

Written submission from the Equality and Human Rights Commission SPP0112)

The Commission views violence against women and girls (VAWG) as both a cause and consequence of women's inequality. We regard sexual harassment of women and girls in public places as part of the continuum of VAWG, which reflects the wider structural gender-based inequalities that make VAWG 'one of the most pervasive human rights issues in the UK'.¹ VAWG affects women's health and independence, reduces their ability to work and creates a cycle of economic dependence. Women's inequality limits their ability to escape from abusive relationships, can make it more difficult for them to enforce their rights, and can make them more liable to be subject to sexual harassment and sexual violence.

The Commission's general and enforcement powers derive from our founding statute, the Equality Act 2006, which determines the contexts in which we can influence change, and the levers at our disposal. Our recent submissions to a Joint Committee on Human Rights inquiry also set out the extent of our enforcement powers in relation to human rights.²

In line with our perspective on VAWG, and the scope of our powers, this response includes information about the Commission's work across a range of areas of life, and includes projects which concern sexual harassment specifically as well as violence against women and girls more broadly. The response is arranged as follows:

1. Legal and enforcement work
2. Research into the extent of the issue and monitoring progress
3. Monitoring and influencing compliance with international standards
4. Influencing change in domestic law and policy
5. Influencing attitudes and informing practice

1. Legal and enforcement work

The Commission can use its legal and enforcement powers, which derive from the Equality Act 2006, in relation to breaches of the Equality Act 2010. Harassment is defined in the 2010 Act as unwanted conduct related to a protected characteristic or unwanted conduct of a sexual nature which has the purpose or effect of violating a person's dignity or creating a hostile, degrading, humiliating or offensive environment for them. Such conduct is unlawful if it is committed in the course of employment, the disposal of premises, the provision of goods or services, the exercise of public functions, the provision of education or in running an association. Conduct which takes place outside of one of these contexts will not be unlawful under the Equality Act 2010. For example, a train provider may be liable for the harassment of a customer by one of its employees on a train. It will not be liable for harassment of one customer by another under the 2010 Act.

Our enforcement action has thus far concentrated on the work context where we can, for example, investigate if we suspect an unlawful act has been committed. Opportunities for enforcement action in relation to the harassment of women and girls in public spaces by other members of the public is much more limited. We would be

unable to take action against the private and voluntary sectors in this regard. We would only be able to take action against public authorities in circumstances where we believe they may have failed to comply with the Public Sector Equality Duty. Further, we can only take action where the public authority has failed to pay due regard to the need to, for example, foster good relations. If a public authority has paid due regard to the need to foster good relations but reaches a decision which we believe will not foster good relations, that will not provide us with grounds for enforcement action.

We have, for example, recently exercised our legal power under section 28 of the 2006 Act to fund a potential judicial review challenging the Department for Education's delay in providing guidance on peer to peer sexual harassment and abuse in schools. The Committee will be aware that this was resolved following preaction correspondence without the need to issue proceedings. We are also looking for other opportunities in this area. We were recently asked to fund a judicial review concerning the licensing of strip clubs, for example. However, we did not fund the case in the main because under section 28 of the 2006 Act, we can only fund a claim by a victim of the decision complained of and it was not clear that the claimant was a victim of the local authority's decision. Although we were unable to fund the case, it ultimately proceeded and was successful. We are actively seeking referrals of further cases of this nature.

2. Research into the extent of the issue and monitoring progress

In line with the Commission's monitoring, research and advisory functions, we have undertaken a range of activities to build an evidence base around violence against women and girls broadly, including specific insights in relation to sexual harassment

2.1. Statutory monitoring reports

Our statutory periodic review assessing progress on equality and human rights in Britain, *Is Britain Fairer?*, has provided an evidence base and highlighted crucial gaps in data. This evidence base has also informed key recommendations and fed into our work to influence domestic law and policy (see below).

