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Public Bill Committee

VOYEURISM (OFFENCES) (NO. 2) BILL

Second Sitting

Tuesday 10 July 2018

(Afternoon)

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The Committee consisted of the following Members:

Chairs: Ms Karen Buck, †Sir Roger Gale

† Caulfield, Maria *(Lewes)* (Con)
† Chalk, Alex *(Cheltenham)* (Con)
Creasy, Stella *(Walthamstow)* (Lab/Co-op)
† Duffield, Rosie *(Canterbury)* (Lab)
† Frazer, Lucy *(Parliamentary Under-Secretary of State for Justice)*
† Hobhouse, Wera *(Bath)* (LD)
† Hollern, Kate *(Blackburn)* (Lab)
† Jones, Andrew *(Harrogate and Knaresborough)* (Con)
† Keegan, Gillian *(Chichester)* (Con)
† Knight, Julian *(Solihull)* (Con)
† Milling, Amanda *(Cannock Chase)* (Con)
† Morden, Jessica *(Newport East)* (Lab)
† Qureshi, Yasmin *(Bolton South East)* (Lab)
† Robinson, Mary *(Cheadle)* (Con)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
† Saville Roberts, Liz *(Dwyfor Meirionnydd)* (PC)
† Smith, Laura *(Crewe and Nantwich)* (Lab)
† Thomson, Ross *(Aberdeen South)* (Con)
† Whately, Helen *(Faversham and Mid Kent)* (Con)

Kenneth Fox, Gail Poulton, *Committee Clerks*

† attended the Committee

Witnesses

Mrs Maria Miller MP, Chair, Women and Equalities Committee

Lisa Hallgarten, Head of Policy and Public Affairs, Brook

Public Bill Committee

Tuesday 10 July 2018

(Afternoon)

[Sir Roger Gale *in the Chair*]

Voyeurism (Offences) (No. 2) Bill

Examination of Witness

Mrs Maria Miller MP gave evidence.

2 pm

The Chair: Good afternoon, ladies and gentlemen. We will follow the usual house-keeping arrangements. The shirt-sleeve order is in order. Will Members and anybody in the Public Gallery—who I cannot see because I am not allowed to—please make sure to switch their mobile phones off? We will now hear oral evidence from the Chair of the Women and Equalities Committee, the right hon. Member for Basingstoke (Mrs Miller). We have until 2.30 pm to ask questions. I thank you for joining us, Mrs Miller.

Q49 Jessica Morden (Newport East) (Lab): Hello. You have tabled several amendments to the Bill. Can I start by asking you to explain their purpose, what they are about and why, in your view, they will make the Bill better?

Mrs Miller: Thank you very much for allowing me to give evidence as we consider the Bill, Sir Roger. The amendments I propose, which have support from Members of every single political party, including some Members here, seek to do two things: first, to change the purposes mentioned in the Bill, and secondly, to introduce a new item to the Bill covering distribution.

Several people feel that the listed purposes are too tightly drawn. I have worked on the amendment with Professor Clare McGlynn, who is a professor of law at Durham University. It is her clear concern that recognising offences only if they are for the purposes of either sexual gratification or the humiliation of the victim would mean that a number of cases could never be tried. That is important, because the Government have made it clear from the start that the Bill is intended to close a loophole in the law. It does not do that as presently drafted. It will need to be more broadly drafted and not simply focus on those two different purposes.

The amendments have been drafted after my having looked at comments from people such as David Ormerod, a law commissioner who has clearly set out that "motive is irrelevant to liability" in criminal law. "Smith and Hogan's Criminal Law", which I understand is the bible on criminal law issues, sets out that motives form an element of an offence only in exceptional circumstances when it comes to criminal law. The example given in that book is of racially aggravated offences in which racism is an element.

In many ways the Bill is anomalous, inasmuch as it sets out purposes, whereas three quarters of offences in the Sexual Offences Act 2003, which, after all, the Bill amends, do not require one. The Minister asserted during the Second Reading Committee that the amendments would

"reverse the burden of proof".—[*Official Report, Second Reading Committee,* 2 July 2018; c. 18.]

David Ormerod, a law commissioner, does not agree, hence my belief that the amendment should stand.

