PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

VOYEURISM (OFFENCES) (NO. 2) BILL

Third Sitting

Thursday 12 July 2018

CONTENTS

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Monday 16 July 2018

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

Public Bill Committee

Thursday 12 July 2018

[Ms Karen Buck *in the Chair*]

Voyeurism (Offences) (No. 2) Bill

11.30 am

The Chair: Before we begin, Members may remove their jackets if they wish. Can everyone please ensure that all electronic devices are switched off? Tea and coffee are not permitted.

The selection list, which shows the order of debates, is available in the room. However, I remind Members that decisions on amendments take place in the order in which they appear on the amendment paper. I will use my discretion to decide whether to allow a separate stand part debate on individual clauses following the debates on the relevant amendments.

Clause 1

Voyeurism: additional offences

Liz Saville Roberts (Dwyfor Meirionnydd) (PC): I beg to move amendment 2, in clause 1, page 1, line 9, leave out

", for a purpose mentioned in subsection (3),".

This amendment is consequential to Amendment 1

The Chair: With this it will be convenient to discuss the following:

Amendment 3, in clause 1, page 2, line 1, leave out paragraph (c).

This amendment is consequential to Amendment 1

Amendment 1, in clause 1, page 2, line 6, leave out subsection (3) and insert—

"(3) It is a defence for a person (A) charged with an offence under this section to prove—

(a) in respect of an offence under subsection (1)—

(i) that operating the equipment was necessary for the purposes of preventing or detecting crime, or

(ii) that A did not operate the equipment with the intent of observing another person's genitals, buttocks or underwear, and

(b) in respect of an offence under subsection (2)—

(i) that recording the image was necessary for the purposes of preventing or detecting crime, or

(ii) that A did not record the image with the intent of recording an image of another person's genitals, buttocks or underwear."

Liz Saville Roberts: Diolch yn fawr, Ms Buck. It is a pleasure to serve under your chairmanship.

Amendment 2, along with amendments 3 and 1, was tabled by the right hon. Member for Basingstoke (Mrs Miller) and has support from Members of every single political party in the House. The group of amendments seeks to change the purposes mentioned in the Bill to ensure that all upskirting is illegal, regardless of the motivation.

The common issue in all upskirting cases is that the victims did not know that a picture was taken, nor did they consent. The amendments seek to ensure that the Bill, which intends to close a loophole, does not enable another on the motivation of the perpetrator. That view is supported by the Director of Public Prosecutions; victims who presented evidence to the Committee, whose anonymity should be respected; the victims' lead of the Association of Police and Crime Commissioners, Dame Vera Baird; and Victim Support, in the most recent written evidence presented to the Committee.

As we are amending the Sexual Offences Act 2003, consent should surely be considered, given the significance of establishing consent and the degree to which the complainant has capacity to give consent in other sexual crimes. Upskirting by its very nature is committed without the victim's knowledge or consent. The Bill does not adequately cover financial motives such as selling to the media, as is common in celebrity upskirting shots. Public order offences might cover such situations, but if they can be covered by the Bill simply by changing the focus to consent, that should be done.

The Bill does not cover situations where the motivation to take a picture is group bonding or banter. In such situations, images are taken not always for sexual gratification or to distress the victim, but purely to have a laugh with friends. The amendments would cover that situation.

I beg the Committee's leave to refer to the views presented by Alison Saunders, who notes:

"The Bill criminalises observation or recording without the complainant's consent. Unlike other sexual offences, this offence is commonly committed without the complainant's knowledge."

She states that consideration must therefore be given

"to providing that the offence is committed where the complainant either does not know or consent."

Alison Saunders notes concerns about the specific purposes for which the activities in question must be committed. She anticipates that most offending would fall within the specified categories, but warns that

"this is another element that the prosecution will need to prove. It is not inconceivable that suspects will advance the defence that this purpose is not made out beyond reasonable doubt and/or that they had another purpose, such as 'high jinks'."

Some of the evidence that has been presented to us—again, I respect the anonymity of the victims—lays out the range of defences people will put forward with success, which brings into question whether we should not be more cautious in our approach to purposes. Ms Saunders also notes

"Consideration could be given as to whether purpose is a necessary or relevant element of the offence (once it has been proved that the conduct is intentional, and given that it involves an affront to the integrity and dignity of the victim)."

The right hon. Member for Basingstoke set out many of those arguments in her oral evidence on Tuesday.

As this legislation is necessary, I do not intend to hold up the Committee or to press the amendments at this stage. I would, however, like to stress again that the point of legislation is to be fit for purpose and effective, not simply to exist. Nor should we be expected to revisit it within an unreasonably short period of time. I hope that the Government will give proper consideration to this issue, since I and many colleagues believe that the amendments are needed to ensure that the legislation protects victims, whatever the motive of the perpetrator. Legislation should be clear and consistent, and in the case of sexual offences it should be mindful of

proportionality in the degree to which the onus is on the complainant to prove a motive for the defendant's choice of action.

The Parliamentary Under-Secretary of State for Justice (Lucy Frazer): It is an honour and a privilege to serve under your chairmanship, Ms Buck.

I am grateful to the hon. Lady for providing an opportunity to discuss this important issue, and I appreciate the impact that this activity can have on the individuals affected. I am also grateful to my right hon. Friend the Member for Basingstoke; I know she spent much time considering the Bill, including giving up her time on Tuesday to give evidence to the Committee. I am grateful for the leadership she provides as Chair of the Women and Equalities Committee, and the powerful position she has taken on tackling ongoing challenges around sexual harassment.

The three amendments that were tabled by my right hon. Friend and have been moved today by the hon. Member for Dwyfor Meirionnydd would remove the element of purpose, so that upskirting is caught in all circumstances, save for when a defence is established. Those defences are outlined in amendment 1. We understand the objective of ensuring that the offences are wide enough to catch all those who should be criminalised for taking upskirting photographs, and we understand the hon. Lady's motivation in moving the amendments. It is important to raise and consider these issues, and I am grateful for the opportunity to do so.

Before turning to the amendments, it might be helpful to explain why the Bill has been drafted as it has. The Bill seeks to rectify a gap in the law. That gap exists in relation to where the act takes place: it is possible to prosecute for upskirting in a private place or a public place, but possibly not in a place that is neither private nor public, such as a school. A school is not open to the general public, so it is not public, but it is open to many, so one could not expect privacy.