Our new measurement framework³ and *Is Britain Fairer? 2018*:

The Commission has a statutory duty under section 12 of the Equality Act 2006 to monitor equality and human rights, by developing indicators and reporting on progress. Over the last decade we have developed a series of measurement frameworks which enable us to monitor and evaluate progress towards protecting and promoting equality and human rights in a systematic way across England, Scotland and Wales. We reviewed our previous frameworks and built a single Measurement Framework to support our reporting to Parliament every three years. This new Measurement Framework was finalised in 2017, in consultation with a wide range of stakeholders.

This new measurement framework includes indicators on sexual violence and sexual offences, as well as harassment and bullying in the workplace and school settings, which can include sexual harassment. This framework underpins our upcoming *Is Britain Fairer? 2018* review report to Parliament on progress towards equality and human rights in Britain.

We also use the periodic review to inform our strategic priorities, as well as to monitor the UK's compliance with the seven United Nations human rights treaties it has signed and ratified.

The measurement framework can also be used by other organisations and individuals to inform their priorities and data collection activities, including parliamentary committees, government departments, statutory bodies and policy makers, NGOs, social researchers and academics.

***Is Britain Fairer? 2015:*⁴**

Our 2015 report included evidence on:

- Sexual violence from the Scottish and England/Wales crime surveys. Our evidence showed that in England and Wales young people and women were disproportionately affected by sexual violence, as were disabled people and LGB people.
- Domestic abuse disproportionately affecting women, and child sexual abuse and exploitation – including specifically relating to girls.
- The proportion of trans people who had reported experiencing harassment in public places, including comments, verbal or sexual abuse (NB: this was not broken down by the experiences of trans women or trans men).

***Human Rights Review 2012:*⁵**

This report looked at how well Britain was meeting its human rights obligations under the European Convention on Human Rights and the Human Rights Act 1998. It also looked at how our laws, institutions and processes support and protect each right. The report included evidence and case studies on Article 3 of the European Convention on Human Rights, including an example of a police force demonstrating its positive human rights obligation to safeguard women at risk.

***How Fair is Britain? 2010:*⁵**

Our 2010 monitoring report included evidence on the extent of violence against women and girls, including sexual violence.

2.2. Mapping gaps in VAWG services

The Map of Gaps (2007)⁶ and Map of Gaps 2 (2009)⁷ was a joint initiative of the Equality and Human Rights Commission and the End Violence Against Women coalition. The project mapped services for women who had experienced VAWG. The report documented the inequalities in distribution of specialised support services in Britain. Based on the results, we made recommendations for national and local UK governments to take action to ensure women are provided with the support needed.

2.3. Disability-related harassment inquiry⁸

In 2010/11 the Commission conducted an inquiry into disability-related harassment,¹⁰ which investigated the causes of disability-related harassment, and the actions of public authorities and public transport operators to prevent and eliminate it. The inquiry

covered England, Scotland and Wales, and concerned harassment by any individual or group in public places such as streets, parks, schools and leisure facilities and/or in private places such as the home. It did not cover harassment in the workplace.

The inquiry highlighted sexual violence and harassment as a concern, and also included a focus on issues experienced by disabled women in particular. The inquiry report made seven core recommendations for change, covering all types of harassment, as well as recommendations targeted at national governments and various public bodies. A progress report with updated recommendations was published in 2013,¹¹ and another in 2017.⁹

2.4. Other research and monitoring activities

In Wales, in 2010 our monitoring of the public sector Gender Equality Duty¹⁰ included a focus on:

- What actions and milestones public bodies in Wales had under the duty to address violence against women
- Who had been consulted to establish these actions and milestones
- A short narrative on the outcomes in respect to work on violence against women.

This covered a range of bodies including: health, local authorities, higher and further education providers and the police.

In 2010, we also carried out research into the effectiveness of the Gender Equality Duty¹¹ in Scotland, which considered whether it would be effective to introduce provision for courts to uplift the sentence for criminal offences that are motivated by gender prejudice.¹²

In 2011, the Commission published a research report on harassment.¹³ While the report looked at harassment in general, it also provided some breakdown by protected characteristic, including whether participating organisations had gathered and used data on the impact of targeted harassment by sex or gender.

