

**Northern Ireland Assembly, Committee for Justice
Justice (Sexual Offences and Trafficking Victims) Bill
Evidence Submission from [Professor Clare McGlynn](#),
Durham Law School, Durham University**

Executive Summary

Endorse Downblousing proposal

- Endorse recommendations to introduce a new criminal law covering images taken without consent of breasts or underwear 'in circumstances where the breasts or underwear would not otherwise be visible'.
- This ensures criminalization of a clearly wrongful act, unlike the English Law Commission proposals that would cover any image taken 'down' a woman's top.
- However, the proposal requires proof of specific motives which unduly limits the scope of the law.

Amend upskirting proposals to ensure comprehensive coverage of all forms of upskirting

- Current proposals require proof of specific motives meaning that many forms of upskirting will *not* be covered.
- It is unlikely that the upskirting in schools case which led to these proposals would be covered by the new law.
- The motive thresholds will make prosecutions more difficult and may inhibit victims from coming forward.

Amend law on distribution of upskirt images

- The law on distribution of intimate images without consent requires proof of intention to cause distress. If the upskirting proposal remains the same, the law on taking and then sharing upskirt images will be inconsistent and confusing.
- Recommendations are made to reform the law on distribution of upskirt images to clarify the law and make it consistent with other distribution offences.

Amend law to cover distribution of Deepfakes/fakeporn without consent

- Current law does not cover distribution of deepfakes/fakeporn without consent.
- Recommendations made to extend the law to cover this growing and harmful practice. **Amend**

Amend law to include threats to distribute intimate images without consent

- Threats can be experienced as paralysing and life-threatening.
- However, the current law does not cover threats to distribute intimate images without consent.
- Recommendations made to extend current law.

Extend law on abuse of trust sexual offences to cover all exploitative sexual activity in agegroup

- Current law limited to specific professions and relationships. It therefore excludes many exploitative relationships with 16 and 17 year olds.
- Current proposals for English & Welsh law are limited to only extending the law to cover sports coaches and religious supervision.
- Recommend following Canadian approach which covers all exploitative relationships in the relevant age categories. This will ensure comprehensive protection and future-proof the law.

Adopt new cyberflashing offence – sending of penis images without consent.

- This is a growing and potentially harmful practice that is not clearly covered by the criminal law.
- Recommendations made to introduce a specific criminal offence covering all forms of cyberflashing.

Professor Clare McGlynn - Expertise

[Professor Clare McGlynn](#) is an expert on laws relating to image-based sexual abuse, including 'revenge porn', 'upskirting' and cyberflashing. She has played a key role in shaping new criminal laws across the UK on intimate image abuse and extreme pornography, giving evidence before select committees of the [Scottish](#) and [UK Parliaments](#) and most recently to the UK [Online Safety Bill](#) legislative inquiry.

She worked closely with a coalition of MPs to [strengthen the English 'upskirting' laws](#) in 2019, first calling for [reform in 2015](#).

She has advised politicians across all the main political parties on potential law reforms and has addressed policy audiences across Europe, Australia, Korea and the US, as well as working with social media companies including Facebook, Google and TikTok to develop their policies. She is a co-author of the recently published books [Cyberflashing: recognising harms, reforming laws](#) (2021) and [ImageBased Sexual Abuse: a study on the causes and consequences of non-consensual imagery](#) (2021).

Endorse proposals to criminalise forms of 'downblousing'

Welcome consideration of criminal law on downblousing

- It is very welcome that the Northern Ireland Assembly is considering action to criminalise some forms of what is called 'downblousing'. This is a form of sexual harassment and abuse that women have long had to endure and which is now becoming ever more prevalent and harmful due to the easy distribution of such images.
- The English Law Commission recent [consultation on intimate image abuse](#) recommends extending English & Welsh law to cover downblousing.
- In my [submission](#) to the Law Commission, with my colleague Erika Rackley, we expressed caveats regarding the English Law Commission proposals.

What is downblousing and what should we criminalise?