The Bill specifies two purposes for which an offence can be committed: to obtain sexual gratification or to humiliate, alarm or distress the victim. The reason these purposes are identified is not only that they are clear and appropriate, but that they use language that is familiar to criminal justice agencies. These motivations are used in current legislation. They are used, word for word, in Scotland. They are also familiar to the English system. That means that the Bill as drafted has precedent in law, and we know it will catch inappropriate wrongdoing.

I will deal with a few criticisms that have been made of the Bill's breadth. It has been said that it will not catch all those who should be caught—for example journalists, as the hon. Lady mentioned—but if a person takes a photograph with the intention of uploading it to a website where others will look at it for sexual gratification, the uploader will be caught. It will not matter that the person who took the image is not obtaining sexual gratification themselves—for example, if they just want to get paid for the photograph. If they share it with another person with the intention that that person obtains sexual gratification, they will still be caught by the new offences.

Stella Creasy (Walthamstow) (Lab/Co-op): Will the Minister talk us through how that would be proven? The concern for many of us is that by not taking out the differences of purpose for the actual offender, we will create a difficult investigatory chain. Will she explain how, if she keeps the requirements around purpose in the Bill, she would expect the police and courts to prove that third-party sexual gratification was part of the process?

Lucy Frazer: I was going to come on to those issues. Does the hon. Lady mind if I deal with them in a moment? I will deal with how motivation will be proven in a moment, but I will just finish the point about the breadth of the provisions.

A number of criticisms have been made; I have mentioned the one about journalists, but there are others. It has been said that the Bill will not catch those who carry out this activity for a laugh, but if the person knows that the laugh is for the purpose of humiliating the other person, they will be caught. As Assistant Commissioner Martin Hewitt said on Tuesday, it is hard to imagine any other reason for which someone would take an upskirt photo that could not be prosecuted under the new offences, as drafted. As Ryan Whelan said:

"There is no requirement that the prohibited motive be the only motive".

The hon. Lady also referred to the Crown Prosecution Service, but it is important to point out that the CPS stated:

"We anticipate that most offending will fall comfortably within these categories."

Wera Hobhouse (Bath) (LD) *rose—*

Lucy Frazer: I will deal with the hon. Lady's point in a moment, after I have dealt with the one about proving sexual gratification.

Assistant Commissioner Hewitt acknowledged that sexual gratification already has to be proved under existing legislation—the Sexual Offences Act 2003—and that it is well understood by the police, prosecutors and the judiciary. He said that motivation can be assessed by interviewing the offender and through digital evidence, such as the website an image is uploaded to, and that it is then for the magistrate or the jury to decide whether there is a sexual purpose.

Liz Saville Roberts *rose—*

Stella Creasy *rose—*

Lucy Frazer: I will take the intervention of the hon. Member for Walthamstow first.

Stella Creasy: For clarity, the Minister set out that if we were dealing with someone who had taken the photos not for their own sexual gratification but perhaps to make money from them, we would need to prove third-party sexual gratification. Will she explain how she expects that to be proven, as opposed to the sexual gratification of the original offender?

Lucy Frazer: I am happy to do so. Obviously, each case will depend on its own facts, but one can imagine a circumstance in which a journalist is taking photographs for money and that is his intention. However, he sells a photograph—he has taken it with the intention of selling it on—to a pornographic website on the internet. It

[Lucy Frazer]

would be difficult to suggest that that photo was being put up for any purpose other than for other people's sexual gratification.

Wera Hobhouse: I would like to come back to the issue of having a laugh. I think we all intend the Bill to be victim-centred, but could there not be an instance where people were having a laugh for bonding reasons and there was no direct connection with the victim? People could share an image of someone they did not know and have a laugh about it because it was a fun image, but the victim would not be involved, so we would not be able to prove that it was done for the humiliation of that particular person.

Lucy Frazer: I refer back to the evidence of both the Assistant Commissioner and the CPS. The Assistant Commissioner was clear that he could not imagine a circumstance other than the two purposes that are set out. If people take a picture that they think is funny, but the obvious reason that it is funny is that they are humiliating someone or laughing at the humiliation, it does not really matter whether the victim knows about that humiliation. The person is taking the picture because it is humiliating and people laugh at the picture because it is humiliating.

Alex Chalk (Cheltenham) (Con): Does the Minister agree that in this offence, as with so many offences, it is possible that there is a blend of motives? Even if the principal motivation is a laugh, the fact that there might be a subsidiary or subordinate motive that involves humiliating, alarming or distressing the victim would be enough in and of itself to make out the offence under the proposed formulation.

Lucy Frazer: Yes, my hon. Friend is right, and I am grateful to have his expertise in Committee as a criminal barrister who is used to prosecuting offences. There is no need to show a primary motivation; it just has to be a purpose, and there may be many purposes. Equally, that would apply to commercial gain.

Liz Saville Roberts: Does the Minister none the less share the concerns of the Director of Public Prosecutions about putting the onus on the prosecution? We are concerned about the effectiveness of this law because the complications implicit in having to tease out the different levels of motivation to find the one that we want, at a time when the police have limited resources and might not initially regard this as a serious crime, might just put too many hurdles in the way.

Lucy Frazer: People may have different views about that question. When activities are criminalised, it is right that the Crown Prosecution Service has the burden of proving the offence. We need to strike the right balance between victims and people who are accused of offences. Amendment 1 would reverse the burden of proof to the extent that it would rest on the defendant to show that they acted for a different purpose, and it is very limited, with only two reasons. It would put the burden of proving a defence on the defendant, but I see no issue with the fact that in our law it is for the CPS to prove its case and to prove that people should be criminalised for what is an extremely significant offence. It is wrong that people do this activity, but when they do it and they are criminalised for it, they will have a criminal record for a sex activity for which they could go to prison for two years.

11.45 am

I will turn to our concerns about the amendments, which would broaden the scope of the purposes of the perpetrator of the crime. One concern is that some people who we do not want to criminalise through the Bill might be caught by it. It might catch young children who are above the age of criminal liability, which is 10, but who do not realise the impact of their action and mean no harm when they carry it out. It might catch a doctor who attends a medical emergency where she needs to view under a patient's clothing using equipment, but the patient is unconscious and cannot give consent. The doctor would be captured by the offences proposed by my right hon. Friend the Member for Basingstoke. The last example simply shows that it is not possible to think of every legitimate defence that individuals might have for viewing underneath someone's clothing.

The second concern relates to the sex offenders register. It is not clear who may be placed on the sex offenders register under my right hon. Friend's amendments. Specifying the purposes allows us to ensure that serious sexual offenders are made subject to notification requirements—that is, they are placed on the register. Where offenders commit a sufficiently serious act for the purpose of obtaining sexual gratification, they will be placed on the sex offenders register, which assists the police with their management in the community. Specifying the purposes also ensures that those who do not pose a further risk are not made subject to those requirements.

