Women and Equalities Committee report on sexual harassment in the workplace

I am writing to you in response to your committee’s recently published report on sexual harassment in the workplace, and to outline the work that the Law Society is currently undertaking to tackle abusive practices.

I welcome the committee’s focus in addressing this issue. Sexual harassment is illegal, and no employee should have to endure such unacceptable behaviour in their place of work.

I wanted to address one element of your committee’s report in detail; that is, the unethical use of non-disclosure agreements (NDAs) to intimidate and silence victims of sexual harassment. The report rightly expresses concern about the use of NDAs in the wake of high profile cases such as the Presidents Club dinner.

The Law Society is clear that solicitors are expected to adhere to the highest ethical standards at all times, and indeed the vast majority do. However, in light of recent instances of inappropriate use of NDAs, we are preparing a practice note for members which will highlight expected behaviour when advising clients on the use of such agreements. We will also be issuing plain English guidance to help those who are presented with NDAs and confidentiality clauses to understand how they work, and ensure that they are aware of their rights to make protected disclosures in certain circumstances.

This guidance will supplement the Solicitors Regulation Authority’s (SRA) own warning notice, which has clarified solicitors’ professional obligations when advising clients on the use of NDAs. The SRA’s note reiterates that improper use of NDAs will be considered a breach of the Code of Conduct, and that solicitors are expected to ensure that the NDAs they approve do not include obviously unenforceable clauses.

Of course, tackling the wider problem of workplace sexual harassment will require determined action from employers to shift cultures. The Law Society is preparing a factsheet on workplace harassment for law firms which will outline best practice in creating a safe and inclusive working environment for all employees.

Should you or your committee wish to contribute to the development of the Law Society’s guidance on this issue I would be very happy to share our current work with you. Any input provided by your committee would be welcomed.

Yours sincerely,

Christina Blacklaws
President