- We argue that the term 'downblousing' covers three different types of image:
 - (a) An image of a woman who is voluntarily choosing to show some underwear and/or cleavage (even though she may not be expecting to have images of her underwear/cleavage taken and/or shared);
 - (b) An image taken *down* a woman's top showing partially exposed breasts and/or underwear (eg from a balcony or standing position on public transport of a seated woman);
 - (c) An image of a woman's breasts which exposes the breasts in a manner not of her choosing, such as if she was wearing a loose-fitting top and an image revealed her breasts as she bent down.
- We agree with the English Law Commission that image (a) should not be covered by the criminal law, even if the woman did not expect her image to be taken. This is similar to other 'creepshots' taken in public that are not and should not be criminalised.
- The English Law Commission recommends that images in category (b) should be covered by the criminal law. We disagree.

-
- **Our view is that downblousing images should *only* fall within the definition of an intimate image where the victim's breasts are involuntarily exposed (ie (c) above).**
- Image (c) is similar to cases of 'upskirting' in that the nudity/underwear revealed would not otherwise have been so had the image not been taken, and the woman did not choose to reveal her breasts/underwear.
Image (c) is also similar to a situation such as where an image captures a man's involuntarily exposed genitals during him voluntarily taking part in a sports match in public (as happened in one US case).

Agree with the Northern Irish proposals which cover category (c)

- The current proposal in section 1 of the Justice (Sexual Offences and Trafficking Victims) Bill would only cover those images taken 'in circumstances where the breasts or underwear would not otherwise be visible'.
- This would appear to cover only category (c) above and therefore ensure that the law is similar to the wrongful activities covered by upskirting laws. **Extend law to cover all motivations**
- However, the current proposal requires proof of specific motives. This unduly limits the law (see further below).

Amend upskirting proposals to cover ALL forms of upskirting, regardless of perpetrator's motives

Limitations of current Bill:

- The current Bill will only criminalise the taking of an 'upskirt' image if the perpetrator does so for the purposes of (a) obtaining sexual gratification for himself or others or (b) 'humiliating, distressing or alarming' the victim. This will cover many forms of upskirting – but it will not cover *all* forms of 'upskirting'. This follows the approach taken in English and Welsh law, which in turn copied the Scots 2009 law.

Excluded motives – financial

- The Bill does not adequately cover, for example, financial motives such as selling images to the media, or payment of fees on distribution of upskirt images. Such actions could be covered if it can be proven that the images are being sold so that another person gains sexual gratification (assuming the photographer does not themselves). Such a motivation is unlikely to be established regarding celebrity upskirt images which are widely disseminated in the national media and for which sexual gratification is not the purpose.

Excluded motives – 'prank', humour, men's group bonding, men's trading and 'collection' of upskirt images

- The Bill also does not cover where the motivation is to take (and likely share) images amongst a group of friends, as means of 'group bonding', such as via WhatsApp or Facebook groups. There are many fora for the exchange and trading of such images. In such situations, the images are not always taken for the purpose of causing distress to the victim. Indeed, the perpetrators often do not wish the victim to know that the image has been taken.

Current law unlikely to cover upskirting cases that prompted this law reform initiative

- The case of a schoolboy [convicted of outraging public decency](#) for taking images up the skirts of two teachers sparked campaigns to change the law in Northern Ireland, to introduce a

specific criminal offence of upskirting.¹ The case was defended on the basis that the actions of taking the images were a 'prank' and there was no evidence provided as to the image having been distributed. The women teachers in this case have shared publicly the [devastation and loss of trust](#) they have experienced as a result of these actions.

- However, if this Bill is introduced as it stands, it is highly unlikely to cover cases such as this. Proving motives of sexual gratification or intention to cause distress will be very challenging. While it is the case that the law on outraging public decency remains, and could be used, that undermines the whole point of adopting this new law that is supposed to replace that vague, outdated and unknown provision.

Additional motivation thresholds will make investigations and prosecutions far less likely

- Laws on non-consensual distribution of intimate images similarly require proof of specific motives. Research evidence has demonstrated that these thresholds mean that prosecutions are far less likely.²
- In the English debates, the Crown Prosecution Service accepted that this additional threshold will make prosecutions more challenging (as did evidence submissions from many other organisations and stakeholders).

