizabeth Prochaska.

Q275 Chair: I would like to welcome our witnesses and those who are watching in the public gallery, online and on television. This is the fourth oral evidence session into our inquiry into sexual harassment in the workplace. Today we will be hearing from two panels of witnesses. First, we have representatives of the Equality and Human Rights Commission to talk about the research the Commission has done on this topic and the recommendations it has made. Later, we will hear from witnesses about how employers should approach culture change to ensure that sexual harassment is prevented as far as possible and, where it does occur, the response is appropriate and victims are supported.

Before we go into questions, it might be helpful for everybody to hear your names and the positions you have in the Equality and Human Rights Commission.

Sue Coe: My name is Sue Coe. I head up employment issues at the Equality and Human Rights Commission.

Elizabeth Prochaska: My name is Elizabeth Prochaska. I am the legal director of the Equality and Human Rights Commission.

Q276 Tulip Siddiq: Thanks very much for coming in. The EHRC was in touch with 234 employers in the course of conducting your recent research. From those conversations, do you think that sexual harassment is being taken seriously by employers?

Sue Coe: The evidence that those employers provided to us was very clear, and we need to remind ourselves that those employers are some of the largest in the country. We wrote to FTSE 100 companies and Russell Group universities. These are large institutions that you would expect to have the most highly developed policies, procedures and practice. What we found was, unfortunately, evidence of paper-based compliance in too many cases. It is not so much about asking whether they take it seriously, but whether they deal with sexual harassment effectively.

We found in response to our questions around victimisation, for example, which is a really key point in terms of dissuading individuals from coming forward, that one in six of those employers had done nothing around tackling victimisation or ensuring people were not victimised. Even of those organisations that had taken action, when we looked at the evidence they provided, it was paper-based. It was words on a policy rather than rounded practice that brought it to life. You could count on the fingers of one hand the number of organisations that had rounded practice where they had taken steps to train, evaluate that training, include steps in induction, track those who had raised complaints to make sure that they were not being victimised and were not blocked in their progression in the organisation. All too often what we saw was either a lack of action or just paper-based compliance.



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Q277 **Tulip Siddiq:** Are those the kinds of results you were expecting, or were you surprised?

Sue Coe: We were surprised at the extent of the organisations that merely pointed to the existence of policies as action that they were taking, because we deliberately asked them not for paper; we asked them what steps they were taking to prevent sexual harassment and what steps they were taking to facilitate reporting, particularly for groups who may face additional barriers such as younger women or agency workers. For example, on agency workers only two of the employers mentioned steps that they had taken to ensure that agency workers felt that they could report sexual harassment. Yes, we were surprised by the real patchiness of the practice.

Q278 **Chair:** Can I ask why you think they are only taking a paper-based compliance approach? That is really quite shocking for the sorts of organisations you are talking about.

Sue Coe: Sexual harassment has been all too often subsumed within wider harassment policies. It has been a part of a sentence on a page of a policy. Where action or training has been done on wider harassment, it has very rarely specifically included that. #MeToo caught people flat-footed.

Q279 **Tulip Siddiq:** You recently published reports and you made recommendations to the Government on sexual harassment in the workplace. The Government have stated that they will not respond directly to the report and described it as your contribution to this inquiry. Are you disappointed that the Government are not responding directly to your recommendations?

Sue Coe: We are disappointed that there has not been a direct response to our recommendations because they were evidence-based, carefully consulted on and presented as a rounded solution to this issue. Although we are keen to contribute to this inquiry, we are the national human rights body and national equality body. We are having some positive conversations, for example around codes of practice, that are encouraging, but yes, we would have liked to see a full response.

Elizabeth Prochaska: We had very positive engagement with a number of Government Departments as we formulated these recommendations and the research, so it was disappointing to us that the final outcome was not more involved, but we are seeing the fruits of that early engagement in conversations about the statutory code. It is not entirely disappointing.

Q280 **Tulip Siddiq:** Since your report was published, the Government have stated that they are looking at all aspects of sexual harassment in the workplace and that they will keep the operation of the legislation under review to ensure that it works as intended. Do you know what this work entails and has the EHRC been asked to contribute in any way?



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Sue Coe: I personally do not know what this work entails and, from a policy side, have not been involved in it. I turn to my legal colleague here.

Elizabeth Prochaska: No.

Q281 **Tulip Siddiq:** You do not know anything about it.

Elizabeth Prochaska: We do not. It is possible that some of our colleagues in the Commission have heard about it but I would have expected it to have been passed on.

Q282 **Tulip Siddiq:** What shape would you like the work to take?

Sue Coe: As I said, our recommendations are based in evidence and are based in consultation with experts in the field. What I would like to see is actions shaped around those three areas that we highlighted, because we feel that an approach that picks on one or two issues in isolation from that broader cultural change, underpinned by strengthened legislation, may be a flawed approach.

Q283 **Tulip Siddiq:** What would you like to see in an ideal world?

Elizabeth Prochaska: I would like to see the adoption of our recommendations in full and that includes those recommendations that relate to data-gathering and so forth right through to legislative change. As Sue says, cherry-picking elements of them—I know there is a lot of focus on NDAs, for example—will not achieve the sort of systemic change that we need to see.

Q284 **Jess Phillips:** One of the recommendations that you would like to see put in place is the introduction of a mandatory duty on employers to protect workers from harassment. The Government has said that existing laws provide protection already for men and women in a working environment. What are the gaps in the protection that you seek to plug with your recommendation?

Elizabeth Prochaska: If I can take a step back and make a general point about the #MeToo movement and what it represents, the essence of the #MeToo movement is really that we should not be expecting individual women to go through and endure a protracted legal process in order to get access to justice in order to remedy a terrible situation at work. What that movement is about is solidarity rather than individual action. In order for us as policy makers and lawyers to pick up on that movement and to really reflect back the cultural change that is happening in society, we need to recognise that this is not about individual remedies.

We have made recommendations around improvements, around filling some of the gaps in the law in relation to individual remedies, but the point of the mandatory duty is to lift that crushing burden off the individual and instead to say that we expect employers to put in place



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those protective measures to ensure that women do not have to end up seeking an individual remedy in the courts in the first place.

Yes, there are improvements to the existing law. We could make some changes to the whistleblowing regime and so forth, but fundamentally the reason we are so keen and passionate about this mandatory duty is that it shifts the focus away from individuals. It does not say that we are expecting women to go through those processes in order to sort things out; it says that it is up to employers to take steps in the first place.

Addressing your question, the current law is insufficient in a number of respects. At the moment, it is a defence for an employer facing a sexual harassment claim to show that they have taken reasonable steps to protect the person from harassment. Of course, they only use that defence once the claim has been brought. Really, that does not create the culture of protection that we would like to see. In that regard, the law on sexual harassment is insufficient.

I know that witnesses here have given evidence about health and safety law. The thresholds for that are relatively high. We are meeting the Health and Safety Executive in early June to discuss its approach to this, but it does not have any current guidance on harassment in the workplace. The guidance that it did produce predates the Equality Act 2010. It is not clear to us that the health and safety approach is really an appropriate one.

In a sense, the same goes for whistleblowing. That is another area that witnesses to the inquiry have focused on. Whistleblowing law is extremely complex. I know you have received evidence from barristers from 11KBW that showed just how complicated whistleblowing provisions are. Again, it does not sit right with the concept of sexual harassment. It is problematic for individual women to see themselves as whistleblowers in that context. Again, it comes too late in the day. In a sense, what we need is that protective measure in place before you get to the point of needing or wanting to whistleblow. The existing law is piecemeal, complex and fundamentally it does not address that need for a protective duty.

Q285 Jess Phillips: What might that look like if you are an employer? In terms of putting all these things in place, is it making sure that there are routes for referral or making sure that people are told as they are going into work, "We have a zero tolerance"? What does it look like? I know each organisation would be different.

Elizabeth Prochaska: Yes. For larger employers, the sorts of employers that Sue referred to earlier, we would expect to see everything from the issue being properly discussed in induction and so forth through to training of managers, anonymous reporting mechanisms, bystander training and so forth. There is a whole host of potential interventions there. We would like to address those in a statutory code. Clearly, in



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dealing with those specific recommendations, it would be very helpful to have that mandatory duty because they would fall out from that.

Q286 **Jess Phillips:** Is there any evidence that the duty would have the desired impact? Are there other duties that have worked?

Elizabeth Prochaska: When you are talking about culture change, the law needs to lead the way in a sense. You need that clear statement of expectation from Parliament. From that, changes in practice can flow. Certainly we know that codes of practice have changed practice. In terms of the Acas code of practice on grievance and disciplinary procedure, there is good evidence that that has changed employer practice. For us, a statutory code of practice on harassment and sexual harassment would be best served by a mandatory duty because that would give it the framework in which those recommendations could be made.

Q287 **Jess Phillips:** You have also recommended reintroducing and strengthening measures that would hold employers liable for third party harassment if they knew that it would be likely to occur. I can think of all sorts of environments where that would be likely to occur. Would there be a need for this provision if the Government introduced a mandatory duty and statutory code of practice?

Elizabeth Prochaska: Yes. They are quite distinct. I do not want to get too technical but a mandatory duty we are not suggesting would give individuals a cause of action themselves. An individual person who had suffered harassment would not be litigating using the mandatory duty. They would not be able to sue their employers using that. If they had experienced third party harassment, they would still need the third party harassment provisions. Clearly, a code of practice can address measures that should be taken to prevent third party harassment and respond to it, but that is not the mechanism that gives people an individual remedy.

