

# Women and Equalities Committee

## Oral evidence: [Sexual harassment of women and girls in public places](#), HC 701

Wednesday 13 June 2018

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

Questions 90–125

### Witnesses

I: Karon Monaghan QC, Matrix Chambers, and Dr Purna Sen, Director of Policy, UN Women



## Examination of witnesses

Witnesses: Karon Monaghan and Dr Purna Sen.

Q90 **Chair:** Welcome to our session today. We have two witnesses in front of us today. Unfortunately, one is running a little late but I will ask Purna to introduce herself in a moment and Karon will join us as soon as she arrives.

This morning we are taking evidence on two inquiries on sexual harassment. The first panel will be looking at how the legal framework and international obligations affect our responses on this issue in the UK. Our focus, in this panel, is mostly on sexual harassment in public places but the subjects are relevant to the issue across the board. We will also touch briefly on some aspects of the sexual harassment in workplaces inquiry as well. We will start our inquiry session this morning just with Purna Sen and Karon Monaghan will join us. But, Purna, can you just say which organisation you are representing?

**Dr Sen:** Thank you very much. I am Purna Sen from UN Women.

**Chair:** When Karon joins us, she will just take her place and we will continue seamlessly. To accommodate that we are going to start with some questions from Eddie, particularly about UN Women's role in addressing sexual harassment and other international models.

Q91 **Eddie Hughes:** What do you think are the likely pros and cons of steps taken in countries like Belgium and France to tackle sexual harassment?

**Dr Sen:** In public spaces?

**Eddie Hughes:** In public spaces.

**Dr Sen:** Different countries are using different approaches and, to frame my answer, we would understand sexual harassment in public spaces as intrinsically linked to sexual harassment elsewhere and to other forms of violence. It falls under the umbrella of all forms of violence against women.

The best approach to make a substantive difference in that field includes legal change as well as work to address social norms and attitudes, looking at prevention as well as responses to violence. Specifically different countries have taken different measures but what we know to work best is an integrated approach across all of those, which address the range of violence in its entirety.

Q92 **Eddie Hughes:** I am still not sure I understand it. What is the good and the bad of that then?

**Dr Sen:** The bad—if I start with the bad—is a perception that perhaps changing laws does the trick. Changing laws is absolutely essential and it is a legal requirement in international law to change laws. But if we are talking seriously about the obligation to end violence against women the good bit is that you would have to work across changing attitudes,



serving media campaigns, or doing works in schools. Changing the law is a framework dealing with perpetrators and showing accountability. Where Belgium and other countries have introduced specific measures we would say excellent, but let's make sure we also have other steps that see the joined-up nature of what is going on and address it as a whole.

**Q93 Eddie Hughes:** But we would say, "Excellent" from what you seem to be suggesting was a perceived perspective so is there evidence of the effectiveness of the changes that they have made in France and Belgium?

**Dr Sen:** I am not aware of evidence of impact as yet. It takes time. So I cannot comment on those specifics. But I can say that where there have been initiatives, so if you are looking at public spaces—as this Committee is at the moment—initiatives that have addressed public messaging, looking at training bus drivers and train drivers and taxi drivers around sexual harassment in public space, those sorts of steps have made women feel safer when they enter public space.

**Q94 Eddie Hughes:** Should it just be criminalised then to help accentuate that feeling of safeness?

**Dr Sen:** Criminalisation certainly helps because it gives a very clear message that this sort of behaviour is not acceptable and it will not be sanctioned by the state. But it is also important because it provides a framework to hold perpetrators accountable. So it is a very helpful, arguably necessary, step but it is not sufficient.

**Q95 Eddie Hughes:** More broadly then, what are the UN doing to tackle sexual harassment?

**Dr Sen:** So UN Women has a programme that we call Safe Cities and Safe Public Spaces, a whole network of major cities across the world from New York to Cairo to Delhi to Port Moresby to Mexico City. London has just joined the programme. That programme looks at ensuring there are adequate steps taken to make public space safe for women. That starts with an initial survey of women and men on their understanding and experience of public space and whether they feel safe or not. That provides a baseline for appreciating the extent and the nature of sexual harassment in public spaces.

According to that, different measures might be taken. One I have mentioned is about public messaging on the underground. Another is working with designers to think about lighting in public spaces. Those cities meet periodically to share their experiences and to afford each other the benefit of their particular initiatives. That is where the mayors meet about every 18 months to share experience and to learn from each other. Do you want some specific examples?

