

Women and Equalities Committee

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

Wednesday 13 June 2018

Ordered by the House of Commons to be published on 13 June 2018.

[Watch the meeting](#)

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

Questions 523–606

Witnesses

I: Victoria Atkins MP, Minister for Women, Government Equalities Office, and Lucy Frazer MP, Parliamentary Under-Secretary, Ministry of Justice

Written evidence from witnesses:

- [Government Equalities Office](#)

Examination of witnesses

Witnesses: Victoria Atkins and Lucy Frazer.

Q523 Chair: Good morning. Apologies to you, Ministers, for keeping you waiting. It has been a slightly challenging morning in terms of staying to time. I welcome our two Ministers before us today, Victoria Atkins and Lucy Frazer. Victoria, you are making your first appearance in front of our Committee. We welcome you to your role and look forward to working with you, and with Lucy, as well.

This is the last oral evidence session specifically for our inquiry on sexual harassment in the workplace. Our purpose this morning is to look back over the written and oral evidence and to press you on some of the issues that have come out of that.

After this session, we will be preparing our report and presenting it to the Government, and will look forward to your response.

I know that Minister Frazer is very time poor this morning and we appreciate you coming in front of us at quite late notice. I have rejigged the order to try to accommodate that and I hope it will not cause too much confusion with Committee members, the fact that we have moved questions around a little bit.

I am going to start with Vicky's line of questioning and then we will move relatively rapidly to the work around NDAs so that Lucy is able to answer that.

Q524 Vicky Ford: Minister, what do you believe the Government's role is in tackling sexual harassment in the workplace and why, in the violence against women and girls strategy, is there so little about sexual harassment and nothing about sexual harassment in the workplace?

Victoria Atkins: Thank you very much indeed for that question, Ms Ford.

May I start, Chair, by thanking the Committee for inviting me? I, likewise, very much look forward to working with the Committee. The Committee does an incredible job in highlighting to us issues of particular concern and where we should be focusing our actions. We look forward to the report in due course.

In relation to Government's role in tackling sexual harassment, it is for us to try to lead the conversation, to change the culture, because we are conscious that although we have the Equality Act, which covers sexual harassment in the workplace, a law alone is not going to stop sexual harassment. We need businesses to understand that they have to treat their employees appropriately, with dignity and with respect, and we also need to tap into the wider concerns that have emerged over the last 12 months or so about how women are treated. We see our role as ensuring that we set the framework through the Equality Act and that we hold the



HOUSE OF COMMONS

EHRC and others to account in ensuring that that Act is enforced, but also saying to businesses that having women in the workforce is clearly a good business decision; if you have a diverse workforce, you are 15%, I think, more likely to be productive than your competitors. Women can be great employees, we want them to be part of the workforce, and it is up to businesses to treat them properly.

Q525 Vicky Ford: Should there be more on sexual harassment in the workplace in the strategy on violence against women and girls?

Victoria Atkins: The Committee will know that the Government have just finished consulting on domestic abuse with the intention of bringing a draft Bill before the House by the end of this session as well as a strong package of non-legislative measures. One of those measures is that we intend to refresh the VAWG strategy. The consultation has been very useful. We have had more than 3,000 responses to it, not just from organisations representing victims but also from victims themselves. We are very much going to be taking those consultation responses into account when we come to refresh the strategy.

Q526 Vicky Ford: Is that imminent?

Victoria Atkins: It is ongoing. I am impatient.

Q527 Vicky Ford: In March, the Equality and Human Rights Commission published a report on sexual harassment in the workplace and it included recommendations that the Government should take but the Government did not respond directly to the recommendations. You have just said that you are going to refresh the VAWG strategy, but the EHRC has told us that it has not been consulted on the work. Why not?

Victoria Atkins: I don't know the context of that evidence, I am afraid. Certainly, the GEO—Government Equalities Office—works with EHRC on these matters, although we have not responded formally to the report. Obviously, we have an obligation, and it is a rightful obligation, to respond to Committee reports, but the Government do not tend to respond to EHRC reports in the same way. However, we are very much taking on board the recommendations of that report as part of our review in this area.

Q528 Vicky Ford: You are taking on board the recommendations?

Victoria Atkins: We are certainly taking them into account. We may not agree with one or two of them but we very much are taking them into account.

Q529 Vicky Ford: Are you consulting any other experts or relevant organisations?

Victoria Atkins: We talk regularly, frequently, with business leaders. I talk with women's sector organisations, not just in my capacity as Minister for Women but also in relation to my Home Office responsibilities. Before Mr Davies dives in, of course we do recognise that



HOUSE OF COMMONS

men can be victims of sexual harassment but the reality is that the vast majority, the overwhelming majority, of victims tend to be women. We consult a wide range of people and organisations on this work. We look forward very much to the conclusions of this Committee's report as well.

Q530 Tulip Siddiq: Just to pick up on my colleague's point. The Government stated that they are looking at all aspects of sexual harassment and the EHRC has done a lot of work on this. When I specifically asked them in another evidence session whether they had been involved in the work, both of the witnesses said that they had not been involved in it and they knew nothing about it. Does that strike you as an omission, that, considering all the work the EHRC has been doing on this issue, they do not know anything about the work the Government are doing and said that they were completely ignorant about it?

Victoria Atkins: We must not confuse, if I may suggest, the role of the EHRC with the role of Government. The EHRC is independent. For example, it is for them to enforce the law on the gender pay gap regulations. We understand that the Commission has done a great deal of work so that 10,520 businesses, or employers, have now complied with the gender pay gap regulation, which is very good news because that means we got a very high return rate on that. It is, however, independent of Government. I am told that GEO meets with EHRC and discuss our work frequently. Indeed, that happened last week. I don't know what that particular witness said, but certainly we view the Commission as a very important player in this field.