Q288 **Chair:** Can I ask why the mandatory duty would not be enforceable by an individual?

Elizabeth Prochaska: The mandatory duty is pre-emptive in the sense that if you were to say that your employer had not taken steps but harassment had not in fact occurred, you would not be seeking damages; there would not be an individualised remedy. In a sense, it does not make sense for a protective duty to be litigated by an individual but the enforcement mechanism that we see is one for the Commission to take on. Currently, in cases of sexual harassment, we cannot use our section 20 enforcement powers—those are our investigative powers—to enforce the Equality Act 2010 unless we suspect that an act of sexual harassment has taken place.

If we were to enforce a mandatory duty to take steps to protect, we would not be concerned with whether or not we could prove ultimately that the act of harassment had occurred. We would be further upstream. We would be saying, "We can see that you as an organisation are simply



not taking any steps to protect your employees. It is a paper-based compliance approach," or whatever it might be. That gives us a much easier route in to enforcement than currently exists.

Q289 Jess Phillips: Presumably it would include something around third party harassment should it be that your organisation was a bar or a pub. The prevention they can do is having standards about kicking people out, et cetera. That would be included.

Elizabeth Prochaska: Yes.

Q290 Eddie Hughes: I think we have touched on part of this. You had recommended that a breach of the duty placed on employers to protect workers from harassment would be an unlawful act. How would you approach enforcement of such a duty and how would this differ from the current enforcement?

Elizabeth Prochaska: If a mandatory duty contained a provision saying that breach of it constituted an unlawful act, that triggers an unlawful act under the 2010 Equality Act. That triggers our enforcement powers under the 2006 Equality Act. We can only bring a section 20 investigation if we suspect an unlawful act. That is a necessity for us just to get an investigation off the ground. That is why we phrased it in that way. That is why it is necessary for the mandatory duty to constitute an unlawful act under the 2010 Equality Act.

Q291 Eddie Hughes: What enforcement action have you taken so far with regard to sexual harassment in the workplace?

Elizabeth Prochaska: We are currently exploring a number of cases. I am not going to give them to you here in public because some of our enforcement activity remains confidential, but I can follow up after the Committee hearing. In broad terms, we are currently looking at about four potential enforcement actions in relation to sexual harassment. That is up from not having looked at any last year. That reflects the fact that more are coming to us now. When I say "enforcement", I do not mean individual cases. We have also looked at funding individual cases on behalf of people who are litigating against their employers. I am talking about potential investigations into sexual harassment at work.

Q292 Eddie Hughes: Four does not seem very many. Would you expect it to have been higher?

Sue Coe: When you say that four does not seem very many for investigations, if you look at the number of section 20 investigations we have conducted over our 10-year history as the Commission, four is quite high. It is not a tool we have used a great deal before. We have used a great deal before. The fact that we have four currently ongoing speaks to the way we are engaging with this.

Elizabeth Prochaska: One of the issues we face as a Commission is that it is hard for us to get our hands on the evidence. Individual victims of



harassment are not coming to us in significant numbers. We have not received very many requests for individual funding, nor have we been given very much evidence about particular organisations where there may be a potential enforcement action.

Q293 **Chair:** Is that because they just do not know you are there?

Elizabeth Prochaska: There is a question about the EAS helpline. This is probably not the forum to talk about it but we do not have a channel into frontline complaints.

Q294 **Chair:** That is a different answer. The question is about awareness of the fact that you do this, not whether or not your telephone line works. We have already had a session on that. Why are people not aware that they should be coming forward to you? Is that not a failure on the part of the EHRC?

Elizabeth Prochaska: I am sure there is more that we can do to improve understanding of our potential powers but it is an evidence question as much as it is an awareness question. People have to be willing to come to us with the evidence of the issue in their workplace. As we know, reporting of sexual harassment is extremely difficult. Of the cases we are looking at, only one of those is based on an individual woman coming to us with a pack of evidence and saying, "This has happened to me and this was my institution's response." The others are based on organisations, stakeholder groups, coming to us. There is a real issue there but that reflects the general problem with reporting of sexual harassment.

Q295 **Eddie Hughes:** How do you envisage working with the Health and Safety Executive and other regulators to ensure that employers take protection action?

Sue Coe: As Elizabeth mentioned, we are meeting the Health and Safety Executive in early June to explore what steps they are taking on this and how we can work together. We have also engaged with the Gambling Commission and the Charity Commission around this. We have a forum within the Commission that engages with regulatory bodies, inspectorates and ombudsmen. We are looking to use that mechanism to bring those bodies together as a whole to look at it in the round and look at how different regulators and inspectorates are engaging with sexual harassment and using their regulatory powers to address it in the fields that they cover.

Q296 **Eddie Hughes:** That is for you to encourage best practice in other people, not for you to end up with more referrals.

Sue Coe: Yes, it is to draw together and understand what is being done across the piece, and see how we can work with partners, whether that is about more referrals coming to us or whether that is about sharing good practice. We are very open to both of those things.



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Q297 **Eddie Hughes:** In discussions so far, do you think the HSE is engaged? Does it see itself as being a strong player in this role?

Sue Coe: We have not managed to meet with the correct officials within HSE to ascertain that. I do not know whether they see themselves as a key regulator in addressing this at the moment.

Q298 **Eddie Hughes:** Sorry to interrupt, but what does, "We have not managed to meet with the correct officials" mean?

Sue Coe: What we have been trying to do is get in touch with the people who are actually dealing with it, to follow through and get the people who are dealing with it and meet them. We have managed to set up a meeting with those people in early June. We will then have a better idea of what the HSE is doing.

Q299 **Chair:** Before we move on to the next set of questions, the International Labour Organization is having a meeting at the end of this month to put in place a worldwide convention on sexual harassment at work, which they started in 2015, yet you are telling us that the regulators in this country have not really got together to talk about this. We would absolutely agree with that because we have had a regulator in here, the Solicitors Regulation Authority, which was not routinely looking at these issues of sexual harassment being seen as professional misconduct. Why are you three years behind the International Labour Organization in getting your act together on this?

Sue Coe: I do not know. It is a good question. We are where we are here, and moving forward we are looking to engage across the board and bring regulators together.

Elizabeth Prochaska: It is probably fair to say that all organisations working on this—and I count the EHRC as one of them—were caught off guard, in a sense, by the #MeToo movement and simply had been focusing on other issues over the last decade. I am proud of the work that we have done, and we have worked as quickly as we have been able to get ahead of the game and to do a good, comprehensive piece of research and recommendation. Of all the regulators, we are leading the pack. We hope that over the next couple of months, as long as other regulators are willing to engage with us, we will be able to bring together that group and make more progress.

Your question is a fair one. The honest answer is that a lot of organisations were caught off guard by this, but we really are trying to get ahead of it now.

Q300 **Tonia Antoniazzi:** You recommended that Acas develop targeted sexual harassment training for managers, staff and workplace sexual harassment champions. What kind of training is required to achieve this cultural change?



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Sue Coe: What it is not is just legal definitions and litigation avoidance. What it should also not be is standalone, but seen as part of a wider organisational response. We would like to see of course that legal definitions are dealt with, so that people understand what sexual harassment is and what it looks like, but also that it deals with preventative measures, such as bystander initiatives where members of staff and managers are encouraged to challenge low-level behaviour when it arises, so taking that burden that Elizabeth was referring to off individuals who have experienced sexual harassment.

We would like to see it addressing issues of victimisation, but we would also like to see clear evaluation of it. We also would not want to see as part of this what came up in our evidence from around 20 firms that responded to us, which was standalone online unconscious bias training, because we have conducted an evidence-based review that has shown that this standalone unconscious bias training is not only in many cases ineffective but also can solidify biases and enhance them.

Elizabeth Prochaska: There are real issues around the efficacy of training. There is very interesting research coming out of the United States that suggests that mandatory training can be counterproductive. It is critical that when you think about training, you build in evaluation and that it is done as part of a broader culture change in the workplace and not as a standalone initiative.

Sue Coe: You are hearing from Rachel Fenton later, who has done some really interesting evidence-based work around the integration of that bystander element, which we think is a key part of effective training.

Q301 **Tonia Antoniazzi:** Interestingly, on 25 April in this Committee Acas told us that its own staff currently do not have specialist training on sexual harassment. We are wondering why you say that Acas is best placed to develop and provide this training.

Sue Coe: Acas is a trusted source of information for employers. It has a really wide reach; 11.4 million people came to its website seeking information. Its online training had 33,000 new sign-ups for organisations to access it. It is a trusted voice with a wide and impressive reach. I would imagine that Acas would be open to working with a range of organisations in developing its training.

Q302 **Tonia Antoniazzi:** I take it you work closely with Acas.

Sue Coe: We are working closely with Acas on this.

Elizabeth Prochaska: They accepted our recommendations.

Q303 **Tonia Antoniazzi:** You recommended that the Government develop an online tool to facilitate the reporting of sexual harassment in the workplace. How will this help to drive the cultural change?