**Eddie Hughes:** Please.

**Dr Sen:** The first step will be about ensuring there are public discussions, so ensuring there is no longer any silence around sexual harassment in



public spaces. All cities undertake a survey and use that to do public awareness work. Then they certainly look at the rule of law and enhancing it if there are gaps in the rule of law, any particular measures that include, as you mentioned, legislation on sexual harassment in public space. That has been introduced in Quezon City, Egypt, Morocco. Just last week a measure was passed in Washington DC also.

Then there are measures that look at how public space is organised. That would include safety design principles. There are a whole set of safety design principles that speak to women's experience in fear of violence. So visible sight lines where women can be seen and heard, for example. Not having dark corners. Improving physical design and social design so that women can travel at ease and safely. This is a big part, changing social norms.

Work has been done particularly using community level organisations to spread awareness, to do messaging of intolerance of harassment, holding perpetrators to account, and ensuring that women know where they can go if there is anything to deal with.

**Q96** **Eddie Hughes:** Women knowing where to go if there is anything to deal with. The UN is facing its own allegations of sexual harassment so how can the UN, as a global human rights body, adequately tackle sexual harassment externally, if it is facing those same problems internally?

**Dr Sen:** You are absolutely right to point out the issues of sexual harassment within the UN. Part of my role is to help us, as an organisation, to take these issues up in a more modern way than has been done previously. There is a crisis of confidence—

**Eddie Hughes:** Sorry, what does that mean?

**Dr Sen:** There is a crisis of confidence, that is just an expression I have used in terms of staff and their experiences of sexual harassment within the UN. They do not feel the process has worked for them. They do not feel adequately protected, and that is why these cases have reached the media and you are aware of them.

All employers, not least of all the UN, which is doing exactly what you are saying, which is advising governments and other actors on what they can be doing, to get its own house in order. There is an initiative under the Secretary General that was started in December to review all the practices and to make changes that work more effectively.

It is incumbent on us to be able to say not only are we looking at what is happening elsewhere and can bring good practice to advise you, but we are also prepared to look at our own practice and get it in order.

**Q97** **Eddie Hughes:** How quick before people internally and externally at the UN feel confidence that the UN has its own house in order?



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**Dr Sen:** Proof will be in the changed experience. The timeline for this particular work is to have new procedures, new definitions, new other initiatives, agreed by the most senior board of leaders of the UN by November. Then they will all need to be put in place. For me—and we bring a gender perspective to this particular work—the evidence of this working well is when women feel that they have trust in the procedures that are there to serve them. That we have truly safe and respectful work environments. Hence the connection again that I make at the beginning that safety at work is also linked to safety in public space. If it is not safe to get on transport, women are going to be inhibited to get to work and be safe at work also.

It is important we join them up. That is what we are looking at in terms of the UN's own internal work but linking it also to the new work. I do not know if you are aware of the ILO on safety at work.

**Eddie Hughes:** Yes.

Q98 **Chair:** Could you write to us in November when the new protocols are in place or the recommendations have come forward? That would be helpful.

**Dr Sen:** Sure, and in the meantime what I am doing at UN Women is ensuring that we have a gender perspective and that we consult women and other gender experts in that process too.

Q99 **Chair:** Welcome, Karon. It is lovely to have you here.

**Karon Monaghan:** I am extremely sorry, there was a problem at the train station, as you probably know.

Q100 **Jess Phillips:** Purna has touched on this a little bit but if you, Karon, want to explain exactly why sexual harassment is an equality and human rights issue and how it is linked to sexual violence and other violence against women and girls.

**Karon Monaghan:** It is an equality issue domestically because we have decided it is under the Equality Act, but it plainly is because it affects women's ability to access public spaces, work or enjoy work on the same terms as men. It necessarily is a form of sexual violence because it impedes women's ability to enjoy spaces with autonomy, safety and so on.

How we deal with it domestically in law is largely through the Equality Act, although not exclusively. I might just want to say something else about the other areas of law that address it. But under the Equality Act we have a pretty wide concept of harassment—both sexual harassment and ordinary harassment covers a wide range of activities—both in the employment sphere but outside the employment sphere; so the context of public authorities, prisons, schools and so on, and also by service providers; your local cake shop, and so on. So, a wide concept.



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Generally, it is not seen as a human rights issue as opposed to an equality issue, although it very much is and it will fall within the scope of the Human Rights Act, where it occurs in the context of public authorities' activities. But public authorities, in my experience, are very rarely challenged under the Human Rights Act for sexual harassment. That is quite important because sexual harassment is broadly seen as an employment issue. If it was broadly seen as a human rights issue it might be we would have more challenges and it would be recognised as having a more severe impact on an individual's ability to enjoy human rights equally and freely; but it is a human rights issue.