Q531 Vicky Ford: I don't want to put words into other Committee members' mouths but I think it might fair to say that there is some concern as to whether or not the EHRC, on equality legislation, has as much strength as, say, you would have on health and safety legislation, and it is the teeth that actually bite to make sure that the issues and the law are properly respected. If they are making recommendations, we would like to make sure that those are being properly looked at by Government.

Victoria Atkins: I must declare an interest here, Chair, because I used to prosecute fatal accidents for the Health and Safety Executive and indeed the 1974 Health and Safety at Work Act is a very different structure from the Equality Act. It is aiming to safeguard lives. The inspectors have powers under section 20 of the Act, and they are extraordinarily strong powers precisely to enable them to go into a factory and shut it down, if it is placing its workers at risk of their lives or their health and safety. I am therefore a bit cautious as to comparisons between that piece of legislation and the 2010 Equality Act. We do think that the basic structure in the 2010 Act is sound. However, I do understand that perhaps EHRC has not been as visibly active in the world of sexual harassment as perhaps it should be. I would encourage EHRC to use its powers more, if it feels it appropriate; I cannot dictate to it, as a Minister, but I would encourage that so that we can see the scale of the problem but also the nature of the problem. There is a range of activities



HOUSE OF COMMONS

on the sexual harassment scale and I would hope that the EHRC feels empowered enough to go after the most serious and most egregious.

Q532 Jess Phillips: On the teeth that you describe the Health And Safety Executive having: we have had them in front of us during this inquiry and it did seem that if you are hit by a van you have better care than if you are hit by a man, whether at work or not. The quite passionate way that you said that they were there to prevent lives being lost, would you not like to make sure that the Equality Law had the exact same prevention strategy for women being sexually harassed at work? Do you not think it deserves the same teeth?

Victoria Atkins: The last HSE case I did before I came to this place was a case where a man was crushed by a crane and many members of the same workforce were poisoned by lead because the employer had acted so irresponsibly—

Q533 Jess Phillips: Do you know what the biggest killer of women at work is? It is violence against women and girls.

Victoria Atkins: That law applies to women as much as it does to men; female members of the workforce were poisoned as well.

Q534 Jess Phillips: Those cases are harrowing. What we want to see, surely, and you as a Minister want to see, is as much teeth in laws preventing sexual harassment as ensuring safety at work. Whether you wear certain sorts of gloves or whether you feel safe to walk the corridors, shouldn't they have the same teeth?

Victoria Atkins: I would be very cautious about making the Health and Safety Executive responsible for that, if that is what—

Q535 Jess Phillips: No, I am not suggesting that. I am suggesting that the legislation needs the same level of teeth.

Victoria Atkins: I am going to tread carefully here because I am mindful of the families that have lost people in the workplace. There are sentences of imprisonment under that Act if someone is killed in the workplace. While I absolutely agree that the powers of the EHRC under the 2010 Act should be effective and must be effective, and if they are saying they are otherwise, of course we will look at that, I would urge caution as to comparing health and safety legislation with this legislation.

Chair: I don't think the Committee is trying to say that sexual harassment is the same as murder, so I think that is an unhelpful line of inquiry. The reason we raise the Health and Safety Executive is because it does have a duty to keep people safe at work. We were somewhat astonished that it did not at all see sexual harassment as a safety at work issue and said quite categorically that was the case, despite the fact that Government have prayed in aid the role of the HSE in keeping women safe when it comes to sexual harassment, just so we are clear on that.

Victoria Atkins: Thank you.



HOUSE OF COMMONS

Chair: There is some difference in what the HSE thinks its role is and what Government think the HSE's role is when it comes to sexual harassment. Maybe it will be better to look at that outside of this Committee.

Q536 **Angela Crawley:** On non-disclosure agreements, it is understood that the Lord Advocate General for Scotland and the Lords Spokesperson on Justice told the House of Lords that the Government were looking at the structures around non-disclosure agreements and the evidence coming forward on how they are being used. Can you tell us more about the work and the MOJ findings and what actions the Government are considering taking on NDAs?

Lucy Frazer: Can I reiterate what Minister Atkins said at the beginning about the valuable work the Committee does, because on this particular issue it was this Committee that raised it with the Prime Minister?

You are right to say that Lord Keen did say that recently in the House, earlier last month, I think, in response to a question Baroness Kennedy put to him. The Government are looking at it: so my Department has looked at it and BEIS is now also looking at it. We have looked at the legal framework that already exists and BEIS is looking at whether there are any gaps in employment law. We will be very interested to see what this Committee says in its analysis of this issue. We will then take a view.

Q537 **Angela Crawley:** Are the Government considering amending the law to require that all agreements containing non-disclosure or confidentiality clauses include plain English wording setting out the limits of the enforceability of those clauses?

Lucy Frazer: The Government have not yet come to a concluded view as to what the right answer is in relation to non-disclosure agreements. I should point out that Baroness Kennedy had sent her letter to *The Times*; there is a place for confidentiality and commercial sensitivity to be protected. In fact, in the debate that you are referring to, those points were made.

We are very much interested to see what this Committee says and we will look at what precisely we should do in due course.

Q538 **Chair:** Surely the Government must have a view at the moment as to whether or not non-disclosure agreements, gagging clauses, whatever we want to call them, when they are used in a way to cover up wrongdoing, would be the wrong thing to do. Surely the Government would agree that that is the case.

Lucy Frazer: It is absolutely wrong and there are already measures and laws in place to protect people from wrongdoing, so already you can be precluded from putting in place a protective disclosure and that is regulated by law. Already, certain things, if you do put them in, are unenforceable as a matter of law. We know that settlements are void unless you have had legal advice. It is a criminal offence to pervert the



HOUSE OF COMMONS

course of justice so if you try to prevent someone from giving evidence in relation to a criminal trial, that would be a perversion of the course of justice. There are also professional requirements on professionals who operate in this space, which we saw in the SRA warning letter that was sent out recently. There are protections in place but it is right that the Government look at whether there are gaps that can be filled if people are to be protected.