Sue Coe: Something that came through really strongly from the evidence base that we collected was that when we asked individuals who had



experienced sexual harassment at work what they wanted to see change and what they thought would make a difference, quite a large number referred to anonymity in reporting as being really important for them. They talked about the significant barriers that there were to them coming forward with their evidence of sexual harassment at the moment in terms of the current mechanisms.

What we have seen from the online reporting tools that have been developed, both for workplaces but also ones that have been developed for use in higher education institutions in the States, is that those mechanisms can, when people go on to them, link them up with information and support services. They put agency and decision-making in the hands of the individual in terms of how they want to report and when they want to report. Some of those online systems have a way of linking individuals up. If they have been harassed by the same perpetrator, then they can be linked up, either to offer support or for them to come forward with a complaint. We know from the Me Too movement that it is often much easier to come forward when there is more than one.

It also allows anonymous reporting. I know there have been some issues raised with anonymous reporting, but it is really important to facilitate this because, although it may not allow individual cases to be taken forward, it gives employers that really important insight into what type of issues are occurring and where they are occurring, and it will allow them to perhaps follow up, for example, by looking at HR information, sick days or turnover, and conducting targeted training.

These kinds of schemes, which facilitate people coming forward safely, in a way that is within their control, are a key part of this cultural change. If we stick with the same systems that quite transparently do not work for people at the moment, we will not have people feeling safe enough to come forward with their issues.

Q304 **Tonia Antoniazzi:** Which of your recommendations will be the most important in driving this forward?

Sue Coe: Elizabeth and I have highlighted this before, because we do not feel that you can cherry-pick from one or other. We feel that there needs to be cultural change, there needs to be increased transparency and there needs to be strengthened protection. Taken together, that will provide the movement forward that we need to really tackle this issue. While we have the national picture, there is not, for example, a national survey, so we do not know what the prevalence of sexual harassment is.

Q305 **Chair:** There are quite a lot of surveys that have been done.

Sue Coe: Not at a national level. 2008 was the last Government survey on this and it asked one question, which was phrased in quite technical language.

Q306 **Chair:** There have been a lot of surveys that have been done that



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suggest around half of women endure sexual harassment. I do not think there is any question.

Sue Coe: The TUC research that you may be referring to there is really important and very thorough. However, it only focused on women and it did not look at the experiences of male employees. What we need is a clear picture of what is happening across the board and also how that picture is improving. In Australia they have undertaken five-yearly national surveys. They are currently on their fourth. They can see the trends over time. They can see what is effective in tackling this. If we do not have that national picture of what is going on and how things are shifting, we are putting in interventions in the dark, as it were.

Q307 **Tonia Antoniazzi:** Professor Clare McGlynn from Durham Law School raised concerns with us about aspects of the guidance for employers on sexual harassment and the law that the Commission published in December. For example, she suggested that the choice of whether to report to the police should be the victim's choice unless there was an immediate risk of harm. Will you be revising this guidance?

Sue Coe: Yes, we will. We have talked to Clare McGlynn so that we can really understand the points that she made. We have, following discussion with her, drafted revisions and we will be publishing those shortly.

Q308 **Chair:** Why did you not talk to her before? Why did you not get it right first time?

Elizabeth Prochaska: It is not that it was wrong. It is that the section on employers' handling of investigations and how that relates to potential police reports was quite brief. Clare's point was that it was potentially confusing, so we are expanding that section to be clearer. Having drafted that section myself, the answer is ultimately that I was trying to keep it condensed, but I recognise the force of her criticism and we will expand it to make it clearer.

Q309 **Angela Crawley:** Coming on to tribunal fees, the EHRC has recommended that the limitation period for harassment claims should be extended to six months. What evidence is there to support your call for a longer time limit for lodging complaints relating to sexual harassment?

Elizabeth Prochaska: The first point to make is that it came up time and again in the response to our survey that women and indeed men were aware of this very short time limit and that was off-putting to them. There is evidence from our own qualitative data. The second point to make is that that is the shortest time limit in any jurisdiction that prohibits sexual harassment. No other jurisdiction in the world has a time limit shorter than six months. The third point to make is that as a matter of common sense it is clear that a three-month time limit is going to make it very difficult for individuals to bring legal cases, especially because at the moment the time limit does not run from the completion of the grievance process but of the incident of harassment itself. It



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means that you are not able to try to resolve it internally. You are forced into having to decide whether or not to go to the employment tribunal, which is obviously a very big decision for anyone to have to make.

We have called for a six-month limitation period. We have called for that to be triggered either by the incident of harassment itself or by the completion of any internal process, so that you can try those informal resolutions with your employer before thinking about going to the employment tribunal.

I know that CM Murray, in their evidence, called for a 12-month limitation period; in a sense it is a question of weighing up what is desirable and what is achievable. We would equally support 12 months, but six months seems to be an achievable limitation period.

Sue Coe: If I may go back to the evidence, I cannot underestimate the descriptions of shock and denial that people described when they were talking about their experiences and the length of time that it took for them to come to terms with what had happened to them. I have a quote here from an individual who said the three-month time limit was ridiculous. Having the courage to report can really take a while.

Q310 **Chair:** We have had this discussion about time lengths on tribunals before, with regards to maternity discrimination cases, and we have pursued that for quite a long time. There are discretions available to tribunal judges, as I understand, to go beyond the three-month limitation, but it appeared to us that very few people, and indeed very few judges, were aware of that in terms of maternity cases, or that system seemed to not be making it very clear. Is it the same for this?

Elizabeth Prochaska: It is the same principle.

Q311 **Chair:** Why are we not pushing for the discretion to be more widely known rather than immediately jumping to the need for more time?

Elizabeth Prochaska: There are two things there. One is that we as an organisation and you as parliamentarians cannot dictate a judge's discretion. That will always depend on the facts of the case so there is always uncertainty about what factors will be taken into account in discretion.

The second point to make is that, as a legal advisor giving someone advice on whether or not to bring a harassment claim—or indeed a pregnancy or maternity discrimination claim—you would have to advise your client that if they had missed the three-month deadline there was a significant risk that their claim would be struck out. That is yet another obstacle to people deciding to take the claim. No competent legal advisor would say, “I am confident the discretion will be exercised in your favour,” because you can never be confident about the exercise of a judicial discretion.

Chair: That is very helpful. Thank you.



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Q312 **Jess Phillips:** I wanted to pick up a point not just about the time limit but about when those rights apply for tribunal, and whether that needs looking into. For example, if you have only been working somewhere for three months and you wish to take a claim because you feel forced out—I have dealt with cases like this—advice given to the women in these cases is that they cannot take it to tribunal because they have not worked there for two years.

Elizabeth Prochaska: That is incorrect advice. For an unfair dismissal claim, you need two years of service in the job, but for a discrimination claim it can be at any point in your service. That advice was incorrect.

Q313 **Angela Crawley:** Coming on to non-disclosure agreements, I know there is an argument that in the individual's case they may wish to have a non-disclosure agreement. You have also, as the EHRC, made recommendations that the use of non-disclosure agreements should be restricted. How do you respond to the suggestion that restricting the use of NDAs might result in fewer reports of sexual harassment because people will think they are less likely to reach a settlement with their employer?

Elizabeth Prochaska: The recommendation we have made has said that an NDA could be entered into at the request of the employee. That is a protection against that. I would question the assumption that people are thinking that far ahead, or in those terms, when deciding whether or not to bring a case against their employer. People bringing employment tribunal claims are not bringing them on the basis that they are definitely going to settle, because, as I said before, it is very hard to predict the outcome of these kinds of proceedings.

The greater risk of a chilling effect—and this is what we heard from the stakeholders we engaged with before we made these recommendations—was on the employer, not the employee. The employer might say, “Why would I settle if you are not going to sign a confidentiality agreement?” That is misconceived too, because fundamentally, if you go to tribunal, all the facts will be aired in public and the judgment is available online for everyone to see. Even absent a confidentiality agreement, an employer would have to be pretty pig-headed to want to go all the way through to tribunal if the claim is a good one, and, even if the claim loses, for issues around their policies and procedures, for example, to be aired in public.

The chilling effect point is overstated, but we recognised that there was a potential for a chilling effect, and that is why we did not recommend a red line through all NDAs. We have a more nuanced recommendation around enabling them at the request of the individual, because they might want confidentiality to be ensured and we understand that completely. As a matter of usual practice, we do not think NDAs should be being used in these cases unless the individual has made that request and has received legal advice on it.

Q314 **Angela Crawley:** In your experience, is the use of NDAs by, for



example, the employer more often likely to be misused than by the individual?

Elizabeth Prochaska: Yes. I do not think individuals always understand exactly what it is they are signing up to in the first place. It is the employer who is the position of power there. It is the employer's use of the NDA that is problematic. If an individual were to request one, you are in a very different set of circumstances.

Q315 **Chair:** There are a couple of questions I wanted to pick up on that have arisen, which I have not been able to cover, so these might be a little bit sporadic. Should there be a requirement on employers to self-report to the EHRC that a sexual harassment claim has been raised? Would that help to make you more aware of non-compliance and then give you more ability to intervene? I was rather taken aback by your apparent feeling of powerlessness to be able to identify more cases. Is this something that might be interesting to look at?

Elizabeth Prochaska: Yes. That is a really interesting proposal. It is not one that we had considered in finding our recommendations. There is a question about what the expectations would be of us in terms of what action we would take to follow up. We currently receive the notifications of commencement of proceedings in employment tribunal claims. We regularly review judgments coming out of employment tribunals, but this would obviously give us a greater, broader insight, because not every claim will get that far. A report that a claim had been raised would allow greater insight.