The second amendment relates to the distribution of material. Shortly after Scotland passed a similar law to outlaw upskirting, they realised that they had no way of stopping the distribution of those images. They had to pass a subsequent piece of legislation—the Abusive Behaviour and Sexual Harm (Scotland) Act 2016—so I found it quite surprising that the Government would bring forward the Bill based on the Scottish Act but not include the subsequent legislation on distribution.

To finish this final point—sorry my answer has been so long—at the moment the revenge pornography law, section 33 of the Criminal Justice and Courts Act 2015, would apply to stop the distribution of upskirting images only in cases where they would cause distress. It would not stop the distribution of those images in any other circumstances. There is clearly a loophole in the law around distribution. I believe that this amendment would close that loophole.

Q50 Alex Chalk (Cheltenham) (Con): May I take up the issue about motive? The offence in the Bill requires one or other of two purposes:

"obtaining sexual gratification (whether for A or C)"—

in other words, for the taker or for a third party—or

"humiliating, alarming or distressing B."

What are credible additional or alternative motives for someone taking a photograph up someone's skirt?

Mrs Miller: Professor Clare McGlynn has set this out in evidence to the Committee, having looked at this issue since 2015 when she first thought there was an upskirting loophole that needed to be filled. I commend that evidence to the Committee as giving a full answer. She feels strongly that there are clear cases where it would not be easy to prove sexual gratification or humiliation as a motivation of the perpetrator. She gave two particular examples for posting images: for financial gain or simply having a bit of fun. The individual may not be recognisable, so humiliation would not be caused. If those images were then posted to a WhatsApp group, that would not be caught by this law.

Q51 Alex Chalk: Okay. Let me deal with financial gain. The value in this photo comes either from a third party getting sexual gratification from it or from it being humiliating, alarming or distressing for the individual. Even if that were part of the intention of the taker, surely it would be possible for the prosecution to say, "Whatever their primary motive, the value in these images came from one of the two purposes set out in the Act." Can you point to any cases where the Crown has not been able to get the defendant down—to use the vernacular in Scotland—because of these alleged loopholes?

Mrs Miller: I think, Mr Chalk, there is a fundamental misunderstanding of the driver for these types of sexual harassment. Indeed, if I may refer to evidence given to my Select Committee by another Government Minister only last week, the Minister for Women said that the

driver of sexual harassment is power, not sexual gratification. The overwhelming likelihood is that these pictures will not be taken for sexual gratification.

I am advised—unlike you, Mr Chalk, I am not a qualified lawyer—that proving sexual gratification is extremely difficult, and indeed the Government do not believe that sexual gratification is the main driver of the taking of these sorts of photographs. In answer to your second question on evidence, unfortunately I do not have the resources to look through Scottish law—

Q52 Alex Chalk: But is it not quite important to be able to point to examples where someone we would expect to have been convicted of upskirting has not been because of deficiencies—or perceived deficiencies—in the law? Can you point to a single example of that?

Mrs Miller: What I would point to is the evidence I have just given around the law commissioner, David Ormerod, who has said that "motive is irrelevant to liability" in the criminal law, and the fact that three quarters of the laws in the Sexual Offences Act that we are amending have no such provision.

Alex Chalk: That is a separate issue.

Mrs Miller: What the Government have not done—if I may be so bold—is to say why this is a very different case. They do not seem to have any evidence to back that up.

Q53 Alex Chalk: With respect, that is a separate issue about how it sits in the canon of sexual offences law. My question is whether this proposal is fit for purpose. I am asking whether you can provide any evidence of culpable conduct that was not capable of being prosecuted to conviction because of a perceived deficiency in the law. Can you provide any example?

Mrs Miller: I cannot provide that example. What I can do is give you professional, expert opinion, including most recently that of Lord Pannick in the House of Lords, which says quite clearly that setting out the provisions, as currently drafted in the Bill, only to cover situations that are to do with sexual gratification and alarming and distressing victims, draws the piece of legislation too tightly. I have to say that I do not want to question the opinion of Lord Pannick.

Q54 Wera Hobhouse (Bath) (LD): Can I come back to the first amendment and hear a little bit more of the response to the argument that we would reverse a core principle in British law that somebody is innocent until proven guilty? I understand that is one of the main arguments why the amendment should not be put forward because, basically, it would make it very difficult for an alleged perpetrator to prove his or her innocence.

