



End Violence Against Women Coalition and Faith and VAWG Coalition

Response to the Law Commission Consultation on Intimate Image Abuse

May 2021

About the End Violence Against Women Coalition

The End Violence Against Women Coalition is a UK-wide coalition of over 100 women's organisations and others working to end violence against women and girls (VAWG) in all its forms, including: sexual violence, domestic violence, forced marriage, sexual exploitation, FGM, stalking and harassment. We campaign for improved national and local government policy and practice in response to all forms of violence against women and girls, and we challenge the wider cultural attitudes that tolerate violence against women and girls and make excuses for it.

About the Faith and VAWG Coalition

The Faith and VAWG Coalition is a partnership of organisations lead by the Safety Across Faith and Ethnic (SAFE) Communities project at Standing Together. The Coalition brings together a range of organisations (Standing Together, Restored, Respect, Muslim Youth Helpline, Muslim Women's Network-UK, Jewish Women's Aid, Juno Women's Aid, Forward UK, Black Churches Domestic Abuse Forum, Latin American Women's Rights Service and Welsh Women's Aid,) and activists (Sara Hyde, Natalie Collins and Nikki Dhillon-Keane) supporting survivors from faith communities to reflect on how survivors and communities of faith can be better supported to end domestic abuse and violence against women and girls. The Coalition seeks to build bridges between members of Faith Communities or Faith-centric organisations and domestic abuse specialists and organisations within the VAWG-sector.

Introduction

Women and girls are subject to disproportionately high volumes of violence, sexualised abuse and hate online. This is known as 'online VAWG', a wide and growing set of harms, that includes intimate image abuse. Other forms of online VAWG includes but is not limited

to online harassment, the sending of unsolicited explicit images, coercive ‘sexting’, and the creation and sharing of ‘deepfake’ pornography.

Online VAWG, including intimate image abuse, should be understood as part of a continuum of abuse which is often taking place offline too. Research by Women’s Aid found that 85% of women who experienced online abuse from partner or ex-partner said that it was part of the pattern of abuse they also experienced offline.¹ Latest data on intimate image abuse showed that 82% of prosecutions were flagged as being domestic abuse-related, further emphasising how online abuse operates as part of the continuum of VAWG.²

Intimate image abuse against women and girls, and other forms of online VAWG, takes place in the context of gendered norms of popular culture that can reinforce harmful stereotypes and gender inequality. While data analysis in this area is still fairly underdeveloped, what is known is that women are 27 times more likely to be harassed online than men.³

Online abuse of women and girls is compounded with multiple forms of discrimination - intersecting with racism, homophobia and ableism, etc. [The Ripple Effect, Online abuse during COVID-19, Sept 2020](#) report by Glitch and EAW highlighted the extent of abuse women receive online and how Black and minoritised women are disproportionately victimised.

We are grateful to our members Imkaan, Angelou Centre, Jewish Women’s Aid, Welsh Women’s Aid, Restored, Natalie Collins and Nikki Dhillon-Keane for their expert insights in informing this submission. We are also grateful to Professor Clare McGlynn for sharing her expertise as well.

Executive Summary

The following are key recommendations that our organisations believe are necessary to tackle intimate image abuse against all women (we have limited our submission to our area of expertise as specialist VAWG membership organisations):

- A comprehensive definition of “intimate image” which ensures all women, particularly those otherwise minoritised and marginalised, have the ability to control the boundaries of their intimate lives, and have a right to ‘intimate privacy’. This would include:
 - Images of women that would be intimate according to their religious or cultural expectations. This should go beyond ‘religious attire’ but must account for contexts and environments that would make an image ‘intimate’. Any changes to the law must only come after consultation with the specialist Black and minoritised- led ‘by and for’ VAWG sector,

¹ [Women’s Aid Online and Digital abuse](#)

² ONS (25 November 2020) [Domestic abuse and the criminal justice system, England and Wales: November 2020](#)

³ Her Net Her Rights – Mapping the state of online violence against women and girls in Europe