Q316 **Chair:** Could that be part of your mandatory duty?

Elizabeth Prochaska: It could be.

Sue Coe: It could be. We would need to think more about it. In terms of internal reports of sexual harassment, I would expect that when employers put in place better reporting mechanisms there will be more reports of sexual harassment, and that will be a positive thing. We would not want to see employers feeling, if they do work to change their cultures and to surface these issues that have been there all along, that we will be looking at them negatively for the work that they are putting into taking this seriously.

Q317 **Chair:** So there are two sides to that argument.

Sue Coe: Yes. We need to look at that, because we would not want to dissuade employers from taking those steps to facilitate reporting and understand the true extent of the issues that are occurring within their workplaces, so that they can tackle them properly.

Q318 **Chair:** Employers are becoming increasingly used to sharing data, the gender pay gap reporting being one of them, which does not necessarily put them in a good light. Transparency can be a good thing.



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Sue Coe: We are big fans of transparency as a cleansing light for organisational practice. That is why one of our recommendations speaks to employers having on their website what steps they are taking to tackle sexual harassment in the workplace and what their organisational approach is, so that not only can current employers see what they are doing but also potential employees can see what they are doing and see what the values and actions of that organisation are.

Q319 **Chair:** There is another tension here. In adopting a mandatory duty on employers yet still wanting to balance that with the important needs of victims to potentially remain anonymous or not wanting to take forward action, even in the most severe criminal cases, how do you square that circle with an employer who might have an allegation of rape against an employee by another employee? They have a mandatory duty to keep their employees safe, yet the employer is not able to take action because the victim is unwilling to do so. How do you square that?

Elizabeth Prochaska: The mandatory duty is about those pre-emptive steps. If there has been an allegation that cannot be taken forward because the victim does not wish to press charges or whatever it might be, you would be looking at that organisation's protective steps. You do not need to explore that particular allegation. You do not need to look at the facts of it.

Q320 **Chair:** Is the employer fundamentally not providing a safe workplace if they have somebody who has been accused of rape within it?

Elizabeth Prochaska: Yes, but our interest would be in what they have done or not done in relation to creating that safe workplace environment, rather than investigating the actual allegation itself.

Q321 **Chair:** Understood. In terms of data, because we are all quite focused on data protection in this place at the moment, particularly when you are starting to talk about anonymous reporting, are there any data protection issues with allowing anonymous reporting of alleged harassment?

Sue Coe: I have looked at some of the schemes that are currently being set up. They seem to have steps in place in terms of the way they handle data. Of course, in terms of named perpetrators and details of the people making the complaint, those schemes would have to be compliant with data protection. That is something we would need to look at in terms of any online tool that would be developed.

Q322 **Chair:** Presumably the same goes for the issue of those that have been accused not being able to offer a defence and that hanging in the air unresolved.

Elizabeth Prochaska: There would have to be very careful due process protections around anonymous reporting but it is being done in other jurisdictions and it is being done increasingly here. As ever, higher education is taking a bit of a lead on some of these issues but the



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University of Cambridge has rolled out an anonymous reporting scheme. We would need to think carefully about it.

Q323 **Chair:** Are there any emerging issues on those two issues with those sorts of online anonymised reporting?

Elizabeth Prochaska: I have not heard of any particular data protection issues, but we would need to speak to people rolling out those schemes to know about the details.

Q324 **Chair:** Will you be keeping an eye on that particularly?

Elizabeth Prochaska: As we go forward with our code of practice, we are going to look in much more depth at those sorts of individual recommendations, such as anonymous reporting, bystander training or whatever it might be, to be clearer about what works and what does not, so yes, we will.

Q325 **Chair:** Finally, in terms of data collection, would it be helpful for tribunal data to include figures on claims involving sexual harassment? At the moment, that is not broken down, is it?

Elizabeth Prochaska: More data is always useful and more granular data is always useful. It would be useful to see it by all protected characteristics. It is not just sexual harassment. Obviously we have harassment based on race, disability, religious belief and so forth, all of which are equally pernicious. It would be good, yes, for that data to be broken down.

Q326 **Chair:** Do you know why it is not collected at a granular level at the moment?

Elizabeth Prochaska: No. I assume perhaps it has been too arduous a task. I do not know. I do not see why it could not be done. Especially as technology evolves, it may be a much simpler process. I do not know.

Chair: Thank you very much for your time this morning, and for your full answers to our questions. We are very grateful indeed. I will bring the first panel session to a close and we will move on to our second panel session. Thank you very much.

Examination of Witnesses

Witnesses: Dr Rachel Fenton, Kathryn Nawrockyi and Yvonne Traynor.

Q327 **Chair:** On behalf of the Committee, can I thank you for joining us today? This is our second panel session of the morning. Just before we kick off with our questions, I wonder whether you could just state your name and the organisation you are from.



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Yvonne Traynor: I am Yvonne Traynor. I am the CEO of Rape Crisis South London and Rape Crisis Surrey and Sussex. I have been CEO of the organisation for 22 years.

Kathryn Nawrockyi: Good morning. My name is Kathryn Nawrockyi. I am an independent consultant and campaigner. I work with employers on bullying, harassment and sexual misconduct in the workplace.

Dr Fenton: Morning. I am Rachel Fenton. I am a senior lecturer at the University of Exeter, and I have been leading on the Public Health England project around bystander intervention.

Chair: Thank you very much for your time this morning. We will start with questions from Tulip.

Q328 **Tulip Siddiq:** Thanks very much for coming in. We know that sexual harassment in the workplace is under-reported, and there is some research to say 79% of the employees who experience it will not report it. What do you think the reason is for this under-reporting?

Yvonne Traynor: Sexual harassment is part of a continuum of violence against women and girls. As we know already, for any kind of form of violence against women and girls, women are less likely to report it. We did a study. We already know from our helpline and the 150 to 200 women that we see each week that the reasons women do not report it are that women tend to take responsibility for themselves and feel that maybe there was something that they did for it to happen, and they feel ashamed and do not want anyone to know about what happened. It is really hard for women to come forward and talk about it.

Apart from anything, from the experiences that we have had and the stories we have heard, organisations are not good at dealing with it. Women are seen as a bit of a problem. They are complainers, they are holding grievances and are bringing the organisation into disrepute because there are not enough robust systems to help them to complain about what is going on.

What we have found in our organisation, and we have many complaints of sexual harassment, is that women are more likely to leave the job. It interrupts their career. They are more likely to do that than they are to complain, because there are no systems to do it. Who do you go to? What do you say? What is going to happen? The women that complain about sexual harassment want it to stop. In their minds, the way for it to stop is to leave that organisation.

Kathryn Nawrockyi: In my previous job I was the director of gender equality for Business in the Community, and we have done a huge amount of work into the prevalence of bullying, harassment and sexual harassment in work. What was very striking when we did that research was that often when you present the broad concept of sexual harassment to people and ask, "Have you experienced this in the workplace?" a lot of



people will say no. When you break it down into individual behaviours, suddenly people have that moment of, "Hang on a minute; that has definitely happened to me and I know five people that have that quite regularly." First of all, there is a big hurdle in getting people to understand that what has happened to them actually is harassment or bullying.

There are also all of the things Yvonne said about that internalisation of the blame, and the shame that comes with that, and the fear of not being believed when women do disclose.

Quite often, harassment is perpetrated by a senior person to a more junior person. It is very difficult to challenge up the hierarchy in an organisation. You are very disempowered, as a junior person in your workplace, to come out and say of that very popular, very successful, senior person, "They did that to me."

People tend not to trust that their organisations either will believe them or do anything to help them. They tend not to trust HR, sadly, who are meant to focus on people issues but are generally seen as working for the organisation.

They may have had experience of seeing those senior perpetrators being protected by the organisations. It is very typical that organisations will close ranks and protect their more powerful, senior people, even if they know they have crossed a line. It does not take long for that to become very common knowledge amongst employees: that, quite frankly, the organisation would rather keep them there being successful, earning money and doing whatever else, and make that slightly awkward, complaining, more junior person over there go away.

As Yvonne quite rightly said, because the complaints process, equally, is so arduous, incredibly painful and emotionally stressful, a lot of people would rather find a way to deal with it, leaving the organisation if necessary, than put themselves through that and risk not having a job at the end of it, regardless.

Dr Fenton: I agree with everything that has been said already, but would add into the mix that the environment in which it happens is really important, in terms of what other people's reactions are, for example, at first disclosure, if you talk to a co-worker or a colleague, how supportive they are of what you are suggesting and how other people around you act and respond. If you are met by a sea of silence and nobody shows any kind of solidarity, it reinforces that reporting is not the right thing to do.

Q329 Tulip Siddiq: All of you have mentioned the problems with reporting and the process, and, Yvonne, you especially touched on it. The EHRC has said that online reporting tools would help to drive cultural change and increase the reporting of sexual harassment at work. Do you think that is likely?



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Yvonne Traynor: I have a bit of a problem with that, only because the women that have contacted Rape Crisis want to talk about it. They want to speak to somebody about it. They want somebody that believes them, because there is a huge myth in this country and around the world that women lie about what is happening. They want somebody that is going to be empathic, they want somebody that is going to understand what is going to happen and they want an unbiased approach. They want somebody to say, "This is what you could do if you feel that you want to do this but it is completely up to you," but to give them the options.