Mrs Miller: I think that is, if I might say, Sir Roger, something that seems to be a point of disagreement with the Government and a number of people who have provided evidence to me—not only Professor Clare McGlynn, but Lord Pannick and the words of David Ormerod. They all suggest that removing the two provisions that narrow the purposes of the Bill would not at all reverse the burden of proof. In fact, in doing so, it would be brought more in line with three quarters of the sexual offences in the 2003 Act.

Rather than in some way perverting the law, which was my layman's take on what the Minister said in the Second Reading Committee, the amendment would more likely bring this piece of law into line with other offences under the Sexual Offences Act. There is no requirement in criminal law to specify particular motives for criminal offences—only in exceptional circumstances. The Government have not said why this would be an exceptional circumstance.

Q55 Ross Thomson (Aberdeen South) (Con): Thank you very much for being with us this afternoon. The reasons for the current speed and scope of the Bill are that, first, it addresses that gap in the law that has long been recognised; secondly, closing that gap is very uncontroversial; and, thirdly, the proposed reform follows provisions that are already there in Scotland.

In relation to the amendments and broadening the scope of the Bill, such as to look at distribution, as you said earlier, would it not be better for the Government to engage maybe with the Law Commission to produce a report and to make considered recommendations on the existing law and the need for reform in those areas, so that they can take proper time to consider how we tackle those issues? In the meantime, we can plug that gap that we know exists.

Mrs Miller: Thank you for your questions. I will pick up your words to take "proper time" over this. I think the Government should take proper time over the whole of the Bill. In potentially rushing it through, we could end up with a piece of legislation that is not doing what the Government set out for it to do, which is to close a loophole in the law.

Far from it, it could be putting in place a piece of legislation that exacerbates loopholes and gives perpetrators the opportunity to say, "Well, do you know what? I was only doing it for financial gain. I wasn't doing it to harass the victim or for sexual gratification. I was simply doing it so that I could get 100 quid from an online site. I didn't even know the name of the victim, so I couldn't have been harassing them or humiliating them, and I certainly wasn't getting sexual gratification from the images." In rushing this through, for the best possible motives, we may end up with a piece of legislation that does not close that gap.

On amending the Bill to cover distribution, I say to Mr Thomson that following the introduction of the Scottish Act, a piece of catch-up work had to be done. As I mentioned, a piece of legislation had to be passed in 2016 to close the gap created by the fact that the original Act did not cover distribution. Perhaps I will point the Committee towards some further evidence here. The Bill is very much founded on what was put in place in Scotland in 2012. A lot has happened since then to the way the online world works and the way other countries deal with exactly the same problems with regard to images.

I am somewhat surprised that the Government do not want to look at precedents other than Scotland to get a better solution. For instance, why would the Government not want to look at what is happening in New South Wales, where a law was introduced that covers all intimate images that are taken and potentially distributed? Why would they not look at the Irish commission's proposal, which again establishes a core offence and, rather than focusing only on upskirting,

includes all intimate images that are distributed non-consensually? My question is: why Scotland? Why not try to do a proper job and look at what other countries have done far more recently?

Q56 Liz Saville Roberts (Dwyfor Meirionnydd) (PC): Will you comment on the risk, in introducing a very small and discrete piece of legislation in anticipation of getting convictions in a handful of high-profile cases, of creating viable defences along the lines that the images were taken for financial gain, by mistake—I think we probably have to have room for that—or to be shared among friends? There is a real risk that if we prioritise the speed at which we introduce legislation over conducting a risk assessment of the loopholes that we may introduce by trying to close a loophole, we may do damage to victims in an area of offences—sexual offences—where victims are notoriously reluctant to come forward.

Mrs Miller: I would say that one very good aspect of the Bill is that it will make upskirting a sex offence, so, as the Minister set out clearly in the Second Reading Committee, there will be anonymity for victims. I am very clear that that—acknowledging that many image-based offences should be categorised as sex offences and therefore that victims should be afforded anonymity—is a move in the right direction.

At the risk of going into other areas—I know you would not want me to, Sir Roger—there are parallels to be drawn with revenge pornography, which was not deemed a sex offence despite the fact that it has a similar impact on victims, and for which there is no anonymity as a result. We know from work by organisations such as the BBC that one in three victims in cases where police want to press charges backs out. Many perhaps do so because of the lack of anonymity if cases are taken to court.