3. Monitoring and influencing compliance with international standards

As a National Human Rights Institution, the Commission has a mandate to independently assess and monitor the extent to which the Government complies with its obligations under international human rights treaties, and makes recommendations for how to improve implementation and compliance.

3.1. United Nations human rights treaties

The key UN human rights treaty in relation to the issue of sexual harassment of women and girls is the UN Convention on the Elimination of Discrimination Against Women (CEDAW).

Our first submission to the UN Committee overseeing this Convention was in 2013. This 2013 submission¹⁷ presented evidence on the extent of violence against women and girls.

To inform the upcoming review of the UK by the UN Committee, which will take place in spring 2019, we have just published a report¹⁴ covering a wide range of issues relevant to violence against women and girls broadly, and sexual harassment in particular. Evidence in the report covers:

- Sexist and sexualised bullying and harassment of girls in school.
- The need for high quality mandatory relationship and sex education in all schools and educational settings which will meet the needs of all young women and girls, and other groups with protected characteristics, so that they are equipped with the knowledge they need to stay safe and prepare for life beyond the classroom.¹⁵
- Women and hate crime, highlighting the need for further research into online abuse marked by misogyny, violence against women and girls, and other biasmotivated hostility, and for the UK Government to consider amending hate crime legislation to extend protections on the basis of a person's sex or gender.
- Online abuse of MPs (which is often of a sexual nature).
- Allegations of misconduct in Yarl's Wood immigration detention centre.
- VAWG more broadly, including domestic violence and abuse, sexual violence, and harmful practices (including Female Genital Mutilation and Early and Forced Marriage).

We have also raised relevant concerns and made recommendations in other UN treaty reports. For example, in our submissions to the UN Committee on the Rights of Persons with Disabilities in February 2017¹⁶ and July 2017,¹⁷ we highlighted that disabled women experience disproportionate levels of all forms of violence and abuse, face greater barriers to accessing support and redress, and made recommendations for adequately funded support services and ratification of the Istanbul Convention.

3.2. EU Advisory Group Opinion on VAWG

In 2010 the Commission led on an EU Advisory Group Opinion on VAWG.¹⁸ This Opinion provided a definition and set of recommendations intended to inform the EU Strategy on Violence Against Women and Girls, and identified eight areas of action the strategy should cover: perspective, prevention, prosecution, provision, action planning, infrastructure, monitoring and evaluation. Sexual harassment was included in the Opinion as part of the scope of VAWG.

3.3. The Council of Europe Istanbul Convention

The Commission has consistently called for ratification of the Istanbul Convention in its treaty monitoring submissions (see above) and through parliamentary and policy work to influence domestic change (see below). This included publishing a legal briefing in March 2014 on the provisions of the Convention.¹⁹

4. Influencing change in domestic law and policy

A number of the research and monitoring activities above have been used, directly or indirectly, to influence changes in domestic law and policy. For example, following the CEDAW Concluding Observations in 2013, we produced a resource²⁰ to help Parliamentarians and civil society understand what the UN Committee expects the UK Government and devolved administrations to do over the next few years. Recommendations and targeted influencing work was also carried out following our Map of Gaps project and the disability-related harassment inquiry.

In addition to influencing work linked to the activities above, the Commission seeks to influence the development of relevant laws. For example, in 2014 in Wales we submitted a consultation response to inform the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Bill. In 2016 we briefed in support of the 'Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Bill' at its Second Reading in the House of Commons. More recently, we responded to the Government's domestic abuse consultation, and the Home Affairs Committee inquiry on domestic abuse.²⁵

We have also responded to other relevant consultations to inform the development of key areas of law and policy. For example, we responded to the Department for Education's consultation on Keeping Children Safe in Education, recommending changes to the guidance to better protect victims of peer-on-peer sexual abuse, ensure mandatory recording of sexual abuse, harassment and bullying, and encourage a rights-based approach to the use of restraint.²⁶

We also responded to DfE's consultation on changes to the teaching of sex and relationships education, and PSHE, covering issues such as the importance of teaching about sexual and reproductive health and rights, including consent, to help reduce harassment and abuse, as well as wider human rights-based approaches to school policies on matters such as peer-on-peer sexual harassment.²¹ It should be noted that the Commission funded a judicial review of the DfE's failure to produce guidance on peer-on-peer sexual harassment and abuse in schools, which was withdrawn after the guidance was produced (see section 1 on our legal and enforcement work above).

