

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### VOYEURISM (OFFENCES) (NO. 2) BILL

*First Sitting*

*Tuesday 10 July 2018*

*(Morning)*

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#### CONTENTS

Sittings motion agreed to.  
Written evidence (Reporting to the House) motion agreed to.  
Motion to sit in private agreed to.  
Examination of witnesses.  
Adjourned till this day at Two o'clock.

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**not later than**

**Saturday 14 July 2018**

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**The Committee consisted of the following Members:**

*Chairs:* Ms KAREN BUCK, †SIR ROGER GALE

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

**Witnesses**

Gina Martin, writer and campaigner

Assistant Commissioner Martin Hewitt, Lead for Rape and Sexual Violence, National Police Chiefs' Council

# Public Bill Committee

Tuesday 10 July 2018

(Morning)

[SIR ROGER GALE *in the Chair*]

## Voyeurism (Offences) (No. 2) Bill

9.25 am

**The Chair:** Good morning, ladies and gentlemen. I have a few housekeeping announcements before we begin. The first and most important of all—although not quite as important as it might have been yesterday—is that Members may take off their jackets if they wish to do so. Will Members please make sure that all their electronic devices are on silent or airplane mode or something? We do not want things ringing in the middle of the sitting. Water is available. Teas and coffees are not permitted during the sitting.

I have taken the liberty of asking the staff to exclude the public, rather than to let them in and then have to throw them out again so that we can sit in private for any private discussions that we may need to undertake. We will sit in public once we get going properly. We will consider the sittings motion on the amendment paper, then a motion to enable the reporting of written evidence for publication, and then a motion to allow us to deliberate in private, which is a formality, about questions before the oral evidence session. In view of the time available, I hope we can take these matters formally and without debate. However, if anybody wishes to intervene, they are absolutely at liberty to do so.

*Resolved,*

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 10 July) meet—

(a) at 2.00 pm on Tuesday 10 July;

(b) at 11.30 am and 2.00 pm on Thursday 12 July;

(2) the Committee shall hear oral evidence in accordance with the following Table:

Date	Time	Witness
Tuesday 10 July	Until no later than 10.00 am	Gina Martin
Tuesday 10 July	Until no later than 10.30 am	The National Police Chiefs' Council
Tuesday 10 July	Until no later than 2.30 pm	Rt Hon Maria Miller MP
Tuesday 10 July	Until no later than 3.00 pm	Brook

—(*Lucy Frazer.*)

*Resolved,*

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Lucy Frazer.*)

**The Chair:** Copies of the written evidence that the Committee receives will be available in the Committee Room.

*Resolved,*

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.—(*Lucy Frazer.*)

9.27 am

*The Committee deliberated in private.*

### Examination of Witness

*Gina Martin gave evidence.*

9.30 am

**The Chair:** We now resume our public sitting and hear evidence from Gina Martin. Before calling the first Member to ask a question, it says here, rather pompously, that I have to remind all Members that questions should be limited to matters within the scope of the Bill and that we must—this is important—stick to the timings in the sittings motion that the Committee has agreed, otherwise we shall overrun and not have the time to afford our guests the courtesy of the proper opportunity to answer questions. Ms Martin, thank you very much for joining us.

*Gina Martin:* Thank you for having me.

**The Chair:** It is good of you to be here and spare your time.

**Q1 Wera Hobhouse (Bath) (LD):** Good morning. Thank you for coming. You said that your experience demonstrated the need for a specific victim-centred offence to cover upskirting. To what extent do you think the Bill achieves that aim?

*Gina Martin:* When I was upskirted—when it happened to me—it was obvious that it was to humiliate me. The pictures were taken up my skirt and passed to people around me, and it was done in response to my rebuffing their sexual advances. My aim, from the beginning, was to work on a Bill with everyone here to cover different situations. I believe the Bill does that because it covers humiliation, distress or alarm.

**Q2 Wera Hobhouse:** Do you think the Bill strikes the right balance between protecting the victim and protecting individuals who accidentally take such images?

*Gina Martin:* I do, yes.

**Q3 Ross Thomson (Aberdeen South) (Con):** Thank you very much for coming in, Gina, and for everything you have done to campaign on this issue and to raise awareness—that is the reason we are here today.

Do you think the impact of the Government seeking to bring in this new legislation as soon as possible will be on the side of victims? Do you think this is the right direction to go? I would like to hear your views on whether you think we are doing the right thing, essentially.

*Gina Martin:* I do, yes, and I think the point you made that the speed at which we do this should be as quick as possible is really important. Upskirting happened to me at a festival a year ago yesterday, and yesterday, Sunday, I received a message from a 16-year-old girl who went to the very same festival, where it happened to her twice by the same person. That shows that this is happening as we sit here and are dealing with it. What we are doing now is absolutely imperative.

**Q4 Ross Thomson:** In terms of ensuring we close this particular loophole in the law, which you have rightly exposed, do you think we need to keep the focus particularly on the issue of upskirting, to ensure that we can get the Bill passed as quickly as possible and also send out a clear message that this type of behaviour is unacceptable?

**Gina Martin:** That is incredibly important to me. I think it has to be focused, it has to be simple and it has to focus on this one issue. We all know there are other broader issues that we want to focus on, but this is an upskirting Bill and it has to focus on just that.

**Q5 Laura Smith** (Crewe and Nantwich) (Lab): Women's Aid and Professor Clare McGlynn have argued that the Bill's scope needs to be extended so that victims of all image-based sexual offences have the right of anonymity in court. What are your views on this?