As well to touch upon some of the problems in the Equality Act, not just that it is not treated as a human rights issue. But also there is no mandatory obligation under the Equality Act to address sexual harassment. An employer is not bound to take steps to address sexual harassment. It is very much a defensive approach. If a person is sexually harassed they have a remedy under the Act but there are no proactive obligations, except in the context of public authorities where they are under a mandatory duty—the equality duty—to have regard to a need to eliminate harassment.

Q101 **Jess Phillips:** Has a public authority ever been taken to task for human rights for sexual harassment?

**Karon Monaghan:** I am aware of one case however long ago, under the gender duty—before the public sector equality duty—certainly well over 10 years, 15 years or thereabouts. I am aware of one and that is in the context of licensing a lap dancing club and the impact on women in the community. We have had lap dancing club cases insofar as employment is concerned—so lap dancers have brought claims—but what has been said in the lap dancing public sector equality duty case is that licensing lap dancing clubs, and sexual entertainment venues more generally, have an impact on the wider community because they promote the idea that sexual objectification of women and sexual harassment commonly in those environments is lawful and acceptable. But that is the only context I can think of. It is rarely used in that context and public authorities, in my experience, are rarely challenged for failing to meet that duty and context of sexual harassment.

Q102 **Jess Phillips:** To both of you: what are the key international laws and obligations on the UK to tackle and prevent sexual harassment?

**Dr Sen:** There are a whole range of international treaties and law that pertain here. The most relevant are the Convention on the Elimination of All Forms of Discrimination Against Women, but also the wider human rights treaties, such as civil and political rights and economic and social rights are pertinent. There is a particular Article 5 in CEDAW, which talks about, if I can read it to you, the state being obliged, "To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices, which are based on the idea of the inferiority or superiority of



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either of the sexes or on stereotyped roles for men and women". That is specifically around social norms and cultural practices.

But CEDAW, in its understanding of discrimination, captures violence as a form of discrimination—as gender-based discrimination—and therefore obliges states to do everything it can to prevent and to end that discrimination. All member states in the world have committed by 2030 to eliminate all forms of violence against women.

Q103 **Jess Phillips:** Good luck with that. Do you think that the international obligations are taken seriously, Karon? In the UK specifically.

**Karon Monaghan:** In terms of the legal context, which is my area, it is very difficult to persuade courts that they are significant. Increasingly courts are taking notice of them, so most recently the Northern Ireland abortion case. The Supreme Court did refer extensively to the international obligations, including the ones just referred to under CEDAW. But nevertheless it is still quite difficult to get them there.

Q104 **Jess Phillips:** What about the UK Government? Is there evidence they take it seriously or have used it in their approach to tackling sexual harassment?

**Karon Monaghan:** They say they take it seriously and they report of course to the Committee—that is the supervisory body in relation to CEDAW—and they say they take action under it. We have not incorporated the convention into our domestic law so, for example, the European convention that we find essentially reflected in the Human Rights Act, we have not adopted the same approach to CEDAW. We have not imposed upon ourselves—that is the UK state—the obligations directly that we see under CEDAW. That is something we could do but Government/Parliament have decided not to do that, if indeed it has come before Parliament.

**Dr Sen:** The UK Government have said it will sign up to and ratify the Istanbul Convention also. Istanbul has an explicit reference, Article 40, to dealing with sexual harassment. So there is another obligation that we would obtain in the UK as well as the rest of the region where the convention applies.

**Karon Monaghan:** Although they have not yet ratified it, of course. They have not ratified and they have not said that they will incorporate it directly into domestic law. As with CEDAW, they have said that we will ensure our domestic law is in conformity with it but not that we will directly incorporate it into our domestic law.

Q105 **Jess Phillips:** Parliament has voted for the ratification of the Istanbul Convention. The International Labour Organization has proposed a convention on violence at work. Do you think this will make a difference to women's safety in the UK?



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**Karon Monaghan:** One important proposal—of course it is not yet been drafted—is that there will be a mandatory duty on employers to prevent harassment. That was one of the matters I was alluding to a moment ago. There is not such a duty in domestic law, leaving aside health and safety, which has no teeth at all. It will impose a mandatory duty if it gets through. That is something Dr Sen will know more.

Q106 **Chair:** The ILO recommendation you are talking about has been proposed?

**Karon Monaghan:** Yes. The International Labour Organization are proposing a new convention addressing explicitly harassment at work, including sexual harassment at work. One of the recommendations is there be incorporated in that convention a mandatory obligation on employers to take steps to prevent it. Not just a right for an employee to bring a claim after it has happened for compensation, which is generally the model we have in domestic law.

Q107 **Chair:** In terms of ILO conventions—it has not been ratified yet, I understand that would be next year—is that the same as a CEDAW undertaking that it would be an undertaking to ensure compatibility of the law rather than necessarily in a corporation?