One important thing in relation to NDAs is not necessarily what the law says but whether people know what the law says. In the debate that you mentioned, Lord Thomas highlighted the importance that lawyers should make clear, when people sign these agreements, what is and what not is legal. It is not necessarily that these things are enforceable; it is that people do not know that they are unenforceable.

Q539 **Chair:** But, Minister, should it not be against professional conduct to put in a contract an unenforceable clause because you are misleading people who are not as well equipped as you are at assessing the fact that that is unenforceable? Surely that is professional misconduct.

Lucy Frazer: The SRA has made very clear the obligation on lawyers—not everyone has a lawyer but in relation to when lawyers draft—

Q540 **Chair:** But they do if they are signing an agreement like this; they have legal advice.

Lucy Frazer: There are certain professional obligations and the SRA made quite clear what they are. This is an area that we absolutely need to look at more closely but I think we also have to recognise that there are frameworks in place at the moment and one of the key issues is making people aware of what their rights are.

Q541 **Chair:** And stopping lawyers putting unenforceable clauses in contracts.

Lucy Frazer: People need to know, even when those clauses are in contracts, what the extent of those clauses is in terms of enforceability.

Q542 **Chair:** I am sorry but I am going to have to press you on that. We cannot, as parliamentarians, be underwriting the fact that lawyers are putting unenforceable clauses in contracts. That is misleading people and we are here to uphold the law. The SRA tells us that that is not acceptable, yet people still appear to do it. As parliamentarians, we should be saying it is unacceptable to have unenforceable clauses in contracts. When it comes to covering up wrongdoing, not just in sexual harassment cases, but in maternity discrimination as well, to say that you are not allowed to talk about something that is potentially a breach of the law, should we not be sending a really clear message to the legal profession that that must stop?

Lucy Frazer: It is definitely something we should look at, yes.

Q543 **Chair:** Brilliant. If you can come back to us looking at that, I would be very grateful because it has not only been raised by this Committee, but



HOUSE OF COMMONS

also somebody like Baroness Kennedy, who is an eminent lawyer, who is asking these questions as well. It is hugely important that we get clarity on this for the legal profession.

Lucy Frazer: Could I make one other point?

Chair: Yes, of course.

Lucy Frazer: Sometimes the unenforceability might depend on the circumstances of the case or the whole clause might not be enforceable but some of it might be. I reiterate, however, that this is something we obviously have to look at.

Chair: We are glad you are looking at and we will be pleased that you will be looking at our report as well.

Q544 **Jess Phillips:** Have the Government made any assessment of how effective the employment tribunal system is and how it works for employers and employees in cases of sexual harassment?

Lucy Frazer: You asked us to look at that one particular issue in relation to sexual harassment. We do look at the tribunal system, which I am happy to talk about in terms of the evidence that we have collected, and we do look at our whole court system regularly to see what is effective and what is not effective in the context of sexual discrimination.

Q545 **Jess Phillips:** Do you think that the tribunal system is currently effective for sexual harassment?

Lucy Frazer: For all forms of employment cases, we need to not just look at the tribunal; we need to look the whole ambit.

Q546 **Jess Phillips:** We are looking at the whole ambit. At the moment, I am asking about the tribunal system. Whether you think it or not is your own personal view. Has your Department done an assessment of whether it is working for sexual harassment cases?

Lucy Frazer: To be clear, the employment tribunal system and employment law are governed by BEIS but I am happy to answer questions on it.

Q547 **Chair:** Can I just say for the edification of officials, we ask the Government to send Ministers who can answer the questions? We do not dictate which Ministers come and officials might want to clarify with their parliamentary people as to how they decide which Ministers to send because these are important issues and the Minister is absolutely right to say they do not necessarily fall completely within their ambit of work.

Lucy Frazer: I am very happy to answer questions on this issue and I am here to do so but you asked me about my Department. It would be really helpful if you could identify where you think it is lacking and then if I could answer some specific questions about what we are doing.

Q548 **Jess Phillips:** Does the tribunal court system collect data on the number



HOUSE OF COMMONS

of tribunal claims involving allegations of sexual harassment?

Lucy Frazer: It does not. It does not have that capability.

Q549 **Jess Phillips:** Do you think it should?

Lucy Frazer: We are manually. I think, yes, it should collect. I think a lot of data should be collected, not just on sexual harassment but data can inform how we make policy decisions. We are in HMCTS so the collection of data is something that is my responsibility and we are looking at whether we can collect this sort of data.

We are not just looking at this sort of data, although I know you are interested in it. In the criminal court system, we are putting together as part of our court reform a very extensive programme where information will be put on one system, all the stuff the judge sees and the counsel sees, all the barristers put together, it is all on one system called the Common Platform. That will allow us to collect information about the types of cases that are coming before us.

Q550 **Jess Phillips:** Will it monitor whether people are litigants in person, for example?

Lucy Frazer: It has capability to do a lot but it is at a very early stage. That is in a criminal court so it is not going to answer your question about sexual discrimination.

Q551 **Jess Phillips:** Do you think the Government should move towards collecting data specifically on—

Lucy Frazer: I think the collection of data is incredibly important in informing policy decisions.

Q552 **Jess Phillips:** The EHRC has identified that a three month time limit for bringing an Employment Tribunal claim of harassment is a significant barrier to people bringing such claims. Do you accept the time limit is a significant barrier?

Lucy Frazer: In relation to the figures you asked for, we have seen in the first three months—

Q553 **Chair:** That was in relation to the previous inquiry, was it?

Lucy Frazer: Yes. That is the collection of data that shows you whether there is a barrier or not. In the extension of time we have had 21 cases of a sexual harassment nature that have been brought outside the three-month period.