**Gina Martin:** Again, we need to deal with a lot of valuable issues. Do I think this Bill needs to cover all of them now? No, I think this is an upskirting Bill and the most important thing is that we cover this problem quickly and simply, and afford women the protection they deserve as soon as possible. I would argue that this is a Bill about upskirting and that those issues that Clare has brought forward should be dealt with properly and with scrutiny at a later date.

**Q6 Mary Robinson** (Cheadle) (Con): It was really disturbing when we discussed this and you relayed how it had happened to you. Part of this was the pressure of people around you. It was quite a physical event for you. There seem to be two elements to this: the upskirting and the taking of the photograph to humiliate you and the passing around. How do you view those two incidents in terms of the humiliation aspect, or is there no difference at all?

**Gina Martin:** It is very difficult. I think the feeling of harassment was compounded. I have not separated out in my mind which I think was worse, because it was just a very horrible blurry event. I just hated all of it, if I am being totally honest. That is my very human response to it.

**Q7 Stella Creasy** (Walthamstow) (Lab/Co-op): Hello Gina. One of the debates in relation to the Bill is about the concept of motivation, about whether we need to set out in law reasons why people do what you are talking about and, therefore, why that is wrong. We are debating whether we need to do that or simply to say that this, in and of itself, is wrong whether a person does it because they want to humiliate someone, because they find the pictures sexually exciting or because they will make money out of them. What is your view on that?

**Gina Martin:** That is a question that is more for a lawyer. I am not a lawyer, and I am not going to sit here and talk about the legislation in detail. One thing you touched on there was monetary gain. I would like to say categorically that of course I would like to see that we could prosecute at some point the paparazzi and photographers who do this. I am of the understanding that that needs to be done very, very carefully, with a lot of detail, to ensure that there are no unexpected consequences. I do not necessarily think that we should delay this process to look at that specifically—that is for another time.

Also, having worked specifically in the media for a very long time, I am very aware that if one celebrity decided to prosecute and raised charges using outraging public decency against paparazzi that would change very quickly. There is a big amount of education that needs to go on in that area. That is my feeling on that.

**Q8 Alex Chalk** (Cheltenham) (Con): You, of course, and we share this feeling, want it to stop, right? But one of the things the Bill has to look at is the consequences for the individual. In the Bill as drafted, someone goes on the sexual offenders register only in the event that the offence was committed for the purpose mentioned in proposed new section 67A: sexual gratification. To put that in plain English, perverts go on the register but idiots do not. So, if someone is at a festival and they are just being idiotic and are humiliating and distressing girls, but that is their principal motivation rather than a sexual one, they do not go on the register. Are you comfortable with that? Do you think it strikes the right balance? Do you have any other views?

**Gina Martin:** I am pretty comfortable with that, but again, it is something we need to look at more specifically. I am here to give my evidence as a human, not to give strong evidence specifically on the Bill.

**Q9 Alex Chalk:** Sure, but what I am really interested in is you as a victim. Victims need to get a sense of justice, so they will want to have a view on whether the punishment fits the crime. We know that someone can go inside for this, so that is one aspect of it, but equally someone could go on the register for a long time, which is a big stigma and burden. Where do you think the right balance is struck? Do you think that the Bill has it broadly right, where it says that it is for people who are doing it for sexual motivations but not for those who are just being idiotic and offensive?

**Gina Martin:** Yes, because I think that if it is for sexual gratification it is a more serious offence, because it is often done multiple times and is a pattern of behaviour. That is where we go to more robust punishments. For me, personally, the Bill does strike the right balance.

**Alex Chalk:** Thank you.

**Q10 Liz Saville Roberts** (Dwyfor Meirionnydd) (PC): We have already touched, forgive me, on the issue of motivation, but I think this is going to be critical to our considerations in this Bill Committee. As the Bill stands, it will need to be proven that there is either a sexual motivation or harassment. Do you have any concerns that a defence for people accused of this offence might be that it was accidental, and that that remains a loophole that needs to be addressed?

**Gina Martin:** I have spent enough hours sitting in enough meetings with my lawyer, Ryan, to understand that that is not something that needs to be worried about massively. Again, I am not a lawyer. There are ways of dealing with it and understanding case by case what happened. It is not the top concern that that would be an issue. That is my understanding.

**Q11 Liz Saville Roberts:** My second question is that if the taking of the photo is then found to be a crime with whichever motivations are finally accepted, to what degree, from the victim's point of view, does distribution constitute harassment? Will that cause distress, and should the act of distribution, therefore, be considered within the Bill?

**Gina Martin:** For me, it is really important that the Bill sets out the intent and the action. Distribution is obviously distressing. I work specifically in digital and

social media—that is my job—and a lot of work and education need to be done there to address this. It is really important to me that the Bill looks carefully at stopping and deterring people from committing the act in the first place.

**Q12 Maria Caulfield (Lewes) (Con):** We will hear evidence this afternoon that there should be stronger penalties for those who take images of under-18s. On the Women and Equalities Committee, we heard evidence during an inquiry about how prevalent this is for younger people, even at school age. What is your view on the impact that the Bill should have in protecting people under 18 who are caught up in this?

**Gina Martin:** I think the Bill sets out to protect everyone across England and Wales, regardless of their age. It is very broad and it protects everyone. I am sure that the right steps will be taken depending on age, the offence and the way in which people take the photos.

**Q13 Maria Caulfield:** For young people who may not understand the implications of what they do at a very young age, does there need to be some leeway, rather than criminalising people who may make a genuine mistake when they are younger and who, when they were a little older, would never consider doing something such as upskirting? Does the Bill protect those who make a genuine mistake?

