



Consortium for the Regional Support for Women in Disadvantaged and Rural Areas

Response to: Review of the Law on Child Sexual Exploitation – Consultation on policy proposals

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Enabling women into non-traditional employment

Foyle Women's
Information
Network



Women's Regional Consortium: Working to Support Women in Rural Communities and Disadvantaged Urban Areas

1. Introduction

1.1 This response has been undertaken collaboratively by the Women's Regional Consortium which is funded by the Department for Communities and the Department of Agriculture, Environment and Rural Affairs.

1.2 The Women's Regional Consortium consists of seven established women's sector organisations working in partnership with government, statutory organisations and women's organisations, centres and groups in disadvantaged and rural areas, to ensure women are given the best possible support in the work they do in tackling disadvantage and social exclusion.¹ The groups are as follows:

- ♀ Training for Women Network (TWN) – Project lead
- ♀ Women's Resource and Development Agency (WRDA)
- ♀ Women's Support Network (WSN)
- ♀ Northern Ireland's Rural Women's Network (NIRWN)
- ♀ Women's TEC
- ♀ Women's Centre Derry
- ♀ Foyle Women's Information Network (FWIN)

1.3 The Consortium is the established link and strategic partner between government and statutory agencies and women in disadvantaged and rural areas, including all groups, centres and organisations delivering essential frontline services, advice and support. The Consortium ascertains the views, needs and aspirations of women in disadvantaged and rural areas to influence policy development and future government planning.

¹ Sections 1.2-1.3 represent the official description of the Consortium's work, as agreed and authored by its seven partner organisation

1.4 The Women’s Regional Consortium appreciates the opportunity to respond to the Review of the Law on Child Sexual Exploitation – Consultation on policy proposals. We have focused on the up-skirting proposals contained within this consultation. Our colleagues in the children’s and victim’s sector are best placed to provide comments on the proposals to strengthen the law to protect children from sexual exploitation and abuse and we support their recommendations on these issues.

2. General Comments

2.1 Our response focuses on the Up-skirting proposals contained in this consultation document.² This is predominantly a women’s/girls issue as the vast majority of known cases of up-skirting involve males targeting females.

2.2 In Scotland up-skirting has been a criminal offence since 2010 when it was listed under the broadened definition of voyeurism.³ A recent campaign by Gina Martin who was up-skirted while attending a festival in London has led to legislation being passed to make up-skirting a crime in England and Wales from April 2019.⁴

2.3 There have been a number of cases involving up-skirting in Northern Ireland most recently involving a guilty verdict against a pupil who took covert up-skirt photos of two NASUWT teachers at a school in Fermanagh.⁵

2.4 There is currently no specific offence of up-skirting in Northern Ireland meaning that victims are likely to only have redress under a non-sexual offence such as breach of the peace, disorderly behaviour or outraging public decency. However these offences can only be prosecuted if the behaviour

² Paras 4.79 to 4.90 Review of the Law on Child Sexual Exploitation – Consultation on policy proposals, February 2019

<https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/consultation-review-law-child-sexual-exploitation.pdf>

³ Sexual Offences (Scotland) Act 2009

⁴ The Voyeurism Offences Act 2019

⁵ <https://www.nasuwt.org.uk/article-listing/nasuwt-welcomes-verdict-in-upskirting-case.html>

occurred in a public place and therefore will not cover all instances of up-skirting.

2.5 Pursuing complaints about up-skirting under non-sexual offences is problematic for victims in a number of other ways:

- (a) victims do not have automatic entitlement to anonymity;
- (b) perpetrators are not considered to have committed a qualifying offence for the purposes of obtaining a Sexual Offences Prevention Order/other civil prevention Order which could place restrictions on them to protect people from sexual harm.

2.6 There are limitations with the existing legislation leading to the potential for gaps where up-skirting incidents would not be considered an offence. For example, the offence of voyeurism only applies to filming of actions that take place in private while most up-skirting incidents take place in public places. The offence of outraging public decency usually requires a witness to the incident but most up-skirting incidents are not witnessed and the victim may not even know that they have been up-skirted. This potentially leaves some victims without access to justice on up-skirting.

