

**Written Submission of Evidence to the Women and Equalities
Committee inquiry into sexual harassment of women and girls in public
spaces**

by Dr Kim Barker and Dr Olga Jurasz

March 2018

Dr Kim Barker
Stirling Law School
University of Stirling
Scotland
kimberley.barker@stir.ac.uk

Dr Olga Jurasz
Open University Law School
Open University
England
olga.jurasz@open.ac.uk

Sexual harassment of women and girls in public spaces

1. We are responding to the call for evidence by this Committee on Sexual Harassment of Women and Girls in Public Spaces in our capacity as experts on social media abuse, and online misogyny. We have in the past made significant contributions to UN calls for evidence on online harassment, and to the Bracadale Review on Hate Crime in Scotland. In addition, we have made representations to the Scottish Government as to the need to amend legislation to cover a wider range of harassing and abusive behaviours online. We are in the process of completing a world-leading volume on Online Misogyny and Legal Regulation, due to be published later this year (2018) by Routledge. We have been working on issues relating to harassment of women and girls in online spaces since 2013. We are possibly your only evidence respondents that have experience of the wider issues surrounding online harassment, and who take a holistic approach to the legal problems posed by such harassment, merging criminal law, gender, human rights, and internet law expertise. As such, we have been encouraged to provide further evidence (as per below), which would supplement the other expert evidence provided. We would add that we are happy to give evidence orally to the Committee if this was of use. We are only commenting on the questions posed regarding preventing and responding to sexual harassment of women and girls in public spaces, with a particular focus on online sexual abuse.

Executive Summary & Recommendations

- The Government needs to recognize the Internet as a public space where various forms of online abuse, including sexual harassment, occur.
- The existing laws which are potentially applicable to online communications need to be better enforced across the spectrum of potential criminal offences. In addition, we propose that a new law addressing online abusive behaviour is created in order to fill the legislative gap created by the existing offences.
- There is a greater role to be played by social media platforms to curtail the phenomenon of online harassment, including online sexual harassment specifically.
- The law alone cannot resolve the issue of online harassment. Whilst we need to have better laws dealing with online abuse – and stronger enforcement – there is an important role to be played by education and challenging social attitudes – most notably combatting pre-existing gender stereotypes, and misogyny.

How should the Government tackle sexual harassment in public places?

2. This must begin with recognition by the Government of the Internet as a public space. Traditionally, perceptions of what is ‘public’ have tended towards environments where there is a physical presence which stretches beyond the immediate family home. This is no longer reflective of reality – social media platforms are accessible on practically any Internet-enabled device, meaning that traditional concepts of private spaces are vastly outdated, and now inaccurate. It is perfectly possible to be engaging with social media from your home, reaching a global audience of thousands of other people without being in a traditional ‘public’ space such as Speakers Corner, or a sports stadium. Use of the Internet for social networking purposes has risen from 47% in 2011, to 66% in 2017.¹ In addition, 78% of adults in Britain used the Internet ‘on the go’ in 2017 using a handheld or portable device,² with 90% of households in Britain having Internet access.³ 76% of all Internet users in the UK have a social media profile, and are increasingly using a wider range of social media platforms.⁴ Finally, the average time spent online by users of the Internet who have been active for 5 years or more averages 24.1 hours a week, with new users averaging 11.9 hours per week online.⁵ The Internet – and our uses of it – have changed the notions and boundaries of ‘public’. Public places are also no longer tangible, physical spaces and include the intangible, digital and virtual – but also the portable.

3. Understandings of sexual harassment must include *online* sexual harassment. Given that the Internet is a public space, understandings of the locations – and public spaces – in which sexual harassment can occur must be updated to include recognition of sexual harassment also occurring online. It is particularly prevalent on social media, and online interactive platforms. The scale and impact of online harassment on women and girls should not be underestimated. The 2014 FRA survey found that the risk of young women aged between 18 and 29 years becoming a target of threatening and offensive advances on the Internet is twice as high as the risk for women aged between 40 and 49 years, and more than three times as high as the risk for women aged between 50 and 59 years.⁶ Furthermore, the 2016 GirlGuiding Girls’ Attitudes Survey confirmed that 50% of girls and young women aged 11-21 think that sexism is worse online than offline, with a further 23% of respondents having had threatening things said about them on social media.⁷ The rise of such abuse not only

¹ Office for National Statistics, ‘Statistical Bulletin: Internet Access – Households and Individuals 2017’ (3 August 2017)

<https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/bulletins/internetaccesshouseholdsandindividuals/2017>, 9.