**Gina Martin:** I feel it does that well. Again, my understanding—having worked on this for a year with great lawyers who know the details of the Bill, the situation and the offence very well—is that each prosecution is dealt with objectively by looking at the situation. As with any law, we would not prosecute kids how we prosecute adults. The Bill does that really well.

**The Chair:** Wera, you indicated that you wanted to come back—or has the moment passed?

**Q14 Wera Hobhouse:** The moment has sort of passed, but the issue has not. Would you not have felt as humiliated and distressed if somebody's motivation for taking the image was just financial gain?

**Gina Martin:** Can you repeat the question?

**Wera Hobhouse:** We were talking about motivation. The Bill covers two different motivations: to humiliate and cause distress and for sexual gratification. We are also looking at the possibility of other motivations, for example if somebody says, "I didn't even know that person. I didn't want to humiliate her and I don't get very excited about the image, but somebody offered me money." Would it not have distressed you in the same way if it had been done with another motivation?

**Gina Martin:** I do not want to sit here and imagine how I would feel if I were the victim of that exact scenario. That has been a big problem that I have dealt with—people trying to guess exactly how I felt during the situation—but it is important to remember that there could be a lot of unintended consequences from looking for solutions to the monetary gain situation.

We do not want the paparazzi to be charged as sex offenders for doing their job. We can all agree that that is not a great job to do—I do not agree with it—but they could be charged as sex offenders. They should be able to be prosecuted for outraging public decency,

which they can be, and I have worked closely with celebrities who have been through that. They have talked to me in confidence about it, and they have said that because of this campaign, they have considered prosecuting for outraging public decency, which is great.

**Q15 Wera Hobhouse:** But we have just established that outraging public decency would not have properly covered what was done to you. Is going back and saying, "Well, they can be covered under outraging public decency," not the same as saying, "I don't care about anybody else because this specific thing has happened to us."?

**Gina Martin:** No, not necessarily. I could have prosecuted under outraging public decency, because there were two or more people there to witness what happened to me, but I did not because the police were confused about the grey area of the law. I never did this to cover my own situation; I did it to cover every instance and help other women as well. I could have prosecuted under outraging public decency, if I had chosen to.

**Q16 Wera Hobhouse:** We have just established that we are introducing a new Bill because that was not good enough to help you to prosecute somebody who committed an offence. Should we not then look at another group of women? I understand that you had a particular issue yourself, but is this law not there to cover not just the individual case that you experienced, but other victims who are not exactly like you but who would feel similarly distressed if it happened to them?

**Gina Martin:** Yes, absolutely, but having worked with women who it has happened to for monetary gain, I believe that there is a way of doing it that is just as valuable but that does not delay this Bill or mean looking into it in this Bill. That is the truth.

**Q17 Wera Hobhouse:** Are you saying that you are just worried about the delay of the Bill?

**Gina Martin:** I am absolutely worried about the delay of the Bill. I do not think we should delay this protection being afforded to women in order to look at that, because it needs to be looked at in detail. Also, it would take one celebrity to table a report of outraging public decency to stop this happening. I have discussed that at length with the media and people this has been done to by the paparazzi.

**Q18 Alex Chalk:** On the paparazzi point, the Bill says that a person commits an offence if he "does so with the intention"

that he, or another person he has passed it on to, will look at the image

"for a purpose mentioned in subsection (3)"—

that is, for sexual gratification or "humiliating, alarming or distressing" the person. In other words, if a pap takes the image and sends it on to somebody who thinks, "Hey, look at her! Look at what underwear she is wearing," or, indeed, uses it for some perverted reason, do you think that that meets the concern that is being raised from your point of view?

**Gina Martin:** Again, I do not want to sit here and give legal advice, because I am not a lawyer, but there is an argument that although it does not say, "personal gain from publishing those images and other people gaining sexual gratification from them," there is a way

that the Bill covers that situation, because it covers all people in England and Wales. There is an argument that that could be covered as well in this Bill.

**Q19 Gillian Keegan** (Chichester) (Con): I want to thank you specifically, because I had not heard of upskirting until you started this campaign. I think a lot of people in the country are much more aware of it now. Until I started reading this, I had not heard of down-blousing either. What is your view on down-blousing and including it in the Bill? Is it a similar offence and intrusion to upskirting? Is it as popular? Is it happening at festivals, as we speak?

**Gina Martin:** I have heard about it. My personal experience is that all of the hundreds and hundreds of stories that have come to me over the past year have been about upskirting. I have not received that many stories about down-blousing. I do not know why that is. Of course, I think it is horrible. I would like to see a million things sorted out and prosecuted against. This being an upskirting Bill, I have to focus on that issue, but thank you for raising it.

**Q20 Liz Saville Roberts:** Gina, thank you for coming before us today. I know what you have gone through.

I understand that you want to see something move as quickly as possible. There are concerns that legislation that is made in haste is not necessarily always effective. We have had examples of that in the past. Would you consider that it is important that we are as thorough as possible in taking evidence and in looking at ways of making this piece of legislation as robust as possible, with as few loopholes as possible?

**Gina Martin:** Yes, of course I would.

**Q21 Liz Saville Roberts:** Would the fact that it should be done in two months override the need for thoroughness?

**Gina Martin:** No, of course not.

**Q22 Helen Whately** (Faversham and Mid Kent) (Con): I want to raise a couple of things. First, you said that you have been hearing from hundreds of women. Is it your impression that this is happening all the time on a daily basis and really is extensive? As Gillian said, many people had not even heard of this until your campaign, but it seems to have suddenly brought something into the open. Is it your impression that it is really quite common now?