2.7 Up-skirting, like stalking which also has no specific offence in Northern Ireland, is often seen as a 'hidden' crime with victims fearing that they will not be taken seriously by the criminal justice system. Gina Martin who campaigned on this issue had reported her up-skirting incident to the police but was told there was nothing that could be done about it. Responses to a 2017 survey on stalking⁶ showed that many police officers did not take the victim's experiences seriously and were dismissive, unless an 'actual crime' happened. Victims felt the police were too busy with 'more serious matters'. Many victims wanted 'low level' behaviours to be taken more seriously, rather than only considering the victim's situation to be serious if there was physical

⁶ Victim's Voices Survey 2017, Network for Surviving Stalking, 2017
https://www.scaredofsomeone.org/wp-content/uploads/NSS_Survey_Report_Final-2.pdf

injury. It is likely that victims may view up-skirting in much the same way as victims of stalking.

2.8 Given these factors it is difficult to get a complete understanding of the extent of up-skirting. Any analysis of the extent of the problem must rely on figures relating to the non-sexual offences listed above since up-skirting is not a specific offence here. Further complicating the identification of the scale of the issue is that there is likely to be a high level of under-reporting. The development of policy and law relating to up-skirting would benefit from a clear understanding of the nature and extent of this type of victimisation/harassment.

2.9 It is clear that legislation has failed to keep up with advances in new technologies and the advent of social media which makes it easier for perpetrators to both take and circulate up-skirting images. The legal framework around sexual harassment is piecemeal with a tendency for the government to be reactionary around new problems such as up-skirting when they hit the headlines.

2.10 We have concerns that the potential for receiving consultation responses from all interested parties on this subject may have been limited by placing these proposals within the Review of the Law on Child Sexual Exploitation. While we understand the point made at para 4.81 of this document that up-skirting can be committed against people of all ages including children we do not agree that it was best to consider this issue within the context of this consultation. We believe that the issue of up-skirting has been somewhat “hidden” within this wider Review.

Northern Ireland

2.11 We welcome the introduction of a specific criminal offence of up-skirting in England, Wales and Scotland but it leaves Northern Ireland in the invidious position of being left behind. The collapse of the Northern Ireland Assembly continues to hold up progress on a range of women’s issues.

Draft legislation on coercive control has not been passed and without a Minister in place new legislation on stalking will not be created. The consultation document states at para 5.3 that any proposed changes to the law on up-skirting “*will be subject to the decisions of an incoming Justice Minister. As they would require primary legislation, any such changes cannot be taken forward in the absence of the Executive and Assembly.*” It seems therefore that the introduction of legislation on up-skirting will be added to the growing list of women’s rights issues that cannot be progressed due to the lack of local government here.

International Recommendations on Sexual Harassment

2.12 There have been a number of recent recommendations from the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Commission on the Status of Women (CSW) which urge government to act on the issue of sexual harassment.

2.13 In its Concluding Observations for the UK Government the CEDAW Committee recently recommended that the UK: “*Continue to implement the recommendations of the Women and Equalities Committee contained in the report of October 2018 on sexual harassment of women and girls in public places*”⁷

2.14 The Women and Equalities Committee report on Sexual harassment of women and girls in public places⁸ showed that sexual harassment pervades the lives of women and girls. The Committee heard about a very wide range of experiences of sexual harassment including up-skirting. The report detailed the damage to victims of sexual harassment is far-reaching and experienced at a young age it becomes ‘normalised’ as girls move

⁷ Concluding observations on the eighth periodic report of United Kingdom of Great Britain and Northern Ireland, Committee on the Elimination of Discrimination Against Women, Para 41(b) https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGBR%2fCO%2f8&Lang=en

⁸ Sexual harassment of women and girls in public places, House of Commons Women and Equalities Committee, October 2018 <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/701/701.pdf>

through life. Sexual harassment is never acceptable, and women and girls should not be expected to endure it.⁹