Q554 **Jess Phillips:** Twenty one. Do you know the total number of cases that were brought on sexual harassment?

Lucy Frazer: We do not have that data.

Jess Phillips: Sorry, you do not collect that. I was not being facetious, I just forgot you had just said that.



HOUSE OF COMMONS

Lucy Frazer: Because we do not have it electronically we have been doing that manually, I am told, so that is a manual collection of data.

Q555 **Jess Phillips:** So, 21 but we do not know what that is of the whole. It does not sound like very many.

Lucy Frazer: It is 21 cases in pregnancy and maternity.

Q556 **Jess Phillips:** So we do not know how many it is in cases of sexual harassment.

Lucy Frazer: We do not, no.

Q557 **Jess Phillips:** Do you think we could find that out?

Lucy Frazer: I can ask my officials whether that is possible and if it is we are very happy to provide it.

Q558 **Jess Phillips:** Currently the law on pregnancy discrimination is an entirely different thing because the three months would start from the moment that person felt they had lost their job. It is usually around issues of the date of losing your job so you could then start a tribunal. However, in cases of sexual harassment your three-month limit starts from the moment you are discriminated against so it is the first time you get your sleazy text or whatever. Then you have not left your job. You are left in your workplace trying to decide what to do and your three months is rolling. Do you think that would be a barrier in women coming forward?

Lucy Frazer: I can see what you are saying but there are circumstances where the discretion can be exercised if it is just and equitable, and we have seen by the fact that 21 cases in another type of case, in pregnancy, have been allowed.

Q559 **Jess Phillips:** Do you know how many cases of pregnancy discrimination there were last year? Twenty-one is a tiny fraction.

Chair: It shows there is discretion being exercised by some of the judiciary in allowing 21 cases. We have been told by people who represent these people that they would never recommend a case going forward outside the time limit because of the uncertainty of it. Maybe these 21 had no representation.

Lucy Frazer: I should make clear that of course there is an issue of tribunal fees at the moment. It may be that judges are looking at cases more leniently because we are in a period of time when there is an accusation that some cases generically might not have been brought within time because of the fees issue.

Q560 **Chair:** Can I ask a supplementary of that? When you did your hand tab, were you able to identify how many cases were not allowed to go forward because they were outside of time?



HOUSE OF COMMONS

Lucy Frazer: I do not think we know those figures. On pregnancy there were none. They were all allowed.

Q561 **Chair:** Any that came forward that were out of time were allowed. None were rejected.

Lucy Frazer: They were all allowed, yes.

Chair: That is an interesting thing for lawyers to know.

Q562 **Jess Phillips:** If you have a lawyer and lots of people will not have. Do you think it would be helpful if the time limit was suspended while internal grievance procedures and alternate routes to resolution are ongoing as with Acas conciliation? If the three months could be suspended while you go through your processes, because if you take a claim against your employer and your employer drags their feet for all sorts of both legitimate and illegitimate reasons, your time is running out for you to go to a tribunal.

Lucy Frazer: I presume the position is you start your claim and then you go to Acas because Acas usually kicks in after you have started your claim.

Jess Phillips: Lots of people will just call them, though.

Lucy Frazer: But if you started your claim, your time will have stopped and you will be within a period of time so while you are going through those settlement discussions you would not be time barred because you would have initiated the claim. We are collecting more data, I should say, on the extension issue of three months on all claims until October so we will have a broader range of work to look at and then we can consider it.

Q563 **Jess Phillips:** I appreciate you saying you will consider it. The idea that somebody who has been sexually harassed at work immediately goes to the tribunal and would not first try to go through their own employment conciliation services such as a grievance—as somebody who has handled what seemed at the time like hundreds of grievance procedures when I employed lots and lots of people—that is the route people are going to take and that will be recorded by your employer as the moment you started. That would be presented in court as the moment your claim went in, whether you applied for your tribunal or not.

Do you not think that there is room to change the time limit to come after any internal process has gone on? That is what most people would do. Your average punter on the ground would say, “I am going to go to my boss” rather than “I am going to take it to tribunal”.

Lucy Frazer: You are raising an important issue. I am not sure it is exclusive to sexual harassment because it might apply to other issues as well.

Q564 **Jess Phillips:** Of course. Do you think there are specific issues around the issue of sexual harassment that make it difficult in a different way to other areas?



HOUSE OF COMMONS

Lucy Frazer: I want to look in more detail into whether in sexual harassment the time limit does kick in from the first moment of sexual harassment or, where there are ongoing incidences of sexual harassment, whether the time limit is at a later period if it is continuous behaviour. I do not know the answer to that but that might mean it is not always some months earlier.

Q565 **Jess Phillips:** For those people who find they cannot afford representation—and we have heard quite a lot of evidence to the Committee from the Free Representation Unit about how the tribunal system can be stressful and difficult to navigate for those who have to represent themselves—is it acceptable that they face additional barriers in seeking to hold their employer to account?

Lucy Frazer: What are the additional barriers? Do you mean if they do not have a lawyer?

Q566 **Jess Phillips:** Yes. Poor people are going to struggle more with this system than rich people. Do you think that is fair?

Lucy Frazer: There is an issue about inequality of arms in any hearing and where there is legal representation. There are a number of ways where the tribunal system tries to lend itself to non-lawyer activity so it is not as formal as a court proceeding. Obviously you have ACAS at the beginning so most cases, one would hope, do not end up in the tribunal. The statistics are with ACAS 17% of cases that go to them settle and only 24% go on to the tribunal. For people who cannot afford lawyers there is already a system in place where they can get some redress with some help already. At the moment there are 9,200 cases a quarter that go to the tribunal system so I think that shows people feel able to access the tribunal and when they get there hopefully it is not a scary procedure. It is a much more informal procedure. When I was a barrister I—

Q567 **Jess Phillips:** Would you go without a lawyer? You are a barrister so would you advise that a member of your staff, if you have a cleaner, went without a lawyer?