**Gina Martin:** Yes, and a big part of that is because a lot of women do not know it has happened to them. It is incredibly secretive assault. A study done recently by a women's magazine asked women to give their stories of it anonymously. The feedback it got was that up to 80% of women said that they felt harassed and upset, but a lot of women said that people had seen it happen to them. People feel that this is something that happens to women—and men and children—extensively, but they do not know it has happened because it is very hard to see it. I was lucky that I saw the picture. That is why we have not spoken about it for so long, and it has been normalised and accepted in society for so long. This campaign has ignited a conversation, so of course people have flooded in, talking to me. I am the only one who has ever gone out and said loudly that it has happened, so I think they trust me, which is nice.

**Q23 Helen Whately:** It is also why you want to see action taken quickly on this, rather than solve a bigger problem.

**Gina Martin:** Yes, because it has always been happening.

**Q24 Helen Whately:** You talk about closing the loophole whereby upskirting is not covered properly by current law. You have also clearly been very thoughtful about when it would be appropriate for someone to be put on the sex offenders register versus when it would not. You have been clear about ensuring that that is the case for someone who is a sexual predator, but am I right that you think that some people should go on the sex offenders register but that a distinction needs to be made with teenagers fooling around? You think there should be a distinction between the most serious sexual predators who are upskirting and others who are not doing it with the same motivation.

**Gina Martin:** Yes, 100%. If I did not think that, the amendment would not be valuable. Obviously, there is a distinction between someone who has 5,000 photos on their phone and a 13-year-old who does it once and does not fully understand the full repercussions of his actions. I feel like the Bill that we have put forward covers all those instances and can be used case by case, objectively by prosecutors.

**Helen Whately:** Thank you.

**Q25 Mary Robinson:** Just on that point, where would the balance be? We are differentiating between a younger person fooling around, taking photos and sharing them and someone who has a different, more sinister intent, but would the impact on the person who is the victim not be the same? How are we going to get the balance between thinking about the intent of the person committing the crime and the impact on the victim? After all, the victim comes forward because of the impact on them.

**Gina Martin:** In each situation that this happens in, regardless of where it is, the age of the person and so on, it is very hard for me to say specifically where it is on the spectrum of how they feel. I have friends who it has happened to. They half did not know it was happening, but it happened to them and they were embarrassed and they left. Their instance was not as violently violating as mine felt. It is difficult for me to know, but that is something where the Bill needs to look specifically at each person's circumstance. Currently we cannot do that.

**Q26 Mary Robinson:** At the impact on the victim.

**Gina Martin:** Yes.

**The Chair:** We are doing commendably well, but we are going to run out of time, so I will call Stella Creasy and then the Minister.

**Q27 Stella Creasy:** Gina, you just talked about the difference between someone who does this once and someone who systematically seeks out women to take pictures in this way. Mary was talking about how we might capture intent. What is your feeling about saying that if someone is clearly showing a pattern of hostility towards women that makes them think they have the right to do this, it should be a factor in the kind of sentence they get once they have been found guilty, because there are different sentences in the legislation?

**Gina Martin:** In terms of?

**Stella Creasy:** If they are shown to be hostile towards women because they have gone out and done this several times. Perhaps they have made websites of all the pictures they have taken and they have shown a different approach—a sense of entitlement—to being able to take pictures of women in this way. Do you think that level of behaviour should be reflected in and have an impact on the sentence they get, if they have been found to have taken the pictures and breached the conditions?

**Gina Martin:** Yes, I feel like this constantly repeated behaviour, the sinister intention and the power play have to be taken into account, and their behaviour would be taken into account by prosecutors.

**Q28 Stella Creasy:** Prosecutors would not be able to do that at the moment, unlike if someone had sought out people from an ethnic minority to do this to. Prosecutors could take that into account, but if the offender were to seek out women explicitly, prosecutors would not be able to take that into account, particularly as opposed to anything else right now under the law. Do you think that should change for something like this?

**Gina Martin:** It is difficult for me to say without knowing the process. I would not want to sit here and give advice, because I do not know the process of prosecuting this. I have been leading the campaign as a victim, so it would be difficult for me to give that advice. If Ryan was here, I am sure he would be happy to talk to you about that and to give you a more comprehensive answer. It would be remiss of me to give you an answer on that.

**Q29 The Parliamentary Under-Secretary of State for Justice (Lucy Frazer):** Gina, thank you very much for all the work you have done campaigning for this. You have done a tremendous campaign. I just want to pick up on something that Liz Saville Roberts asked you. She asked whether it was important to be thorough, rather than quick. The narrow area we have identified in the Bill follows the Scottish legislation, which has been in place for some time. The motivations we have identified in the Bill take a precedent that exists and that the Crown Prosecution Service prosecutes under in other sexual offences and other offences. There is thorough ground to put forward a law on this narrow area but, in other areas, if we wanted to expand the Bill, that would be unprecedented and would warrant further consideration.

**Gina Martin:** Yes, that is where I stand currently.

**Q30 Yasmin Qureshi (Bolton South East) (Lab):** Thank you, Ms Martin, for all the work and campaigning you have done. I know that you tweeted that you started this last year and you are pleased to see it coming to the Bill Committee today. I want to ask a couple of questions.

As you know, the upskirting offence in the Bill would allow victims to be anonymous because it is categorised as a sexual offence. There has been considerable debate and a suggestion, particularly from Professor Clare McGlynn and Women's Aid, that the Bill's scope needs to be extended, so that victims of all image-based sexual offences have the right to anonymity in court. For example, it does not cover revenge porn. What are your views on that?

**Gina Martin:** My view is that it is incredibly important to bring forward this protection quickly and focus on the issue that we have here. I have been a victim of sexual assault and harassment throughout my life. I would like to see every situation covered. I would also like to see the things that you mentioned, but I do not believe that this is the place to do it.