No motive requirement in most areas of criminal law or sexual offences law:

- There is no requirement in the criminal law to specify particular motives for criminal offences and such motives are required in only 'exceptional cases'.³ The criminal law is generally concerned with an individual's intention to carry out the particular act (eg punch/kill) rather than *why* they have done a particular act. The *why* (motive) becomes relevant in terms of evidence and sentencing; but is not relevant regarding the elements of the crime itself.

No motive requirement in most of Sexual Offences Act 2003:

- By way of further example, in the Sexual Offences Act 2003, approximately three-quarters of offences do not require a specific motive. The 'guilty mind' is the intention to commit the nonconsensual act. This emphasises that the offending actions are 'sexual offences' due to the nature of the acts (i.e. sexual acts) and *not* a particular motive. For further discussion, see my [blog](#).⁴

Reject UK Government's justifications for limited English upskirting law

- **'Highly likely' all motives covered:** The English Government justified the new English law on the basis that where someone takes the upskirt image for financial or group bonding/'a laugh' motives, it is 'highly likely that, by doing so, they intended to humiliate, distress or alarm' their victim and so will be covered by the new law.
- **'Highly likely' is not sufficiently reassuring** for victims and all women who are at risk of being upskirted.
- The whole aim of this law was to send a *clear* signal that all upskirting was criminal and should not be tolerated.

English Law Commission proposals focus on non-consent and not motives

- The English Law Commission has recently issued a [consultation document](#) to comprehensively reform the law on the non-consensual taking and sharing of intimate images. It proposes an offence, which would replace the existing upskirting law, based on non-consent, without the need to prove specific motives.

- I firmly endorse that approach to intimate image abuse and urge the NIA to be at the forefront of recognizing the core wrong of non-consent and enacting legislation accordingly.

Recommended law reform

Strengthen and clarify law to cover all motivations, protect all victims and better enable prosecutions

- The Bill would be strengthened if the core offence was 'the non-consensual taking of an intimate image'. This would ensure that all forms of upskirting are covered (as well as other forms of voyeurism).

This is the approach taken in other jurisdictions, including New South Wales where the offence is: 'A person who intentionally records an intimate image of another person (a) without the consent of the person and (b) knowing the person did not consent to the recording or being reckless as to whether the person consented to the recording, is guilty of an offence.'

2020 new Irish Law covers all forms of upskirting

- Recent legislation in Ireland clearly covers all forms of upskirting, focusing on non-consent, not the motivations of perpetrators. It is an offence in [section 3 of the Harassment, Harmful Communications and Related Offences Act 2020](#) to 'record, distribute or publish an intimate image of another person without that other person's consent' and such recording or otherwise 'seriously interferes with that other person's peace and privacy or causes alarm, distress or harm to that other person'. It can be assumed that taking an image up a person's skirt without their consent seriously interferes with their privacy.

Strengthen law on distribution of upskirt images

Current Bill does not cover distribution of images

- The current Bill does *not* cover the non-consensual *sharing* of 'upskirt' images. The distribution of such images amplifies the harms of the original conduct and often leads to further harassment and abuse. Images often end up on pornography websites and are difficult to get taken down.

Existing laws on non-consensual distribution only cover *some* cases of distribution

- If an offender shares upskirt (or voyeurism) images without consent, there *may* be an offence under section 51 of the Justice Act (Northern Ireland) 2016. However, this offence *only* applies if it can be proven that the sharing of the private and sexual images was done with the direct intention to cause distress to the victim. It does *not* cover distribution for motives of finance, humour or sexual gratification.⁵

Inconsistency of law relating to taking and then sharing upskirt images

- This inconsistency between offences for taking and sharing intimate images means that, for example, where the 'upskirt' image was *taken* for the purposes of sexual gratification and the new voyeurism offence is made out, but if *shared* with the same motive, there is *no* criminal offence relating to distribution.