I went on an online tool to check it out. It was awful because there is no interaction, there is no empathy and there is no humanness. The NHS tried that with depression and anxiety. Having an online tool was a complete disaster. Hundreds of thousands of pounds were wasted. Women want to talk to other women. We are women. We like to talk to other women. We want to say what is going on. We want a human response. We do not want online automaton, to be honest.

Q330 Tulip Siddiq: If there is no one for a woman to speak to at work, would that not be a good way of at least raising the complaint, if there was no option for a woman who had been sexually harassed, for example in an all-male environment?

Yvonne Traynor: If you are looking at setting up an online tool or a human tool, I would go for the human tool. If you are going to set something up, let us do it properly. Let us not do it because it is cost-effective to have somebody talking to an automaton. Let us do something properly if we really want to tackle this problem, which has been going on since I was a young woman going out to work in the first place. Who would have thought that in 2018 it would still be happening with all the equality that is going on in this country? You do not need to even know the statistics; just talk to some of your friends. One in three women is going to say, "Yes, this happened to me."

As Kathryn said, some people do not even realise it is sexual harassment; it just an occupational hazard that women have to deal with in the workplace. What you do is you smile, say, "Yeah, yeah, okay," and back away from it, as opposed to saying, "Actually, this is against the law. This is sexual harassment. I want to do something about it." Women are coming to terms with that now, because of the #MeToo movement and all the movements that are going on, finally. Rape Crisis has been going on about this for many years: that it is a continuum of violence against women and girls. Finally, we are now coming to the realisation that this is still happening in the workplace today, in every workplace. Sorry, I got a bit excited.

Kathryn Nawrockyi: As Yvonne said, technology is never the solution. It can be part of helping us to tackle the problem but we need to look at structural changes; I am sure we will come on to that in future questions.



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We need to create as many avenues as possible for somebody to be able to report. Quite often, somebody would rather deal with something on an informal basis anyway. They do not want to go through formal reporting channels necessarily but to have the opportunity to simply talk to somebody, to understand what their options are, to possibly have an informal conversation, whether with a mediator or not, with a perpetrator. That might be part of the solution.

There need to be multiple options. As Yvonne said, technology can be deeply impersonal. For some people, that anonymity may be exactly what they want right at that moment, because the idea of looking somebody in the eye while they talk about it might also be really difficult.

Equally, every employer needs to create multiple avenues. That includes having a helpline. It includes training up people at every level of their organisation, call them advocates, call them champions or call them what you will: people who are well-versed in this subject, who sit outside of somebody's direct line management relationship, so that they can go and talk to them confidentially about what has happened to them. It includes a counselling service.

That is in addition to, as general good practice, regular climate assessments in the organisation, so that even if people choose not to report, they can at least comment in a staff survey, for example, that they have experienced something in the organisation, so that the employer can tackle the general challenge if not the individual specific cases.

Dr Fenton: The anonymous report tools are really important in conjunction with other reporting tools. The University of Exeter, for example, has just launched an online reporting tool but there are three ways to report: one is anonymous; one is that somebody contacts you back who is qualified to talk to you and you request informal guidance on what your options are; and the third is to go down the formal route. It is not preclusive.

To come back on a question that was asked in the previous evidence session about data protection, it depends on the kind of anonymous tool. For example, the model we have and the model that was mentioned earlier, which Cambridge uses, is one where you cannot disclose information about perpetrators, for example. It is a set of tick-boxes. The reason I say they are important is because they allow the organisation to collect climate information, to find out where those hotspots are. You can find out where the hotspots and what the kind of things are that are being experienced. It is not in detail, necessarily, and you do not get detailed information or data protection issues around perpetrators unless you have open text boxes. They are valuable but in conjunction with everything else that has been said.

Yvonne Traynor: There are two different issues here. There is information collection and support for survivors. We are looking at two



different things. An online information collection could be a tool, but actual support for survivors has to be talking to somebody.

Q331 Jess Phillips: In your experience, what are the most important factors that determine the prevalence of sexual harassment in a particular workplace and how effective are employers' responses to it? Where is it worst?

Kathryn Nawrockyi: There are two ways of understanding prevalence. First of all, external surveys are really important. The piece of work that we did at Business in the Community, called Project 28-40, was a survey of 23,000 women across the UK in different sectors. It gave us some really useful data on experiences of sexual harassment in different sectors. We were able to disaggregate that by sector to understand where it was coming out worst. Unsurprisingly, in the more male-dominated fields—transportation and logistics, the uniformed and armed services, for example—it was highest.

That survey of 23,000 women showed that, as a minimum, 12% of women experienced some form of sexual harassment at work in the previous three years alone. Those numbers shot up for different groups of women. Minority women were far more likely to have experienced sexual harassment. In fact, bisexual women were the group most likely to have experienced sexual harassment, but also there were ethnic minority women, gay and lesbian women and senior women. Women at board and director level were not immune to this.

People tend to think of sexual harassment as being this thing that happens down the hierarchical chain, but sexual harassment when used as a tool to reassert power or control, where male power feels threatened or limited, is also very classic. Senior women talked about experiencing sexual harassment either at the hands of their peers or more junior colleagues because, quite frankly, they did not like seeing more senior women have power in that organisation. That is on an external level.

On an internal level, all organisations need to be asking the very difficult questions in their surveys, whether it is as part of a broader staff survey or ideally doing something that is specific on experiences of sexual harassment and bullying. Any kind of climate assessment will help you understand again where the hotspots are in the organisation.

Again, we need to recognise that people will not always trust those tools internally, but giving the opportunity for people to have an anonymous say is really important. Running focus groups with people, ideally with an external facilitator to create a level of confidentiality, is really important. The numbers of actual reports, as you have already talked about in the previous evidence session, do not always show the true picture, but certainly those other types of surveying tools will be hugely helpful.

In terms of the best employer responses to the problem, there are relatively few out there right now. If I am really honest, my work on the



subject started about four years ago, and when we published that data at BITC, leaders were shocked. People did not want to think that this was happening in their organisation; they could not believe that it was happening in their organisation. Talk to the women that responded to that survey, or other women out there, and most of them would say, "Of course it is; it's so normalised." Leaders tend not to realise that it is such a problem.

My work currently is about working with the leadership of organisations to help them on that journey to understanding what harassment actually is. You would be surprised at how often you have to go right back to basics, to understanding the very simple nature of bullying, harassment and sexual harassment, and then to helping understand their role in being a part of that culture change for the whole organisation, encouraging people to talk about it at every level, so that we start to break that silence and complicity that enables perpetrators to remain in post and to thrive.

Be prepared to ask the difficult questions as an employer. Be prepared to make difficult decisions. Be ready to exit the people that do not really have any empathy with this challenge. The best leading employers at the moment currently—the ones who are really focused on culture change—will be the ones who are prepared to make some public executions of those at the top who say, "I'm not really interested in this. This doesn't concern me." If that organisation is prepared to say, "Then there is no place for you here," that is an incredibly powerful message to the rest of the workplace.

Jess Phillips: There will be no one left anywhere.

Kathryn Nawrockyi: The work that I am doing currently is two different types of work. It is partly advisory work with organisations that are surveying their employees and trying to understand what the stories are telling them and what the data is telling them, and to put responses in place, both to support them but also, in the longer term, to help them with culture change, which is a much bigger challenge.

Some of the work I am doing is very practical, hands-on training of people to understand the complexity of the subject and to understand the prevalence of it, at least in their sector. Even if you do not have the data about your organisation, you can read some assumptions from the sector data. What is really important and what is best practice is to start by asking for stories, asking employees to share their experiences and then using those stories in the training. Putting the voices of women front and centre is really important. You would be very surprised—you actually probably will not be at all surprised—at how often when you use those stories in training, people say, "Surely that has not happened here though." Nobody wants to believe those things are happening under their radar. That is a very powerful tool to get people to understand how insidious these problems are in organisations.



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To finish, for this to work in any organisation, you have to have the leadership absolutely on board, especially if you have a very structured, hierarchical organisation where the messages tend to come down a chain of command. You have to have the leadership at the top absolutely won over before you can start to cascade that messaging down the organisation and make very clear that everybody is responsible for this agenda.

Q332 Jess Phillips: Rape Crisis and other witnesses have raised concerns about the way that employers handle sexual harassment. It seems from what we have heard on this Committee that the standards we have fought for for years on criminal law is all but barren in employment law. What are the most common ways in which employers fail and treat victims poorly? Rachel, you have already mentioned about not being believed or ignored in the first instance. Are there any other things?

Dr Fenton: Rape Crisis might be better to answer that question.

Jess Phillips: How do they fail?

Yvonne Traynor: First of all, you are talking about where the prevalence of sexual harassment is. I have a very short answer. Where there are men in an organisation, that is where sexual harassment is happening. There are not any identifiable organisations; it is any organisation where there are men. Where I feel organisations have fallen down is that they do not have any robust policies. It is very uncomfortable for HR, if there is a HR department, to even address it, to even talk to somebody about it. They do not know how to talk to somebody about it. They do not know the words to say or how to handle it. There are no policies in place to say, if somebody does complain about somebody sexually harassing them, what the company should do now. There are no policies in place.