**Karon Monaghan:** Precisely. As with CEDAW and the other international conventions, it will bind the UK as a matter of international law—it is a matter of its international law obligations—but it will not directly form part of our domestic law, so you could not bring a claim on the basis of it unless Parliament takes action to introduce laws in conformity with it or to directly give effect to it.

Q108 **Jess Phillips:** Finally, on sustainable development goals requiring that all discrimination and harassment against women is ended by 2030—it is a draft of hope over experience—do you think there is any realistic prospect of the UK achieving this?

**Dr Sen:** This goal reflects the calls that have been made by women across the world who have put this matter on the public agenda and the public policy agenda to live lives that are free from violence, intimidation, and fear of both. The fact that Governments have heard and reflected that in their own goals is something that should be worked towards with the utmost intelligence and energy. There are naysayers who say this is impossible but the fact is—

**Jess Phillips:** Sorry.

**Dr Sen:** —Governments have made a commitment and that obliges us all to put our best efforts into making this as much a reality as possible. The international level obligations, which Karon has referred to, but also CEDAW places positive responsibilities on due diligence and work to prevent violence. Obviously, sexual harassment is part of that.





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All best efforts have to go towards seeking to achieve that goal and if it is not met by 2030 then there will have to be a discussion about why. But the monitoring along the way—and the UK has agreed to report to the high level political forum next year on inequalities—it gives a scope to see the rate of progress and how it can be stepped up in the intervening 12 years.

**Q109 Jess Phillips:** The UK was part of the group of countries pushing for a sustainable goal so there is no reason for us to doubt their commitment. Have you seen any evidence that they are making steps towards it currently? I know they have not reported yet.

**Dr Sen:** Not reported, I think there will be a report next year. UN Women will be in a position to give a more specific answer to that through a new piece of work we are doing on data on the SDGs. The first report on gender monitoring of the SDGs was issued in February—again, if it is useful, I can send you a copy—which is looking at progress against each of the 16 goals in terms of gender dimensions of those goals, but also with a particular focus on SDG 5. That will be issued periodically and a data platform will be made available where all this information can be accessed. There is a mechanism through which each individual country can be tracked in terms of their progress on this.

I do not feel I have enough information to say whether the UK is specifically on track but I am offering a tool by which that can be monitored over the next period.

**Q110 Angela Crawley:** In reality, how do you get international laws, which seem very remote, to make any difference to women in the UK? For example, how do they make a difference to women who have had specific images of them circulated without their consent or who cannot walk around their own community without facing a barrage of sexual comments? How do you think you can make the international laws relevant to them?

**Karon Monaghan:** We are both looking at each other and thinking who is going to answer that one. Shall I make one observation? It is difficult to say because the international obligations that we are speaking about do not directly form part of our domestic law, but it would be said that they have informed it to a large degree; shaped it. They act as a context for those campaigners who want to push laws forward and say, “There is an international law obligation, you have to make these changes”. But it is difficult to measure their direct impact, certainly as a lawyer—there might be others that would be able to help you with this—it is very difficult to say there is a direct correlation outside of EU law. There is certainly a direct correlation with EU law. But in terms of the broader international obligations it is difficult, except to say they have operated as a context for allowing people to push Parliament forward to introduce changes. EU law is a different kettle of fish. That has had a very significant impact on our domestic law, including in the context of sexual harassment.



**Dr Sen:** The international framework has a number of different dimensions. CEDAW is one of them and is certainly hard law where the specific obligations are spelt out, and certainly domestication is a recommendation of that Committee. Attached to that is a protocol through which individuals can make individual petition to the Committee that oversees the law. That is starting to be increasingly used.

One of the issues around the use of CEDAW is awareness of the law and its provisions. There is an obligation on states to ensure that their civil society, their women's organisations, are aware of these international obligations and then they are more likely to be used both for lobbying and campaigning purposes by women's organisations and others, and perhaps through judicial activism. But also that they can make shadow reports to these Committees; so when the Government reports other activists or academics or experts can also make a report to talk about what progress has been made since the previous report. Then the optional protocol allows for individual petition. We are finding that that has been used more and more.

Secondly, the other parts of that framework include mechanisms such as the universal periodic review. I can give you a specific example because I happen to be involved in it but the universal periodic review is a peer review by states of their human rights obligations across all the treaties, not just one. Of course, there are gender dimensions to other treaties beyond CEDAW.