This is a Bill about upskirting. It is unprecedented for a Bill to go through so quickly with so much support. We have an opportunity to put down one piece of the puzzle. I would like to see us do that with this specific issue. I would personally help afterwards to focus on the rest.

**The Chair:** Thank you. Are there any further questions? Ms Martin, thank you very much indeed both for your candour and your willingness to stick your head above the parapet. I hope that this experience, at least, has not been too bruising for you.

**Gina Martin:** No. It has been lovely. Thank you all.

### Examination of Witness

*Assistant Commissioner Martin Hewitt gave evidence.*

9.57 am

**The Chair:** We will now hear oral evidence from the National Police Chiefs' Council and we have until 10.30 am. For the benefit of the record, could you please identify yourself?

**Assistant Commissioner Hewitt:** My name is Assistant Commissioner Martin Hewitt. I am from the Metropolitan police.

**The Chair:** Mr Hewitt, thank you for taking the trouble to come and talk to us this morning. I know that there will be significant questions, which I am sure you will be able to answer with great candour, as we expect. Who would like to set the ball rolling?

**Q31 Yasmin Qureshi:** What impact do you think the Bill will have on the resources of those working in the criminal justice system, including the police?

**Assistant Commissioner Hewitt:** There would clearly be an impact if this legislation were enacted because it would create a new offence. It would fill a gap that exists currently in the legislation to deal with this type of offence. I do not think it would be a massively impactful issue for us and the subsequent services. You would have to think about police resourcing.

Clearly, any legislation would inevitably and quite properly lead to publicity about that legislation, which would be a positive thing. It would be an important element of any legislation to make it very clear to anybody who was thinking of perpetrating the crime that there would be a law that would deal directly with it. That would have a positive impact in terms of prevention. It would clearly lead to an increase in reporting but I do not think that level of increase would be so significant that it would outweigh the benefits of being able to deal with this crime effectively.

You would obviously have the knock-on when individuals were charged in the Crown prosecution and courts system. The other end that we would have to consider is

the impact of people who would potentially be placed on the sex offenders register. That is a list that grows. To give the example from my own force in London, we have seen an increase of about 8% or 9% per annum over the past few years in London of those who are on the sex offenders register. Clearly, there is a monitoring regime around those individuals based on the risk element. There would properly and obviously be an impact on resources, but I guess that is weighed against the necessity we have to be able to deal effectively with what is a newish crime and a crime that is quite impactful.

**Q32 Kate Hollern (Blackburn) (Lab):** Clause 2 of the Bill includes motives, such as obtaining sexual gratification and causing humiliation, alarm and distress. How difficult will it be for the police to secure a prosecution by establishing the motives?

**Assistant Commissioner Hewitt:** Establishing motive is always a challenge in any sort of crime. You will clearly have the digital evidence—that is, whatever photograph was taken. That will take you some way towards motive. Adding the element of alarm and distress is important, because the legislation should be very victim focused. Clearly, I would suggest, any person who realised or became aware that someone had taken a photograph in those circumstances would be distressed by it, so you would be able to use that.

Equally, one of the other factors we have to consider is that, often, these photographs find their way on to websites. There are websites where people will upload these kinds of photographs. Again, there is a further trail that takes you towards motivation on behalf of the person who has committed the offence.

We will always have to prove motivation, but the alarm and distress element is very strong. I suggest that, with the right kind of questioning, the right approach to interviewing and the digital evidence you would have, you would be in a reasonable place to assert the motivation.

**Q33 Mary Robinson:** When Gina Martin brought this to the police in the first place, she was able to get somebody on to it straight away, because there was a police officer there. The first thought was that it would be treated through the Offences Against the Person Act 1861 more generally, yet that did not come to anything. Is that because it was not previously covered or because it is difficult to prove a case? Are we going to have to guard against simply getting into another piece of legislation where it is difficult to prove the case again?

**Assistant Commissioner Hewitt:** I don't think it is about difficulty. For me, that is the gap this legislation can potentially fill. The two pieces of legislation that you would most likely try to use as it currently stands are, first, outraging public decency legislation, which—let's be honest—even with the language used in that you realise it is not necessarily fit for the time that we are now. In the first instance, that has to happen in a public place. It also requires witnesses to have been present at the time where the offence took place. An important point coming from my sexual offences lead is that it is not, per se, a sexual offence, and I think these should be treated as a sexual offence. We also have the voyeurism legislation, which has been used, but again, that requires a private setting and seeing and filming a private act.

I do not think the legislative framework as it stands is adequate for the issue that we have. It is another example where the advances and availability of technology—let's

be clear, I would guess that everyone at secondary school probably has a smartphone with them all of the time, which means they have a camera with them all of the time. This means they have the opportunity to commit an offence, amongst others. There are a number of what I believe are sexual offences that are image-based—the so-called sexting and the revenge porn as it is popularly called—all of these offences where the ability for people, universally, to take quality images quickly and potentially share those images takes us to a place where, at the moment, the legislative framework does not give us the ability to deal with that effectively. That is the gap. You always have to prove a crime and there will be always be occasions when that can be challenging. We can deal with it much more effectively with clauses that are specifically focussed on this type of offending.

**Q34 Mary Robinson:** Thank you for that answer. You seem to be implying that there is more scope for expanding this list of offences.

**Assistant Commissioner Hewitt:** I just think that this is a specific issue that needs to be dealt with. I don't know if I really want to get into that here. It is worth making the point that we collectively need to focus on a number of image-based sexual offences. People are committing offences in ways they never did before because of the universality of the technology. Legislation can never keep up with every change, but the technology that exists, and our ability to obtain digital forensic evidence and to check things in the way that we can around offending, takes us to a place where we need legislation that fits the nature of the criminality.