We want to ensure that limited police resources are appropriately and effectively targeted. That is a very real issue. Assistant Commissioner Hewitt gave evidence of an 8% to 9% increase in the number of people on the sex offenders register in London over the past few years. Although the amendments would remove the purposes in respect of the substantive offences, they would not remove them from the notification requirements. Therefore, there is potential confusion about how it would work in practice. For example, where the offence has been committed and no defences are raised, will the court consider whether it has been done for sexual gratification? If not, will a number of people who need to be on the sex offenders register not be placed on it?

The Bill is drafted to capture this reprehensible behaviour in a clear and focused way, to ensure that those who should be punished for it are and that the penalties available for it are robust, while still being proportionate. The legislation has been brought forward at speed and is designed to close a small gap in the law that we have identified and that needs to be filled. It will work alongside existing offences to strengthen the criminal law. It has been useful to consider the amendment, but we seek swiftly to plug a gap that we have identified needs to be fixed in line with our existing laws and established precedent in Scotland.

Undoubtedly, we want to keep the law up to date, given the prevalence of such issues and the development of technology, so we should continue to keep these areas under review. The Government are alive to the fact that new technology may facilitate the carrying out

of degrading acts, but we want to fill a gap that we have identified and the Bill will put this offence swiftly on the statute book. In the circumstances, I urge the hon. Member for Dwyfor Meirionnydd to withdraw the amendment.

Alex Chalk: I rise briefly to oppose the amendments, although I recognise that they have validity and force. I am not suggesting that they are misconceived, but, on balance, the Committee should vote against if necessary, and I will explain why.

The first point is one that has already been made. We should not lose sight of the fact that almost everyone who has spoken about these matters recognises that the overwhelming majority of offending would comfortably have been caught. Although a point has been made about the Director of Public Prosecutions, it is worth considering precisely what she said in paragraph 2.6 of her written evidence:

"The Bill introduces purposes for which such activities are committed. We anticipate that most offending will fall comfortably within these categories."

That is important—it is worth underscoring the point—because while one can imagine some individuals in court saying, "This was just for fun, wasn't it? We were having a good time and it was just larks," or equally a journalist saying, "My motivation was to get money," it is always open to the Crown to say that that was a subordinate motivation that comes within the scope of the Bill. Therefore, it will be vanishingly rare, I suggest, for any defendant credibly to argue—with emphasis on the word "credibly"—that no part of his or her motivation fell within the scope of the Bill.

It is also worth considering the representations that were made in a wider context. Ryan Whelan, the lawyer representing Gina Martin, said in written evidence:

"However, most if not all of these cases"—

referring to other suggested motives—

"can be caught by the Bill as it stands. There is no requirement that the prohibited motive be the only motive and the offender who acts to humiliate, distress or alarm the victim is not somehow given a defence because he does those things for financial gain, a laugh or to exert power."

The point I want to make is that, often, in life and with respect to the Bill, people do stupid and illegal things for a blend of motives. It is no good them standing in court and saying, "My primary motive is not within the Act. Therefore, I should walk out of this court scot free," because most juries would give that short shrift.

Stella Creasy: This is a very interesting conversation. The only person who has mentioned how consent might influence such a decision was the Minister, in a very narrow context. The hon. Gentleman's comments are all about the offender. If this is a victim-centred Bill, it does not matter whether somebody was having a laugh or was sexually gratified. It matters whether the person whose photo was taken said, "Yes." Where does that come in his hierarchy?

Alex Chalk: The hon. Lady is absolutely right. Ultimately, we are trying to prevent offending so that victims can get justice. One aspect of victims getting justice is ensuring that something is put on the statute book as quickly and efficiently as possible. The key evidence, if I may say so—the centre of effort that came from Gina Martin's evidence—is that she wants to see this on the statute book. For it to mirror the situation in Scotland has an added advantage.

The second point, over and above the inconsistency, is about the sexual offenders register, which is critically important for this reason. If someone is put on the sexual offenders register, that is major deal, because if they act in breach of that they will go inside. It is absolutely right, by the way, that that happens. If somebody commits an offence such as this for a sexual motive, it is quite correct that they should go on the sexual offenders register. Indeed, the overall tenor of the evidence is that the Bill is right to draw a distinction between those who commit the offence to humiliate or degrade and those who commit it to achieve sexual gratification.

Liz Saville Roberts *rose—*

Alex Chalk: I will give way to the hon. Lady in a moment.

Most people recognise that only people in the latter category should go on the register. Let us imagine for a second that this amendment were carried. The defendant would say, "I'm not guilty of this crime. I want to have a trial, please." He would go before a judge and jury and say, "My phone was operating by accident. I didn't mean to do it," and the jury would say, "Pull the other one. Guilty." At that point, who would decide whether that person went on the sexual offenders register or not? The jury would not have been able to give any kind of verdict on the individual's purpose when he took the photo. In other words, the judge might sit there and say, "I've no idea. It wasn't really relevant to the offence. Am I, the judge, going to make the decision about what his motivation was?" How does that serve justice?

Liz Saville Roberts: I question the hon. Gentleman's statement that the overwhelming tenor of the evidence is in favour of what he is arguing. What has been presented to us, particularly since yesterday, is quite strong, especially if we look at what both the victims lead for the Association of Police and Crime Commissioners and the Director of Public Prosecutions have said. In response to the balance of power in sexual offences, Dame Vera Baird QC, Northumbria's police and crime commissioner, said:

"We do not regard a specific motive as the important characteristic of this behaviour. More important is that this behaviour is done without the consent of the person being photographed. Its impact is that it is a violation of her/him in an intimate way and is thus more closely related to rape and sexual abuse than might at first be considered. It appears to be based on the concerning notion that women's bodies are public property over which any one has a right to take advantage, for any motive, if they can find a way of doing so."

Alex Chalk: I absolutely accept that the purpose of consideration in Committee is to drill down on such matters and see how they would work in practice. No one should misread my representation on this; of course victims come first—that is why we are here and why the Government have moved so quickly to get the Bill on to the statute book. We recognise that there is a socking great hole in the law that needs to be filled. The question

[Alex Chalk]

is how that can be done as effectively, efficiently and fairly as possible. Apart from anything else, if the view is taken in due course that we did not think about that in Committee, the people who will be most upset about that are the victims, who will think it bad law.