It is a very different climate, it is countries looking at other countries rather than experts examining countries. When the UK volunteered to report in the first round in March 2010 one of the shadow reports—a stakeholder report—said at the time there was no national strategy on violence against women. One of the countries asked the UK why this was the case and what they were going to do about it. At that meeting, the UK Government committed to having a strategy on violence against women.

You can find at that national level there are implications but at lower levels the use of CEDAW is very much dependent on awareness of CEDAW. Perhaps in the UK there is more that can be done around that.

Q111 **Angela Crawley:** What do these obligations mean in practice for a public body that might have a role in addressing sexual harassment, such as local authorities, the Equality and Human Rights Commission, or the Health and Safety Executive?

**Karon Monaghan:** I am not sure the UK have signed and ratified the optional protocol so I do not think we have—

**Dr Sen:** Yes, they have. There was a case earlier this year.

**Karon Monaghan:** Fine. Just picking up on the one point that perhaps I should have expanded on when you asked about the impact of the



international obligations. There is another impact and that is in relation to judicial decision making. Some judges are now looking to the international obligations more frequently, although not very much, but the example I gave was the abortion case, as one of the most recent examples.

I think your question was: what should we be doing? We should be doing more proactive work and one of the routes to achieving that is through the public sector equality duty. Ms Phillips asked about have there been any cases in relation to harassment. There is so much that can be done using the public sector equality duty. Planning, environment, lighting, the way streets are organised, schools, licensing sex entertainment venues. How are we doing that in the 21st century? We are not going to get rid of sexual violence if we mandate the sexual objectification of women in licensed venues.

There is a lot we can do that is proactive and which promotes the aspirations that we see in the international conventions that Dr Sen has spoken about. There are tools that we have domestically and there is an international framework. Part of the problem is that we are not looking imaginatively at the tools we have and we are not taking robust enough enforcement action where public authorities, in particular, fail.

**Dr Sen:** If I may add to that. This obligation to due diligence—to act to prevent to ensure remedies and accountability of perpetrators that pertains under CEDAW and other international law—is something that perhaps could have a greater purchase in the UK. The more that people are aware of CEDAW and its provisions and its obligations, including to non-state actors, it is important that we recognise over recent years that not only is the state responsible for what the state does but the state is also responsible for what non-state actors, private actors do. If they should have known about it or could have prevented it then they are liable. They are responsible for that.

The more people know about this the more they might bring petitions under the optional protocol to CEDAW, to say, "This has happened to me. I have tried local remedies to address this but I have not found an adequate conclusion so I am reverting to international processes to seek justice". You will find more and more of that as awareness in the UK grows of those international possibilities.

Q112 **Angela Crawley:** Let's say there is a town centre where there is going to be a high level of sexual harassment taking place at night. How could the UK law, or international obligations, be used to get the police, local authorities, business owners to take action and hold them accountable?

**Karon Monaghan:** That would probably be a state systems issue. As Dr Sen said, there are obligations on states to take action to prevent forms of sexual violence, including sexual harassment, so I suppose it would be said that you are failing in your obligations under, among other things, CEDAW, by not having systems in place to ensure that women are safe



on the streets, and that might be through the sorts of things Dr Sen has already talked about, safe streets, safe public spaces.

**Dr Sen:** If it were a city that was signed up to the Safer Cities programme there would be a lot of resources, information and networking available for those cities and those mayors, for example, to take appropriate preventive steps and to learn from what has happened elsewhere. There is a lot of good practice available on this, and remedy for individuals to bring cases.

Q113 **Angela Crawley:** My final question: how is the Human Rights Act relevant to sexual harassment? I think you have covered this briefly, Karon.

**Karon Monaghan:** Article 8, which forms part of the Human Rights Act, requires that respect be had to one's private life. The courts have recognised that private life is a broad concept, and it protects sexual and personal autonomy, so engaging in sexual harassment, on the face of it, violates that right, the right to respect for private life. There is a provision under the Act that does provide some protection. It is only as against the state, but as with the international obligations that have been spoken about, the state does have a duty—it is a fairly limited duty, perhaps, but a duty—to take steps to prevent it happening in private spaces. Article 8 is used sometimes, particularly in the context of prisons, for example—where sexual harassment has happened in prisons there have been Article 8 claims under the Human Rights Act—but it is rarely used. Perhaps there should be greater awareness about sexual harassment as a human rights issue. Certainly the international obligations are very much seen as rooted in human rights values, not just equality values but also human rights values, dignity, and so on, so perhaps there is more work to do there.

Q114 **Chair:** Karon, do you say that if there was a situation where a town was failing to keep women safe, a case could be brought under the public sector equality duty because there is a clear duty for local authorities to keep people safe?