The Bill is a is a positive step, but Ms Saville Roberts alludes to the concern that, by rushing it through, we may reinforce the fact that not all intimate images are illegal and reinforce bad behaviour. She is absolutely right. What really concerns me is that perpetrators could easily plead that they were taking images not for sexual gratification, but anonymously for sale to a third party. That could actually give perpetrators a very big loophole to climb through. At the moment it is not so clear but, if the loophole is set out in law, some very clever barristers could make extremely good use of it.

Q57 Mary Robinson (Cheadle) (Con): I would like to get some clarity and then ask a question, if I may. You appear to be interested in extending the scope of the legislation—you talked about New South Wales and other areas where such legislation has more scope—and, at the same time, in increasing the number of defences that could be relied upon, if I am reading this properly. In doing so, would you be concerned that more of the onus is on the police and the prosecution to look at ways of not only prosecuting but dealing with defences that would be much wider than at present?

Mrs Miller: This morning, listening to Assistant Commissioner Martin Hewitt, he was really saying, "If this is expanded any more, it leads to more to deal with in the legislation." If anything, however, the amendments would make the life of the police a lot easier, because they would not have to prove sexual gratification, which I am told is extremely difficult to prove, nor would they have to prove that a victim was subject to humiliation or alarm and distress, which again are not always the easiest things to prove. What they have to prove is that a photograph was taken. I would have thought that that was much more straightforward in scope.

One issue that Members raised in the Second Reading Committee, and that the Minister has raised, is that the legislation might lead to more offences being caught because, potentially, it would capture more young people who are simply taking photographs in a way that might be seen more as jovial or as a bit of a laugh. I have to say that I have yet to meet any victim of this crime, of whatever age, who thinks it is a bit of a laugh. The impact on the victim is as great if it is done for that reason as if it is done for sexual gratification.

I also point out to the Committee that the Government already have dealing with young offenders well under control: Crown Prosecution Service guidance on the charging of young people with any offence is already in place. In particular, that was gone into in great detail when the Sexual Offences Act 2003 was discussed. The noble Lord Falconer discussed it then and it was clearly set out in CPS guidance that it was not Parliament's intent to punish children unnecessarily or inappropriately. I therefore do not think that that will be quite the issue that has been drawn out in conversations about the Bill.

Q58 Yasmin Qureshi (Bolton South East) (Lab): Thank you for coming, Mrs Miller. I want to put it on record that your Committee is doing great work, which you as Chair are leading. I have two questions, one of which is on behalf of my hon. Friend the Member for Walthamstow, who is unwell and is being attended to by a doctor. She asked earlier witnesses about misogyny, and you will have seen her amendment about that, which in essence says that if the motivation for committing an offence is hatred of women, the sentence should be stronger. What do you think about introducing that as a concept into the Bill?

Mrs Miller: First, I am very grateful for your comments about our Committee's work. The Women and Equalities Committee is actively looking at this issue in our current inquiry into sexual harassment in the public realm. If Members are looking for evidence of the need for a law, please look at the evidence we had from the British Transport police, who told us very clearly that the lack of a specific sexual offence for upskirting causes them real issues. As I have said before, we have had evidence from Professor Clare McGlynn, who has been calling for a new law of this sort since 2015. Dr Matthew Hall and Professor Jeff Hearn have given us evidence about how technology has facilitated an explosion in crimes in public places and have gone into quite a lot of detail about the earnings that people have made from upskirting websites. Rape Crisis has commented on the lack of mention of sexual harassment in the Government strategy. So we have had quite a lot of evidence to suggest that this is important to do.

I have not looked in detail at Stella Creasy's amendment, but I know that some concerns have been expressed about introducing a hierarchy within the Bill. I would just refer you again to Professor Clare McGlynn's evidence on that. I would not really want to comment any further on it at this stage, if you will forgive me.

Q59 Yasmin Qureshi: That is very helpful. My second question relates to anonymity for revenge porn victims. The victims of this offence, because it will be added into the Sexual Offences Act, will automatically get anonymity, as opposed to revenge porn victims, who one could say have experienced very similar embarrassment, harassment and distress.