² Ibid, n6.

³ Ibid, n4.

⁴ OFCOM, ‘Adults Media Use and Attitudes Report 2017’ (June 2017)

https://www.ofcom.org.uk/data/assets/pdf_file/0020/102755/adults-media-use-attitudes-2017.pdf, 3

⁵ Ibid, n10.

⁶ EU FRA, *Violence Against Women: An EU-Wide Survey* (2014).

⁷ Girlguiding, ‘Girls’ Attitudes Survey 2016’, p.17 <https://www.girlguiding.org.uk/globalassets/docs-andresources/research-and-campaigns/girls-attitudes-survey-2016.pdf>.

undermines the ideal of an open, all-inclusive and participatory Internet but also unveils gender inequalities experienced in these online environments.

4. It needs to be recognized that online sexual harassment can take various forms, including both image-based sexual abuse (IBSA) (e.g. revenge porn) and text-based sexual abuse (TBSA). Whilst the law in England & Wales, and in Scotland, has introduced measures to address IBSA,⁸ online text-based abuse remains a lacuna in the current legislative framework. There have been a number of high-profile sufferers of text-based online harassment, including Tom Daley who was subject to abuse sent through social media in respect of his sexuality, but for which no criminal proceedings were pursued. He is not however, the only notable example – others include online abuse and harassment sent to prominent women. The landmark examples being those of Caroline Criado-Perez and Stella Creasy, both of whom were subjected to significant levels of harassment, including rape and death threats sent via social media platforms. So too, Gina Miller in the aftermath of her legal challenge to the Brexit referendum result.

5. The above cases, whilst not addressing online *sexual* harassment, illustrate a much broader problem with regard to establishing accountability, punishment and remedies for acts of online abuse. In the instances of Criado-Perez and Creasy,⁹ and Miller,¹⁰ criminal prosecutions were pursued but on the basis of communications offences rather than sexual harassment. In turn, the criminal sentences handed down in both cases were relatively light for the harassment inflicted, with the abusers of Criado-Perez and Creasy receiving custodial sentences no longer than 14 weeks. This evidences the lack of seriousness paid to instances of online harassment occurring in – what is now – a public space, be it sexual or not. This trend continues with the threats made to MSP Stewart Stephenson who was warned to avoid the same fate as Jo Cox MP. In the pursuant criminal proceedings,¹¹ the offender received a £2000 fine – no custodial sentence, and yet the preceding harassment had severe connotations. These sentences for death and rape threats, alongside less explicit abuse, are too low.

6. As a priority, there needs to be better enforcement – and *prosecutorial use* – of the full spectrum of existing criminal offences – the majority of which fall within the broad category of communications offences.¹² In addition to this, a new offence¹³ ought to be considered to operate where the threshold for criminal liability is too low to allow for a

⁸ Criminal Justice and Courts Act 2015 s33; Abusive Behaviour and Sexual Harm (Scotland) Act 2016 Part 1 s2.

⁹ *R v Nimmo & Sorley* (2014) (unreported).

¹⁰ *R v Viscount St Davids* (2017) (unreported).

¹¹ *PFA v William Curtis* (2018) (unreported).

¹² For example: Communications Act 2003; Malicious Communications Act 1988; Protection from Harassment Act 1997; Public Order Act 1986.

¹³ K Barker, O Jurasz, 'Submission of Evidence to Scottish Government's Independent Review of Hate Crime Legislation' (November 2017), available at:

<http://oro.open.ac.uk/52612/1/Hate%20Crime%20Legislation%20Review%20%28Barker%20%26%20Jurasz%209.pdf>, 7.

prosecution under existing criminal offences – many of which require the abusive or harassing communication or threat, to be ‘grossly’ offensive, and which therefore restrict the potential for prosecutions,¹⁴ and judicial redress.

