



Ministry
of Justice

Gweinyddiaeth
Cyfiawnder

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Women and Equalities Committee
House of Commons
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Dear Sarah,

CLARIFYING THE LAW ON INTIMATE IMAGE ABUSE

Thank you for your work on tackling intimate image abuse. We were both pleased to be able to come and give evidence to the Committee on this matter. Following this session, given the complexity of the landscape we wanted to write to make absolutely clear the legislation, powers and regulation in this area.

We hope this will support the development of your report on non-consensual intimate image abuse.

Criminal Offences

1. There are currently several different criminal offences which tackle intimate image abuse. Each jurisdiction in the UK has its own separate offences in this area.

Voyeurism – England and Wales

2. The offences of voyeurism are set out at section 67 of the Sexual Offences Act 2003 and criminalise the observing or **recording** of a 'private act' for the purpose of sexual gratification (as well as the operation of equipment to enable another person to observe that act), where the perpetrator knows that the victim does not consent to being observed or **recorded** for that purpose.
3. The Voyeurism (Offences) Act 2019 inserted a new section 67A (commonly known as the 'upskirting offences') criminalising operating equipment to enable the observation of, or the recording of, a person's genitals or buttocks (nude or covered with underwear) without consent or a reasonable belief in it, in circumstances where that individual's genitals or buttocks would not normally be visible (such as photographing up someone's skirt or kilt).

4. Each of the two offences has two alternative specific intent elements – where someone observes or photographs for the purpose of a) causing humiliation, alarm or distress, or b) sexual gratification. Section 67A was amended by the addition of an offence relating to criminalising operating equipment to enable the observation of, or the recording of a person breastfeeding without their consent or a reasonable belief in their consent, and with the same alternative specific intent elements as ‘upskirting’. This was added to the section 67A offence by the Police, Crime Sentencing and Courts Act 2022.

Sharing intimate images without consent – England and Wales

5. The offence of **non-consensually disclosing** private sexual images or videos with intent to cause distress was first created in the Criminal Justice and Courts Act 2015 (section 33); the Domestic Abuse Act 2021 added to this by introducing an offence of threatening to share the same. These were criticised by many stakeholders, including the Law Commission in its 2022 report “Intimate image abuse” as they were limited to images which were both “private” and “sexual” and required proof of an intention to cause distress. This meant that if a person acted without an intent to cause distress but for the purposes of sexual gratification, for example, their behaviour was not caught by the offence.
6. These offences were repealed by the Online Safety Act 2023 and replaced with **four new sharing offences** at section 66B of the Sexual Offences Act 2003 (commenced on 31 January 2024): (1) a base offence of sharing an intimate image without consent or reasonable belief in consent; (2) an offence of sharing without consent or reasonable belief in consent and for the purposes of sexual gratification and (3) an offence of sharing without consent and with an intention to cause alarm, distress or humiliation, and (4) an offence of threatening to share an intimate image.
7. The maximum penalty for the first offence is the statutory maximum for summary-only offences (currently six months’ imprisonment). The maximum penalty for the remaining three offences is two years’ imprisonment.
8. ‘Sharing’ is defined broadly in law as giving or showing an intimate photograph or film to a third party, or making it available to them, by any means. The offences apply to photographs and films that show, or appear to show, another person in an “intimate state” which means that it shows, or appears to show, that person participating or engaging in an act or doing a thing that a reasonable person would consider to be sexual; exposed breasts, buttocks or genitalia (including where they are visible through wet or transparent clothing; covered only with underwear, or are obscured to a similar or smaller degree than would be the case were they covered with underwear), or acts of urination or defecation or associated personal care. The law also defines ‘photograph or film’ as encompassing altered or fake photographs, so covers the sharing or threat to share of ‘deepfake’ images.

Police powers

9. Restoring trust and confidence in policing is a central part of our mission for government. We are committed to playing a more active role in policing to ensure officers have the right support, to significantly improve standards across the board and to ensure justice is delivered for victims. This includes ensuring policing have the right skills and training to respond appropriately to victims of VAWG, as part of our commitment to halving violence against women and girls in a decade.

10. VAWG is part of the Strategic Policing Requirement, meaning that forces must treat it as a national priority in the same way as terrorism and child sexual abuse and exploitation. We expect to see sustained work across policing to drive up standards and to ensure there is always a swift and specialist response to these appalling crimes. We know that these crimes are underreported, and we will take action to ensure victims coming forward get the response they deserve.
11. The College of Policing is also developing evidence-based guidance and training in handling and investigating non-contact sexual offences for first responders, call handlers, investigators and supervisors. This new learning module will cover some non-consensual intimate image abuse offences, with scenario-based exercises to help officers develop the right skills and attitude when responding to intimate image abuse.