Lucy Frazer: As a barrister obviously I see the value in legal services. I did as a student barrister volunteer and I did a case for the Free Representation Unit that does pro bono work for those who have employment cases. There is great work being done by pro bono lawyers to support people who do not have paid-for legal advice.

Q568 **Jess Phillips:** Just to finally reiterate, do you think it is acceptable that those who cannot afford representation face additional barriers in seeking to hold their employer to account? Do you think it is acceptable? It is “yes” or “no”.

Lucy Frazer: I think you have put the question in a particular way. What we need to ensure is that when people go to court—and this is not just in the Employment Tribunal, it applies equally in other tribunals where



HOUSE OF COMMONS

people do not have legal aid and may not be able to afford it themselves then we may—

Q569 **Jess Phillips:** On behalf of all of them I will stick up for them.

Lucy Frazer: We are also trying to make the tribunal system itself work more effectively. If I could just do an analogy. In the Social Security Tribunal one of the things we are doing is making sure people know more about what is happening in their case. There is a trial at the moment where the tribunal can update people on what is happening on their case by mobile phone, so they get text messages as to whether their evidence is received, whether some other step needs to be made. Legal representation is important but it is one part of making the process easier and simpler for people to manage.

Q570 **Chair:** Another part of making the process easier and simpler is looking at tribunal fees. What is the Government's stance on tribunal fees?

Lucy Frazer: As you know we have stopped tribunal fees at the moment and we are looking at assistance in fees and we are looking at fees more generally.

Q571 **Chair:** Are you going to reinstate tribunal fees?

Lucy Frazer: We are looking at fees.

Q572 **Chair:** You have not come to a final decision?

Lucy Frazer: We have not come to a final decision.

Q573 **Chair:** When will you come to a final decision on that?

Lucy Frazer: We will let you know when we come to a final decision.

Chair: Brilliant. We are moving on to the next section. Thank you for being with us this morning.

Q574 **Tulip Siddiq:** What is the Government's estimate of the number and proportion of people who have experienced sexual harassment in the workplace specifically and what figures does it use to estimate the prevalence of sexual harassment in the workplace?

Victoria Atkins: One of the issues that we are beginning to realise is that we only have indicative stats. They tend to be small samples and self-selecting samples as well. For example, we know the Equality Advisory Support Service that the Government Equalities Office funds, and is the helpline for equalities and human rights complaints, received 92 workplace sexual harassment cases between January and April this year.

We know from other reports, for example, the TUC report that was a sample of just over 1,500 women, that 52% had experienced some form of workplace sexual harassment and almost 25% had experienced unwanted touching. The EHRC carried out a survey in December last year and of 750 respondents who were self-selecting 75% had experienced



sexual harassment at work. We understand that 38 Degrees, the campaign organisation, had nearly 15,000 respondents and 47% of female participants said they had experienced sexual harassment at work.

We are conscious these are not huge numbers in terms of the surveys. We are conscious that certainly some of them are self-selecting surveys but we are also clear that we do not pretend this represents the scale of sexual harassment in the workplace. It may well be that, arising from your report and our considerations of it, we need better data on this because when we have better data we can then start challenging businesses as to what they are doing to ensure their employees are treated properly.

Q575 Tulip Siddiq: Accepting the need for better data, does the Government also accept the need for action to make sure we prevent such sexual harassment from taking place in the workplace?

Victoria Atkins: Yes, very much so. The Equality Act 2010 sets out the framework for that. The EHRC has the role of enforcing it. In the cases where the relevant tests are met in the criminal law I would hope victims of sexual harassment receive the support from the police they deserve as well.

Q576 Tulip Siddiq: Do you think they are receiving that assistance?

Victoria Atkins: In the criminal domain, again it is difficult to assess nationally. I know the police and crime commissioners are very alive to the existence and our greater understanding of sexual harassment. Yesterday I met Gina Martin who is campaigning for a law on upskirting, a form of sexual harassment albeit not necessarily in the workplace, and there is Wera Hobhouse's PMB on Friday. I think we are becoming more aware of harassment, the fact of harassment. It is going to be a developing process for Government and for wider society as to how we come to terms with this and how we deal with it.

Q577 Tulip Siddiq: You accepted the need to collect data to find out proper statistics around sexual harassment but witnesses from the civil service told us recently they did not know the extent to which sexual harassment was a problem in the civil service and other employers are also unaware of the extent of the problem in their workplaces. Wouldn't it be useful to have national statistics on the prevalence of sexual harassment and information including sector-specific information?

Victoria Atkins: I have asked my officials arising out of the questions to try to get some better information for the Committee. The figure provided to me in the staff survey last year is that 11% of cases have included an element of sexual harassment. That is 11% too much. In terms of sector analysis, I welcome any effort by any regulatory body to dive into this in more detail. I would not wish to speculate as to which sectors may involve more sexual harassment than others but I think any sector—any regulatory body, I would hope—would want to have that information at



their disposal so they can look at what more they can be doing in their own profession or industry.

Q578 Tulip Siddiq: Is there not an onus on the Government and not just the idea of welcoming other sectors of regulating this? Is there not an onus on the Government to find out what data there is and find out options of collecting the data? It is not just about welcoming other sectors doing it themselves but we have a duty as parliamentarians to find the data out, so what options have you considered as a Government Minister?

Victoria Atkins: We recognise the need for more data on this and you have heard Minister Frazer talk about the collection of data in tribunals. I am very conscious that by the time it has reached a tribunal it is too late because by then behaviour has happened that has placed the victim of that behaviour in a very difficult, often distressing situation. I think we should be asking questions about this of business alongside all the questions we already ask business, most recently with the gender pay gap reporting. We should be asking businesses what they are doing and what they feel their response is to sexual harassment and I am open to the Committee's recommendations as to how that might be best achieved.