7. Alongside better enforcement of existing laws, and the creation of a new law, the Government should also be working to implement its promised ‘Digital Charter’,¹⁵ focussing on the harms caused by online sexual harassment as well as harassment more broadly. This necessarily needs to include a greater educational emphasis; responsible social media training; and, measures to desexualise harassment. Ultimately, there is a requirement for leadership so as to ensure that there is a change in social attitudes. The Government should also be taking forward its Internet Safety Strategy¹⁶ but with a broader consideration – an assumption that making the Internet a safer place will equate to a reduction in sexual harassment online or a reduction in harassment online more generally is one which ought to be avoided. There is also a need for clearer guidance, and awareness raising initiatives concerning the point at which abuse and harassment becomes *sexual* harassment.

What are the police, local authorities or other bodies doing to tackle sexual harassment in public places? Who else has a role?

8. A range of actors, including (but not limited to) the police and social media platforms have a significant role to play in tackling online sexual harassment. However, due to the lack of monitoring requirements,¹⁷ the responsibility for reporting issues of online abuse to the relevant policing authorities rests largely on the individuals affected by such abuse. Despite the growing scale of online abuse on social media platforms, there have been only very limited efforts made by the police to respond to such forms of harassment, – effectively or otherwise – recognize the potential offence, or take it seriously. The experience of Stella Creasy MP reporting online abuse to the police further illustrates this point. When Creasy reported online abuse to the police in 2013, the police failed to act, which led to her describing the

¹⁴ Ms Marit Maij, Rapporteur of the Council of Europe Parliamentary Assembly Committee on Equality & Non-Discrimination, in her Report: ‘Ending cyber-discrimination and online hate’ Doc. 14217 (13 December 2016), para.32. <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNveG1sL1hSZWYvWDJILURXLWV4dHIuYXNwP2ZpbGVpZD0yMzIzNCZsYW5nPUVO&xsl=aHR0cDovL3NlbnFudGljGFJzS5uZXQvWHNsdc9QZGYvWFJlZi1XRC1BVC1YTUwYUERGlnhzbA==&xslparams=ZmlsZWlkPTIzMjM0>.

¹⁵ HM Government, ‘Digital Charter’ (25 January 2018) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/676715/2018-01-25_Digital_Charter_final.pdf.

¹⁶ HM Government, ‘Internet Safety Strategy: Green Paper’ (October 2017) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650949/Internet_Safety_Strategy_green_paper.pdf.

¹⁷ Under the e-Commerce Directive, Article 15.

police as “technologically illiterate”¹⁸ – a polite way of accusing the police of being either incapable of, or unwilling to, act.¹⁹

9. Providers and social media platforms have been engaged in discussions aimed at tackling forms of online abuse broadly, but these – to date – have proved to be ineffective and largely piecemeal when compared to the measures taken to, for example, tackle extremist content online.²⁰ Nonetheless, social media platforms – especially Twitter and Facebook – have an important role to play when it comes to curtailing such forms of abuse and should assume greater responsibility for identifying and reporting incidents of online harassment – especially where sexual harassment is concerned. Recognition of this is perhaps becoming more evident with Twitter’s calls for ‘Health Check Proposals’²¹ but again, this is not a solution. Initiatives such as introducing ‘mute buttons’ on Twitter²² allow individual users to determine themselves what to hide from their feed (including content which is potentially abusive, and potentially criminal). However, such measures merely result in *masking* the problem rather than effectively tackling it and, as such, allow for online harassment to reoccur. This leaves the victims of online sexual harassment in a precarious position whereby they are likely to be exposed to further abuse and also left with no support from the social media platforms – despite some initiatives to raise awareness of such abusive behaviours online.

Are more or different laws needed? Or do existing laws need to be better understood or enforced?

10. More laws or different laws are not necessarily the answer, nor the resolution. In many respects, the issues raised here are too complex to be resolved purely by changing the

¹⁸ K Lay, M Ahmed, ‘Online threats not taken seriously, MP claims’ (The Times, London, 31 July 2013).

