

Rt Hon Maria Miller MP  
Chair of the Women and Equalities  
Committee  
House of Commons,  
London, SW1A 0AA

Date: 30 May 2019

Dear Chair

**Re: sexual harassment of women and girls in public places, and GRT healthcare**

Thank you for your letter dated May 8<sup>th</sup> regarding the sexual harassment of women and girls in public places. I also write to respond to your committee's recommendation that the Commission undertake an inquiry into the health needs of Gypsies, Roma and Travelers (GRT).

We take sexual harassment extremely seriously, and it remains a priority in our new [2019-22 strategic plan](#). Our current primary focus is on workplace sexual harassment and I am afraid we will be unable to extend this to public spaces. While we agree that GRT access to healthcare is another important issue, we will not be able to work directly on this either.

This is not to say we will not act on flagrant breaches of the Equality Act in either of these areas over the next few years. As you know our core aim commits us to challenging the most flagrant breaches, increasing our litigation and enforcement work to ensure that the law is working in practice. However in terms of our key areas of focus, these are two of many difficult yet essential decisions we have made in prioritising a smaller number of issues on which we are best placed to use our unique powers and existing resources to have impact.

Where an issue falls outside of the issues prioritised in our strategic plan, such as the barriers to healthcare faced by GRT communities, we are seeking a

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stronger response from public authorities through a strengthened Public Sector Equality Duty (PSED). This would require Ministers to set objectives for particular sectors, to address the principal inequalities facing the sector, and for public authorities within the sector to set objectives reflecting those principal inequalities.

As an example, we are in discussions with NHS England (NHSE) about improving its PSED compliance at national and local levels. We welcomed its Long Term Plan commitment to improve how local areas collect and use data to set local targets for tackling health inequalities, and have told NHSE that it is critical to ensure as far as possible that this includes data on the experience of people with different protected characteristics. We believe that partnering with the relevant public authority in this way is the most effective use of our powers on this issue.

I am responding to your specific questions on sexual harassment as follows.

### **1. Partnering with other regulators**

Given the breadth of our mandate, an important cross-cutting ambition of our new strategy is to support the incorporation of equality and human rights standards into existing oversight mechanisms which are the responsibility of other regulators. Those we have worked with include the Care Quality Commission, the Planning Inspectorate, and Ofsted. This is an important way of addressing a wider range of issues, drawn from *Is Britain Fairer?*, through supporting them to take action.

We have established a new directorate to focus on understanding and helping overcome the barriers to compliance with the Equality Act and Human Rights Act. It will lead our organisational engagement with other regulators around our strategic aims, to help broaden the scope of what we can achieve.

Through our workplace sexual harassment project we have specifically engaged regulators including the Bar Standards Board, Charity Commission, Financial Conduct Authority, General Medical Council, and Health & Safety Executive. Our aim is to help embed workplace sexual harassment into their

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regulatory scope, specifically through our forthcoming code of practice on effective prevention and response to workplace harassment. We have also had further, ongoing discussions with HSE on our respective responsibilities on this issue.

## 2. The Equality Act

You referred to the Commission's previous guidance on third-party harassment, and asked whether a service provider could be held liable for failure to address longstanding harassment of a service user by a third party. The case law at the time this guidance was produced indicated that this was possible. However, in *Unite the Union v Nailard (2018)*, the Court of Appeal held that in the work context an employer will not be liable for acts of harassment carried out by a third party unless the protected characteristic – such as the sexual orientation or race – of the victim is relevant to the motivation behind the employer's failure to act.

Although this case was decided under the work provisions of the Equality Act, this principle is likely to also be applied to services, and we understand that Unite are not appealing to the Supreme Court against the ruling. We are in the process of reviewing our guidance to ensure it reflects the evolving case law in this area.

This ruling does place some limits on the type of enforcement action we are able to take on third party harassment. We would be unable to use our s.20 investigation powers (as we would have to suspect that an unlawful act has been committed), s.21 unlawful act notice (as we would have to find that an unlawful act has been committed via a s.20 investigation), or s.28 legal assistance (as the individual to whom we provide the assistance must be the victim of a contravention of the Act).

## 3. Stakeholder engagement

We consulted widely on the development of our new strategic plan, including through more than 1,000 formal respondents. This is our highest ever total, and includes organisations with a primary or significant interest in women's and girls'

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issues – many of which are existing partners – such as the Centenary Action Group, Centre for Women’s Justice, Fair Play for Women, Fawcett Society, Jo Cox Foundation, Pregnant Then Screwed, Women’s Equality Party, and Young Women’s Trust.

These organisations were broadly supportive of our proposed focus on workplace sexual harassment. We aim of course to maintain a dialogue with them on further partnering opportunities.

### **The Commission’s other work**

Although we are not able to work directly on sexual harassment in public places, we can help address the issue from other perspectives.

- Strategic enforcement: we have concluded and publicised agreements on sexual harassment issues with a range of employers, while funding other cases in the Employment Tribunal. Under our new litigation and enforcement policy we will be continuing, in accordance with the core aim under our strategic plan, to maximise the use of our legal powers and will be considering where our they can help clarify or strengthen the law on this issue, in all the contexts within which it occurs.
- Violence against women and girls (VAWG): sexual harassment is a form of VAWG, and our new strategy prioritises ensuring that barriers to justice for survivors are exposed and removed. We will continue to urge the UK Government to broaden the scope of any forthcoming legislation to ensure it provides a robust and coherent response to all forms of VAWG, including sexual harassment.
- Workplace sexual harassment remains our focus, and in addition to our code of practice we are developing guidance on the use of non-disclosure agreements.
- Education: we agree that further work should be done to explore the causes of sexual harassment, and ways to prevent it. The Commission’s new strategy prioritises increased understanding of how to effectively

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tackle prejudice, promote inclusivity and empathy, and challenge harmful norms (such as gender stereotyping) in the education system. Earlier this year we recommended that teaching on sexual harassment, consent, abuse, exploitation and bullying, amongst other matters, be exempted from parents' right to withdraw their children from relationship/sex education classes.

- Transport: public transport is a common setting for sexual harassment. While our strategic aim focuses on ensuring that it promotes the social and economic participation of disabled and older people, we will explore partnering with the appropriate regulators to ensure it provides safe and inclusive spaces for everyone. We also aim to use our section 28 powers to support cases where we suspect the Equality Act has been breached.

I hope this answers your queries. While we have had to make difficult prioritisation decisions in developing our new strategy, we believe it provides a clear framework through which we can focus our work and use all of our powers to have the greatest possible impact.

Yours sincerely



**Rebecca Hilsenrath**

Chief Executive

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