**Q35 Liz Saville Roberts:** Thank you Assistant Commissioner for the information so far. What interests me is that you raise the issue of the exponential growth in digital imagery offences, and you also touch on the growth of 80% to 90% of the sex offenders register. Obviously we have to keep a balance to take into account capacity, but nonetheless we should not be restricting what we legislate for. Growth should not be a motivation for us to cease legislating. How could you advise us to keep the appropriate balance? Looking at this growth in digital imagery crime and in the sex offenders register, the wider question is: what practices need to be changed, and what support do police forces need in order to enforce and bring evidence for successful prosecutions?

**Assistant Commissioner Hewitt:** There is no doubt that we have been wrestling for some time with a dilemma in exactly the way you describe. Developments in technology have enabled a whole range of offending that previously would still have taken place, but in a very restricted and challenging way.

Consider the issue of indecent images: previously it was difficult for somebody to access indecent images. They had to find their way into very specific websites and undertake a series of acts to get there and do what they did. Indecent imagery is now almost readily available in so many spaces, and this means that far more people are accessing it either deliberately or inadvertently. Equally, there is the technology we use to spot when particular computers are accessing that imagery. We are in a situation in which there is a real volume challenge for us. The legislation point needs to be clear at the outset

that doing this is illegal, and in this instance we do not have clarity around the specific issue of upskirting, so we need legislation that clearly says that—in the circumstances described—“This is an illegal act”.

The question then is how we respond, and how the system deals with that illegal act. In the first instance it would require awareness, training and understanding to be shared between police forces so that all officers were aware of the new legislation—as we would do with any new piece of legislation—and so that they understand what their powers are and what needs to be done. Then you get into the use of discretion and how you apply the legislation, as you would under any circumstances. For example, where it involves a 15-year-old and a 15-year-old, we need to think and then apply the usual logical approach that would be applied to whichever outcome you were seeking. The system would need to be able to look at whether certain offences were suitable for a caution or some form of warning. We do not want to be dragging loads of young people into the criminal justice system unnecessarily. With image-based sexual offences, you always have that challenge of trying to understand the level of risk presented by the offender, whether it is the viewing of images or upskirting. Some offenders will do no more than take a photograph or view an image, but some may be contact offenders or be escalating in the nature of the offending, and our challenge is always to have systems and processes in place that allow us to try to identify what the risk level is. Even among those registered sex offenders I spoke about, there are clearly RSOs at the top end who are the highest risk RSOs for whom we have significant control mechanisms, and then others at the lower end, where there is a much lighter level of control.

What you wrap into that, as I said at the very beginning, is what we do in terms of publicity and getting the information out there, not just to the police but to the broader public, about what this legislation says, why it is being done and what it says about what we expect and do not expect. I think that will have a really positive impact. You then broaden that out to all the spaces where this offence might take place, for people to become more aware of it. Looking at the offences we have dealt with most, there are obviously quite a few on transport systems, but they are also in supermarkets, shops and places like that. There is an awareness thing that can go on, and then it really is about dealing proportionately with the offending.

All those things are challenges, but I do not think that any of them take us away from the fact that these acts are illegal—they should be very clearly and specifically illegal. Particularly in this instance, they are also incredible distressing and harmful to the victim, but we have to try to find an ability to operate proportionately, and that gets us into some difficult debates about the images online.

**Q36 Liz Saville Roberts:** You emphasised earlier the significance of harassment and distress suffered by the victim. How do we ensure that that is safeguarded as a primary issue and that there is not an inappropriate defence of accidental motivations, or alternative ones such as profit? How do we ensure that we safeguard the victim experience as the priority driver?

**Assistant Commissioner Hewitt:** It is partly about how the investigation is run. There may be circumstances in which someone could run an accidental defence, but

it seems unlikely to me. Not only do you have the evidence that the individual provides you with from what is on their phone, but often, in many of the places where this is happening, you have evidence from internal CCTV—in a supermarket, on a train or wherever. The point for me is that we then ensure that we utilise the mechanisms we have, such as the victim impact statements, when we are prosecuting. The evidence from the victim and the impact on them can very clearly be presented in court. Frankly, even if someone did try to say that it was done accidentally, that would not change the distress caused to the person realising that someone had taken a photograph up their skirt. Whether they could successfully run a defence that said, “I accidentally did that”, would depend on the way in which we conducted our interviews and how the CPS carried out the prosecution.

**Q37 Andrew Jones (Harrogate and Knaresborough) (Con):** Thank you, Assistant Commissioner, for your answers this morning. You mentioned the desire not to unnecessarily criminalise younger people. I am keen to close this legislative gap in a proportionate way, drawing a distinction between the stupid occasion and the repeated pervert. How do the police tackle the existing offences, such as sexting, for those who are under 18?

**Assistant Commissioner Hewitt:** You look at all the circumstances. When the figures are produced on other sexual offending, for example, there will often be a lot of criticism levelled at us about people who get cautioned. We will, on occasion, caution people for rape offences, but if your victim and your offender have mental health issues or a mental impairment, we will take decisions based on all the circumstances. You are looking at the circumstances of the victim and of the offender, and on that basis, you will make a judgment. If you have an adult offender and a child victim, that is clearly an aggravating factor, but you will also have mitigating factors, as I said. If you have two 15-year-olds or 14-year-olds, there are mitigating factors around that, but as you alluded to in your question, if it emerges that that 14-year-old offender has done it on numerous occasions, or there is a repeated pattern of behaviour, again, that would clearly be an aggravating factor.