**Karon Monaghan:** No, it does not go that far. I would want the public sector equality duty strengthened to have that sort of mandatory duty, but what it does do is require public authorities, when making any decisions, to have due regard—so to take account of—to the need to eliminate, among other things, sexual harassment. Whenever a public authority makes a decision on, for example, licensing a sex club, which might be the easiest example but also lighting, street arrangements, and so on, it is bound to consider how it can do this in a way that promotes the elimination of harassment, and so on.

Q115 **Chair:** Who would trigger that?

**Karon Monaghan:** The power to take action lies in the hands of individuals. One can issue what is called judicial review proceedings in the High Court and say, "My local authority has failed to have regard to



the need to eliminate harassment when it licensed this club” or licensed a pub that is known to sexually harass customers, and so on. Also, of course, the Equality and Human Rights Commission has specific enforcement powers in relation to public sector equality duty, where it thinks there has been a failure to give sufficient regard to it.

Q116 **Chair:** How many cases has the Commission brought under the public sector equality duty?

**Karon Monaghan:** I don’t know. I am not aware of any but I would not necessarily be aware so I think the question needs to be asked.

Q117 **Tonia Antoniazzi:** It is over 40 years since the Sex Discrimination Act and despite this, surveys are showing consistently that women and girls in the UK experience sexual harassment routinely, whether it is in the street, at work, or elsewhere. How effective is UK law or policy in tackling sexual harassment?

**Karon Monaghan:** It has not been great but in part I think that is because of relatively low level awareness of sexual harassment as a form of sex discrimination. It seems obvious to us now but it has taken some time to even see it as a form of sex discrimination. That is largely because of the impact of EU law, some time ago. It is true that there has been prohibition on sex discrimination for 40 years, but sexual harassment was not seen as a form of sex discrimination until the late 80s or 90s, or for some considerable time, probably in this jurisdiction, in the 90s. It used to be said, “If I comment on a woman’s breasts, it is not sexual harassment because I might comment on a man’s breast” and the courts would say that is absolutely right, it has nothing to do with being a woman; it is to do with being rude, discourteous, and so on. So it took a very long time to persuade those who were covered by the Act that sexual harassment was sex discrimination.

Q118 **Tonia Antoniazzi:** You spoke about the public sector equality duty and the need to strengthen it, but do you have any suggestions for how the law or policy could be improved?

**Karon Monaghan:** In relation to the public sector equality duty, it could be that rather than having due regard to the need to achieve elimination of discrimination, that they have to positively take steps, that there is a mandatory duty, not a duty to take account, but a duty to achieve, so an outcome-focused duty that is measured against particular standards. That seems to me to be much clearer. We all know where we are but it is sometimes very difficult to explain what the public sector equality duty is. A duty to have regard is quite conceptually difficult. If we had an outcome-focused duty, I think that would be much more compelling.

I do not think the law is the whole answer, I should say. The law is important in changing social norms, because it makes people do things, and there are some technical areas of the law, like third party harassment, and so on, which you may have heard about already, that need, in my view, to be improved, but I think there are broader issues,



such as awareness raising and prosecuting men who sexually harass women in the streets under the criminal law and telling men, “If you do this, if you touch a woman up in the pub, you are committing a sexual assault and if you are convicted, that could affect the whole of your life. You may have to disclose it to your employer. You may not be able to do a particular course at a university. You may be excluded from particular work” and so on. While it is seen as relatively minor, the message does not get to men as well, that they will be in big trouble if they think they can carry on like this. Schools and education facilities also need to take it seriously.

**Dr Sen:** The point about sexual harassment not being seen as discrimination is absolutely moot, but so is the point that sexual harassment has been marginalised around our understanding of violence against women. It has been seen as more trivial, less important and less serious, but what we have seen over the last nine to 10 months, with women’s agitation, is that this has moved more centrally into our understanding of violence and therefore our state obligations to address violence, and now to end violence, capture the work on sexual harassment, too. That gives it an extra momentum now, which must be taken seriously.

There is perhaps no obligation to act proactively in the public sector through what is domestic law but in international law there is an obligation, so that obligation on due diligence still obtains because the UK has ratified those international treaties. In the absence of being proactive on those steps, this is the sort of thing that the UK will be questioned about when it reports both to the high-level political forum on the SDGs but also to the Committee on CEDAW. It will also leave room for individuals to bring cases for failing to act according to the due diligence standard.

Q119 **Tonia Antoniazzi:** We have heard evidence that the prevention of sexual harassment is a major gap in the UK, and you talk about obligations. What obligations are there on the Government or other bodies to prevent sexual harassment and change social norms that reinforce discriminatory attitudes towards women and girls, and what does this look like in practice?