Q579 Tulip Siddiq: Do you know of any practical steps the Government will be taking to collect data in the next few months or the forthcoming future?

Victoria Atkins: We are waiting for this Committee's report because you have had a wealth of witnesses and expertise come before you. We very much value that work and we are also working with the MoJ and others to see at different stages of the process what the data shows us. I wish it was as simple as asking one group of people one question. It is not going to be a simple process but certainly we are very sympathetic to the point of view that we need to collect this data.

Q580 Tulip Siddiq: In a 2012 consultation on the Equality Act the Government said they only knew of one case brought to the Employment Tribunal including sexual harassment by a third party. In light of recent survey data and cases such as the Presidents Club dinner do you accept that third party harassment is a significant problem?

Victoria Atkins: We are very conscious of the Nailard judgment that was delivered a couple of weeks ago, and we are considering it very carefully because that has clarified the law for us in a way we had not interpreted it in terms of section 40 as it now stands. I am conscious that we gave our original representations to the Committee before that judgment and obviously now we are considering that judgment.

In terms of the old section 40, if I can put it that way, the idea that someone would have to endure three strikes of sexual harassment before liability falling to an employer frankly placed an undue burden on the victim. We had thought that section 40 in its current form includes third party sexual harassment, the Nailard judgment suggests otherwise so we are very actively considering that.



Q581 **Tulip Siddiq:** You do accept it is a significant problem the fact that in 2012 the Government thought there was only one case. It is certainly more.

Victoria Atkins: That is the information I have and I was told that section 40 appeared in previous legislation before the 2010 Act. There was one case under that section before the 2010 Act and then since the 2010 Act there was one case under the old section 40. Obviously I was not in Parliament at the time but my understanding is that section was rewritten to try to make it clear and remove the three strikes and you are out approach.

To make it very clear, if you look at section 40 in the Act it is very stark in the way it is written. "An employer must not in relation to employment harass a person who is an employee or who has applied to the employer for employment". It could not be clearer in terms of that. The Nailard judgment obviously has led us to consider that now in terms of the application to third parties.

Q582 **Tulip Siddiq:** My question is not so much about the legal aspect of it but about whether you accept as a Government Minister that third party harassment is a problem that has not been addressed. It is not so much about which cases come to light and who can afford to go to tribunal. It is more about whether you accept this is a problem that needs to be addressed. I am specifically talking about third party harassment.

Victoria Atkins: I am mindful of the conversation we have just had about data collection so—having just said I think we need to collect more data, I agree with you on that—I do not think I could in good conscience speculate as to the extent of third party harassment, but of course I accept it exists. Of course it does and that is why the judgment is important, because that has left us in a position where we have to review our position on that particular issue.

Q583 **Jess Phillips:** The Government has stated in its written evidence it is satisfied the civil law in this area is comprehensive in protecting victims against sexual harassment and continues to keep this area of law under review. Given what we know about the high levels of sexual harassment in the workplace, on what basis has the Government decided the law in this area is sufficient?

Victoria Atkins: The framework of the law is provided by the 2010 Act and the Act is absolutely clear in section 40 in relation to the employer-employee relationship and of course section 26 sets out how that harassment can manifest itself. Section 26 is written very broadly, precisely, I imagine, so woe betide any parliamentary counsel that tries to specify in the face of a statute the way humans may interact with each other. The way section 26 is drafted is very broad and I would hope provides hooks for cases where they arise. If the Committee is aware of wording that is missing I would be very interested to read about it in the report. But that is the framework.



HOUSE OF COMMONS

We then have the EHRC maintaining that framework and I think there is a challenge here to EHRC to say, "Are you doing enough on this?" We know we are about to commence a tailored review of the EHRC and we will very much take into account the Committee's conclusions about the EHRC and the way it is working as part of that review.

Q584 Jess Phillips: The law can only go so far—one agrees with you entirely—but if the law is sufficient why are there still such high levels of sexual harassment in people's jobs?

Victoria Atkins: Precisely because the law is the backstop. The reason I came into politics from the criminal court is because by the time I had a case harm had already been done and I wanted to be at the stage earlier in the process to prevent the harm from happening in the first place. We have to have an attitude change to this.

Q585 Jess Phillips: Do you think employers should be forced to prevent it, to have a duty to prevent it?

Victoria Atkins: We start at an even earlier stage than that. Our boys as they are growing up and our girls as they are growing up should understand it is not acceptable to behave in certain ways, that girls frankly do not have to accept that behaviour when they are going through college, university, whatever, training, apprenticeships or they start their first job, that they do not deserve to be treated like this. I think it starts much earlier than that. That is why the law is incredibly important. The work we do here in the House and the message that parliamentarians send out is vital in helping to change that national conversation and in fairness also campaigners such as Gina Martin, who I have already referenced.

Q586 Jess Phillips: I totally agree with you. That might be great for my children but not so great for women working today. Do you not think that, as you say, in a prevention strategy that maybe the law needs some better teeth in making sure employers have a duty to do this?

Victoria Atkins: In terms of the teeth, in those cases that meet the criminal test—we all accept, I hope, that there is a range of sexual harassment behaviour—

Q587 Jess Phillips: This is not about criminal law. This is about civil law.

Victoria Atkins: But it is part of the response. We cannot ignore the criminal law in that. It is a tool there that can be employed in those cases that meet the criteria. In terms of the civil law and the Act, the challenge is to the EHRC to say, "Is there more you can and should be doing?"

Q588 Jess Phillips: Do you think there is also a challenge to employers, "Is there more you should be doing?"

Victoria Atkins: Absolutely. Of course there is and I am very struck by the EHRC's suggestion that the code of conduct should be updated and that sexual harassment should be included in it. I am very struck by that.