Mrs Miller: I think an inconsistency in the law is emerging here that the Government need to look at much more closely. Mention has rightly been made of revenge pornography. When that offence was introduced back in 2014, the need for it was questioned somewhat by the CPS. We now have 500 cases a year successfully prosecuted and hundreds more that are not successfully prosecuted, for the very reason that has just been set out—it is probably mostly because anonymity is not afforded there. But I think some broader inconsistencies are coming out as a result of this Bill. We have said we are delighted that the Government have seen this as a sex offence and so there will be, in the case of upskirting offences, anonymity, but as has been pointed out, why is there not anonymity for people who are victims of revenge pornography? It is not entirely clear on what basis that has been decided, other than the fact that revenge pornography was not made a sex offence—again, for reasons that are entirely unclear. I am sure the Committee is very aware that flashing in a mac is not only a sex offence but, if it was causing harm or distress—not sexual gratification—a notifiable offence, yet deep fake porn, where your head can be very easily put on to a pornographic image, moving or otherwise, is not a sex offence at all; it is simply harassment.

I think this is at best complex and at worst confusing, and the Government need to take a very long, hard look at it, because online offences and image abuses are as real and as dreadful for the victims as some of those abuses that are perpetrated in person.

The Chair: We are running out of time. We will take one very quick question from Helen Whately and then we have to draw this session to a close.

Q60 Helen Whately (Faversham and Mid Kent) (Con): Thank you, Sir Roger. Maria, you described a scenario in which somebody would be seeking financial gratification and therefore, you believe, would not be picked up by the current drafting of the Bill. You described somebody selling the image on to an online site to receive £100 for doing so. Could you say what you believe the customers of that online site would be seeking if they were not seeking sexual gratification?

Mrs Miller: You are asking me to speculate, Ms Whately. There is anecdotal evidence that the sharing of these images in WhatsApp groups can very readily be for "mate" reasons—group interest, perhaps a little bit of prowess.

Q61 Helen Whately: But you talked specifically about somebody being paid for the image, so one imagines that someone is then paying to use the site, and what would the customer of the site be paying for if it was not sexual gratification?

Mrs Miller: In that case, it could well be sexual gratification, but why are we making the police's life so hard because we want to capture only those people where we can prove beyond reasonable doubt—because it is a criminal charge—that this is for sexual gratification, when, frankly, taking a picture up your skirt, Ms Whately, would be as offensive to you, whether that person was seeking sexual gratification or whether they were simply doing it as a lark, so that they could put it on their WhatsApp group and share it with their mates. It is the same impact on you as a victim as it would be if they were getting sexual gratification or seeking to humiliate you.

We know from the police that, with many of these images, people do not know the victims and it would be impossible to prove humiliation. We know, again from the police, that trying to prove sexual gratification is far more difficult. Should we not try to look at this from the victim's point of view, as three quarters of sexual offences already are, and simply set it out as a crime in its own right and stop being obsessed about why people do it?

The Chair: That, Mrs Miller, is a question we are going to have to leave in the air, because we have run out of time. Thank you for coming. We appreciate that you are an extremely busy lady. The Committee is indebted to you.

Mrs Miller: May I thank the Committee for allowing me to speak today?

Examination of Witness

Lisa Hallgarten gave evidence.

2.30 pm

The Chair: We will now take oral evidence from Brook, which used to be known as the Brook Advisory Service. We have until 3 o'clock for this session. Please identify yourself for the record.

Lisa Hallgarten: I am Lisa Hallgarten, head of policy and public affairs at Brook.

The Chair: Thank you very much for coming, Ms Hallgarten. Who would like to open the batting? Or we could sit in stony silence for half an hour.

Q62 Ross Thomson: Do you agree that education can be just as important and effective in tackling this sort of behaviour as criminal law?

Lisa Hallgarten: I am glad you asked that question. Our position is that we are very glad that upskirting is being taken seriously. I said in advance that I could not comment on the criminal justice aspects—I do not have a legal background. I can talk from the position of the young people we work with and the impact that this law might or might not have on them.

Much as we are delighted that upskirting is being taken very seriously, we do not necessarily believe that for young people a criminal justice approach is the best or the only way to tackle it. We recognise that the patterns for some of this behaviour are set as early as the early years of primary school. We think that educational approaches and whole-school approaches are needed to tackle the kind of gender stereotyping that underpins this, the lack of understanding of personal boundaries, issues around consent, issues around bodies, and how you talk to and report bullying and abuse. All those things are the beginning of this behaviour, and we need to tackle them through educational approaches.

We have some recommendations about how to do that, but we think it should begin in early years, right from the beginning of school, with teaching children about consent and how to understand the limits of other people's ability to touch you, how to recognise when someone is bullying you and how to understand your right to say no to things. That is a very simple start and it needs to go from early years right through to the end of secondary school.