¹⁹ The police’s inaction in relation to reports of online abuse and harassment stands however in contrast with the recent steps by some of the police forces in England to recognize misogyny as a form of gender-based hate. E Ashcroft, ‘Cat-calling and wolf-whistling now classed as gender-hate crimes by Avon and Somerset Police’ (Bristol Post, 16 October 2017) [https://www.bristolpost.co.uk/news/bristol-news/gender-hate-now-recognised-crime-](https://www.bristolpost.co.uk/news/bristol-news/gender-hate-now-recognised-crime-635194?utm_content=bufferf8757&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

[635194?utm_content=bufferf8757&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer](https://www.bristolpost.co.uk/news/bristol-news/gender-hate-now-recognised-crime-635194?utm_content=bufferf8757&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer); M Townsend, ‘Police in England and Wales consider making misogyny a hate crime’ (The Guardian, 10 September 2016) available at: <https://www.theguardian.com/society/2016/sep/10/misogyny-hate-crime-nottingham-police-crackdown>; Nottinghamshire Police, ‘Hate crime’ <https://www.nottinghamshire.police.uk/hatecrime>.

²⁰ EU Commission, ‘Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions: Tackling Illegal Content Online Towards an Enhanced Responsibility of Online Platforms.’ COM (2017) 555 <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-555-F1-EN-MAIN-PART-1.PDF>.

²¹ J B White, ‘Twitter seeks outside help to combat ‘abuse’ and ‘misinformation’ (The Independent, 1 March 2018) available at: <http://www.independent.co.uk/life-style/gadgets-and-tech/news/twitter-jack-dorsey-conversational-health-request-for-proposals-russian-trolls-abuse-a8235516.html>.

²² @ptr, ‘Another way to edit your Twitter experience: with mute’ (12 May 2014), available at: https://blog.twitter.com/official/en_us/a/2014/another-way-to-edit-your-twitter-experience-with-mute.html.

law. Ultimately, there are a wide range of existing offences on the statute book which *could* be better enforced in instances involving online sexual harassment. The challenge however, is that the spectrum for these offences is vast, wide ranging and far from coherent. Similarly, the enforcement and understanding of these laws requires one further element currently missing from the questions posed – and that is the prosecution of these offences under the legal provisions in place. Understanding of the applicable laws as well as specific characteristics of online (sexual) harassment by criminal justice entities is the first step, and enforcement by the relevant policing or regulatory bodies is also required. If, however, there is no consideration beyond enforcement, then it is futile to have better understanding or enforcement. The roadblocks imposed to prosecutions arise in the form of the public interest and evidential thresholds imposed by the relevant prosecutorial authorities – irrespective of the harm / evidence, unless (or until) there is a sufficient public interest, no prosecution will be forthcoming. Therefore, existing laws need to be *used*. Beyond this, there is a pressing need for a new law to operate at a lower threshold in order to encourage the enforcement of existing laws, especially where the threshold for prosecution is not met – a new law with a lower threshold could then be used.²³ Where however, the threshold under existing laws *is* met, those laws should be used.

11. The legislative framework needs to be much more straightforward than at present – it is currently too disparate and sporadic. It needs to be more responsive to the challenges brought by online communications – none of the current laws were enacted to deal with the challenges posed by new public spaces such as the Internet, and social media. As such, the existing laws prove to be problematic because they were never intended to deal with such behaviours. The legislative framework needs to allow for communications offences to be expressly used in instances of written or textual sexual harassment, in public spaces, and especially online. For instance, the Sexual Offences (Scotland) Act 2009 makes express provisions for criminal offences to be committed whereby a person sends written or textual sexual communications²⁴ encompassing harassment to another – a pressing problem in the context of social media. The impact of this can be seen in the recent case of Christopher Lyons, who has been required to register as a sex offender as a result of sending over 50 abusive, threatening, and sexually harassing messages through Facebook to his ex-girlfriend and her mother.²⁵ Whilst these criminal provisions are not perfectly suited to sexual harassment, when it comes to sexual harassment online, they indicate at the very least, awareness of the potential problem, and the seriousness of such harmful behaviours. More laws must be avoided unless they are necessary – over-legislating will not allow for enforcement nor understanding. Rather, greater clarity, consistency and modernisation of the legal framework(s) are required.

²³ *Op cit.* n13.

²⁴ s7.

²⁵ BBC News, 'Student sent rape threats to girlfriend and her mother' (30 January 2018) <http://www.bbc.co.uk/news/uk-scotland-glasgow-west-42872466>.