HOUSE OF COMMONS

Q589 **Jess Phillips:** Who is responsible currently for making sure this area of law is under review and is doing what it should be doing?

Victoria Atkins: The Government Equalities Office holds ultimate responsibility for the Act and, of course, we have responsibility ministerially for ensuring across Government that the spirit and the letter of the law is being met by other Government Departments as well.

Q590 **Jess Phillips:** You have spoken about the Nailard judgment so we shall await the Government's decisions on that. Do you think that interns and volunteers deserve protection from sexual harassment in the workplace and do you think maybe the Government need to amend the Equality Act to make sure that is the case?

Victoria Atkins: We have looked at this very carefully because I absolutely very much understand the point about volunteers expecting and deserving to be treated properly as well. The difficulty with volunteers in the Equality Act—and forgive me if I sound terribly lawyerly about this—the Equality Act arises out of a state of employment, usually a contract of employment, and those protections fall in, rather like the Health and Safety at Work Act, unless we are referring to section 3 with protection of the public. Volunteers have sort of slipped between the sections of the Equality Act in terms of protection.

We have also been mindful as well of small community charities or community organisations, that we do not want to load on to them the sort of regulation that we would expect of a FTSE 100 company. We have to be able to gauge it. But we are very conscious of the point about volunteers, which is why GEO is working with the Charities Commission to see if we can try to influence behaviour that way, through the Charities Commission, because that is who they apply to.

Q591 **Jess Phillips:** Of course there are lots of places that are not charities that have lots of volunteers, such as the House of Commons, famously good on sexual harassment. Is there no room to try to protect the young people who come here, for example, hopeful of a job, of a career in the future, the exact people who could be exploited?

Victoria Atkins: Ms Phillips, I share your—I do not think disappointment is strong enough. I share your very strong concerns and, indeed, I know the concerns of others on the Committee as to the way in which people are treated in this place. I know that the Leader of the Commons is looking into this very carefully. Indeed, she has her working party. I do not feel I should veer into that territory, because it is a matter for the House as opposed to—

Q592 **Jess Phillips:** But this is just an example of any organisation that might have volunteers, there are all sorts of internships going on in music companies and in lawyers' firms. Big companies have lots of volunteers who work for them, so I think that maybe the Government needs to look at where volunteers sit in this, not just the idea of your CVS volunteers in a hospital, but people who are interns and volunteers in big



HOUSE OF COMMONS

organisations, usually as a pathway to power.

Just finally, as the nature of the workplace is changing, the gig economy, zero-hours contracts, less formal sorts of work, is the current law adequate for protecting these types of workers from sexual harassment?

Victoria Atkins: Interestingly, the way in which tribunals approach cases is not just looking at the contract, if indeed there is a contract, it is to look at the reality of the day-to-day work of that person. It may well be that a gig worker is found by the tribunal to be employed or a worker or self-employed. While we are conscious of this label "gig worker" it may be in fact the tribunal decides that someone who considered themselves a gig worker, in fact the day-to-day reality means that they are employed and thus protected by the Act. The Committee will know of course the Government commissioned Matthew Taylor to review employment and the economy last year and he reported. The Government have responded as part of our Good Work plan, so we want the UK's employment law to provide clarity to businesses and individuals. That is why we have consulted recently, to make it easier to understand who is an employee, a worker or who is self-employed and the rights and responsibilities that apply to each.

Q593 **Jess Phillips:** Yes, I suppose the self-employed issue is a difficult one, but do you think that anybody who is currently ostensibly working for an organisation, being paid by that organisation, should be able to take a sexual harassment claim against them, should that occur to them?

Victoria Atkins: I think that is the law. If the tribunal finds that they are employed or a worker—there are one or two very technical exceptions—the tribunals apply the law, is my understanding, in that way.

Chair: I am mindful of everybody's other responsibilities today, but want to make sure we have covered the last two sections. Sarah, I think I have suggested editing down a bit.

Q594 **Sarah Champion:** Minister, I am going to rattle through these, but I am going to start by saying I welcome your comments about prevention. The Department of Education is currently bringing forward guidance around relationship education, so if you could feed that in, I would be very grateful.

Do you think employers are doing enough to protect those they employ from sexual harassment in the workplace?

Victoria Atkins: Some employers are good; some, frankly, are not. It is that challenge as to how we embed good practice across all employers. Mention has been made here of the Civil Service. One would normally expect the Civil Service to be a good employer. I think we have to say to the organisations for which we are responsible, "Make sure that you are leading from the front on this". I know from speaking to business leaders, as I do in my capacity as Minister for Women, and also from evidence the Committee has taken from business leaders, that we are in new territory.



The sands are shifting, if I can put it that way, and I think there is a greater understanding now that businesses have to up their game.

Of course this is not just about sexual harassment, although that is really important. It is also, to me, part and parcel of how women are treated in the workplace. Whether it is ensuring that women are paid fairly and properly for the work they do through the gender pay gap or whether it is through expecting business, FTSE 350 companies, to have at least one woman—gosh, how radical—on their boards by 2020, it is part of a package, I think, about how we treat women in the workplace. One thing I am conscious of, by definition this Committee and I tend to look at the worst-case scenarios, rightly so, because we have to scrutinise that, we have to make sure that we are doing what we should to help women who are at the very tough end of harassment and other things.

But let's also be positive about the role of women in the workforce. We know that having a diverse workforce is good for businesses; we know that more women than ever are employed; we know that more than 1 million small and medium-sized enterprises are now led by women. Let's encourage that, let's be positive about having women in the workplace as well as rightly addressing those areas that concern us.

Q595 Sarah Champion: You said that there are good examples. Do you think the Government has a responsibility, a duty, a requirement to make sure that all employees have good protections in place?