Current Bill and laws on non-consensual distribution of intimate images do not adequately recognize harms of distribution, whatever the motives

- The nature of upskirting means that it is not always possible to show intention to cause distress: perpetrators often do not know who the victim is and are not concerned about the impact on that victim. Or, as in the case of the celebrity photo for example, we may know that they have an entirely different motive: here the main – maybe only – reason for taking and distributing the photo is financial. This current Bill does not adequately recognise the very serious harms which come from the non-consensual sharing of intimate images, whatever the motive of the perpetrator.

Reform the law to include threats to share intimate images without consent

There is consistent and detailed research demonstrating the prevalence and harmful nature of threats to share intimate images without consent. The law should be reformed in order to provide a clear and straightforward offence to recognize the harms experienced by victims and to enable swift prosecutions.

High incidence of threats to share intimate images without consent

- In my research with colleagues, nearly half of the victim-survivors we spoke to had experienced threats to share nude or sexual images/videos without their consent.⁶ While many of these threats are following by non-consensual sharing, we must recognize that threats to share such images can in and of themselves have significant, life-threatening impacts.
- In further research with colleagues across the UK, New Zealand and Australia, a survey of over 6,000 individuals found that one in five (18.7%) of respondents reported experiencing threats to share their intimate images.⁷

Threats made in all contexts, not only domestic abuse

- In addition, while many threats to share are experienced as part of a broader pattern of domestic abuse, this is not always the case. Threats are made by colleagues, friends, strangers and in many types of relationships.

Paralysing and life-threatening impact of threats

- The harms of such threats can be devastating. Threats can be experienced as paralysing and life-threatening. For one of our research participants, Louise, the fear of the images being shared was such that she tried to end her life: *'I was embarrassed and I was ashamed And I felt stupid... even now I'm still not sure whether or not she will send them ... my mental health deteriorated quite significantly ... I took an overdose'*.⁸

Reform law to include threats to share intimate images without consent

- Accordingly, there is an urgent need to reform the law to include threats to share intimate images. The amendments recently adopted in England & Wales could be followed to provide some measure of protection. See [section 69](#) of the Domestic Abuse Act 2021.

Reform law to include distribution of deepfakes/fakeporn without consent

Deepfakes and fakeporn is a growing and harmful problem

-
- In my [research with colleagues](#) interviewing victim-survivors of intimate image abuse, we found that of those whose images were created without their consent, one third (34%) of the images were digitally altered revealing a high number of 'fakeporn'/deepfake abuses.
- The harms experienced by digitally altered images can be equally devastating as with 'real' images. As one stakeholder explained to us: "it's still a picture of you ... it's still abuse".⁹
- In 2017, in my research with Erika Rackley, we argued that '[sexualised photoshopping](#)' (as we then termed fakeporn/deepfakes) must be seen as a form of image-based sexual abuse and should be covered by the criminal law.

Widespread recognition of need for reform and harms of deepfakes:

- Many others have subsequently recommended this change, including the UK [Parliament's Women & Equalities Select Committee report on public sexual harassment](#) in 2018 and a [coalition of MPs](#) in 2019. The English Law Commission [2020 consultation](#) on intimate image abuse also recommends this reform.
- See this recent BBC news investigation to hear from a survivor on the experience of fakeporn: [Deepfake pornography could become an 'epidemic', expert warns - BBC News](#)
The law is falling behind many other jurisdictions which criminalise distribution of altered images including Scotland and many of the Australian and US states.

proposed amendment in criminalise distribution of altered images in section 53 of the Justice Act (Northern Ireland) 2016

- offence of 'disclosing private sexual photographs and films with intent to cause distress'
- the law currently includes altered images within its definition of images, but specifically excludes images that are *only* private and sexual by virtue of being altered (section 53(5)).
- Amendment required therefore to *delete* sections 53(5)(b)-(c) and ensure that the images/videos covered include those that are altered to make them sexual or intimate.

Introduce comprehensive law on abuse of trust sexual offences to cover all exploitation, not limited to sports and religious relationships

Strengthen law to cover all exploitative sexual activity:

- It is welcome that the provisions on abuse of trust are to be strengthened.
- This [gap](#) in the law has been identified for many years.