There needs to be a robust induction policy. There needs to be a no-tolerance policy in every organisation in this country to say, "We are not going to tolerate this."

Q333 Jess Phillips: Do you think that duty should be on employers, which is what the EHRC said?

Yvonne Traynor: Absolutely, but with Government will behind it. We want something to happen. This is not something that is just a good idea, which is another policy put on a shelf. It should be an active policy. It should be part of an induction when somebody joins an organisation: "We do not tolerate this. These are the procedures that you can go through."

What we have heard from clients is that sometimes it is really difficult to say, "I have this guy who works in such-and-such department who looks me up and down all the time and focuses on my breasts." That is a really hard thing, to ask, "Is that sexual harassment or is that just me?" There needs to be a space for her to say, "Actually, this guy is making me feel really uncomfortable. I do not want to come into work because I cannot



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go to the photocopier because he may be there; I cannot go to the canteen because he may be there.” There needs to be a robust policy of, “If you feel uncomfortable about something, however minor it might be, we will take this seriously. We have a no-tolerance policy and we will do something about this.”

We are not talking at this stage about going through the legal route, but there need to be policies in place where you can talk to that perpetrator. The reason that sexual harassment happens in this country is because perpetrators are not held to account. We have focused a lot on what we can do for women, and obviously I am from an organisation about what we can do for women; however, perpetrators are left. First of all, a minimal number are reported. There are no sanctions on them in any organisation. What do you do if you do not want to go down the legal route? What does an organisation do? If they have had a couple of people complaining about this guy but they do not want to go down a legal route, what can the organisation do? It seems that organisations’ hands are tied because they are very frightened about data protection and about human rights. They really do not know what to do with it. It is just left; it is just shelved.

Q334 Eddie Hughes: What do you think should be done? We had evidence previously about sexual harassment in public places and we were hearing from people and were talking about women being stared at on the tube. The people who were giving evidence to us said it was very difficult to quantify staring or identify that as a legal offence. In the example that you gave about being looked up and down, what could you reasonably do?

Jess Phillips: Have a word with him.

Yvonne Traynor: We need to take it back a step. If there was in that organisation a zero-tolerance policy, then women would feel more comfortable coming and saying, “This is making me feel very uncomfortable. Can you speak to this guy about it?” That is a simple win-win situation. The perpetrator knows he has been reported and that the organisation he is working for does not take this lightly and want it to stop. It needs to come from the organisation. It needs to come from the company. Let us create this environment where it is easy for women to report anything that makes them feel really uncomfortable because, “We are not going to stand for this. This has to stop.”

Dr Fenton: I wanted to come in on the issue of what the failures are. The failures are not just with employers but at Government level and other levels. Ultimately, employers need to work with the evidence. What is the evidence base? What is the academic literature? What are the experts saying? Work with these people who know what is going on and know how to best work with and use evidence effectively. There has perhaps been a lack of commissioning evidence bases, looking at effectiveness, what actually works and how we tackle that in



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organisations, instead of just saying that these organisations need to go off and deal with it. We need to look at what actually works?

Q335 **Jess Phillips:** Are there any examples of really good organisations where this sort of thing is well known for being robustly stamped out?

Dr Fenton: My interest is in bystander intervention. There is certainly significant evidence—and it has been picked up now by the Australian Human Rights Commission and by the US EEOC—about the transferability of bystander as being effective into workplaces, for example. They have commissioned reviews into that. In this country, as far as I am aware, nobody is yet using bystander intervention, apart from what I have started to do with Exeter City. I have started having conversations already with Acas and Public Health England South West about bringing bystander into workplaces, for example. That would be one example of where there is evidence of effectiveness that has been picked up worldwide but yet there has been no action on it in this country so far.

Q336 **Jess Phillips:** Is there no great employer or anything? When we are talking about the gender pay gap we can always name companies that have brilliant paternity.

Yvonne Traynor: Organisations are trying. I do not want to name any here.

Q337 **Jess Phillips:** We are saying nice things about them; you could name them.

Yvonne Traynor: I do not think I can. There are organisations that are really trying to do it. They are really attempting to do that. They have created an environment where women can report it and they are handling it really well. At the first stage of reporting sexual harassment, they can remain anonymous while it is looked at. If the evidence is robust, that information will then be handed over to the perpetrator and they will go in front of a board. They are handling it well but we need to overcome this first step of women reporting it, because so few women are reporting that it is going on; they are just handling it.

Q338 **Chair:** Ultimately, we are talking here in the abstract. It is very easy to do that and say things like “zero tolerance”, but if an employer has a zero-tolerance policy and an employee comes forward and reports sexual harassment but the perpetrator says that it is not true, how do you deal with that? You are often dealing with one person’s word against another. Are we not making this so difficult that the employers are going to put it into that box marked “can’t really deal with it”? Are we making this too difficult by using phrases like “zero tolerance”?

Yvonne Traynor: You are absolutely right, and this is a problem we have in all sexual offences. Very often it is one person’s word against another. By not including the perpetrator, they are not saying anything to him at all, like, “We have been told this is happening”—so you are coming from an unbiased opinion—“and if it is happening, we do not want



this to continue.” There has to be some remedy. There are no remedies for most organisations right now, so there are so many perpetrators getting away with it. That is why there is an epidemic: because perpetrators are not being held to account at any level.

Kathryn Nawrockyi: Most organisations will have a zero-tolerance policy. Typically, the policy does not mean anything because policy sits on a dusty shelf and people are not aware of what is in there. It is much more about having a bigger programme of culture change and internal campaigning within an organisation to start to raise this subject and make everybody comfortable talking about it.

The point about cases where this is simply between two people and there is no other evidence is tricky. There are many, many instances, however, where there is a lot of stuff that happens in public and where quite often people know exactly what is going on in their offices. There are plenty of people who have a reputation for certain kinds of behaviours in their organisations but who are just enabled to remain in post.

That is where Rachel’s point about bystander intervention comes in. Training people to understand the bystander effect is really crucial, because the bystander effect essentially means that if more people are present, we are less likely to step forward and intervene, because we all normalise our inaction in one another. We look to the next person to step in, who looks to the next person to step in. Eventually, nobody does anything. We all normalise that reaction in one another, so we all sit back. It is about helping people to understand that they need to be aware of the grip of the bystander effect and break that inaction; you can then start to change things.

Where the one-on-one issues are relevant, it is really important that HR are very well trained in dealing with this issue, because they will have those stories often. Somebody may feel like they are experiencing an incident in isolation, but if they tell HR about that and then that perpetrator does it to another person six months down the line and they tell HR about that, then eventually HR—or whichever line manager or senior leader, but ideally HR—can start to at least build that pattern where they have a repeat offender. Very rarely do those things happen in isolation. Very rarely is it actually just one person behind closed doors with another person, where there is no other evidence and no other audit trail.

Yvonne Traynor: It is about having a policy but having an active policy.

Q339 **Jess Phillips:** On the issue that you just mentioned, about different people coming forward and HR holding that data, I can only speak about the working environment I work in, but I have basically been told that this causes problems in both data protection and also in a whistleblowing policy, where people can feed in but not take it forward. That is not necessarily something that people feel legally comfortable with.



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Yvonne Traynor: We have to stop being afraid.

Q340 **Jess Phillips:** I couldn't agree with you more, but that is what you get told when you try to do it.

Yvonne Traynor: We are 50% of the population. We have to stop being afraid of tackling it. If we are going to tackle violence against women and girls and tackle sexual harassment, we have to be brave. We have to stop looking at all the reasons we cannot and start looking at the reasons why we can. That is why it carries on: because everyone is too afraid to do anything.

As Kathryn said, these policies need to be active. There needs to be training for HR staff and for all staff in organisations. There needs to be ongoing training, so that it is not just left on the shelf and we are going to actively say, "This is what is not to happen, and we will not tolerate it". It is not just having a policy and saying, "That is our policy". It should be made really clear at your induction, "If you join our organisation, we will not tolerate this". We have to start being active and stop being afraid of doing something to stop it.

Q341 **Jess Phillips:** I'm not afraid. Finally, it has been suggested there should be an independent body receiving investigation reports of sexual harassment. Do you agree that for many employers it would be better to outsource the handling of sexual harassment cases?

Yvonne Traynor: It would be easier for them, would it not? If we get someone else to do it then we do not have to recognise the problem. It has to start with an organisation. It is a continuum. Here we have the anti-sexual harassment policy, which is active. We have trained all our staff. We continually raise the issue. If we feel we are unable to handle that, then another organisation could be put in place. There are organisations around the country that handle employment issues independently.

Q342 **Jess Phillips:** Do you think that for some victims in some workplaces it might be preferable—in politics, for example—to have an independent person where there is no fear or favour, or patronage, et cetera?

Yvonne Traynor: Yes. Also if the perpetrator, as is the case in a lot of cases, is your boss who employs you, how do you manage that? That is a real difficulty. Handling it outside, in an employment tribunal or with an independent organisation, might be better.

Q343 **Tonia Antoniazzi:** Both Rachel and Kathryn have spoken about the bystander intervention and you have both been working with employers to tackle sexual harassment in the workplace. What are the most effective types of training in preventing sexual harassment and achieving culture change?