**Dr Sen:** Both CEDAW and its interpretive judgments speak about the obligation to address social norms, cultural attitudes, and gender stereotypes. Article 5, which I read before, speaks explicitly to that. The obligation is there. The way it has worked in practice means that some states have had public awareness campaigns. A very good campaign in the UK some time back was the zero tolerance campaign—billboards, bus stands, bus shelters, having these messages about violence, its prevalence, and who is subject to it. In my international work, I have certainly seen that that campaign has been used as a point of reference by many other countries as an example of good practice.



It also means there is more attention being paid to early years work, work in schools, looking at curricula initiatives, looking at building the values of respect in personal relationships in school-age children. It also has a particular impact on university campuses where there is increasing attention being paid to practices of certainly initiation on US campuses, and other forms of sexual violence in other countries, where universities and employers are stepping up to have specific measures in place to act promptly where attitudes and behaviours illustrate disrespect to women and a sense of sexual entitlement among men. There is a range of examples. If you want some specifics, I can send them later. However, that has been an important point of reference.

There is also awareness that many good initiatives have been put in place, legally, sometimes training service providers, the importance of funding the women's sector—refuges—adequately, and so on. However, I think that now there is an understanding that those sorts of measures can only go so far if the environment in which those laws and regulations operate is not also addressed. You can have laws that punish men for rape or sexual assault but if men still feel they are entitled to do those things, you will have it continuing rather than be addressing issues around prevention, and prevention is now a major focus.

**Q120 Sarah Champion:** Over the last decade or so, the criminal justice system has adapted its practice and developed protections for complainants of sexual assault. Do you think the employment system provides adequate protection for employees who raise allegations of sexual harassment or sexual assault at work? If not, what modifications do you think there should be to give them that protection?

**Karon Monaghan:** In terms of our domestic law, I think it would be helpful to re-enact section 40. Section 40 was the third party harassment provision, which ensured, for women who work for example in public-facing roles, that if they are sexually harassed by a customer or somebody in respect of whom they are exercising a public function, for example, their employers can be liable if they have not taken action to prevent it or taken reasonably practicable steps to prevent it. I think that sends an unfortunate message, Parliament repealing that pretty soon after the Equality Act that first introduced it. That sends an unfortunate message if we are saying we want to take positive steps to address it.

That is one thing, but there are also reinforcement issues. Bringing cases to employment tribunals is difficult. You heard from somebody from the Free Representation Unit. I was watching it on stream. He was explaining some of those difficulties. It is very difficult to go along to a tribunal and talk about your experiences and there are no positive obligations—as I alluded to a moment ago—on employers outside the health and safety context, which is not really appropriate for this, to prevent sexual harassment within their workplace, whether from co-workers, agents, customers, and so on. We do need to do more around that. There needs to be enforcement.



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People also need to understand, and I am not sure we do, that most forms of sexual harassment also constitute criminal offences and that might be an area that we need to be doing more work on.

Q121 **Sarah Champion:** Could I pin you down specifically? If you are going through an Employment Tribunal, for example, are there particular protections that you would like to see in place for the person making the allegations of sexual harassment?

**Karon Monaghan:** Legal representation would be one. I think that would be even more unlikely, if I may pick up on Ms Phillips's observations on achieving our commitment to eradicating sexual violence by 2030. We know that there have been pretty significant cuts to legal aid. I know that is not an area that this Committee has responsibility for, but that, certainly I think, acts as an impediment. Bringing a sexual harassment case brings particular challenges because you are going to be cross-examined about the experience of having been subject to sexual violence, without a lawyer.

Q122 **Sarah Champion:** Would you suggest anonymity?

**Karon Monaghan:** You can get anonymity already.

Q123 **Sarah Champion:** At the judge's discretion.

**Karon Monaghan:** Yes, it is at the judge's discretion.

It may be that mandatory anonymity would help. I have to say that I have not considered that. Generally, it has not been a very significant problem in the cases I have been involved in, but perhaps that is something that more work could be done on, and certainly there should be assistance. There can be funding from the Equality and Human Rights Commission but it has a relatively limited budget. I guess you will be speaking to them anyway.

However, it is difficult bringing a case and often both sides are under-represented, so you could find yourself being cross-examined, at least theoretically, by your manager, against whom the allegation is made. There are those issues. Bringing legal proceedings is not easy, whatever the context, which is why it might be helpful to have the duty shifted to the employer, rather than to the employee having to make the case.

**Dr Sen:** You are asking a question that is running in parallel to our own work internally at the UN, as Mr Hughes mentioned, around how we make workplaces safe and respectful places for all staff, particularly women, who have historically and persistently been subject to sexual harassment.