2.15 The report recommended: *“Government should introduce a new law on image-based sexual abuse which criminalises all non-consensual creation and distribution of intimate sexual images, including altered images, and threats to do so. This should be a sexual offence based on the victim’s lack of consent and not on perpetrator motivation, and include an automatic right to life-long anonymity for the complainant, as with other sexual offences.”*¹⁰

2.16 The Commission on the Status of Women (CSW) is a UN Commission dedicated to the promotion of gender equality and the empowerment of women. In March 2019 it concluded its 63rd session with a strong commitment by UN Member States to safeguard and improve women’s and girls’ access to social protection systems, public services and sustainable infrastructure.

2.17 The Commission stressed that: *“sexual harassment in private and public spaces, including in educational institutions and the workplace, as well as in digital contexts, leads to a hostile environment, which has a further negative impact on women and girls in the enjoyment of their rights and equal opportunities, including full and equal access to public services and sustainable infrastructure, and has negative and physical and mental health consequences for the victims and may negatively affect their families.”*¹¹

⁹ Ibid

¹⁰ Sexual harassment of women and girls in public places, House of Commons Women and Equalities Committee, October 2018, Para 52

<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/701/701.pdf>

¹¹ Social protection systems, access to public services and sustainable infrastructure for gender equality and the empowerment of women and girls, Agreed Conclusions, Commission on the Status of Women, March 2019, Para 14

<https://undocs.org/en/E/CN.6/2019/L.3>

2.18 The Commission urged governments to bear in mind: *“the importance of all women and girls living free from violence, such as sexual and gender-based violence, including sexual harassment, domestic violence, gender-related killings, including femicide, as well as elder abuse;”*¹² As part of the Commission’s call to governments to take action on making infrastructure work for women and girls it urged governments to: *“explore appropriate ways to address any potential negative impact of new technologies on gender equality;”*¹³

2.19 The UK government also has obligations under other UN Conventions including Article 40 of the Istanbul Convention which relates to sexual harassment of women and girls: *“Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.”*¹⁴

¹² Ibid, Para 47(h)

¹³ Social protection systems, access to public services and sustainable infrastructure for gender equality and the empowerment of women and girls, Agreed Conclusions, Commission on the Status of Women, March 2019, Para 47(ccc)

<https://undocs.org/en/E/CN.6/2019/L.3>

¹⁴ Council of Europe Convention on preventing and combating violence against women and domestic violence

<https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>

3. Specific Comments

We have attempted to answer the specific questions asked in the consultation document on the issue of Up-skirting.

Q.9(a): Do you agree or disagree that there is a need to change the law to make up-skirting a criminal offence? If you disagree, please explain why.

Yes, we agree there is a need to change the law to make up-skirting a criminal offence in Northern Ireland.

Without a specific offence of up-skirting this issue has the potential to remain a largely hidden or even acceptable crime. The lack of a specific offence minimises the impact of up-skirting on victims as it fails to acknowledge the specific harms felt by victims. It can also lessen the seriousness of the offence and leads to the perpetrator's behaviour being diminished to a merely nuisance crime.

We believe the lack of a specific offence makes it more likely for up-skirting to reoccur as there is no explicit way of challenging this type of behaviour. The existing legislation under which up-skirting may be challenged (see general comments section) contains gaps which mean that some examples of this type of behaviour may not be able to be legally challenged. There should not be a situation where victims are deterred from complaining about these type of degrading acts.

By creating a specific offence of up-skirting and making it a criminal offence it sends out a powerful message that this form of harassment is unacceptable, that victims complaints will be taken seriously and that perpetrators of this crime will be properly held to account.

However while we would welcome the creation of a specific offence of up-skirting, laws are not enough to address the cultural acceptability of this

kind of sexual harassment. There is a wider societal view that “smaller sexual assaults” are not a problem and there is a need to change social norms around these issues. While the creation of a specific offence would set a precedent it does not change people’s opinions and there is still a lot of work to be done in creating narratives around the issue of up-skirting.