Dr Fenton: Bystander intervention shows effectiveness for preventing violence against women. I have done, with colleagues, a literature



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review for Public Health England that looks at bystander intervention, how bystander intervention training works and what the psychological processes are that people need to pass through, to go from seeing something happen and not wanting to get involved to being able to interrupt, distract or challenge those behaviours. We have to train people to go through different stages. The first of those stages is awareness, so really understanding what sexual harassment and sexual violence actually looks like and what the nuances of it are. It is about really in-depth understandings, but that in itself is not enough. Awareness-raising does not lead to behaviour change. It is a crucial step for behaviour change but it is not enough.

The second stage is that we have to recognise that it is a problem and that we see it as a problem. We then have to feel responsible for dealing with it, so we need to feel empathy; we need to feel motivated; we need to feel responsibility that this is something we can get involved in. Finally—and this is what is really crucial—we need to have a skillset. Training courses need to include modelling, for example through using role play of real situations that have really happened, and training people in different kinds of skills, so that those skills can be exercised when inappropriate jokes or sexual comments are being made, or when someone is witnessing something physically happening, for example, and taking disclosures as well. Supporting victims is part of bystander intervention.

Another thing that is really crucial is understanding how social norms work in those environments—so, understanding that when we see something happen, we are really influenced by what everybody else is doing. If we see something inappropriate going on and other people have seen it as well, we are very likely to be influenced by everybody else's inaction. When we do intervene, we might find that everybody is really supportive of that. It is about changing that culture so that everybody sees it as a positive thing to do and feels empowered to be able to change those cultures.

It is about involving everybody. It is a positive, inclusive and empowering framework. That has been shown to be effective for prevention work. What is really crucial is that we look at the evidence and see how that works in bystander training for the prevention of sexual harassment, specifically in workplaces.

Yvonne Traynor: We do training in schools, with boys and girls, around consent, gender difference and respect. This is just an adult version. It is an adult version of teaching men who do not understand consent, gender difference and sexual harassment. It is another step forward. If we can, as we are, working in schools to get young men early, so they understand that this is not acceptable behaviour, in the long run we are going to see a difference in society. This is like adult training of children in schools.



We are also working with the Met around the night-time economy, with sexual harassment in bars, clubs and pubs. We are doing training with the bar owners, again about bystander intervention, to get people to notice when there is some sexual harassment going on in the night-time economy and having a procedure to deal with that. We are approaching it from different angles. This is just another angle, but it is all about respect for women.

Kathryn Nawrockyi: In practical terms, that training needs to start with a very clear message from somebody very senior in the organisation. In one of the organisations I am working with currently, they have a very senior sponsor who comes into every session to start the training off with, "Here is what we are asking of you and here is what we expect at the end of this". The training needs to include all of the things Rachel talked about and a very clear ask at the end of that, particularly when you are talking to leaders of the organisation, in terms of what you are expecting them to do when you walk out of this room that day.

Quite frankly, you need to create that space for people to have very awkward and very difficult conversations, because, as Yvonne said, you are training men in this stuff but I also train women in this stuff, some of whom are just as complicit in the problem. You have some very difficult, awkward conversations. You are helping to shift very deeply held beliefs and perceptions that have built up over time. At the end of the day, those people are custodians of those organisations' culture and so they really need to understand their role in taking that forward.

Q344 **Tonia Antoniazzi:** Rape Crisis and the EHRC have recommended the development of training to tackle sexual harassment in the workplace. Who should receive such training and who is best placed to deliver it?

Dr Fenton: Everybody. There are differing layers of training that you might want to develop. Everybody ideally should be trained but you might want to do more in-depth training with managers and people who are perhaps champions, people who are dignity and respect advisers or people who take a specific role within that. Ideally, everybody. If you want to change culture then you need to start training everybody.

Kathryn Nawrockyi: It cannot be training in isolation. It has to be part of a bigger communications campaign in which the top of the house sets out very clearly their stall and makes it very clear that the organisation will start talking about this more commonly and expects everybody to have fluency in it. By breaking that silence, you make it easier for people to come forward and talk about their experiences. Everybody absolutely has to be a part of that training in some way.

Yvonne Traynor: Of course I am going to say Rape Crisis. We are already doing this training in schools. We are doing this awareness-raising with professionals. In fact, we train teachers and lecturers around consent and gender difference but we give the teachers the exact same training as we give to the pupils. We ask them to just pretend they are



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16 years old and they have to do exactly the same course. It is amazing that the adults know far less about gender equality and respect than the pupils know. Of course I am going to say Rape Crisis.

Q345 **Tonia Antoniazzi:** I think naturally we will see a culture change because we are training our young people to be more receptive.

Yvonne Traynor: It is still an uphill struggle because girls in schools are still using shorts under their skirts because sexual harassment is endemic in schools, colleges and universities.

Dr Fenton: Organisations need to work with the experts to develop training, absolutely, so that is people like Rape Crisis and other agencies. There is an issue there around sustainability as well. For example, in the work that we are going to do with Exeter City Football Club, once they have had the training themselves, we will then train the trainer to try to be able to embed that, so that they can embed that within the work that they then do with young people in their outreach work, for example.

There is something about being able to get the right people really well trained up so they can deliver training; otherwise, there are questions about sustainability. You can then develop your training, because you can evaluate. It is really important that training is evaluated for effectiveness. As you learn more from your evaluation, you can build that back into your own specific training, because training must be socio-culturally relevant to that organisation. It should be predicated on theory, it should be preceded by surveys and it should be evaluated. That evaluation should then feed back in so that it is absolutely tailored to that organisation.

Q346 **Tonia Antoniazzi:** It is about the quality of training and the continuity across all of the United Kingdom.

Yvonne Traynor: Absolutely, and it is about sustainability. This is all about funding. As a national sexual violence helpline, we get no funding from Government at all. We are relying on grants and things to manage that. We are getting 300 calls a week from different women around the country. It is about sustainability. If we are going to do this, let us do it properly.

Q347 **Chair:** Sorry; how many calls a week are you getting?

Yvonne Traynor: On the national helpline, 300 calls a week.

Q348 **Chair:** The EHRC were finding it difficult to find cases.

Yvonne Traynor: I know.

Q349 **Chair:** Why is there the disconnect?

Yvonne Traynor: We do not have the funding to do research about our calls. We have a database full of thousands and thousands and thousands of calls. We do not have the funding to be able to analyse them.



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Q350 **Chair:** Are your 300 calls a week about sexual harassment?

Yvonne Traynor: No, they are about sexual violence. About 10% of those are sexual harassment.

Chair: That is still 30 calls a week.

Yvonne Traynor: Yes, plus there is the other helpline we have been running.

Q351 **Tonia Antoniazzi:** The EHRC recommended that Acas develop the training. Do you think they are best placed to do so?

Kathryn Nawrockyi: We need to be very realistic. What we can make freely available is really key. There are going to be lots of organisations that are under-resourced and that do not have the money to develop very complex training programmes and bring in external facilitators. There are plenty that can but there are plenty more that will be really nervous about how you tackle something like this, which is of such a sensitive nature, with relatively limited resource. If we can develop some standardised packages and content that is available freely, whether it is online or training packages that people can get delivered, that would be hugely helpful.

The other thing is about guidance on how to design a tailored package for your organisation; it is not difficult to do in-house as well, as long as we have guidelines for best practice. We need a standard, certainly, so that we have consistency and sustainability. Organisations have used all sorts of tools out there that are freely available to help these conversations in their organisations. I work with one employer that uses the "Consent is like a cup of tea" comic strip to help people have those conversations about sexualisation of culture and the importance of consent in sexual relationships. That is something they are able to factor into their training at absolutely no cost, but it is such a critical tool in helping people have those conversations.

There is stuff out there; it is about helping employers access that content as much as possible. If Acas is able to develop something that does not necessarily rely on external trainers coming into every organisation but provides tools that employers can use in their organisations, that would be a great thing.

Yvonne Traynor: I am really pleased that other organisations have jumped on the bandwagon to say that sexual harassment is happening. That is great, but there needs to be a specialism to really understand what is going on, to understand how women feel and to understand exactly what sexual harassment is. You really need a specialist organisation.

Q352 **Chair:** Has anybody looked at how easy it would be smaller employers to be able to train all their employees? What resources might be available to them, and is it a different problem if you are working in a group of four



people rather than 400 people?

Yvonne Traynor: It is easier, is it not? If it is a smaller organisation, training is going to be much easier; it is going to be much easier to monitor. There is not a problem with size; it is just about getting the training. You can develop a training to four people as to 400 people.

Kathryn Nawrockyi: The group discussions need to happen on a group basis anyway. The training that I deliver typically has somewhere from four to 12 people in a session. You need to create that intimate dynamic so you can have the difficult conversations. Certainly in terms of protecting the anonymity of individuals, it is harder to use live case studies if you are in a very small organisation. If the nervousness is lack of resource and lack of funding for something, as I say, I do not think it is difficult to design a training package in-house and make use of the existing vast array of tools that are out there to help generate discussion, and, if something comes off the back of this inquiry that is freely available to employers, then that too.

Dr Fenton: I would be very wary of standardised packages because they tend to go online and they tend not to be very specific. They tend to become these tick-box exercises where companies can go, "I have satisfied this because I have bought my training and there it is," as opposed to making use of the professionals and proper resources that might well be out there. We need to be a little bit careful about what that looks like when we are talking about standardised packages.

