



The EU Mutual Learning Programme in Gender Equality

Tackling sexual harassment

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Sexual Harassment in the UK: online and in public spaces

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1. Sexual Harassment

All parts of the United Kingdom are subject to the same international obligations prohibiting sexual harassment, including the Convention on the Elimination of Discrimination against women (CEDAW) and EU law. The UK is a signatory to the Istanbul Convention (on violence against women) and legislation has been passed enabling the UK to ratify the Convention. National law varies across the different jurisdictions of the UK (Scotland, Northern Ireland, England, Wales), particularly criminal law and equality law.² The different jurisdictions across the UK have strategies on ending violence against women, some of which include sexual harassment.³

1.1. Sexual Harassment and Equality Law

Sexual harassment is defined in the Equality Act 2010 as unwanted conduct of a sexual nature which has the purpose or effect of violating the recipient's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.⁴ The Equality Act is a civil law that applies to workplaces, educational institutions and private clubs or associations.

1.2. Sexual Harassment and Criminal Law

There is no specific criminal law against sexual harassment. However, certain types of sexual harassment overlap with other criminal offences such as sexual assault. In addition, there are other criminal offences which cover certain forms of sexual harassment.

1.2.1 Protection from Harassment Act 1997

This law aims to protect victims of all forms of harassment, including sexual harassment and stalking. Specifically, it prohibits a person from pursuing 'a course of conduct' which 'amounts to harassment of another' and which they 'know or ought to know amounts to harassment of the other'. The maximum prison term is 51 weeks. The 'course of conduct' requirement means that a single incident of harassment is unlikely to come within the Act. An innovative feature of the Act is that it provides for a statutory civil remedy. This makes it easier for a victim to bring a claim for damages against a perpetrator.

¹ Thanks to Tara Beattie for her research assistance in producing this report.

² This commentary focuses predominantly on the law in England & Wales.

³ English strategy is available at: <https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>

⁴ [Equality Act 2010](#), section 26(2). This law does not apply in Northern Ireland.

1.2.2 Disclosure of Private Sexual Photographs or Films with intent to cause distress (including 'revenge porn') (Criminal Justice and Courts Act 2015, section 33)

This law was introduced to criminalise what is commonly known as 'revenge porn' where, typically, an ex-partner shares, without consent, private, sexual photographs or videos. While this law is a welcome recognition of the need to criminalise this form of harm, it is limited. It does not cover threats to share images, does not cover all forms of image-based sexual abuse such as 'upskirting' (see further below) and a conviction is only possible if it can be proven that the perpetrator had a direct intention to cause distress to the victim. The Scots law on this issue is far more progressive, covering a wider range of abusive behaviours.

1.3 Sexual harassment in context

1.3.1 Where does sexual harassment take place?

Education: In 2014, 59% of girls and young women aged 13-21 were subject to sexual harassment at school or in college, while one third of women experienced sexual assault on higher education campuses. A 2015 poll of the National Union of Students (NUS) found that 17% of respondents had been victims of sexual harassment during their first week of beginning university.

Workplace: In 2016, 52% of women stated that they had experienced some form of sexual harassment at work in the past 12 months. Within the UK armed forces, a 2014 report found that nearly four out of ten women had received unwanted comments or been exposed to sexually explicit material.

Online: Research has found that 49% of girls aged 11-21 state that they feel less able to share their views online because of a fear of online abuse. A 2015 Girl Guides survey showed that 70% of girls 13-21 felt that the increase in online pornography contributed towards women being treated less fairly; the vast majority of 17-21 year old females felt that it encouraged society to view women as sex objects (80%), and that it normalised aggressive or violent behaviour towards women (70%).

Cities: Three-quarters of women surveyed by ActionAid in the UK said that they have suffered public harassment or violence in cities.

Public Transport: In 2016-17, there were 1,448 sexual offences reported on trains, compared to just 650 incidents in 2012-2013, with the majority of reported incidents being from females aged 13 years and above.

1.3.2 Who are the victims?

Sex: Women and girls are most likely to be the victims of sexual harassment, with 64% of women in the UK being subject to unwanted sexual attention, and 35% to unwanted sexual touching. Men and boys can also be victims of sexual harassment with such experiences likely being under-reported.

Age: The End Violence against Women Coalition (EVAW) found that 85% of women aged 18-24 had experienced unwanted sexual attention in public places, and 45% had experienced sexual touching. In the workplace, the highest rates of sexual harassment are among women aged 18-24, 63% of whom had experienced sexual harassment (compared with 52% of women overall).

Race and religion: The Fawcett Society report that Muslim women suffer abuse and violence at disproportionately higher rates than the general female UK population.

Sexual orientation and gender identity: Stonewall, a leading UK LGBT+ rights charity, reported their concern that LGBT people are also at a higher risk of subjection to sexual harassment. They draw on the higher rates of sexual abuse, school bullying and cyberbullying that are present among young LGBT persons.