The Commission also produces briefings in order to raise the profile of key issues around violence against women and girls, and help to keep these issues on the political and public agenda. For example in 2015 we produced a briefing for an International Women's Day Backbench debate, including our concerns about violence and sexual exploitation, and highlighting particular issues faced by Black and ethnic minority groups. In 2016/17 we produced a briefing to inform a Backbench Business Debate in the House of Commons on transgender equality, which included evidence around stigma, hate crime, harassment and physical/sexual assault. In 2018, we also provided briefings for debates in the House of Commons and the House of Lords around International Women's Day. Both briefings included our evidence and recommendations on the need for a rights-based approach to education supported by a whole-school environment that ensures respect for individuals' human rights, including by tackling identity-based and sexualised bullying and harassment. In 2018 we also

produced and disseminated a briefing to inform a debate on the support available to survivors of domestic abuse and preventing further abuse.²²

We are also in the process of responding to a consultation on the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice's proposal for a rule and guidance to address the use of gender stereotypes in advertising, which we can share with the Committee in due course.

5. Influencing attitudes and informing practice

5.1. Prejudice and unlawful behaviour project

The Commission currently has a programme of work exploring the links between prejudiced attitudes, values and discrimination and other identity-motivated unlawful behaviour in Britain.²³ As part of this programme of work, we are developing a national barometer of prejudice and discrimination. Through that work, we aim to establish a set of survey questions that can be used to capture prejudice and experiences of discrimination in a comparable way across different areas of life and protected characteristics (including sex) in England, Scotland and Wales. In the survey questions we have included questions about attitudes towards women. We anticipate that the report will be published this summer.

5.2. Equality Act 2010 guidance on harassment

In line with our statutory functions, the Commission has produced advice and guidance on harassment. This includes advice for the public sector on harassment, including sexual harassment,²⁴ as well as advice on harassment and victimisation for individuals and organisations using services.³¹

We have also produced various guidance documents which are relevant to the issue of sexual harassment of women and girls, including sector specific statutory codes of practice and non-statutory guidance on employment, on services, public functions and associations and on education, and guidance on the public sector equality duty.²⁵

5.3. Preventing and tackling prejudice-based bullying, including sexual harassment of girls

In 2017/18, the major focus of the Commission's education work was on preventing and tackling prejudice-based bullying, including sexual harassment of girls. We produced a range of resources for senior leadership teams and the wider school workforce.

For Anti Bullying Week 2017, we developed a video on prejudice-based bullying in schools²⁶ and published evidence about the scale and impact of prejudice-based bullying,²⁷ including data on sexual harassment of girls. We also worked with the Anti-Bullying Alliance to produce 'top tips' guidance.

This year, we worked with the sector, and schools themselves, to promote the importance of gathering, analysing and using data and to showcase how some of the best schools do so. We published the ‘Record, review and respond’ film,²⁸ with school leaders talking about their approach and its value, alongside a short guide for schools²⁹ on how to use data to inform and evaluate anti-bullying strategies. We also published eight real life examples of how schools use data to prevent and tackle bullying³⁰ from England, Scotland and Wales. This includes schools who are tackling sexualised banter and bullying.

We were pleased that the DfE plans to include our case studies and checklist in the new Respectful Communities Toolkit resources for schools. Other stakeholders, including Stonewall and the Anti-Bullying Alliance (ABA), have also promoted some of our resources.

5.4. Grant-funded programmes

Between 2007 and 2010, the Commission funded a number of projects through its grants programme. A number of these programmes addressed issues around violence against women and girls.

For example, some programmes focused on awareness raising, including a programme by Refuge in 2008-2009 that aimed to raise awareness among young women of their rights in relation to violence against women. Another programme in 2008-2009 was run by Rights of Women, and aimed to promote awareness and understanding of the impact of violence against women, and promote equality and human rights for disadvantaged women, including Black women and women from ethnic minorities in England and Wales. Also in 2008-2009 we funded Nia³¹ to raise awareness of difficulties faced by disabled women who have experienced genderbased violence accessing the justice system, by delivering training to relevant criminal and civil justice organisations.