Current proposals to amend English law are limited to sports and religious coaches/supervisors

- Note however that current proposed changes to English law while welcome, are only partial, and will not provide comprehensive protection or future-proof against the need for further changes.
- [Current proposals to change English law](#) (section 45 of the Police, Crime, Sentencing and Courts Bill 2021) only extend the law to include sports coaches and religious supervisors and associated roles.

Reform the law to cover all exploitative and harmful relationships to ensure comprehensive protection and to future-proof the law

- A better approach is to amend the law such that any exploitative and harmful relationship, including coaching, is covered, using criteria to determine what forms of exploitation are to be covered.

- This would ensure that the whole range of circumstances where young people are sexually exploited is covered. For example, the proposed law may not cover sexual activity between a doctor and young person.
- The NSPCC in its [Close the Loophole](#) campaign also note the need to ensure the law covers all exploitative relationships.

Future-proof the law:

- It is preferable to 'future-proof' the law to cover as yet anticipated circumstances, without having to wait until more young women and men are victimized and the law has to be changed before they are protected by the criminal law. It should be noted current law is in need of amendment because the original 'list' based approach has proven too restrictive and manifestly failed to protect victims. Such a provision would enable prosecutors and judges to examine the circumstances of the relationship, rather than whether it fits within an already set list.

Canadian law provides a suitable model to be followed:

Section 153(1) of the Canadian Criminal Code provides that:

- Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who:
 - for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or
 - for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.
- In considering whether there has been exploitation, the following factors are considered (section 153(2)): the age of the young person; the age difference between the person and the young person; the evolution of the relationship; and the degree of control or influence by the person over the young person.

Introduce New Criminal Law on Cyberflashing (sending penis images without consent)

Summary

- include new offence to clearly criminalise cyberflashing (sending unsolicited 'dick pics')
- offence must be based on non-consent and cover *all* forms of cyberflashing, regardless of the perpetrator's motives
- current English Law Commission proposals *only* criminalise sending penis images if can prove perpetrator's intention to cause alarm, distress or humiliation (or proof of sexual gratification and reckless as to causing distress) therefore excluding many cases of sending 'dick pics' without consent
- experience of laws on intimate image abuse show that a threshold of intention to cause distress seriously limits prosecutions
- legislation should follow examples from US where laws criminalise the sending of penis images to someone without their consent, regardless of motives
- my short blog commenting on Law Commission proposals here in [The Independent A proposed new law criminalising cyberflashing is welcome – but it has one major flaw | The Independent](#) **Evidence base:**

This evidence draws on my recently published book [Cyberflashing: recognising harms, reforming laws](#) (2021) with Dr Kelly Johnson which is the most comprehensive study of cyberflashing internationally to date. It details the nature and extent of cyberflashing, as well as providing detailed recommendations for law reform. A summary of the research findings and recommendations is available [here: cyberflashing-policy-briefing-final.pdf \(bristoluniversitypress.co.uk\)](#) **How common is cyberflashing?**

- Cyberflashing is an alarmingly commonplace experience, with women, and young women in particular, disproportionately facing the highest rates of victimisation and disclosing the most negative impacts.
- A YouGov survey in 2018 found that 41% of women had been sent an unsolicited penis picture; for younger women, this rose to almost half of women aged 18-24 (47%) (YouGov

2018). These findings are paralleled in a number of US surveys, with women and girls most highly victimised.

Data from UK police FOI reports show that the majority of those reporting cyberflashing are women under thirty, and that while still the 'tip of the iceberg', reports over the last few years are increasing (Gallagher, 2020).