Some of this behaviour is seen to be "normal". I spoke to our team of educators to find out what their take was on this, and they said that sometimes when they go to secondary schools and talk about some forms of sexual harassment, which might include upskirting, some of the girls say, "It's just normal, isn't it?" We need to nip that in the bud much earlier on and say that this cannot become normal, because if it does, there is no sense in which people can protect themselves against it. It is very important to us that this is not just about punishing the perpetrators, but about prevention.

Q63 Ross Thomson: What you have said about consent and what needs to be done in primary and secondary schools was interesting. When I was on the Education and Skills Committee in the Scottish Parliament, we did an investigation. Believe it or not, young women going to university still did not understand the concept of consent. A number of organisations were going in, during freshers week and the rest of it, to educate people on that point. Do you think more needs to be done on that aspect, going into further and higher education? In terms of the people you have been working with, the victims who have experienced this kind of horrific practice, what has the impact been on them?

Lisa Hallgarten: I must admit, I cannot answer the second point because I do not have any direct evidence of the impact on individuals. On your first point, around consent, it is extremely worrying that people could get to the end of their school life without having fully understood sexual consent and what their rights to bodily autonomy are. However, it is not surprising when so many young people do not get an opportunity to learn about those things in school.

One of the things I would say is that we are very disappointed that the Government are taking so long to make a decision about whether personal, social and health education will be made statutory in school, and we are very disappointed at the one-year delay in mandatory relationships and sex education. These are the subject frameworks within which consent can be fully explored from the earliest years of school right up until the end of school. We feel like these subjects have always been marginalised. RSE and PSHE have always been the Cinderella subjects in school, and we feel they should be front and centre in terms of people's personal development and prevention of crime.

Q64 Wera Hobhouse: I am glad you mention the educational aspects of the law we are passing. I am a secondary school teacher, I taught PSHE, and I could see how this would be a powerful way of engaging with young people about what is okay and what is not. We are looking at whether we are happy with the Bill or whether there is scope for amending it even more, so I want to get a feel for whether you think these two motivations—doing it for humiliation and causing distress or for sexual gratification—will this do the job, or whether you think making it even wider would help the discussion? Do you think we have enough in the Bill as it stands to have a useful conversation with young people about what is okay and what is not?

Lisa Hallgarten: In terms of having conversations with young people, the kind of nuance you are talking about is probably not going to have any traction either way. Knowing that something is illegal gives a strong message that it is wrong, but much more important than understanding that it is considered to be wrong is understanding why it is considered to be wrong. Talking about the distress it causes and the impact it has on its victims is probably as important as just saying something is wrong. We know that when you tell young people something is wrong, that does not necessarily seep through, as opposed to exploring with them what somebody might feel to be a victim of this. As for whether the law will be more or less effective depending on the wording of the clauses, I would think that that is probably not that relevant for young people.

My concern with the law would be whether it is clear that it can be implemented in a way that has some form of nuance. Some very good work was done by the UK Council for Child Internet Safety around sharing sexual images and an understanding that when young people share sexual images they have made, it has to be in the public interest for a prosecution to go ahead. My concern would be to have any Bill on this that unnecessarily criminalises a young person who does not fully understand why what they have done is wrong.

Q65 Mary Robinson: It is probably a little bit late in the day, but would you be able to say briefly what Brook is and what work you do? I have grasped it, but it may be worth putting it on record. When you talk about the effect on children, we heard Assistant Commissioner Martin Hewitt saying earlier that sexual offences have gone up 8% or 9% in the past year, so there is an increase in this type of crime. What sort of impact would that have on the young people you work with?

Lisa Hallgarten: Brook is a young people's sexual health charity. We currently have clinical services in 10 areas of England, and we deliver sex and relationships education in about 10% of schools in England. We also develop resources for teachers, so we cover areas all around young people's sexual health and relationships. In terms of the increase in offences, we know from the Women and Equalities Committee report, "Sexual harassment and sexual violence in schools", that there are incidents in schools at a very early age. Quite often they are not dealt with seriously, and schools feel slightly at a loss as to how to respond to incidents.

We would like to see clear guidance for schools on how to deal with what they may see as insignificant incidents at primary school and upwards. They may see these incidents as innocent, not necessarily because the incident is more serious than that, but because dealing with it in a serious structured way starts to give a message to children that it is not acceptable. There is a sense that if you do not deal with it early and do not give those messages strongly early, then those incidents are likely to become more serious.