Wera Hobhouse: All of us here, and me in particular, recognise that it is important to get something on the statute book, and I am grateful that the Government have acted so quickly. At the same time, that should not be the overwhelming reason we cannot now consider amendments seriously and see whether we can create very good law. As has been said by my hon. Friend the Member for Dwyfor Meirionnydd, we should not have to come back in a year's time because we have not really considered something enough and have created loopholes. There will be victims for whom justice is not done. Also, if I may say—

The Chair: Order. May I remind hon. Members that they are making interventions, not speeches, and that interventions are meant to be short?

Wera Hobhouse: Thank you, Ms Buck. On the campaigner's evidence, it became quite clear when I questioned her that she had not considered how other victims would feel, apart from what she had experienced.

Alex Chalk: I congratulate the hon. Lady once again on the vigour with which she has pursued this important cause.

With enormous respect, I do not think that anyone has dealt with the issue of the sexual offenders register. If we accept that not everyone should automatically go on it, the key problem with the amendment is that it does not answer the question of how a court is supposed to decide.

At the moment, the prosecution will say, "You, Mr Bloggs, are charged on an indictment with upskirting pursuant to section 67A(3)(a)—that is to say, sexual gratification." The jury will consider the evidence that a photo was sent to a pornographic site, or about where it was stored on the defendant's computer, or about what was found at his home, or whatever it is. They will convict the defendant, and the judge will say, "We will put you on the sexual offenders register and give you a sentence of 18 months in prison," or whatever it is—simple.

If the amendment were made, what on earth would the judge be supposed to do? All the jury need to find is that the defendant intentionally used his phone to upskirt, so they would reject his ludicrous defence that somehow the phone operated automatically, but the poor old judge would raise his hands and say, "What am I going to do now? I have to make a decision that will be incredibly significant for protecting the public, potentially, and in changing this man's life," as he might be an idiotic criminal with no previous convictions and lots of personal mitigation. The judge would say, "All right, I will put him on the sexual offenders register." But should a jury not decide that? The only way they can sensibly decide that question is if the Bill allows them to. I am concerned that judges will ask, "What on earth has Parliament done here? It has not assisted us, as judges, to do justice in the cases before us." For those reasons, I oppose the amendment.

12 noon

Stella Creasy: It is a pleasure to serve under your chairwomanship, Ms Buck, this fine Thursday morning. I rise partly in response to the hon. Member for Cheltenham. I apologise for being unable to listen to the second set of evidence. The Committee will have to forgive me; I am afraid I had a rather unpleasant medical emergency. Members will be pleased to see that I am back on my feet and trying to respond.

The amendments matter because of a couple of concerns that I want to put on the record. I understand the case set out by the hon. Member for Cheltenham from his experience. Let us take it as a given that everybody on the Committee wants the legislation to pass and be as good as it can be. The challenge and the difference is about whether it will meet that second test. The amendments address a concern that many of us have and that, if I am honest, the hon. Gentleman set out very well in how he talked about the crime and how he believes, given his experience as a criminal barrister, the legislation would be enacted. He did not at any point, even when I prompted him, say that the courts would consider the fact that the victim said, "No, I didn't consent to this."

The concern about setting out specific motivations is that it takes the power away from the victim to be the one who defines what happened, and that it is wrong. When we start to include particular categories, we take the conversation away from whether a woman such as Gina Martin, or a man who had a camera put up his kilt, said, "No," or, when they found out what had happened, said, "That was not something I consented to." Instead, we start quibbling about the motivations of the perpetrator. We all want to ensure that victims come first in the law.

Alex Chalk: The hon. Lady is absolutely right that victims should be in charge of their own bodily integrity, and that includes whether they are upskirted or touched intimately. However, on either formulation—the Government's or that in the amendment—that is taken as read. In other words, it is a key part of the offence that it has to be shown that the victim did not consent. Of course, if the victim says, "Oh yeah, absolutely—I'm perfectly happy," that is taken as read. It is the same in the Government's formulation and in the amendment.

Stella Creasy: I thank the hon. Gentleman for his intervention, but he and I disagree on that. By putting in notions about the motivation of the offence, we automatically start queering the conversation away from that very simple point—whether we can prove that the person consented—and we start saying, "Hang on a minute; was it about sexual gratification?" or, "Hang on a minute; can we prove it's a third, or indeed a fourth, party?"

If only this was about pornographic websites. We live in a culture in which people will take such pictures and engage in that behaviour not just to humiliate, but to entertain. I am sure that the hon. Gentleman is a regular reader of *Heat* magazine, and magazines such as *Closer.* He will have seen such pictures being used to

entertain. The risk of setting out the motivations is that we create loopholes and take the focus away from consent. He and I agree that consent should be the primary focus. Saying it is taken as read is not the same as making it the primary, defining factor.

The right hon. Member for Basingstoke has been brilliant about identifying some of the challenges. By removing these requirements, we take the focus back to the victim. I worry, and I suspect that other Committee members worry too, that there will be a case in which somebody says, "It wasn't for sexual gratification; I was making money, but doing so to entertain." That is the world we live in now. We have voyeurism for the sake of voyeurism. There is no sexual element to it; there is simply the pleasure of seeing somebody else in an awkward position. It is not necessarily about humiliation or distress. Again, setting bars for what has to be proved would create an environment that none of us want.

Alex Chalk: If an individual who said, "I'm selling it to *Closer* magazine," turned up in court and said, "Do you know what? I had no idea that it might humiliate, alarm or distress the victim", does the hon. Lady really think that he is likely to be believed by a jury?

Stella Creasy: We are going to come on to some of the broader questions underpinning the offence. The sad truth is that this is not the first time that people have tried to humiliate, and to humiliate mainly women. This is not the first time that there has been a sense of entitlement to see, to judge and to talk about the privacy of a woman's body. Do I have confidence that there would be people on the jury who would think, "Well, fair play"? Sadly, that is the society that we live in and we are making legislation in that society. I wish I could be with the hon. Gentleman in having confidence that in the 21st century people would recognise that treating women as pieces of meat for their entertainment is no longer acceptable, but, sadly, both case law and modern society tell us that we still have a long way to go.

The risk for all of us is that we create a loophole in the legislation, where people quibble about whether it was entertaining or not, rather than ask the simple question: did she say yes? Did she say she was happy for it to happen, because it was something she was doing for her career, or whatever? I wager him that we would have a case where we would have that kind of discussion, and ask him to think what it would be like for the victim in that circumstance to have motivation pored over in court, rather than the simple question of whether she said yes or no.

We are not pushing these amendments to a vote today, but we have to recognise that there is a risk that there could be a loophole. There is a risk that we are sending a message from this place that our focus is going to be all about the ins and outs of motivation, rather than on saying that, in 2018, consent and equality are what matters in our legislation and we will introduce legislation accordingly.