Disability: The Anti-Bullying Alliance point to the fact that children with disabilities and special educational needs are more likely to be subject sexual abuse in general.

1.3.3 Who are the perpetrators?

The majority of those perpetrating sexual harassment are men. A 2016 TUC Survey found that in nine out of 10 cases of sexual harassment in the workplace, the perpetrator was male; while Parliament's Women and Equalities Committee reported that boys are most likely to be perpetrators of sexual harassment in schools.

2. Policy Debates on Sexual Harassment

2.1 Should 'upskirting' be a sexual offence?

Upskirting is the practice where a photo or video is taken up a woman's skirt without her permission.⁵ With smartphones, it is easier and quicker to take and share upskirt photos than ever before and these images are often shared on specifically dedicated porn websites. Following [one woman speaking out](#) about her experience of upskirting at a music festival in the summer, there has been much public debate in England, Wales and Northern Ireland about why this form of abuse is not currently prohibited by the criminal law and whether the law should be changed.⁶

The current criminal law covers voyeurism, but this is defined as taking an image or video of someone in a private space (eg changing room or toilet) and does not cover public spaces such as public transport, supermarkets, shopping malls, where upskirting is often perpetrated. There is now a campaign to change the law, and the opposition Labour party has said it will support change.

2.2 'Revenge porn', 'upskirting', sexual extortion: all forms of 'image-based sexual abuse'?

The current law is piecemeal and only covers some types of online abuse and has failed to keep up with developments in technology. The law criminalises some forms of 'revenge porn' but not all abuse or threats, including where images are shared as a result of hacking, or for financial gain; nor does it cover upskirting. Further, the UK Government has so far refused to characterise these forms of abuse as sexual offences, meaning that victims are not entitled to anonymity in the media, and the seriousness and nature of the offending is not properly recognised.⁷ Increasingly, these different forms of abuse are characterised as all part of a

⁵ Clare McGlynn & Erika Rackley, 'Why "upskirting" needs to be made a sex offence' *The Conversation*, 15 August 2017 <https://theconversation.com/why-upskirting-needs-to-be-made-a-sex-crime-82357>

⁶ BBC News, 'Upskirting – how one victim is fighting back', 9 August 2017: <http://www.bbc.co.uk/news/magazine-40861875> Scots law does cover upskirting.

⁷ Clare McGlynn, 'Revenge porn is a form of sexual assault' *Huffington Post* 19 March 2017: http://www.huffingtonpost.co.uk/clare-mcglynn/revenge-porn_b_15441782.html

pattern of ‘image-based sexual abuse’.⁸ A review of this area of law, with new forms of criminal and civil redress, would help to better respond to victims’ experiences and help to bring about change.

2.3 Street harassment: a form of hate crime?

The everyday nature of sexist and racist street harassment is being challenged by women across the UK as they begin to recognise how pervasive it is and how much time is taken dealing with it. Research has shown how women underestimate how much effort they put into avoiding street harassment, and that this ‘safety work’ included: making decisions about routes home, making decisions about where to sit on public transport, using items of clothing, such as sunglasses or headphones, in order to create a ‘shield’ when in public and adopting certain facial expressions.⁹

Much of this harassment takes place on public transport. In order to tackle sexual harassment on public transport, the Leader of the Labour Party (opposition party) suggested in 2015 that women-only carriages could be introduced on public transport and another male MP said the same last month.¹⁰ Although such carriages are used in countries such as Japan and Mexico, the suggestions made by UK politicians have faced significant backlash. Those who oppose the idea are concerned that the policy would lead to a “normalisation of such attacks” and a restriction on the freedom of women in public spaces. It has also been seen as tantamount to admitting defeat in the battle for safe public spaces for women and girls.¹¹

Transport for London’s ongoing campaign, “Report it to Stop It”, aims to encourage individuals to report cases of sexual harassment on public transport. The campaign involved the release of a video in 2015, which was viewed more than 4 million times in one year. It is reported that 36% more people subsequently reported sexual harassment on Transport for London, and there was a consequent 40% increase in arrests.¹² Both the BBC and Hollaback! London have provided online mapping systems where women can report and see the precise locations where an incident of sexual harassment has occurred.¹³

Public debate is focussing on whether the police should treat street harassment and abuse as a hate crime. One police force has been doing so, with others considering further action.¹⁴ Not everyone agrees that making street harassment a criminal offence will improve the situation. More effective and longer-lasting are education and campaign programmes.