Victoria Atkins: As with the gender pay gap, because this is similar to the gender pay gap discussion, I would like for us to take business with us. I want businesses themselves to understand the need to change, if they need to change. At the moment, my instinct is to be cautious in terms of a duty, because I expect, frankly, business to do better itself without us imposing a duty. But we have set, for example, the challenge to business that by 2020 all FTSE 350 boards will have female representation; I am undecided as to what happens if they don't meet that challenge, for example, by 2020.

Q596 Sarah Champion: The follow-on from that then is do you think the EHRC has both enough resources and power to regulate when people are falling down in these areas?

Victoria Atkins: I am not aware that EHRC feel that they are under-resourced, but obviously we would always keep that under review. Part of the reason for the tailored review is to ensure that the EHRC is fighting fit, as it were, in terms of the modern day, what we expect today in 2018. I hope that as part of that review we will discover whether there are issues that perhaps they would like us to think about, would like us to review and that will be part of the review. The EHRC, I think, have a great deal of power in terms of their ability to name and shame and to call things out. Their report a couple of weeks ago on the extraordinary attitudes displayed in some boards towards female directorships, that got



HOUSE OF COMMONS

a lot of publicity and I hope has very much been taken on board by CBI and other organisations that can influence businesses.

Q597 Sarah Champion: One of the things we have heard is employers saying that they do need clear guidance on actions they should take to both prevent and tackle sexual harassment. Are you considering introducing either a statutory code of practice or guidance to employers in this area?

Victoria Atkins: I am very sympathetic to that. We are awaiting the report, but I am very sympathetic to that suggestion.

Q598 Jess Phillips: The EHRC has suggested that the current system places a crushing burden on the individual by expecting them to go through and endure protracted legal processes in order to get access to justice to remedy a situation at work. Do you accept that the burden of policing employers' actions on sexual harassment currently rests with the individual?

Victoria Atkins: Obviously the framework, as set by the 2010 Act, means that it is the individual that takes a claim to an Employment Tribunal. This is not just the case, sadly, in sexual harassment situations, there are many fields that we all care about in which it seems that there is a requirement, a burden, on the alleged victim to take processes forward. If there is a complaint, then we need evidence of that complaint and it will be the person who has been harmed who is best able to give that evidence. I must admit, I rack my brains on this. I do not know how else we could set up a system that reflects the experiences of victims without their assistance.

Q599 Jess Phillips: The example in cases of data protection, health and safety and money laundering, it has shifted—currently, as we all know, after getting all those e-mails—to being the responsibility of the employer or the organisation to make sure that it does not happen. It is not just, “You have to take a claim if you lose a finger at work”, it is that where my husband works, everyone has to wear a certain sort of gloves now. Do you not think that that system would be better or do you think that currently it is fair that the burden sits with the victim?

Victoria Atkins: The Health and Safety at Work Act deals primarily in the criminal field. In the case of a fatal accident, then the facts—

Q600 Jess Phillips: With data protection, it is our responsibility as Members of Parliament to make sure we found out if there was somebody and we could contact them. It does not rely on somebody having to go to the—

Chair: Can't the same principles apply?

Victoria Atkins: For the incident or incidents to come to light, it would still mean the victim having to tell someone, unless it is—

Q601 Chair: But that is not a problem. We are talking here about whose responsibility it would then be. The recommendation from the EHRC is that the employer would then be held responsible.



HOUSE OF COMMONS

Victoria Atkins: I do not think they have quite worked through their recommendation. We are looking at it, but quite how that would be transcribed into law, there are issues there at the moment that we are looking at. This is the question I asked my officials last night.

Q602 **Jess Phillips:** Nobody could say that the data protection law wasn't complicated, but we managed to get through it.

Victoria Atkins: Oh crikey, did you sit through the Data Protection Bill? Yes, it was complicated.

Q603 **Chair:** Can I pick up the last question? There are sectors where this is very easy, because they are regulated, if you look at the legal sector, you look at the financial sector, where they have regulators in place that regularly go in or have the powers to go in to regulate. Ofsted is another one. We have sectors, quite large sectors, where you have regulators who could enforce this for you. Do you think there is a role for regulators to ensure that employers are tackling this in those regulated areas? Because it would seem to be quite low-hanging fruit for the Government to act. We heard from the SRA that sexual harassment should be reported to the regulator already, but frankly, it does not happen.

Victoria Atkins: I think the message to those regulators is they should be advertising that fact, publicising that fact more.

Q604 **Chair:** When we had Ofsted in, we asked them about do they look at sexual harassment when they go in and, frankly, when it came to staff, no. Are you surprised at that?

Victoria Atkins: To me it is part of the working environment. Again, it comes down to treatment and respect and dignity for and of the employee.

Q605 **Chair:** When it comes to the Financial Conduct Authority, would you be expecting them to be looking at whether or not somebody is a legal, decent, honest person—sorry, I have forgotten the phrase—if they have had sexual harassment allegations against them? Should they be—

Victoria Atkins: I do not know enough about the workings of the FCA to know if they are best set up for that sort of inquiry, because what we do not want, I would suggest, is assuming that—using the HSE example—because they look at an aspect, which can often be a very technical aspect of the workforce—

Q606 **Chair:** That is not correct, if I can be as bold. The FCA looks at whether or not you are a fit and proper person. Do you think if you have been sexually harassing your staff, touching them up, asking them to go to bed with you, you are a fit and proper person?

Victoria Atkins: I think that is a very good point. I will take it away, if I may, and consider that.

Chair: Brilliant. In saying that, you are sending a very strong message to



HOUSE OF COMMONS

the regulators that they should be taking this far more seriously than we have heard in the evidence that we have had given to us so far. Thank you. Can I apologise for having overrun and for putting you through your paces in this first appearance before the Committee? We are very grateful to you and also Lucy Frazer for taking the time to come before us. We feel passionately about this issue, we know you do as well and we look forward to working to make the changes that we need happen. Thank you. Apologies to everybody for overrunning significantly on this session today.