Helen Whately (Faversham and Mid Kent) (Con): I rise to speak briefly on the question of motive, which we are all clearly thinking about. Although there is widespread support for the Bill, this is an important question on the detail.

I certainly feel that the weight of evidence we heard was on the side of victims, and victims arguing that motive should not matter. If someone were a victim of upskirting, whatever the reason for doing it, it would still feel awfully humiliating and degrading for that person. We have heard the concern that someone might argue in defence that it was just for a laugh or high jinks. I do not think any of us believe that that is appropriate, because it would be deeply humiliating, but there is a concern that that might be argued as a defence—even though, as my hon. Friend the Member for Cheltenham, who has expertise in the area, has said, it would be highly unlikely that that would be permissible as a defence as the intention would clearly be to humiliate somebody.

The weight of evidence has been in support of the principle that motive should not matter. We should just think about the other side. Who would give evidence on the other side of the argument? There are lots of people who are standing up for victims, and we heard very compelling cases from people who have been victims, including a very powerful one that we have been asked not to quote from.

There was only one witness who gave the other side of the story very strongly. Lisa Hallgarten from Brook said:

> "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."—[*Official Report, Voyeurism (Offences) (No.2) Public Bill Committee,* 10 July 2018; c. 32, Q73.]

What she brought to light is that we are going from nought to 60 here. The Government are absolutely doing the right thing and I have huge respect for the hon. Member for Bath for pushing this—we must urgently plug this loophole in the law—but there is a question of proportionality and of making sure that we do not unintentionally criminalise people. Being a criminal would have such a huge impact on lives—I think about teenagers. As I say, it is totally inappropriate to do this for a laugh, and the level of sexual harassment and bullying in schools concerns me. The Minister mentioned that 10-year-olds and upwards may be criminalised by the Bill, so we must be mindful of the need to get the balance right.

Many of us have an instinct to be campaigners. We stand up for the women of the world and we want to put an end to such horrendous, degrading offences, which technology has made possible—the law has not necessarily kept up with technology—but in this room we are not so much campaigners as legislators. We must be conscious of the enormous power of Government, which has certainly struck me since I became a Member of Parliament, and ensure that our decisions are proportionate.

The Chair: If no one else wishes to speak, I call Liz Saville Roberts.

Liz Saville Roberts: Diolch yn fawr, Ms Buck. I shall seek the Committee's leave to withdraw the amendment at this stage, but I will work with others to redraft and refine amendments, in discussion with Members in the other place, with the intention of tabling them on Report.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Liz Saville Roberts: I beg to move amendment 4, in clause 1, page 2, line 8, at end insert—

"(3A) It is an offence for a person (A) to disclose an image of another person (B) recorded during the commission of an offence under subsection (2) if the disclosure is made without B's consent.

(3B) It is a defence for a person (A) charged with an offence under subsection (3A) to prove—

(a) that disclosure of the image was necessary for the purposes of preventing or detecting crime, or

(b) that A did not disclose the image with the intent of disclosing an image of another person's genitals, buttocks or underwear."

Again, amendment 4 was tabled by the right hon. Member for Basingstoke and is supported by Members from every party. It seeks to ensure that the sharing or distribution of upskirting images taken without the complainant's consent is a criminal offence.

As we all know, the Bill is modelled on the equivalent Scottish legislation, which had to be supplemented, relatively soon after its introduction, by additional legislation to stop the distribution of images. That was necessary to make the original legislation effective. It therefore does not logically follow that the Government will bring forward part of what is necessary—measures to prevent sharing—to address this issue effectively.

As the right hon. Lady pointed out in evidence to the Committee, current legislation might stop the distribution of upskirting images, but only in cases where such images would cause distress. As we have already discussed, sharing an image on a group chat for the purpose of banter is not necessarily intended to cause distress, so it may well not be covered. The amendment would close that clear loophole.

Another potential loophole was raised by the Director of Public Prosecutions, who noted in her submission to the Committee that

"the Bill does not criminalise a person who is in possession of images which have been recorded"

without the consent of another person or people

"but where it cannot be shown that"

that individual was responsible for recording the images. For example, someone might have hundreds of such photographs on their computer or digital device or devices, but there might be no forensic evidence to reveal how they came to be taken. It should also be noted that there is no power of forfeiture over such images, so someone may have a really quite unpleasant collection but, unless those other pieces were in place, there would be nothing we could do about it. It could be claimed as a collection—a collection of women being distressed. We have not addressed that.

I also draw the Committee's attention to the precedent set by existing law in relation to revenge porn. There may be an offence under section 33 of the Criminal Justice and Courts Act 2015 if it can be proved that the sharing of images was done with the direct intention of causing distress to the victim. As we know, that does not cover distribution motivated by finance, entertainment, amusement or indeed sexual gratification. That means that commonplace activities such as sharing among groups of friends are not covered. Once again, rather than acknowledging that distress is implicit in the objectification of women through this deliberately demeaning and humiliating act, we will place the onus on the complainant—the victim—and the prosecution to quantify distress.

Let me say in passing that I welcome the Law Commission's ongoing review of online abuse. I took part in one of its consultations last night. On the basis of its recommendations, which are relevant to what we are discussing, I understand that the Department for Digital, Culture, Media and Sport intends to bring forward a White Paper on internet safety by the end of 2018. I look forward to the Minister's response.

12.15 pm

Lucy Frazer: I reiterate that the Government are introducing this Bill to protect victims. That is absolutely why we have sought to introduce this legislation swiftly.

The amendment seeks to create an additional offence of disclosing the upskirt image, where such an image is caught by the Bill. It would create two defences to this offence, which are the same as those created by the other amendments tabled by my right hon. Friend the Member for Basingstoke for the existing offences in the Bill.

I sympathise with the position of the hon. Member for Dwyfor Meirionnydd on forwarding and sharing upskirting images. I very much share the desire to ensure that victims are protected by the law from this distressing practice and to ensure that the law is sufficiently robust to address this issue. Upskirting is an inappropriate act that we all agree needs to be addressed.

The amendment raises an important question about the distribution of images, but this issue is not confined to upskirting. Sharing images and inappropriate material online is a significant issue; indeed, it is a wider problem than this specific offence.

As the hon. Lady mentioned, there is already good work under way across Government to consider these issues closely. As she said, DCMS has asked the Law Commission to look into the onward sharing of images as part of its review in relation to online abuse, and in May we published our response to the Green Paper on internet safety strategy.