⁸ Clare McGlynn, Erika Rackley and Ruth Houghton, [Beyond ‘Revenge Porn’: The Continuum of Image-Based Sexual Abuse](https://claremcglynn.com/imagebasedsexualabuse/) (2017) *Feminist Legal Studies*, pages 1-21. See further <https://claremcglynn.com/imagebasedsexualabuse/>

⁹ Fiona Vera-Gray, [Have You Ever Wondered How Much Energy You Put in to Avoid Being Assaulted? It May Shock You](#) (21 September 2016, *The Conversation*). See also Fiona Vera-Gray, *Men’s Intrusion, Women’s embodiment – a critical analysis of street harassment* (Routledge 2017).

¹⁰ Jessica Elgot, [Shadow Minister Faces Backlash over Women-Only Train Carriage Idea](#) (23 August 2017, *Guardian*)

¹¹ See Andrew Sparrow, [Jeremy Corbyn faces Backlash over Women-Only Train Carriages Idea](#) (26 August 2015)

¹² See Ellie Violet Bramley, [Has Transport for London Found a Way to Stop You being Groped on the Tube?](#) (4 April 2016, *Guardian*).

¹³ Georgina Rannard and Will Dahlgreen, [Women 2016: A Weekend of Street Harassment, Mapped](#) (9 December 2016, *BBC Magazine*); www.ldn.ihollaback.org

¹⁴ End Violence Against Women, ‘Sexist/racist street harassment – a hate crime?’ <http://www.evaw.org.uk/sexistracist-street-harassment-a-hate-crime/>

2.4 Watching Pornography in Public: a new form of street harassment?

The ease of access to pornography from smartphones means that it is becoming more common to see people watching pornography in public, whether on the bus, in the library or local cafe. Recent debate in the UK focussed on whether this is a problem and, if so, what can be done about it.¹⁵

There are no specific laws against this, unless the person is harassing another, or causing a public nuisance.¹⁶ Free wifi services might have rules against watching pornography, but who is going to enforce them? But just because the criminal law has little role does not mean viewing porn in public is ok. Some have argued that it's another commonplace form of [street harassment](#), or [sexual harassment](#). People viewing porn in public know they are making others uncomfortable, or worse. Being subjected to porn in public (and sometimes it is not possible to avert your eyes, avoid the screen, or the noise) is being subjected to non-consensual sexual activity. While each of us does have rights to read, or watch what we like in public on our own devices, there are limits and those freedoms end when the actions impinge on the freedom of others. While the porn-viewer is entitled to privacy and freedom, as members of the public, we too are entitled to privacy in public, and to feel safe (and experiencing porn in public can feel threatening).

Ultimately, this is an issue about culture and attitudes and the need to shape a new sexual ethics. These debates give us the opportunity now to shape attitudes, ensuring that consent and respect shape our public and sexual lives.

3. Lessons from France and Denmark

3.1 France

Criminal offence: French law provides for a criminal offence of sexual harassment which sends a clear message that this conduct is unacceptable and harmful. It does not require repeated harassment to constitute the offence. Both of these changes, if introduced in the UK, would significantly change the law and help to ensure greater recognition of sexual harassment.

National campaign: The French national campaign is a positive sign of high-level Government commitment to eliminating harassment and violence against women. The private nature of much public transport in the UK would make such a national, Government-led campaign difficult. Transport for London has been active in challenging harassment on its public transport network.

3.2 Denmark

Government initiative against Digital Sexual Abuse: Impressive, comprehensive approach to tackling online abuse, covering education, policy, support, punishment. Many lessons including: recognition of non-consensual sharing and taking of images as a form of

¹⁵ BBC News, 'Is it ok to watch porn in public?', 14 January 2017: <http://www.bbc.co.uk/news/magazine-38611265>

¹⁶ Clare McGlynn, 'Watching Porn in Public: a modern form of street harassment?' *Huffington Post* 19 January 2017: http://www.huffingtonpost.co.uk/clare-mcglynn/watching-porn-in-public-a_2_b_14268708.html.

sexual abuse; vital role of education, including development of 'digital etiquette'; support initiatives to help victims.

Focus on criminal/penal sanctions: Important debate raised about whether a focus on criminal law and penal sanctions distracts from education, support and other policy initiatives. This has echoes in the UK which has a very high prison population and a dominant narrative that the only form of justice is criminal convictions and long prison sentences. Adopting new criminal laws is relatively easy for a Government, compared to committing resources to new policies, support and education. One option is to also include civil law claims in any new law, enabling a different form of legal redress (such as in UK Protection of Harassment Act and as recommended by some when considering new laws regarding image-based sexual abuse).

4. Conclusions

Sexual harassment is a form of abuse which predominantly affects women and girls. In the UK, there are laws covering many forms of harassment, including in the workplace, education institutions and some forms of online sexual abuse. Important initiatives have recently been taken by the UK Government, but more needs to be done. Denmark's new actions on Digital Sexual Abuse provide a valuable example of a comprehensive and holistic approach which might begin to tackle the many forms of online sexual harassment.