Other funding provided support for direct services for women who had experienced violence, and a number of projects supported local groups and women who shared more than one protected characteristic. For example, in 2009-2010 we funded Coventry Rape and Sexual Abuse centre to set up and provide a regular outreach service offering support, information and advocacy to women and girls from black and minority ethnic groups in the Coventry area who have experienced sexual violence at any time in their lives, and to conduct related awareness-raising and training resources. Also in 2009-2010 we funded similar projects in Durham, Northumberland and other areas, and also provided funding programmes providing support to women survivors of domestic violence.

More recently, the Commission’s Access to Justice grant programme³² funded Nia, a women-only London-based charity working on all forms of violence against women and girls, to carry out a project on ‘enhancing awareness and use of discrimination and rights based approaches in supporting women victims of rape and sexual assault’. The project aimed to: upskill sexual violence advocates and managers in the range of legal and rights-based measures and tactics; upskill the pool of legal firms and lawyer

contacts that Nia can refer cases to; increase capacity on the advice and referral line and among Independent Sexual Violence Advocates so that more women can be supported; and dedicate staff time to explore equality characteristics of women in East London Rape Crisis referrals and how these characteristics impact on women's experiences of violence, help-seeking and access to justice, in order to inform potential legal work and strategic litigation.

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¹ Equality and Human Rights Commission (2014), 'Submission to the United Nations Human Rights

Committee Pre-Sessional Working Group on the United Kingdom's implementation of the International Covenant on Civil and Political Rights', pp. 54-7. Available at:

https://www.equalityhumanrights.com/en/file/4311/download?token=G4agq_mX

² The Commission does not have the power to investigate suspected breaches of human rights or fund human rights cases, which restricts our ability to take legal action on issues outside the Equality Act. See:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rightscommittee/enforcing-human-rights/written/86610.html>

³ See: <https://www.equalityhumanrights.com/en/publication-download/measurement-frameworkequality-and-human-rights>

⁴ EHRC (2015), 'Is Britain Fairer? The state of equality and human rights 2015.

Available at: <https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2015>

⁵ EHRC (2012), 'Human Rights Review 2012'. Available at:

<https://www.equalityhumanrights.com/en/publication-download/human-rights-review-2012>

⁵ EHRC (2010), 'How Fair is Britain? Equality, Human Rights and Good Relations in 2010'.

Available at: <https://www.equalityhumanrights.com/en/publication-download/how-fair-britain>. In particular see the chapters on legal security and physical security.

⁶ Coy, M, Kelly, L, Foord, J (2007), 'Map of gaps: the postcode lottery of violence against women support services', London: End Violence against Women. Available at:

https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/map_of_gaps1.pdf

⁷ Coy, M, Kelly, L, Foord, J (2009), 'Map of gaps 2: the postcode lottery of violence against women support services', London: End Violence against Women. Available at:

<http://www.refuge.org.uk/files/Map-of-Gapsreport-2009.pdf>

⁸ See: <https://www.equalityhumanrights.com/en/inquiry-disability-related-harassment> ¹⁰

EHRC (2011), 'Hidden in plain sight: Inquiry into disability-related harassment'. Available at:

https://www.equalityhumanrights.com/sites/default/files/ehrc_hidden_in_plain_sight_3.pdf

¹¹ EHRC (2013), 'Manifesto for Change: progress report 2013'. Available at:

<https://www.equalityhumanrights.com/en/publication-download/manifesto-change-progress-report2013>

⁹ EHRC (2017), 'Tackling disability-related harassment: Final progress report 2017'. Available at:

<https://www.equalityhumanrights.com/en/publication-download/tackling-disability-related-harassmentfinal-progress-report-2017>

¹⁰ Later subsumed under the Public Sector Equality Duty in the Equality Act 2010.

¹¹ Later subsumed under the Public Sector Equality Duty in the Equality Act 2010.