Kathryn Nawrockyi: We do, but we need to be really honest that people cannot afford those training packages.

Dr Fenton: They often can be very expensive as well.

Kathryn Nawrockyi: Exactly. What is freely available? If we can provide good guidelines on how people can tailor them to their organisations, that would be really helpful.

Q353 **Tonia Antoniazzi:** Rachel, you have already talked about the different layers of training. Is it more important to focus on leaders, managers or other employees when seeking to bring about a culture change in an organisation?

Dr Fenton: If you cannot get everybody, then the evidence is that you need to get the peer leaders—people who are influential and who people look at and look to for guidance. That is behavioural guidance, as well. That might be at every level. That has to be about senior leadership visibility—managers, for example. It is also about having working environments, team leaders, people that you know who are movers and shakers, if you like, people in smaller teams on the ground, for example, who can influence culture and who role-model. It is getting that crucial percentage of people trained up if you cannot train everybody.

Q354 **Chair:** Thinking about the mandatory duty that the EHRC were talking



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about, which you have indicated is an interesting idea in some of the comments we have had to today, do you think there should be within that a mandatory duty on employees to report sexual harassment, or indeed to intervene in the same way you might have a mandatory duty for reporting an accident in the workplace? There are already mandatory duties that as an employee you have to do certain things in certain circumstances. Is there room for that when it comes to sexual harassment?

Yvonne Traynor: That is really quite difficult. It is a bit like saying if you have been raped, you have a mandatory duty to report it to the police. For women, it is going to be very difficult to say that this is a mandatory thing.

Chair: No, no, if you see it happening.

Yvonne Traynor: If you see it happening, in terms of third party reporting, yes, absolutely.

Dr Fenton: Off the top of my head, I would say no, because that might lead to enforceable legal duties against somebody who does not intervene. Someone who has not had the training will find it very difficult to intervene. Legally, that could be really problematic. I have a comment on the mandatory duty, which is that it has to include the word "effective". At the moment, it just talks about taking steps, but we should be using the word "effective"; it is not sufficient that employers can pluck a training out of thin air and say, "We have told our employees what sexual harassment is and we have told them not to do it," and that constitutes their training. The word "effective" needs to go both in the mandatory duty and in the statutory code of practice, so that it brings in a duty to evaluate and work out what is actually working and, if it is not, to change it.

Kathryn Nawrockyi: We need to recognise that, even as bystanders, there may be some fear in why people do not come forward, whether it is about the impacts on their career, the harm then being perpetrated against them or there being some kind of retaliation for doing so. We need be careful with a duty for employees but for employers, certainly.

Yvonne Traynor: Bystander intervention is so important. As racism is a white issue, violence against women and girls is a male issue. If there are men who are colluding with any kind of sexual harassment, they need to stop doing that and they need to address it with the person. If there is a culture in an organisation that says this is not acceptable, then you need everybody on board. If it is a bystander who sees that something is going on, I cannot see any reason not to mention it.

Q355 **Angela Crawley:** Rachel, you mentioned earlier the EHRC's recommendation on a duty on employers to provide a statutory code of practice on sexual harassment at work. Why do you agree with that recommendation?



Dr Fenton: It looks like a sensible recommendation as long as the code of practice is fit for purpose. My comment was really that if that is going to happen, we need to make sure we use the word “effective” in there, so that whatever employers are told to do is evidence-based, so that we make sure we are continually looking at what the best evidence and make sure that we are doing something that is positive, proper and right. That word “effective” needs to be explained as meaning proper evaluation and proper evidenced-based research into practice.

Kathryn Nawrockyi: It is about something that holds employers to account for taking action on this subject. What I have learned over the years, as I said at the start, is that leaders in particular, but most employers, do not understand this is already happening in their organisation and when they are told that it is, they are very reluctant to believe it or that they have had any kind of complicity in the problem. As much as possible, that signalling coming from outside the organisation and from Government will be hugely helpful in this problem. It is so silenced in organisations. The problem is that if it is just managed internally, with no duty for reporting for transparency, it will continue to be silenced, it will continue to go under the radar and we will continue having this problem in 10, 20 or 50 years’ time.

Yvonne Traynor: This is a national shame, quite honestly, that there is still violence against women in this country. If there is a political will behind this to bring it into the open, to say we are having these conversations and to say are talking about it, then we can do something about it; it is not inevitable. That is what so many people think: that this is inevitable and that we cannot do it because of this or that we cannot do it because of that. We need a political will behind this to stop this national shame.

Q356 **Vicky Ford:** But it’s not only an issue that is happening in the UK.

Yvonne Traynor: No, it’s global.

Vicky Ford: So please don’t call it just a national shame.

Yvonne Traynor: It’s because I am living here.

Vicky Ford: It’s a societal shame. It’s a global shame.

Yvonne Traynor: Absolutely.

Vicky Ford: It’s not just a national shame.

Yvonne Traynor: No, but we have an opportunity to do something here.

Q357 **Vicky Ford:** I am very sensitive. We have a great opportunity to do something here and it is great that we are having this conversation but on that language of “national shame”, I would call it “societal shame” or something else, because this is happening all over and we need to make sure that we take the leadership, but let us not pretend it is only happening in our nation.



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Yvonne Traynor: If we say that this is a global issue, we are distancing the fact that this is happening here. We have a very high proportion of sexual violence in this country and around the world.

Q358 **Vicky Ford:** Okay. Maybe I will turn it the other way around. I do not want to do down anything about the seriousness of what you have been saying, which is extremely serious, but are we significantly worse than comparable? Are there other countries we should be learning from?

Yvonne Traynor: I am not going to say we should be following their policies, but I had a visit from the Abu Dhabi police a little while ago who wanted to do something about sexual violence. They have a very zero tolerance to sexual violence, as do the Saudis. That is a very zero-tolerance regime.

Q359 **Tulip Siddiq:** Do you think our country should have higher standards than that of Abu Dhabi and Saudi Arabia?

Yvonne Traynor: I completely agree with you. We need to have higher standards. We need to be setting the pace. We need to be doing something about it. We are a really small island. We have to get to grips with this because this is the country for our children.

Dr Fenton: We are behind the curve in terms of doing research and recognising the issues. If you look at universities, for example, it has become an issue since about 2011. If you look at the evidence, universities in the US have recognised and done research into this problem for 20 or 30 years. Suddenly, this decade we have started picking up on this. It is the same point you made earlier about sexual harassment and the ILO. We are behind the curve. One of the reasons for that is that there is not enough money being put into research. Where are the big research grants? Where is the Government funding, as well as the specialist services, to work out why we are so late to the game? That would be my question. I do not have an answer to it.

Q360 **Chair:** A lot of the international media coverage tends to suggest a lot of countries are late to the game because of the international pick-up on the #MeToo campaign.

Dr Fenton: Yes, but not all.

Q361 **Chair:** Which are the ones that are ahead of the curve?

Yvonne Traynor: Australia.

Dr Fenton: The US and Australia, for example.

Q362 **Chair:** Do you think if we had US Senators and Congresswomen in here, they would agree with you that the US is ahead of the game?

Dr Fenton: No, but if you look at the amount of money, for example, that the CDC has put into violence against women research, they are definitely ahead of the curve.



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Q363 **Chair:** In terms of research, maybe, but not in terms of practice or laws.

Dr Fenton: Yes, absolutely. For example, in certain areas there are mandatory requirements on bystander training for US universities, in law, because of the evidence base that they have established. That is what I mean. What I am trying to say is we need to look at not just the specialist services—it is incredibly important that they are resourced—but also that research in this area is properly funded.

Q364 **Chair:** It would be very helpful to have from you, if we do not already have it, Rachel—because it sounds like you have your finger on the pulse here—some of the work, although it will not be exhaustive, that has been done either in research or in legislative terms in other countries. At the moment, we have a very piecemeal view of that, which again is interesting.

Yvonne Traynor: There is research. The research is that one in four women are affected by some form of sexual violence in this country. I just wanted to mention that it is an epidemic.

Chair: Yes, but more detail would be good. I think I picked up the EHRC on that.

Dr Fenton: Full-scale clinical trials into what works to prevent it absolutely have not been done. You look at the amount of money in the States. It has not been done.

Q365 **Angela Crawley:** I think we all agree that there is probably legislative work done elsewhere that would be relevant and we would value that in this Committee. Rape Crisis has recommended that the Government should do more to tackle sexual harassment in the workplace through its violence against women strategy. What exactly should the Government be doing in regard to that strategy?

Yvonne Traynor: It's creating an environment; it's a strategy, but who is listening to this strategy? Is that strategy being implemented? In many of the strategies that I have seen, and in Dame Elish's report as well, there are recommendations. I do not want to see recommendations. I want to see implementation. Let's implement this. These are serious crimes that are going on in this country. We need to see implementations, not recommendations.

Dr Fenton: I would reiterate my previous point about funding and really working out not just what is going on but how we combat it and what is effective.

Q366 **Chair:** Do the Government have anything on sexual harassment within their current strategy?

Yvonne Traynor: I do not think they do. I am trying to think of the 300 pages. I do not think sexual harassment was highlighted, no.



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Chair: Lots of other forms of violence against women but not that one. Thank you very much for your time today. We really appreciate you coming along to give evidence. On behalf of the Committee, thank you very much.