- **Everyday normalisation of cyberflashing for girls:** young and teen girls' experience cyberflashing as ubiquitous, with one study finding that 76% of girls aged 12-18 had been sent unsolicited nude images of boys or men (Ringrose et al, 2021). The recent [Ofsted review](#) found that nearly 90% of girls said being sent explicit pictures or videos of things they did not want to see happens a lot or sometimes to them or their peers, including 'dick pics'.
- **Online abuse particularly affecting black and minoritised women:** It is likely incidence of cyberflashing has recently increased, with surveys showing a rise in online abuse generally, particularly among black and minoritised women, since the pandemic began (Glitch UK and EAW 2020). The differing experiences of harassment, including street harassment (EAW and Imkaan 2016) and cyberflashing, as experienced by black and minoritised women, must therefore be clearly acknowledged and taken into account in all law and policy reforms. **Different types of cyberflashing**

Different types of cyberflashing

- **Cyberflashing is a Sexual intrusion:** cyberflashing should be understood as a form of *sexual intrusion* similar to other forms of sexual violence and abuse, and should therefore be treated as a sexual offence. Many victim-survivors characterised their experience of cyberflashing as being similar to in-person indecent exposure, and/or as a form of sexual assault.
- Cyberflashing can take place in a variety of contexts. It can be a one-off event of a sexual exposure, involving one or multiple images or videos, or can form part of a course of abusive, threatening and harassing conduct.
- **Cyberflashing by teenage boys:** sending penis images to girls without their consent is commonplace in schools. Young girls and teen girls receive these images from both their peers, as well as older strangers through social media. Boys are commonly sending penis images followed by pressure on the girls to send back nudes, as the boys collect nudes to be able to raise their status amongst their peers.
- **Cyberflashing in public spaces and on public transport:** Victim-survivor testimonies reveal that women frequently experience cyberflashing in physical public spaces; in supermarkets, libraries, restaurants, museums, university campuses, airports, as well as on various forms of public transport. In many of these circumstances, unknown men send penis images to women's mobile phones through the use of technology such as Airdrop and Bluetooth. This form of cyberflashing closely parallels physical 'flashing'.
- **Cyberflashing in online dating and hook-up apps:** Cyberflashing is experienced as routine by many using dating apps, including from strangers, acquaintances and potential daters. It is commonly experienced out of nowhere; other times following rejecting the man's advances.
- **Cyberflashing on social media and other digital technologies:** Cyberflashing is regularly experienced by women engaging in social media and other online technologies, in personal and professional capacities, by strangers, colleagues, acquaintances, family friends. It is also now taking place in online video conferencing with terms such as 'zoomflashing' and 'zoombombing' now into language reflecting a rise in various forms of online abuse, including online exposure and distribution of sexually explicit texts online. **Multiple, Over-Lapping**

Multiple, Over-Lapping Motivations for Cyberflashing

-
- There are multiple, motivations for sending unsolicited penis images which overlap, demonstrating that there will rarely be a single, clear motivation for committing this abuse:
- **'Transactional'**: men are hoping to either receive nude or sexual images in return, or to initiate sexual activity. For young men, the unsolicited dick pic is usually followed by pressure on the girls to send nudes. The main aim for the boys is to share their nudes and increase their social status amongst their peers. A form of bonding. The nudes are 'trophies' to collect.
- **Threatening, harassing and causing distress**: some perpetrators acknowledge they are hoping to shock and threaten women, inducing alarm and fear.
- **Sexual gratification and exhibitionism**: like physical 'flashing', some men seek sexual arousal from exposing their penis to women without their consent.
- Our research identifies that underpinning all these range of motivations are problematic constructions of masculinity, a sense of **masculine entitlement, 'homosocial bonding' and desire for exercising power and control. Potentially Significant Harms of Cyberflashing**
- **Infringing sexual autonomy**: Fundamentally, cyberflashing is wrong no matter what because it is non-consensual sexual conduct which infringes our autonomy and privacy. This is the case regardless of the nature and extent of any further consequential harm, if any, or whether or not the action is actually welcomed by the recipient: it remains a breach of fundamental rights.
- **Gendered harms**: The harms of cyberflashing are deeply gendered: most obviously, women are predominantly targeted, but also that the sexualised form and manner of the abuse, the motivations of perpetrators and the connections with other forms of sexual violence and harassment.
- **Different women experience different harms**: Women's differing experiences must be recognised, particularly those from black and minoritised communities who experience higher levels of online abuse and harassment (Thiara and Roy 2020), as well as differing experiences depending on age, sexuality, class, disability and other social, political and cultural positions.
- **Sexual violation**: Some victim-survivors have described their experiences of cyberflashing in terms of violation, heightened by the sexual dimension of cyberflashing.
- **Humiliation**: Victim-survivors also report experiencing being embarrassed, disturbed, shocked, utterly horrified and ashamed.
- **Threat and fear - what might happen next?:** Women have frequently recounted feeling 'frightened', 'terrified', 'vulnerable' and 'exposed' by acts of cyberflashing. For many, the harm stems from the 'well-founded fear' of escalation - of what might happen next - particularly in contexts where unsolicited penis images are sent in public from strangers.
- **Making girls responsible for boys' behaviours**: young girls and teenagers find they are often shamed for *receiving* dick pics as it's assumed they've sent nudes. Girls have to invest the emotional labour in dealing with their peers as they find being sent the images disgusting and irritating, but they don't report, don't challenge the boys and try to carry on as normal so as to not incur social embarrassment or ostracization.
- **Impacts on everyday life**: The harms of cyberflashing must be understood as cumulative and connected to women's other experiences of harassment and abuse, impacting on women's everyday lives and reducing their participation in public and online life.
- **Social and cultural harms**: the prevalence of cyberflashing, and its detrimental harms and effects, has ramifications across all of society; for example, it may help sustain a culture in which sexual consent is marginalised, thereby minimising other forms of sexual violence.

