Dear Ms Miller,

Sexual harassment in the workplace report

Thank you for your letter of 31 July 2018 about the Women and Equalities Committee report on sexual harassment in the workplace. At the Care Quality Commission (CQC), we agree with the report that sexual harassment can have a devastating impact on employees and that it has no place in a modern workplace.

In our response below, I cover firstly our regulatory remit, and how this relates to sexual harassment in workplaces and our public sector equality duty. I then explain the three areas of our regulatory work that relate to sexual harassment of staff in health and social care organisations: firstly, fit and proper person requirements, secondly, workforce equality, including sexual harassment in our assessment framework and inspections and finally our work on sexual safety on mental health wards.

Our regulatory remit and how this relates to sexual harassment in the workplace

Our role in helping to eliminate workplace sexual harassment is clearly dependent on our overall role as a regulator. Our role is prescribed in the Health and Social Care Act 2008. Our objectives and purpose are laid out in the 2008 Act:

(1) The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services.

(2) The Commission is to perform its functions for the general purpose of encouraging—

(a) the improvement of health and social care services,
(b) the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services, and
(c) the efficient and effective use of resources in the provision of health and social care services.
Thus, CQC is a regulator of care quality, not of employment in the health and social care sector. The regulator of employment in health and social care is the Equality and Human Rights Commission. Our statutory objectives are reflected in the regulations that we can use for enforcing care quality, the Health and Social Care Act 2008 Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. As our purpose is framed around protecting and promoting the health, safety and welfare of people who use services, our regulations do not cover employment matters for staff working in health and social care, such as sexual harassment.

To fulfil the Equality Act 2010 public sector equality duty, we must have due regard to the need to eliminate discrimination and harassment in the exercise of our functions. Our functions relate to the safety and welfare of people who use health and social care services rather than employment matters.

Our only potential regulatory enforcement role that could relate to sexual harassment of staff working in health and social care is under the Fit and Proper Person Requirement (FPPR).

However, at CQC, we do recognise the clear link between how health and social care staff are treated and the quality of care. There is much evidence that staff experiencing a high level of inequality is a good barometer of a poor culture that will also make it more likely that people using the service will experience poor care. For this reason, we do consider staff equality issues – including bullying and harassment – in our assessment and rating of health and social care services, even though we are not able to take enforcement action in this area.

**The Fit and Proper Persons Requirement**

CQC takes due regard to issues regarding sexual harassment when ensuring that directors of health and social care provider organisations are fit and proper. This is through Regulation 5, the fit and proper persons requirement for directors.

Regulation 5 recognises that individuals who have authority in organisations that deliver care are responsible for the overall quality and safety of that care. For the purpose of this Regulation, these individuals are board directors, board members and individuals who perform the functions equivalent to the functions of a board director and member. This Regulation is about ensuring that registered providers have individuals who are fit and proper to carry out the important role of the director to make sure that providers meet the existing requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

The provider is responsible for the appointment, management and dismissal of its directors. The provider must be able to show evidence that appropriate systems and processes are in place to ensure that all new and existing directors are, and continue to be, fit. Under this Regulation sexual harassment would be an example of misconduct and mismanagement that providers would be expected to conclude amounted to serious misconduct or mismanagement, unless there are exceptional circumstances that make it unreasonable to determine that there is serious misconduct or mismanagement. We reference the Equality Act 2010 as legislation which is relevant to Regulation 5.
CQC does not determine what is and what is not misconduct or mismanagement. However, when we consider whether Regulation 5 has been breached, we will make a judgement about the provider’s decision; for example, whether or not the provider acted reasonably when it made its determination. We would look at Regulation 5 through our registration process, our inspections or if information of concern was given to us by a third party.

Regulation 5(3)(d) states that, “the individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity”.

It is the responsibility of the provider to ensure that the requirement is met. In determining what amounts to “serious mismanagement or misconduct” beyond the decision by a court or professional regulators regarding individuals, we recognise that context is paramount. Directors may personally be accused and found guilty by a court of serious misconduct in respect of a range of already proscribed behaviours set out in legislation, such as being placed on the children’s or adults’ barred list, being undischarged bankrupts or convicted by a court for offences under the Sexual Offences Act 2003.

**Workforce equality, including sexual harassment, in our regulatory assessment framework and inspections**

In our regulation of health and social care services, we consider whether services are safe, effective, caring, responsive and well-led. As part of our assessments on whether services are well-led, we have key lines of enquiry regarding whether staff experience inequality and how workforce equality is promoted by health and social care organisations that we regulate. This is reflected in our “ratings characteristics”. For example, in health care services, we say one characteristic of a service which is “inadequate” (the lowest rating) is that:

> There are high levels of bullying, harassment, discrimination or violence, and the organisation is not taking adequate action to reduce this.

To enable our inspectors to make an informed judgement about this in NHS Trusts, we use the NHS staff survey results about whether staff have experienced bullying or harassment. This is also checked on inspection through discussions with staff and management, so that we get information from a range of sources. Staff working in health or social care services that we regulate can contact us if they have concerns about harassment in their organisation. Whilst we cannot investigate individual cases, this helps us build up a picture of the culture of an organisation and alongside other evidence may result in us taking regulatory action, for example bringing forward an inspection.

One of our current equality objectives is to develop how we consider equality for staff in our assessments of whether health and social care services are “well-led”. We have developed our methodology for considering this in our inspections of NHS Trusts and other healthcare organisations. For example, we have ensured appropriate coverage of staff equality questions in our interview guides for different roles within the organisation and developed guides for specific roles such as the director with responsibility for equality and diversity issues and the
equality and diversity lead in the organisation. These support the use of other evidence, such as staff survey results and feedback from staff, to give us a picture of the most pressing staff equality issues, which could include sexual harassment, and how organisations are tackling these. This contributes to the “well led” rating of the Trust.

**Sexual safety on mental health wards**

We have recently undertaken some work to look at sexual safety in mental health settings and this month published our national report [Sexual safety on mental health wards](#). Because of our regulatory remit, the focus is sexual safety issues involving patients (rather than, for example incidents where a member of staff harasses another member of staff). It does cover sexual harassment issues, including sexual harassment of staff by patients.

In the report, we make recommendations for action at both a national level and at the level of individual healthcare providers. We have developed the recommendations with other national bodies.

**Looking to the future**

We will continue to review the way that we consider workforce equality in our “well-led” assessments so that that this contributes in a proportionate way to the overall rating of services, in a way that helps to fulfil our purpose – to ensure the quality and safety of health and social care services and to improve services for the people that use them. In collaboration with others, we will build on our work on sexual safety in mental health settings, to help health and social care providers reduce the level of sexual harassment experienced by both staff and people using services. We will continue to have due regard to sexual harassment in relation to the FPPR under Regulation 5.

I hope that this response is useful for the Women and Equalities Committee. If the Committee requires further evidence, we would be happy to provide this.

Yours Sincerely,

Ian Trenholm
Chief Executive