Q66 Mary Robinson: It is interesting to hear that, and I am sure that it is correct. Would the other side of the coin be that perhaps schools do not want to criminalise young people too early and put a stigma against them?

We have heard people talking about innocent joshing about and having a bit of fun. Is that coming into the equation?

Lisa Hallgarten: Absolutely, and I should clarify that when I say that schools should be given clear guidance on how to deal with the issue, there are many ways of dealing with it that fall short of criminalisation. That is why I referred to the work done on sending and sharing sexual images: some good work was done on how to support schools in managing those incidents and treating them with the seriousness with which they deserve to be treated. We also need clarity about when it is and is not appropriate to report incidents to the police and, when they are reported, guidance that allows the police to use their discretion as to whether to bring a prosecution—it has to be in the public interest for them to do so.

I worry that if young people know that something is illegal, they are less likely to report it. If they think that a schoolmate will be criminalised, they will be less likely to report it. The research on sending sexual images showed that young people were scared if they appeared in the image—they were distressed about an image of themselves being shared—and they were distressed about reporting it, in case they would be criminalised. One of our messages would be that young people do not necessarily hear the nuance of messages, and we have to be careful about the message we give them, so that we do not deter them from seeking help around these issues.

Q67 Liz Saville Roberts: I am very interested in what you said about tackling the normalisation of the sort of behaviour that targets women under the assumption that they are there to be objectified and treated as objects. Coming back to the legislation being dealt with by the Committee, is there anything particular that we need to make sure is in place to ensure that it is robust enough to do exactly that? One of the issues that concerns me is that of sharing and distribution and social media, and you mentioned this in relation to children. Is there anything in particular that you would like to say about this legislation as it stands?

Lisa Hallgarten: I wanted to avoid saying too much on what the Bill should look like as that is not my area of expertise. The aspect of upskirting that young people especially—for whom sharing images is normal and scary—would find most distressing is the fear that it would be shared. I do not know if that should be addressed through the law or through the guidance and work we do around it with young people, but that, more than anything else, would be their fear.

Q68 Liz Saville Roberts: We are, as a Committee, concerned about overly criminalising children, but none the less would you feel that that same fear is there for adults as well?

Lisa Hallgarten: That may well be true. With any law, you want to ensure that it is not counterproductive. If people are less likely to point their finger at a perpetrator or to report an incident because they think it is inappropriate for the person who did it to be potentially imprisoned, that is something I suppose you would want to take into account in creating law. Young people especially do not want to criminalise their peers. They do want this to be taken seriously, but that is not necessarily the same thing.

Q69 Gillian Keegan (Chichester) (Con): Thank you so much for coming. We have been hearing a lot about how one of the powers of this Bill is the prevention side through education, and it is helpful to have that laid out with your expertise. One of the things on which different witnesses have given us different information is how to get that balance right, while protecting children and victims, between a school child who has just made a bad judgment and has maybe not been educated correctly versus somebody who is a serial criminal. The police have described how they and the Crown Prosecution Service take each case on the merits to some degree, but do you think we get the balance right in this Bill? It is incredibly difficult to do that, and we have had people who say, "Well, it is the same to the victim." Do you think we are getting the balance right here?

Lisa Hallgarten: I wonder whether it is the same to a victim, actually. Every incident is very particular. Some women would think, "That person is pathetic and sad," and other people would feel really invaded and offended and harassed by the experience. For each woman it will be different. There is no perfect law that will address every victim's experience of this.

I do not have the Bill in front of me, I am sorry to say, but I did not see anything about a prosecution being in the public interest. I know that in terms of sharing sexual images and the guidance to police on whether to prosecute, there is something about whether prosecution is in the public interest. For a lot of young people, it would not be in the public interest. It would be in the public interest to teach children not to behave that way in the first place. I am not sure whether the Bill is the place to address that, but certainly it needs to be addressed. Prosecution should not be automatic and it should be taken into account that a young person's life could be ruined for something that was genuinely a spontaneous moment of stupidity. We would not want that to happen.

Q70 Andrew Jones (Harrogate and Knaresborough) (Con): You mentioned that young women need greater understanding of consent and boundaries—that legislation may also send a signal or a message to them about what is not acceptable—but also that young people may be hesitant in reporting if they feel they will be caught up in the criminal justice system. That is quite a difficult balance to strike. I understand your point about education being critical, but if legislation is sending a message and young women need greater understanding on consent and boundaries, is this legislation drawn too narrowly? Should we be looking to broaden it out—for instance, to taking photographs down a woman's blouse, and so on—on the grounds of sending the right message to reinforce the education? Are we too narrow in our scope?