The law is currently failing victim-survivors of cyberflashing in England and Wales

- There is no criminal offence against sending unsolicited penis images in England, Wales and Northern Ireland. The laws on physical 'flashing' do not apply; and prosecutions using other offences like harassment have many hurdles, with prosecutions unlikely.
- This is not the case in other jurisdictions; some countries, like Scotland and Ireland, already have sexual offences legislation which is sufficiently broad to capture new forms of sexual

violence like cyberflashing. Other places, like Singapore and several US states, have recently introduced new criminal laws specifically targeting cyberflashing.

- Ultimately, the law in England, Wales and Northern Ireland has failed to keep pace with evolving technology and is letting victims down. Consequently, law reform is urgently needed.

Cyberflashing Key Recommendations

Reforming the criminal law:

- **Adopt a specific cyberflashing offence:** There are many benefits to adopting a bespoke criminal law addressing cyberflashing, including that it would: make it clear cyberflashing is wrong and potentially harmful; let victim-survivors know their experiences are understood and recognised; facilitate successful prosecutions, by removing requirements to shoe-horn cyberflashing into other laws; and provide a positive foundation for education and prevention initiatives.
- **Cyberflashing as a sexual offence:** Any new law must frame cyberflashing as a sexual offence, to recognise the nature and harms, to grant victims anonymity and protections in court, and to permit suitable sentencing options.
- **Focus on the core wrong of non-consent, not perpetrator motives:** The wrong of cyberflashing is non-consensual conduct breaching sexual autonomy, *regardless of the perpetrator's motives*. Motive requirements invariably mean only some abuses are covered, denying some victims redress and make prosecutions less likely.
- **Law Commission proposals only cover some forms of cyberflashing:** the current proposals *only* criminalise sending penis images if can prove perpetrator's intention to cause alarm, distress or humiliation (or proof of sexual gratification and reckless as to causing distress) therefore excluding many cases of sending 'dick pics' without consent
- This proposal will mean that most cases of sending penis images without consent will *not be covered*, including the everyday experiences of young girls.
- The threshold of proving distress etc will also make prosecutions very difficult. We know from experience of laws on intimate image abuse show that a threshold of intention to cause distress seriously limits prosecutions.
- legislation should follow examples from US where laws criminalise the sending of penis images to someone without their consent, regardless of motives
- my short blog commenting on Law Commission proposals here in [The Independent A proposed new law criminalising cyberflashing is welcome – but it has one major flaw | The Independent](#)

Beyond creating a cyberflashing offence:

- **Education, Prevention and Support:** Law reform is only ever the first step and must be accompanied by effective awareness-raising campaigns and education initiatives. Crucially, organisations supporting victim-survivors – including specialist organisations working with black and minoritised women whom we know experience higher levels of abuse – must be granted sustainable and sufficient resources to support victim-survivors.