We would then work with the Crown Prosecution Service to identify what the correct disposal and the correct charge would be—probably the charge would be the same—and whether we would dispose of it in a charge way or whether we would use some other form of control. It is difficult to come up with a clear line. It is about individual cases and looking at the circumstances, including the nature of the offence, the nature of the victim and the circumstances of the victim and the offender. When you work against those three areas, in the centre of those criteria or questions, you come up with what you think the most appropriate position is.

We are facing that a lot with people who are sharing images. If a teenager takes an image of another teenager, having possession of that is an offence. Once you pass that around, that is another offence. We have to constantly ask the question, proportionately, what is the right thing to do? Is that the ill-advised behaviour of a 15-year-old who needs to learn some lessons and change what they do, or are they someone who needs to end up in the criminal justice system? That is a constant balancing act, particularly when you bring juveniles into play. Equally, you could get someone who does it and who

has a mental health condition. They may be a 30-year-old, but they may not have the capacity of a 30-year-old. Every case will have to be dealt with on its own merits.

**Q38 Wera Hobhouse:** Thank you again for coming in, Assistant Commissioner. We all understand that we do not want to create legislation that puts massive burdens on the police and the Crown Prosecution Service, for which reason the main thing is that it acts as a deterrent so people do not do it in the first place—so they see that if they do any of it, it is a criminal offence.

Is it not very important, therefore, that the law is clear and that it makes all upskirting a criminal offence, full stop—no ifs, no buts? You have described a situation where you could say that an image had been taken accidentally, but someone would still end up in a court situation. Would it not be much better if the law was so clear that every upskirting was an offence—so that you would not get all these people in—because we all know it? Is that not the case?

**Assistant Commissioner Hewitt:** Absolutely. We always seek very clear laws, which make our job a lot easier. Defences will always be run, and some of them will have some credibility, although I would guess that most will not in this sort of instance. For me, that is absolutely right. Having that clarity around an offence that we know is taking place—and, as I said, with the kind of access people have to their phones—is really important.

Equally, the other reason that I think that is important is that this does not sit in isolation; it is part of a continuum of sexual offending. Of course, it is not a contact offence, but it is part of that continuum, and it is absolutely right that we send a clear message that it is unacceptable to do any acts that are motivated by sexual gratification and have a victim on the other end. That starts with this, but it works through sexual assault and right into rape offences. We need that clarity, which will allow us to deal with it. As I say, you deal with it proportionately once you have the investigation.

**Q39 Julian Knight (Solihull) (Con):** You talked about clarity. From a slightly different perspective, do you think that it is important to keep the Bill focused on this specific offence, in being a deterrent for the public and getting the message out there? At all festivals next summer, I would like to see signs saying, “You will go to prison, if you commit this offence.” I would like to see clarity for officers on the beat. To widen the scope of this legislation to include other acts could mean upskirting somehow getting lost and officers not quite being as focused as perhaps they would be if the Bill were clear and simple.

**Assistant Commissioner Hewitt:** I agree with that entirely. As I just said, if you can reach absolute clarity in legislation, which makes it very clear where the line is and whether you have stepped over that line and that that is an offence, that is absolutely beneficial from our perspective. As we said, we can work out fairly clearly the kind of place where this happens. There has been lots in shops and supermarkets, on transport, and, as you say, at festivals, nightclubs and pubs. Having legislation that makes it very unambiguous for the people running those licences and events, so that they can be clear to everybody who comes into that place, is where we should aim to be. The more we hang things off and spread it, the harder it is to explain it to police officers and others.

**Q40 Julian Knight:** Just to be clear, you are saying, effectively, that we should not go outside the scope of this offence to bring in other offences and, therefore, perhaps detract from this particular offence, so that it does not become a catch-all for all forms of nefarious activity?

**Assistant Commissioner Hewitt:** Yes. I introduced that concept of image-based sexual abuse, but that was just to make the point that there is a range of ways that people can offend using digital imagery. It was not to suggest that we ought to make this any less clear than it would appear to be. The one exception that I might make around that is whether there is a potential to add an element around distribution or sharing of that image, because, at the moment, the legislation does not go to that stage. As I said, there is some evidence that there are places where people go to upload these images. I think that is taking that offence to a further stage and is adding to the backdrop. That may be worth considering, but we should have absolute clarity about the core elements of that offence.

**Q41 Stella Creasy:** I have two issues I would like to raise with you. I am conscious of time. First, you have made a powerful case for the impact on victims of these kinds of offence. Do you think that impact is any less if it is a picture of somebody’s breasts, rather than their buttocks or genitals?

**Assistant Commissioner Hewitt:** I am not sure that I can answer that question, but I understand the point you are making. It feels to me that the intrusion of going in and under a garment—the skirt; I know you don’t have to physically—takes it to a slightly further stage than an image of somebody that is taken clearly outside their clothing. You are in the same territory, but I do think there is something particularly invasive about somebody being able to take an image up a skirt. But I understand the point you are making.

**Q42 Stella Creasy:** The concept of consent is secondary in that instance to the location—that is what we are trying to understand.

**Assistant Commissioner Hewitt:** If you have not given consent to somebody to take a photograph that is sexualised, you have not given consent to them. I accept that point entirely. That takes us to the last question about clarity. To my knowledge, the phenomenon we are facing, particularly at the moment, is this phenomenon of upskirting, and it would be really good for us to be able to send a very clear message. I get that someone taking a photograph of someone’s breasts or backside from other angles is offensive, but I am not sure—I think it might confuse.