We believe that there needs to be further research on the prevalence of sexual harassment, including up-skirting, in Northern Ireland. This research should inform the work of government on the causes of sexual harassment and how to prevent it. This should include a more preventative approach including public awareness campaigns to tackle the societal attitudes that support sexual harassment.

We would also suggest that the creation of laws are not enough if they are not properly enforced. There is a need for training/education on this issue for all the criminal justice agencies involved so that there is widespread knowledge of the existence of this new crime as well as how it is enforced.

All the criminal justice agencies involved must properly understand any new legislation around up-skirting and its impact on victims. Services that do not adequately take into consideration the negative effects of up-skirting or that treat victims insensitively run the risk of re-victimising service users. It is important that complaints about up-skirting are treated seriously and that victims are fully supported through the process.

Q9(b): If you agree that up-skirting should be a criminal offence, do you agree or disagree with our proposal to achieve this by amending the existing voyeurism offence as per the law in Scotland and expected changes to the law in England and Wales? If you disagree, please explain why.

We agree that up-skirting should be a criminal offence and that this could be achieved by amending the existing voyeurism offence as per the law in Scotland, England and Wales. We understand, as suggested in the

consultation, that this would seem to be a sensible approach as it would use an existing legislative definition and would ensure consistency across the jurisdictions.

However we would recommend learning from the experiences in other jurisdictions particularly Scotland where up-skirting has been a crime since 2010. We note with concern some recent press coverage in Scotland highlighting the lack of prosecutions for up-skirting since the legislation was introduced.¹⁵

The Scotsman revealed an average of just 3.5 prosecutions a year since 2011. It concluded the explanation for the disparity between prosecutions and actual offences appeared to be that the design of the law is flawed. The Scotsman pointed to a number of loopholes in the law, for example, upskirting is only illegal in Scotland if the motive of the perpetrator is either sexual gratification or causing distress to the victim. The only person that can truly know the motivation is the offender and proving this beyond reasonable doubt may prove too difficult for police and prosecutors.¹⁶

As previously stated the creation of laws is not enough without enforcement. If enforcement is not working in other jurisdictions then lessons will need to be learned to ensure that any new laws introduced in Northern Ireland are as effective as possible.

4. Conclusion

Sexual harassment of any kind is not acceptable and women and girls should not be expected to endure this type of behaviour. Sexual harassment causes fear and affects women's behaviour and choices and restricts their freedoms. Research has shown that sexual harassment pervades the lives of women and

¹⁵ Leader comment: Scotland's upskirting law is not fit for purpose, The Scotsman, 9 August 2018 <https://www.scotsman.com/news/opinion/leader-comment-scotland-s-upskirting-law-is-not-fit-for-purpose-1-4780965>

¹⁶ Ibid

girls and is deeply ingrained in our culture.¹⁷ This has wider effects contributing to a culture where sexual harassment/violence can be normalised or excused.

Introducing a specific crime of up-skirting would be a step forward in challenging prevailing sexist attitudes and behaviours in society. We believe the creation of a specific offence of up-skirting would ensure that victims can effectively challenge these degrading acts and help to ensure that perpetrators are properly deterred from repeating this behaviour. However proper training and enforcement of new laws as well as wider preventative work on the cultural acceptability of sexual harassment must accompany any new legislation.

Government is continually catching up with the changing ways that modern technology and the growth in social media has facilitated sexual harassment of women and girls. There is a need for government to move away from being reactionary to the new/evolving problems posed by modern technology and be more forward thinking in responding to new forms of sexual harassment helped by these developments.

While we welcome this consultation and the possibility for new laws to make up-skirting a crime we are concerned about how it will be progressed given the collapse of the Northern Ireland Assembly. The collapse of the Assembly has stalled much-needed progress on a range of women's rights in Northern Ireland and we do not wish to see up-skirting being added to this growing list.

¹⁷ Sexual harassment of women and girls in public places, House of Commons Women and Equalities Committee, October 2018
<https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/701/701.pdf>