References

Gallagher, Sophie. (2020) "'The tip of the iceberg': Cyber-flashing on trains "largely unreported" despite huge rise in incidents', *The Independent*, 18 February, <https://www.independent.co.uk/life-style/women/cyber-flashing-incidentnumber-2020-a9341676.html>

- Glitch UK and EVAW. (2020) 'The Ripple Effect: COVID-19 and the Epidemic of Online Abuse', September, <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Glitch-and-EVAW-The-Ripple-Effect-Onlineabuse-during-COVID-19-Sept-2020.pdf>
- Henry, Nicola., McGlynn, Clare., Flynn, Asher., Johnson, Kelly., Powell, Anastasia., and Scott, Adrian. (2020) *Image-based Sexual Abuse: a study on the causes and consequences of non-consensual nude or sexual imagery*, London: Routledge.
- Imkaan and EVAW. (2016) 'Powerful new film- Black women speak out about racist sexual harassment', <https://www.endviolenceagainstwomen.org.uk/powerful-new-film-black-women-speak-out-about-racist-sexualharassment/>
- McGlynn, Clare and Johnson, Kelly (2021) *Cyberflashing: recognising harms, reforming laws* (Bristol University Press).
- Ringrose, et al (2021) 'Teen Girls' Negotiating the Ubiquitous Dick Pic: sexual double standards and the normalization of image-based sexual harassment' *Sex Roles* <https://doi.org/10.1007/s11199-021-01236-3> Thiara, Ravi., Roy, Sumanta. (2020) *Reclaiming Voice*, London: Imkaan.
- Vera-Gray, F, McGlynn C et al (2021) *Sexual violence as a sexual script in mainstream online pornography* *British Journal of Criminology*

¹ [Enniskillen schoolboy guilty in upskirting case - BBC News](#)

² Clare McGlynn et al (2019), [Shattering Lives and Myths: a report on image-based sexual abuse](#). See also Rackley, McGlynn et al, '[Seeking Justice and Redress for Victim-Survivors of Image-Based Sexual Abuse](#)'.

³ David Ormerod, *Smith and Hogan's Criminal Law*, (Oxford University Press, 2011, 13th ed), at 117. Ormerod gives the example of racially motivated offences as being one such 'exception'. See also: 'generally motive is irrelevant to liability' in the criminal law (Michael Allen, *Textbook on Criminal Law*, 11th ed, 2011).

⁴ Clare McGlynn, 'Revenge Porn' and 'Upskirting' Remind Us that Sexual Offending is Not About Sexual Arousal', 11 July 2018, *Huffington Post* https://www.huffingtonpost.co.uk/entry/revenge-porn-and-why-sexual-offending-is-not-about-uk_5b45c9e7e4b00db1492ffe9f

⁵ See further Erika Rackley, Clare McGlynn et al (2021) 'Seeking Justice and Redress for Victim-Survivors of Image-Based Sexual Abuse' *Feminist Legal Studies* (2021) 29:293–322 <https://doi.org/10.1007/s10691-021-09460-8>

⁶ Clare McGlynn et al (2019), [Shattering Lives and Myths: a report on image-based sexual abuse](#). See also Rackley, McGlynn et al, '[Seeking Justice and Redress for Victim-Survivors of Image-Based Sexual Abuse](#)'.

⁷ Henry, McGlynn et al (2021) [Image-Based Sexual Abuse: A Study on the Causes and Consequences of NonConsensual Nude or Sexual Imagery](#) (Routledge).

⁸ See further: Clare McGlynn et al (2019), [Shattering Lives and Myths: a report on image-based sexual abuse](#). See also Rackley, McGlynn et al, '[Seeking Justice and Redress for Victim-Survivors of Image-Based Sexual Abuse](#)'.⁹ See McGlynn et al [Shattering Lives and Myths: A Report on Image-Based Sexual Abuse](#).