¹² Burman, M., Johnstone, J., de Haan, J. and Macleod, J. (2010), *Responding to Gender-based Violence in Scotland: The Scope of the Gender Equality Duty to Drive Cultural and Practical Change*.

¹³ EHRC (2011), 'Public authority commitment and action to eliminate targeted harassment and violence'. Available at:

https://www.equalityhumanrights.com/sites/default/files/rr74_targeted_harassment.pdf

¹⁷ EHRC (2013), 'Submission to the Seventh Periodic Report of the UN Committee on CEDAW'.

Available at: <https://www.equalityhumanrights.com/en/file/12751/download?token=vrt6etf8>

¹⁴ EHRC (2018), 'Pressing for progress: women's rights and gender equality in 2018'. Available at: <https://www.equalityhumanrights.com/en/publication-download/pressing-progress-womens-rights-andgender-equality-2018>

¹⁵ This should include coverage of sexual and reproductive health and rights, and discussion of same-sex as well as heterosexual relationships.

¹⁶ UKIM (Feb 2017), 'Disability Rights in the UK'. Available at:

https://www.equalityhumanrights.com/sites/default/files/united_kingdom_main_submission_to_crpd_u_k_loi_-_ukim13march.pdf

¹⁷ UKIM (July 2017), 'Disability Rights in the UK'. Available at:

<https://www.equalityhumanrights.com/en/publication-download/disability-rights-uk-updatedsubmission-un-committee-rights-persons>

¹⁸ See:

http://collections.internetmemory.org/haeu/20171122154227/http://ec.europa.eu/justice/genderequality/files/opinions_advisory_committee/2010_12_opinion_on_eu_strategy_on_violence_against_women_and_girls_en.pdf

¹⁹ See: <https://www.equalityhumanrights.com/en/parliamentary-library/response-equality-and-human-rights-commission-joint-committee-human-rights>

²⁰ EHRC (2014), 'Concluding Observations of the Committee on the Elimination of Discrimination

Against Women'. Available at:

<https://www.equalityhumanrights.com/en/publicationdownload/concluding-observations-committee-elimination-discrimination-against-women> ²⁵ For our

parliamentary briefings and consultation responses see:

<https://www.equalityhumanrights.com/en/legal-responses/parliamentary-briefings>

²⁶ See: <https://www.equalityhumanrights.com/en/legal-responses/consultation-responses>

²¹ See: <https://www.equalityhumanrights.com/en/legal-responses/consultation-responses>

²² For our parliamentary briefings see:

<https://www.equalityhumanrights.com/en/legalresponses/parliamentary-briefings>

²³ See: <https://www.equalityhumanrights.com/en/prejudice-and-unlawful-behaviour>

²⁴ See: <https://www.equalityhumanrights.com/en/advice-and-guidance/what-harassment>

³¹ See: <https://www.equalityhumanrights.com/en/advice-and-guidance/what-harassment-andvictimisation>

²⁵ Employment code and guidance: <https://www.equalityhumanrights.com/en/advice-andguidance/guidance-employers>; Services etc code and guidance

<https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-service-providers>;

Education guidance <https://www.equalityhumanrights.com/en/publication-download/equality-act-2010technical-guidance-further-and-higher-education>;

PSED guidance <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equalityduty-guidance>

²⁶ See: <https://www.equalityhumanrights.com/en/advice-and-guidance/how-can-we-stop-prejudicebased-bullying-schools>

²⁷ See: <https://www.equalityhumanrights.com/en/our-work/news/supporting-anti-bullying-week-2017>

²⁸ See: <https://www.equalityhumanrights.com/en/bullying>

²⁹ See: <https://www.equalityhumanrights.com/en/publication-download/using-data-inform-andevaluate-anti-bullying-strategies>

³⁰ See: <https://www.equalityhumanrights.com/en/advice-and-guidance/how-can-schools-use-dataprevent-and-tackle-bullying>

³¹ <http://www.niaendingviolence.org.uk/>

³² See: <https://www.equalityhumanrights.com/en/legal-casework/funding-advice-organisations>