There is, I think, a more global sense of the need to review what is in place and to see what has worked and what has not worked. I have just attended a two-day event with lawyers and activists, where there was exactly this discussion going on. That obligation on employers to create safe and respectful workplaces was discussed and I hope the ILO





initiative, which will be confirmed next year, will go some way towards this.

What we are seeing is that, for example, training on sexual harassment has not been a successful tool. The role of leadership in messaging intolerance and in exhibiting intolerance has had an impact. We are seeing that work with bystanders has proven to be a more useful tool to address sexual harassment. There is a need to protect reporters—and we are talking about them as reporters rather than complainants—when they are reporting prohibited behaviour, that those who report sexual harassment do not fear retribution, loss of jobs, failure in promotion, and other adverse consequences. However, the role of leadership in ending and recasting what have historically been a hostile work environments is proving more and more critical in ensuring lasting change.

There must also be, I think, no room for perpetrators to have dignified exits from work. Leaving employment in the middle of an investigation should not let them off the hook. Collusion between people who have worked together for a long time, leadership from management level, should not be allowed to get in the way of justice for those who are reporting sexual harassment.

There is a need, also, to shift cultures at work, which consistently see women as unreliable, not credible, falsifying their reports, what is essentially a perpetrator-focused approach. If you disbelieve the reporter, you tend to side with the accused; that I would call a perpetrator-focused approach. That needs to shift to become a victim-centred approach, which is to have an open mind as to the report, if not a starting point of belief, and a duty to address issues of harm and to seek healing from what has happened, to understand the trauma and the impact of sexual harassment at work, what that brings to the life of the person reporting.

The ILO work, I think, will flesh out some of this. That work is, of course, about violence against men and women at work—we are supporting them in the gendering part of that work—and I think there will be more tangible work that comes out of it, but also the UN system work, which I am involved in, will be looking at these issues and looking at what constitutes good practice.

Q124 **Sarah Champion:** That is very interesting. Could I take you both on to the next stage, which is how effective you think the regulator, the Equality and Human Rights Commission, is on monitoring and enforcing legislation around sexual harassment in the workplace?

**Dr Sen:** I don't know if I can comment on the EHRC as such. Karon might be better placed to do that.

**Karon Monaghan:** I don't know that they have funded a lot of cases on sexual harassment. They may have done and they will tell you if I have got that wrong.



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The Commission has broader strategic powers and also has the power to fund individual cases. For the Commission, it is a matter of policy, I guess, what is the strategy they are presently adopting, and I suppose they would say, "There are a million things we could bring cases on and we have to spread our funds and identify priorities".

If you are asking me the question of how successful have they been, sexual harassment is still widespread, but whether the answer is that the EHRC should be taking more individual cases, or whether it is that there should be greater work on the public sector equality duty, or whether it is that there should be funding to other organisations to bring cases, such as advice centres and so on, those are broader questions. Certainly in terms of outcome, we still have widespread sexual harassment.

If I may pick up on a point that Dr Sen referred to, what we might describe as soft measures, we do think there is also an obligation on all of us not to tolerate it. Frankly, I doubt there are many of us that could say there has not been ever in our lives, even at the senior end of our lives, where we have seen something but decided not to call it out, for a variety of reasons. One of the things we do have to think about when we are looking at social norms is whether or not we should be calling it out individually when we are not necessarily the ones subject to it.

**Q125 Sarah Champion:** My final question links on from that. It has been suggested that tribunal awards are generally too small to act as an incentive for employers to take action around sexual harassment and change practice. Do you feel that tribunals should be able to award punitive damages or order that the employers pay the claimant's costs if the claimant wins a sexual harassment case?

**Karon Monaghan:** There are very rarely any legal costs because very rarely is a claimant represented, because there is no funding. Where there are legal costs incurred, we need to be slightly careful because what we do not want is a situation where a woman loses the case and has to pay the employer's costs, because that will act as a massive disincentive. I suspect there would not be a lot of enthusiasm for having a one-way costs systems; in other words you get your costs if you lose but if the employer loses, they never get the costs. There are cost provisions already, but they require very bad conduct on one or other side for a costs order. We do need to think carefully about that but I certainly do think there is a role for punitive awards. We can have punitive awards outside the employment sphere, where the defendant or respondent is a public authority and I do not see any reason why there should not be punitive awards in the employment context and those be used regularly. As you say, sometimes the compensation is relatively limited and that does operate as a great disincentive, unlike, for example, in the States, where you get massive awards by way of punitive damages.

**Chair:** Thank you both so much for joining us today. It has been an incredibly interesting session. As always, thank you for your time in



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preparing for this and for the time in coming to talk to us. We will make sure that you receive a copy of our report.