Therefore, although the hon. Lady makes an important point, it seems both prudent and beneficial to be careful not to cut across the ongoing work. It would be better to wait until we know the outcome of these reviews so that we can consider them properly, in slower time, to decide what steps are necessary, if any, to take this matter forward. Tackling image sharing more widely is complex and requires detailed consideration and analysis.

Liz Saville Roberts: In that case, could the Minister indicate to me, given that there is now a sense of speed in moving forward with this piece of legislation, how she would incorporate anything that was recommended? Frankly, bearing in mind the experience in Scotland, we should be considering addressing this issue now, rather than holding back.

Lucy Frazer: The hon. Lady makes a good point. DCMS is looking at this issue. Its report will come forward in due course and then we will need to consider it—both its scope and whether there is anything else that needs to be considered. Sharing images is a wide issue and the Government are very aware that they need

to consider new technologies, how they are affecting women and children, the issue of the distribution of images, and all the horrors, as well as benefits, that come with the internet.

We are concerned that using the Bill, which is moving at pace, to deal with this issue could result in unforeseen consequences. I will mention a few of those in the context of the amendment.

First, the amendment suggests that a person would be guilty if they received and shared an image even if they did not know that it had been taken without consent. Secondly, under the amendment, a person would also be liable if the image was passed on to them by email and they passed it on by email, social media or messenger app without opening it.

So, while we must of course consider carefully those who are victims, it is also important to point out that other laws and a number of other offences relate to this area, which will potentially catch perpetrators of this sort of crime. So, onward sharing is captured by the revenge porn offence, if it is done without consent and with the intention of causing distress to the victim.

There are also offences that might capture the distribution of such photos. The offence of improper use of a public electronic communications network is captured by section 127(1) of the Communications Act 2003, while section 1 of the Malicious Communications Act 1988 captures the sending of letters and other articles with intent to cause distress or anxiety. There are also harassment offences.

The sharing of images is not just a question for the criminal law; we also need to consider the responsibility of the platforms on which those images are shared. Victims need to know that such images will be taken down rapidly, and it is good to know that YouTube, Facebook and Twitter all have terms and conditions that state they will remove upskirting images when they identify them or are requested to do so by a user.

If someone takes an upskirt image and subsequently shares it, they will be fully punished for taking it, and any harm caused by the sharing of it would be taken into account in sentencing. The two-year maximum sentence for the new offence is a serious penalty that fully reflects the harm caused.

The offences in the Bill will tackle the taking of the photo. Existing offences already capture the misuse of communication networks, but, importantly, that issue is wider than the Bill can cover, and the Government are already looking at the broader issue of online abuse. In those circumstances, I urge that the amendment be withdrawn.

Liz Saville Roberts: Once again, I shall work with others to redraft and refine the amendment, in discussion with Members in the other place, with the intention of tabling it on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stella Creasy: I beg to move amendment 6, in clause 1, page 2, line 13, at end insert—

"(4A) Where a court is considering for the purposes of sentencing the seriousness of an offence under this section, and either or both of the facts in subsection (4B) are true, the court—

(a) must treat the fact mentioned in subsection (4B) as an aggravating factor (that is to say, a factor that increases the seriousness of an offence), and

(b) must state in open court that the offence is so aggravated.

(4B) The facts referred to in subsection (4A) are—

(a) if, at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim having (or being presumed to have) a particular sex characteristic, or

(b) if the offence is motivated (wholly or partly) by hostility towards persons of who share a particular sex characteristic based on them sharing that characteristic.

(4C) For the purposes of subsection (4B), 'sex characteristic' means the protected characteristic of sex in section 11 of the Equality Act 2010."

This amendment ensures that if the crime is motivated by misogyny then that will be considered by a court as an aggravating factor when considering the seriousness of the crime for the purposes of sentencing.

The Chair: With this it will be convenient to discuss new clause 1—*Requirement to amend guidance*—

'The Director of Public Prosecutions shall ensure, within six months of this Act coming into force, that any guidance issued under section 37A of the Police and Criminal Evidence Act 1984 is amended to ensure such guidance specifies information to be provided to the Director of Public Prosecutions to assist with—

(a) the prosecution of an offence under this Act, and

(b) the identification of any aggravating factor to an offence under this Act."

This new clause requires the Director of Public Prosecutions to ensure that guidance provided to the police is amended to require the police to provide information to assist with the prosecution of the offences under this Bill or the identification of any aggravating factors.

Stella Creasy: These proposals reflect the context in which we are trying to make legislation. Our conversation proves some of the challenges that we face, and today the national police chiefs are discussing this very issue. It is a simple truth that this country's law now protects nine different characteristics, under the Equality Act 2010. However, that protection does not extend within our courts. Therefore, not only is there limited redress when people want to take on offences such as upskirting, but we cannot reflect where somebody's protected characteristic was part of the offence in understanding how we challenge that offence and the message that we send. Currently, when aggravating factors are dealt with in sentencing—which is what the amendments relate to—there is a gap, which means protection is not offered in relation to somebody's sex, although we offer that protection around somebody's sexuality, racial background or religious background.

There is a simple, obvious conversation that we might have, which is, "Has somebody done this because, actually, they hate women and believe they have an entitlement to women? They believe that women are second-class citizens and that, therefore, it is their right to use film of them for entertainment." That is not a new conversation in our society. Upskirting, and therefore the need for the Bill, reflects the fact that everyone now has a mobile phone in their pocket, but humiliating women, targeting women and treating women as pieces of meat for entertainment is a very old facet of our society.

These proposals recognise that if—superficially—we are legislating to deal with the symptoms of that attitude, we need to deal with the primary source. It is time, in

[Stella Creasy]

2018, for parity in the way we treat those protected characteristics—not just in the workplace, but in our court houses.

The proposals are about what we can do to tackle the cause of those problems and the fact that one woman in five in our society says she has been sexually harassed, and that upskirting is part of that. They build on the evidence we have from Nottingham that where misogyny is treated as a hate crime—that includes instances of upskirting—that has started to change the experience of victims when they report these crimes, and indeed the mindset of the police and the CPS in dealing with them.

That goes back to the question that the hon. Member for Cheltenham asked me. He seemed surprised that I would query that experience, but the honest truth is that for most women the experience of trying to report sexual harassment and of trying to say, "My body is not here to entertain you; it is here for me," is very hard. Day in, day out, women in this country face a barrage of harassment and abuse, and upskirting is just one element of that.

Our legislation and our way of dealing with those crimes have not moved with recognising the cause, so we treat the symptoms. We come up with individual offences. We do not send the message that the issue is equality under the law. While we have the protections in the Equality Act, which are mirrored in amendment 6, they do not make a difference in court.

