

**Memorandum to the Committee of Privileges from Rt Hon Maria Miller MP,  
Chair of the Women and Equalities Committee (SCC0017)**

I welcome the opportunity to submit written evidence to your inquiry into the exercise and enforcement of the powers of the House in relation to select committees and contempts as Chair of the Women and Equalities Committee.

On 13 November 2018, the Women and Equalities Committee launched an inquiry to look at the wider use of non-disclosure agreements (NDAs) in cases where any form of harassment or other discrimination is alleged. This followed the Committee's July 2018 report into Sexual harassment in the workplace which made a series of recommendations to better control and regulate the use of NDAs, to ensure that they are not used unethically in cases where sexual harassment is alleged.<sup>1</sup> The issue of non-disclosure agreements is also the subject of an ongoing consultation by the Department of Business, Enterprise and Industrial Strategy. Our report was published on 11 June 2019.<sup>2</sup>

During our inquiry into sexual harassment in the workplace we were concerned to have heard from the Equality and Human Rights' Commission (EHRC) that their survey of 234 large employers in December 2017 revealed an inconsistent and often inadequate approach to preventing and addressing sexual harassment at work.<sup>3</sup> In light of this, we wanted to ensure that our inquiry into the use of non-disclosure agreements received evidence from a range of employers, including businesses.

Their very nature makes it difficult to find out about the use of settlement agreements, confidentiality clauses and non-disparagement clauses in private companies. During the course of our inquiry a number of allegations about the use of non-disclosure agreements in businesses were covered extensively in the media. On 23 October 2018 Lord Hain disclosed, in the House of Lords, that Sir Philip Green had successfully obtained an injunction against the Telegraph to prevent his naming in relation to alleged sexual harassment and racial abuse of employees. It also emerged that Arcadia had made use of NDAs in handling these allegations.

The fact that Arcadia was known to have used non-disclosure agreements and their status as a large employer made them a valuable potential witness for our inquiry. We also took evidence from a number of other commercial and public sector organisations over the course of the inquiry, some of which had also been the subject of public criticism over their use of non-disclosure agreements. The Committee was mindful during these sessions of the need to focus on the policy issues set out in our terms of reference rather than the detail of individual cases. The evidence from these organisations was extremely useful to the Committee and

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<sup>1</sup> Women and Equalities Committee, Fifth Report of Session 2017-2019, [Sexual harassment in the workplace](#), HC725

<sup>2</sup> Women and Equalities Committee, Ninth Report of Session 2017-2019, [The use of non-disclosure agreements in discrimination cases](#), HC1720

<sup>3</sup> Women and Equalities Committee, Fifth Report of Session 2017-2019, [Sexual harassment in the workplace](#), HC725 , para 19

reinforced our belief that representatives from Arcadia would provide valuable evidence.

We first approached representatives for Arcadia on 14 February 2019 to invite Sir Philip Green and other representatives of Taveta, the owner of the Arcadia Group to give evidence. As further information about the structure of Arcadia was provided, we invited Ian Grabiner, Chief Executive of Arcadia and other representatives of Arcadia to give evidence. A summary of our communication with Arcadia and copies of the correspondence between the Committee and lawyers acting for Arcadia are provided in the annex and appendix.

Throughout the process, the Committee was clear that the purpose of the evidence session was not to seek to question Arcadia representatives on the details of individual cases. Instead it was to allow us to hear a valuable perspective on the questions set out in our terms of reference. Despite repeated attempts to reassure representatives for Arcadia on this front and extensive efforts on the part of the Committee to work constructively with Sir Philip and Arcadia representatives to agree a suitable date for an oral evidence session, on 3 April 2019 the Committee was forced to issue an Order for the attendance of Sir Philip and Ian Grabiner due to a lack of progress with negotiations over their attendance. On 12 April 2019 lawyers acting for Sir Philip replied to say neither Sir Philip nor Ian Grabiner intended to comply with the Committee's Order.

Our experience has highlighted a number of concerns relevant to the issues your inquiry is looking into, in particular:

- How can select committees effectively exercise their powers to summon witnesses and call for papers, while at the same time treating potential witnesses with fairness and due respect?
- What are the benefits and drawbacks of the three options identified in 2017 by the then Clerk of the House, that is, to do nothing, to reassert the House's existing powers by amending Standing Orders or by Resolution, or to legislate to provide a statutory regime?
- What are appropriate sanctions for non-compliance or other contempts on the part of witnesses? How should these be applied?

**How can select committees effectively exercise their powers to summon witnesses and call for papers, while at the same time treating potential witnesses with fairness and due respect?**

During our correspondence with lawyers acting for Arcadia, the Committee was mindful of the need to treat them fairly, both in terms of the process of issuing the invitation and seeking a date and in terms of the content of the evidence session. A clearer understanding of the process and reasonable timescales would help provide clarity to both potential witnesses and committees about what was reasonable. It was certainly the case that without this defined process, the Women and Equalities Committee felt the need to proceed with great caution. While fairness and due respect to witnesses should be a key part of any process, reluctant witnesses should

not be allowed to use a committee's wish to act fairly against them, in order to frustrate and delay what are often vitally important committee inquiries.

**What are the benefits and drawbacks of the three options identified in 2017 by the then Clerk of the House, that is, to do nothing, to reassert the House's existing powers by amending Standing Orders or by Resolution, or to legislate to provide a statutory regime?**

While the Women and Equalities Committee does not take a view on which option for reform of the current system is best, it is clear from our experience that something must be done to give teeth to the power of select committees to summon witnesses. At present, those witnesses who are willing to risk the embarrassment of being admonished by the House, or who simply do not feel that such an admonishment has any power over them, can flout reasonable and proper requests from select committees with impunity.

**What are appropriate sanctions for non-compliance or other contempts on the part of witnesses? How should these be applied?**

Again, the Women and Equalities Committee does not take a view on specific sanctions, although I am aware of some of the ideas that have been discussed, such as the power to issue fines or to disqualify anyone found to be in contempt of Parliament from holding certain positions. It is, however, clear to me that while potential reputational damage or social pressure may be sufficient levers to act on some individuals, more is needed to ensure that select committees are able to exercise their powers effectively. Parliamentary select committees play a vital role in the democratic process and in ensuring the accountability of government bodies. Without the co-operation of witnesses, and in particular without effective sanctions against obstructive and/or non-compliant witnesses, it becomes increasingly difficult to carry out this democratic function.

[Annex: correspondence between the Women and Equalities Committee, Arcadia Group and others](#)

*4 July 2019*