Lisa Hallgarten: It is an interesting question whether law in itself is about education. I think people are glad that people are discussing this and taking it seriously, but I personally do not think having the law in and of itself is educational.

Andrew Jones: I wish it was as simple as, "We could pass a law and everything would change." That would be marvellous. I think everybody who is involved in passing laws knows that that does not happen.

Lisa Hallgarten: I am not sure whether it needs to be broadened, although I am not an expert in what sexual offences already exist and what is not already covered by legislation. I am sorry I cannot be very helpful on that point.

Q71 Alex Chalk: I want to go over the point you very helpfully raised about making a decision on whether to be heavy-handed, go in with your size 12s and prosecute someone to conviction, potentially ruining a young person's life, or to take a lighter touch. That involves individual discretion, often of a police officer, to decide, "Are we going to go down the caution route or are we in fact going to go down the full prosecution route, which could end up in front of judge and jury at the local Crown court?"

From your vantage point, what experience have you had in similar cases, such as revenge porn, of that discretion of individual police officers being exercised credibly and consistently around the country?

One of my concerns is that a police officer might go to a festival in Reading and decide that that 15-year-old is an idiot and deal with them by way of a caution, but a police officer in a different part of the country could say, "Absolutely not. You are going to be charged and potentially go inside." Do you have any experience of whether discretion is operated properly and consistently in relation to young people?

Lisa Hallgarten: I do not have evidence of whether it is operated correctly and consistently. I do know that there is guidance on sending sexual images, which I keep referring back to because it is extremely helpful. There is something called Outcome 21 in the guidance:

"This means that even though a young person has broken the law and the police could provide evidence that they have done so, the police can record that they chose not to take further action as it was not in the public interest."

Another part of that guidance says that

"schools and colleges can be confident that the police have discretion to respond appropriately in cases of youth produced sexual imagery".

I do not know how well or how consistently the guidance is implemented and I cannot answer that.

Q72 Alex Chalk: But would you agree that that is a key part of how this sort of legislation operates on the ground—namely, how it is enforced and the discretion that is applied to its terms?

Lisa Hallgarten: I would agree and I would say that it is really important that people understand the point of the legislation. Whether that can be described through the wording of the legislation, I do not know.

Q73 Helen Whately: You have talked very helpfully about avoiding unnecessary criminalisation of young people. That is helpful because some witnesses have argued for a more heavy-handed approach, with a much more blanket criminalisation of people. It would be helpful if you said more about the consequences of criminalising a young person when, in some of the circumstances you have described, they might not know the full seriousness of what they are doing. What do you think the best alternatives would be?

Lisa Hallgarten: It is interesting that we are going from lots of schools not even excluding a child who has been proven to be involved in sexual bullying or harassment to moving to prosecution. It would be good to think about the different steps that are appropriate at different ages for a child and different kinds of offence.

There have been situations where young women who have been raped in school—a very serious sexual assault—have had to go to school when the same children are still in the school—the people who were guilty of the offences. It feels to me that there is a big gap between ignoring the offence and prosecuting the child. There must be some sensible steps that we could take.

None of this is to say that this law should or should not happen. I am not really commenting on whether the law should exist, but I think, long before a child is prosecuted, far more steps should be taken, and much earlier. It is very unlikely that somebody would go to a serious offence from nothing. It is very likely that a child who ends up taking photos, sharing sexual images or physically assaulting somebody will have done what we would consider to be more mild offences, which will not have been picked up or taken seriously.

I know that the Women and Equalities Committee report found that lots of cases were dismissed. Lots of complaints, mainly from girls, were very easily dismissed in their school and not taken seriously. You wonder whether those boys just did not get the message that it is completely unacceptable to behave like that.

The Chair: Are there any further questions? No. In that case, Ms Hallgarten, thank you very much indeed for affording the Committee the benefit of your experience and knowledge. We are grateful to you.

Ordered, That further consideration be now adjourned. *—(Amanda Milling.)*

2.55 pm

Adjourned till Thursday 12 July at half-past Eleven o'clock.

Written evidence reported to the House

VOB01 Professor Clare McGlynn, Law School, Durham University