Some people will tell us, and I want to be clear that this is about sentencing when somebody has been proven to have done such a thing, that the courts could take account of them, but if somebody is targeting women—it does not have to be ethnic minority women, because then we could use the racially aggravated offence—we need to say that that is unacceptable in 2018.

In the same way, women who try to report harassment or upskirting have faced an uphill battle with the police, and that has come across in the evidence. We do not yet see hate against women as something that we have to say is on a par with racial hate and religious hate, so when women come forward to report such crimes, very often they get dismissed. Indeed, in some of the testimony, people talked about the police saying, "I'll just delete it. It's not that big a deal." I can tell the Committee it is a big deal while we live in a society where we do not treat women and men equally, and we do not treat them equally under the law.

I hope that, today, the national police chiefs will look at the evidence from Nottingham and recognise that recording street harassment, including upskirting, as a form of hate crime and using that to drive how they identify where it happens, whether there are particular times that it happens and what that means for their policing priorities, will lead to a step change—not just as we have seen in Nottingham, but in every city, in every community. I am sure Members have all heard the stories about this happening.

I tabled these proposals to reflect the fact that this should happen after somebody has been found guilty. I recognised in the earlier amendments that the concept of consent should be the primary motivation as to whether somebody is found guilty of upskirting, and I also recognise the issue is not just about upskirting, but this is the legislation in front of us. As I have explained to the Minister, my purpose in tabling these proposals is to push these votes because we get so few opportunities to try to make legislation that really gets to the root cause of the problem. My fear is that even if we tackle upskirting, and even if new technology is created, the causes remain. The harassment, the inequality and the violence that women then face as a result will continue.

These proposals would do two things. First and foremost, they would put on par the ability of courts to take into account where there was evidence of hostility towards somebody as a result of their sex-protected characteristic. That is the legislation from the Equality Act. It is simply about equality. For Members who are not necessarily convinced on the argument about misogyny, this is simply about parity.

The new clause would encourage the police to do what I hope they will do today voluntarily: start collecting evidence for the purposes of being able to prosecute. The hon. Member for Cheltenham might argue that the courts might well be able to take into account harassment, but they cannot if there is no evidence and if the police have not built up a profile of, for example, the Dapper Laughs character—the person who has taken photos and encouraged people to take photos of women in compromising positions, not because they particularly find that sexually appealing, but because it is simply funny for them.

Why is that funny? Because it is about power. It is actually about the power to control and define what is important about that person by taking that photo. By taking away their mind, their voice or whatever they might say, and making it simply about their body, it is a power play and not sexual. But we would have no evidence for that because at the moment we do not systematically record this to enable us to say that that has been a particular offence.

I appreciate this element is new, and I understand people's concerns about whether we should get into it in this Bill, but I say to the Minister that we have not had any opportunities and these debates have been around for some time. If she were to say to, "We are going to review this, because there is an anomaly here where we protect characteristics in other parts of legislation, but we do not protect characteristics in the court," I would happily work with her and go away and look at this. I recognise these proposals might not be the right way to address the problem, but we cannot avoid this debate and this inequality any more, because it is upskirting this week, but it will be something else next week.

Misogyny is pervasive in our society and I would wager it is on the rise, because we live in a society where people think somehow we have equality. Every time I say that, all the men in the room look quizzical and all the woman roll their eyes, because we know how much further we have to go. These proposals highlight a simple point about this legislation, which is that it fits a symptom of a bigger challenge, and if we can target the bigger challenge, we can make real progress.

One of the frustrations for me as a Back Bencher is how few opportunities we get to make any real progress on issues such as this, so I am interested to hear what the Minister has to say. Has the Ministry of Justice been

looking at these issues and the evidence from Nottingham on how treating misogyny as a hate crime has driven change in how issues such as upskirting are dealt with?

I am really interested to hear what the Minister thinks we can do, if we do not accept these proposals, to make it explicit that, if somebody targets women in this way and shows that hostility, the courts should be able to take that into consideration. There should be a requirement to have the evidence to be able to make that case.

12.30 pm

Yasmin Qureshi (Bolton South East) (Lab): It is a pleasure to serve under your chairmanship, Ms Buck.

Labour's Justice team has worked closely with Gina Martin and her lawyer, Ryan Whelan, since last year. They have done a remarkable job in attracting public and media support, gaining nearly 100,000 signatures for their petition, and then getting the issue on to the parliamentary, and now the Government's, legislative agenda.

Under great pressure, the Government have been forced to expedite this legislation to outlaw this disgusting practice, using unusual parliamentary procedures usually reserved for when there is a broad consensus on uncontroversial legislation. In normal circumstances, the Opposition would support some of the amendments. However, given that the campaigners seek a broad consensus, it is not our position to support the amendments on this occasion, as we do not want to create an excuse for the Government to delay the legislation, including during its passage through the Lords.

I understand why my hon. Friend the Member for Walthamstow tabled her amendment, but she will be aware that the sentencing guidelines allow judges to consider misogyny when sentencing. However, it is obviously not a specific aggravating feature, as race is. We really need the Government to bring in, on a separate occasion, a domestic violence Bill or a victims of abuse Bill, during the deliberations of which these matters could be considered. My hon. Friend would have our full support on that occasion.

Lucy Frazer: The hon. Member for Walthamstow has campaigned hard on a number of issues, including this one. I am grateful to her for her interesting and thoughtful speech and for giving us the opportunity to discuss these issues.

Upskirting is a terrible crime and an horrific invasion of privacy for those affected, and it is right that offenders are appropriately punished. Creating a specific upskirting offence sends a clear message to potential perpetrators that such behaviour is serious and will not be tolerated. The offence carries a maximum sentence of two years' imprisonment, which is a serious penalty. It is in line with the sentence for racially aggravated assault, assaulting a police constable while resisting arrest and other sexual offences, such as voyeurism and exposure. Additionally, the Bill will ensure that the most serious sexual offenders are subject to notification requirements, having been put on the sex offenders register. Those are common with sexual offences and assist the police with the management of sex offenders in the community.

Statutory aggravating factors do not usually apply to just one or two offences, as would be the effect of the amendment. Judges already take into account, on a factual basis in sentencing, the circumstances of the case. Creating an additional aggravating factor for this new offence would make it inconsistent with all other sexual offences. There is no rationale for the amendment to apply specifically to this offence alone.