**Q43 Stella Creasy:** Secondly, the National Police Chiefs’ Council is meeting on Thursday, when we will be considering this Bill, to talk about the roll-out of the policy from Nottingham, where they have put misogyny on the same level as racial and religious hate crime. They have said that there is a case for recognising this as an aggravating factor. When it comes to an offence such as this, if it is proven that somebody has, for example, created a website where they have uploaded images and who seems to be systematically following women around to take these kinds of picture, should that be taken into consideration in the sentencing, in the way that could

[Stella Creasy]

happen now with somebody who was racially or religiously motivated, so that the court could take into account the misogyny behind this?

**Assistant Commissioner Hewitt:** I am not sure the circumstances you describe are about misogyny. For me, that is about somebody who is a more serious predatory sexual offender. I see this in sexual offending terms. I will be there on Thursday as part of the debate you describe.

**Q44 Stella Creasy:** Will you be supporting the roll-out of Nottingham?

**Assistant Commissioner Hewitt:** That is for the debate on Thursday. I do not want to pre-empt that debate. For me, this is about sexual offending. If it is proven that an individual has done this repeatedly, or has followed certain people, or is putting himself in certain places to do that, that is an aggravating factor that I would expect the prosecution—and ultimately, if they were convicted, the sentencing—to take into consideration, as opposed to the person where it appears to be a one-off issue.

**Q45 Stella Creasy:** So do you think there is a case for an aggravating factor? The question is, what would it be under? If they had not picked out a particular type of woman to do this, but it was women, as the law is currently drafted we would not be able to recognise that in the sentencing.

**Assistant Commissioner Hewitt:** But this will be women, in the way the Bill is drafted at the moment, will it not?

**Q46 Stella Creasy:** But, for example, if somebody had targeted women in this way, but targeted every type of woman—there was no particular pattern, as opposed to somebody simply targeting women systematically to do this—and was clearly showing hostility to them as a category of person because they felt an entitlement to be able to do this, is that something the courts could look at?

**Assistant Commissioner Hewitt:** That sounds fairly complex to me and you would have to ask the courts to answer that question. I see where you are going. I think I would keep this more purely in the realm of sexual offending and the pattern of behaviour of that person as a sexual offender. Whether that is about an approach in a relationship with women is a different thing.

**Q47 Stella Creasy:** So the Dapper Laughs person who gets their jollies from putting up pictures of women in compromising positions but does not take sexual gratification from them is not a particular category of person that you think we should be challenging?

**Assistant Commissioner Hewitt:** I do think we should be tackling them; it is just whether this is the right legislation to tackle them with. I think the courts will have to consider that.

**The Chair:** We have three minutes left. I cannot call other Members because I must bring the Minister in at this stage. We have to finish at 10.30 am.

**Q48 Lucy Frazer:** I have one short question. Assistant Commissioner, on exercising discretion as to how to treat young people, you said that you were often criticised, you had to exercise your judgment and there were challenges in these things. Do you think it is important that the law is clear—not only that the act that you are asked to prosecute is clear, but that the motivations and purposes that you are asked to decide on as to whether they constitute that offence are clear as well? Will that make your job easier and therefore ensure more prosecutions?

**Assistant Commissioner Hewitt:** Yes, we need that clarity, which covers the act itself. From the way I have seen the legislation drafted, that seems fairly clear to me. As with any crime, you are then looking to the motivation of the offender. In this instance, as we discussed in one of the earlier questions, clarity about the motivation around their personal gratification, and clarity about the impact on the victim as well, is really important to allow us to be able to balance both those elements in prosecuting.

To be honest, it is quite hard to think of another motivation for taking a photograph up someone's skirt. The Bill seems pretty clear to me in the way it is drafted at the moment. As someone who has investigated quite a few crimes over the years, I would be fairly confident that if I had the evidence that somebody covertly took a photograph up someone's skirt and I had the evidence of what that photograph showed, I would be in a pretty good position to get that person charged with that offence—or whatever disposal we chose. It seems pretty clear to me.

**The Chair:** Thank you. I apologise to those Members who have not been called this morning. I have made a note of the names and I will endeavour to give at least some sense of priority this afternoon. I apologise, but the clock has beaten us.

Mr Hewitt, thank you very much for taking the time and trouble to see us and for the excellent evidence that you have given. We know how busy you are and how precious your time is. I think I am probably right in saying I am the only person in the room who has also held a warrant other than you and I particularly appreciate the fact that you are here this morning. The Committee will sit again at 2 o'clock this afternoon and we shall hear evidence from the Chair of the Women and Equalities Committee.

10.30 am

*The Chair adjourned the Committee without Question put (Standing Order No. 88).*

*Adjourned till this day at Two o'clock.*

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

## Public Bill Committee

### VOYEURISM (OFFENCES) (NO. 2) BILL

*Second Sitting*

*Tuesday 10 July 2018*

*(Afternoon)*

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Examination of witnesses.

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

Written evidence reported to the House.

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No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Saturday 14 July 2018**

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**The Committee consisted of the following Members:***Chairs:* Ms KAREN BUCK, †Sir ROGER GALE

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

**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 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



# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT  
GENERAL COMMITTEES

Public Bill Committee

## VOYEURISM (OFFENCES) (NO. 2) BILL

*Third Sitting*

*Thursday 12 July 2018*

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CLAUSES 1 AND 2 agreed to.  
New clause considered.  
Bill to be reported, without amendment.  
Written evidence reported to the House.

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**Monday 16 July 2018**

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**The Committee consisted of the following Members:**

*Chairs:* †Ms KAREN BUCK, SIR ROGER GALE

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

## 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