Online Safety Act 2023

12. The Online Safety Act 2023 establishes a new regulatory regime for certain online service providers. These include search services and 'user-to-user' services. A user-to-user service covers services that allow content to be generated, uploaded or shared on the service by a user which can be encountered by other users. Services can be in scope of the OSA even if the provider of the service is based outside the UK. This is where it has links with the UK, including if they have a significant number of UK users, or if the UK is a target market or it is capable of being accessed by UK users and there is a material risk of significant harm to such users. The OSA imposes duties on these services, including a duty for service providers to **assess the risk** of harm arising from illegal content or activity on their service and to take **proportionate steps** to manage and mitigate those risks. This will include steps relating to the design and operation of the service (**'safety-by-design'**). It also includes systems to take 'illegal content' down (**'content moderation'**).
13. It should be noted that "*Illegal content*" is a new legal concept created by the OSA. It means content that **amounts to a relevant offence**. A "relevant offence" for the purposes of the OSA includes the offences listed as a 'priority offence' in Schedule 5,6,7 of the OSA and service providers are required to mitigate and manage the risk of the service being used to commit these offences. The four sharing offences mentioned above were added into Schedule 7 via statutory instrument in November 2024, and will come into effect alongside illegal content duties. Therefore, the risk assessment duties and safety duties in respect of priority offences will apply to those non-consensual sharing offences.
14. When making judgements about content in order to comply with the risk assessment and safety duties, the OSA requires service providers to do so based on all relevant information that is reasonably available to them. The approach is to consider – based on this reasonably-available information - whether there are reasonable grounds to infer that all elements necessary for the commission of an offence, including the mental elements, are present and satisfied, and that there are no reasonable grounds to infer that a defence to the offence may be successfully relied upon.
15. Content moderation systems and processes should be set up to take 'illegal content' down at least at the point this threshold is met. This is not a criminal standard. As above, the concept of 'illegal content' relates to the OSA regulatory regime and there are no criminal justice system implications for the user if their content is judged to be illegal content against this threshold.

Ofcom

16. Ofcom is the regulator under the OSA and has a duty to prepare codes of practice providing recommended measures which services may take in order to be deemed compliant with the applicable statutory duties. It will also produce guidance to assist providers with compliance. This includes guidance on how providers can make judgements about content, including intimate image abuse content. Ofcom published this 'Illegal Content Judgements Guidance' (ICJG) guidance on 16 December. It sets out more information about how providers should make judgements about illegal content, including intimate image abuse content. This includes guidance about "identifier features" which may indicate content is intimate image abuse content. It also includes information about defences.
17. Ofcom's guidance acknowledges that it is likely to be necessary for service providers to make illegal content judgements at scale, and that they will not be able to collect and assess all relevant contextual information, and that they will not necessarily have a complete understanding of the contextual circumstances pertinent to each individual piece of content.
18. The ICJG also makes clear that inferences about users' states of mind are likely to be relevant for judgements about IIA content. This differs from some other illegal content judgements, such as possessing or distributing indecent images of children or extreme pornography. For these offences, Ofcom's ICJG states that it will be reasonable for the provider to assume that the relevant state of mind requirement has been met by virtue of the image being posted or shared.

Deprivation Orders

19. Section 153 of the Sentencing Act 2020 (reproducing previous provisions which have been in force for many years) gives the court the power to deprive a convicted offender of property rights in any property which either has been used for the purpose of committing or facilitating any criminal offence, or which the offender intends to use for that purpose.
20. Where a person is convicted of sharing or threatening to share an intimate photograph, the Court would therefore have the power to deprive the offender of laptops or mobile phones used for committing these offences, or which the offender intends to use to commit further offences, as well as the images themselves. Section 153 also gives the Court the power to deprive an offender of property where the possession of the property is in itself an offence.
21. We do not have data on the use of deprivation orders in sentencing for intimate image abuse offences. Sentencing, including decisions on what orders to impose, is of course a matter for our independent judiciary, guided by Sentencing Guidelines which include information for judges on the orders which they can impose, including deprivation orders.
22. Judges are required to follow any guidelines which are relevant to a case, unless it is in the interests of justice not to do so, and to take into account representations made by the CPS at a sentencing hearing. CPS guidance sets out clear information for prosecutors on the availability of deprivation orders.

23. The Sentencing Council is currently reviewing their guidance on ancillary orders, including deprivation orders, to improve its clarity, accuracy and usefulness to sentencers. The consultation closed on 4 December.

Civil Remedies – England and Wales

24. There are a range of civil actions which could be taken in court against those who are perpetrating intimate image abuse. As with criminal offences, each jurisdiction in the UK has its own range of civil actions. Civil actions will involve incurring costs in terms of professional advice and bringing a court claim.
25. Defamation – claims could be brought where publication has caused serious harm to the reputation of the person who is the subject of the publication. Defamation actions could involve seeking an injunction from the court to prevent further publication.
26. Malicious falsehood – these claims are based on publication of a falsehood with malicious intent and are calculated to do damage. They often relate to harming the person's economic interests rather than their reputation.
27. Privacy – These actions are nearly always about competing rights (privacy v freedom of expression normally) and therefore are rarely a straightforward matter, unless specific torts of misuse of private information apply, or the deepfake image(s) in question depicted children or particularly intimate scenes.
28. Harassment – in addition to a criminal offence, this could also be a civil action. For this, the harassment would have to entail a connected course of conduct carried out by the same person(s) which causes the subject distress or alarm. The test is that the behaviour must be something that 'a reasonable person would think amounts to harassment'.

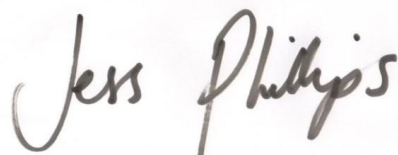
We would also like to reassure the Committee that we will deliver our manifesto commitment to ban the creation of sexually explicit deepfake images of adults in this session of Parliament. Our manifesto commitment is just the beginning, we are also considering whether further legislation is needed to strengthen the law around taking intimate images without consent, and we will write to you again with further details in due course.

Thank you again for your important work in this area, we look forward to the publication of your report in due course

Yours Sincerely



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