Similarly, it would be wrong to suggest that patterns of offending would not be considered in sentencing. For example, if in addition to taking a photo the offender went on to share it with others, the additional harm caused would be taken into account in sentencing. If the offender took hundreds of images of women, rather than just one, the additional harm or potential harm caused would be linked directly to the seriousness of the offence and would be taken into account in sentencing. If the offender has been convicted of a similar or the same offence previously, or if a prior offence indicated intent or aggression on the basis of gender, it must be considered by the judge in determining the appropriate sentence.

In addition, the independent Sentencing Council already publishes guidelines, setting out the factors that magistrates and judges should consider in determining the seriousness of offending and the harm caused for the purposes of sentencing. An updated version of the guidelines is currently the subject of a public consultation.

Stella Creasy: Will the Minister talk us through the message she thinks we are sending? We have religiously and racially aggravated offences where we specifically say—not for individual cases, but as a matter of course—that it is a challenge where someone is motivated by hostility around someone's race or religion. What message does she think that sends, and why does she not think we should send the same message about someone who is motivated by hostility towards a certain sex?

Lucy Frazer: The hon. Lady raises an interesting and broad issue. It is a conversation that we need to have and that it is good to have, but the question before us today is the legislation and the appropriateness of the measures we are putting forward in this Bill, which is about upskirting. It is a narrow issue. I recognise her frustration and desire to raise the issues she cares about in a broad sense in a narrow Bill, but as my hon. Friend the Member for Faversham and Mid Kent said earlier, as legislators—the Government, the Opposition and Parliament—we have an obligation to ensure that the legislation we are putting forward, debating and voting on is appropriate.

Alex Chalk: Although I have a significant amount of sympathy for the points made by the hon. Member for Walthamstow, is the point not that the law would be made to look extremely foolish if sex was a statutory aggravating factor in respect of an offence of upskirting, but not in respect of rape or sexual assault? In those circumstances, the inconsistency would bring the law into disrepute. Does the Minister agree?

Lucy Frazer: That is a good point to make, as my hon. Friend's points generally are. When we legislate, it is important that we do so with care. We should legislate when we have done a proper review of the issues we are legislating on and bring in appropriate measures within the confines of the Bill under discussion.

Stella Creasy: I do not disagree with the Minister. I believe that misogyny as an aggravating factor could be ascribed to a number of offences. If she will forgive me, I will not take lessons from her about legislating. As an Opposition MP, it is not within my gift to timetable the legislation to be able to deal with these things. She said it is an interesting conversation, but will she commit to reviewing the anomaly we are pointing out with the amendments? Right now, we do not protect sex in the same way that we protect race and religion within sentencing. Through that review, the points that the hon. Member for Cheltenham and I are making could be addressed. Will she at least commit to that review? It would be welcome.

Lucy Frazer: The hon. Lady says she is a Back-Bench MP and so does not have the power or ability to change laws, but let us remember how this legislation came before the House. It was a private Member's Bill brought forward by a Back-Bench MP. The Government have supported the Bill because it is the right Bill to take forward. It identifies a gap in the law, and we are bringing it forward.

I would also like to touch on the statutory guidance referred to in the hon. Lady's new clause. It is important to ensure that the legislation is applied effectively by police and prosecutors so that this behaviour is tackled robustly and consistently. I should point out that we already have that in train. Following a request from the previous Lord Chancellor to the then Home Secretary and then Attorney General, work is under way to develop and update the guidance on upskirting, without the need for legislation to command us to do so.

We are committed to working together across the Government to ensure that the new offences and the existing law are used effectively to tackle upskirting. The Home Office is working with the College of Policing to develop police guidance on the powers that currently exist to tackle some cases of upskirting, including outraging public decency. The guidance will be further updated to capture the proposed changes to the law in the Bill. The guidance will be aimed at all frontline officers, control room staff and investigators and will be created in consultation with the National Police Chiefs' Council and the CPS.

The previous Attorney General discussed this issue with the DPP, and they are clear that all cases involving upskirting need to be considered carefully. The CPS will ensure that guidance is updated to reflect the proposed new offences, as well as to raise awareness of existing offences.

Stella Creasy: I am going to push the Minister on the point about a review. It is wonderful to see a Back-Bench private Member's Bill get Government attention. All of us recognise the circumstances in which that was made an imperative, but the reality is that the Government set the timetable for dealing with these issues. If she is serious that these are issues that the Home Office is updating guidance on, and that people are starting to look at this anomaly around misogyny versus other forms of hate crime, will she commit to a review? Will she commit to going away with her assistants and looking at these issues, and asking whether there is a case for change, such that she might bring forward legislation herself? Otherwise, these are warm words and, as the suffragettes taught us, it is deeds, not words, that matter.

Lucy Frazer: Just to clarify, the guidance I was talking about is the guidance in relation to upskirting—that is what is being updated. The Government always keep matters under review. We keep criminal law under review. I am sure that the Home Office, where matters affect it, also keeps issues under review. While I recognise the intent behind the amendments, I ask the hon. Lady not to press them.

Stella Creasy: It is interesting whether people put their money where their mouth is, and how we recognise when we can make progress. Too often, especially when it comes to women's issues, the question is to do it at some other time. I am sorry to hear the Minister not committing to a review. I would happily have worked with her on that review and the evidence. I fear that the police chiefs will be ahead of her in committing to make the recording of misogyny as a hate crime something that the police do, which would be very welcome. I am also sorry that Labour Front Benchers are not with us on the importance of making progress where we can.

I have no desire to split people on this, but I think there is support for it. I put the Minister on notice, however, that it will come back on Report. I also tell my Front Benchers that it will come back on Report, and I hope that they will be more positive.

The other thing I am worried about is that on a Bill about controlling women, it appears that some people have been told that amendments in Committee delay things. That is clearly not the case and we would not want to send a message that we are trying to deal with the symptoms, rather than the cause—which is what misogyny is—and that we are going to control women and restrict what they can change. It took 100 years for some women to get the vote. Let us not wait 100 years to make legislation that works for women. At this point, however, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: We have already had a thorough and very good debate on clause 1, so I am not inclined to have a stand part debate unless hon. Members are actively seeking one, which I do not believe they are.

Clause 1 ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Bill to be reported, without amendment.

12.43 pm

Committee rose.

Written evidence reported to the House

VOB02 Geoffrey Monaghan FRSA, Independent Consultant

VOB04 Crown Prosecution Service (CPS)

VOB05 Ryan Whelan

VOB06 Victim Support

VOB07 Dame Vera Baird, QC, Police & Crime Commissioner (PCC) for Northumbria

VOB08 Mayor of London

VOB09 Zimmerman and Schneider