- Sexual images,
 - Nude/semi-nude images,
 - Altered/deepfake images.
- A straightforward single offence – This would ensure that all intimate image abuse (including upskirting and downblousing) are covered by one offence to strengthen understanding and clarity.
 - No hierarchy of offences or victim-survivors – There should be no more ‘serious’ additional offence related to motivation of perpetrator as this does not accurately reflect the overlapping, shifting motivations of intimate image abuse perpetrators and would be inconsistent with most criminal law offences.
 - Automatic anonymity for all those reporting any form of intimate image abuse and further measures to protect complainants during any trial process.
 - The establishment of a regulator with powers to order social media and porn companies to take down images, as well as supporting and funding educational and preventative initiatives.
 - A holistic, public health approach to online VAWG – This would include sufficient resourcing of specialist VAWG services, with particular emphasis on ‘by and for’ Black and minoritised women’s VAWG organisations, as well as recognition of online VAWG in the forthcoming Online Safety Bill.

Chapter 6 - Definition of "intimate image"

How the law defines what is an ‘intimate image’ will determine the whole reach and scope of the law. The principles that should drive the development of defining an ‘intimate image’ should focus on protecting ‘intimate privacy’; This means one’s right to control the boundaries of our intimate lives, of our sexual autonomy and sexual expression, of what people know about our intimate experiences. This would therefore amount to power, control, choice and autonomy over our intimate lives; particularly important for women, specifically Black and minoritised women, women from faith communities, women who observe behavioural and religious modesty as part of their religious practice and other marginalised groups who are particularly subject to having their intimate lives scrutinised and subjected to abuse.

The definition must be broad enough to include the types of intimate images that when taken or shared without consent cause serious harm and trauma. But the law must also not be so wide as to include actions that while being wrong, unethical and very troubling, should not be criminalised.

Images included in the definition

- To this end, we agree with the Commission that an image which shows something that a reasonable person would consider to be sexual because of its nature; or taken as a

whole, is such that a reasonable person would consider it to be sexual should be included in the definition (*Question 1*).

- We also agree that the definition of intimate images should include nude and semi-nude images (*Question 2*).
- We agree that the ‘chest area of trans women, women who have undergone mastectomy and girls starting puberty’ should be included within the definition of an intimate image. This is vital as such images can be as harmful as the other forms of nude or sexual images included (*Question 3*).
- There should be no arbitrary distinction in the law between garments worn as underwear when there is an upskirt image. Which is why we agree that any garment that is being worn as underwear should be treated as underwear for this definition (*Question 4*).
- Nude or sexual images which have been slightly altered to supposedly make them acceptable to share, such as black strips across nipples, should also be included. This is vital to protect the sexual autonomy and privacy of victim-survivors (*Question 5*).
- We agree that the law should include images where the victim-survivor cannot be identified. This is the case in many US states and means that if the woman’s head is not included, for example, she is not covered by the criminal law. This would seriously limit the scope of the law (*Question 6*).

Images that are intimate within particular religious groups

We recommend that the taking, sharing and threats to share images of women that are intimate within certain minoritised and/or religious communities be included within the definition of intimate image abuse (*Question 10*). Such images can be understood as an attempt to control, subjugate and threaten victim-survivors by using, for example, (fear of) the shame associated with breaking perceived religious, cultural and faith boundaries, or by using faith and religion as a justification to pose for, send and share such images. Within a pattern of abuse offline, such intimate image abuse can be viewed as a tool of spiritual abuse.⁴

Spiritual abuse is a tool of power and control that can present as a form of domestic abuse and an exacerbating factor in physical, sexual, emotional, psychological and economic abuse, which uses religion, culture and faith systems to control and subjugate a victim-survivor. It is often characterised by a systemic pattern of coercive or controlling behaviour that can take place within a faith and or spiritual context. Spiritual abuse can have a deeply damaging impact on victim-survivors and is a recognised form of domestic abuse and will be in the forthcoming Domestic Abuse Act’s statutory guidance.

Additionally, these images, once taken and if doctored and/or shared would lead to a real and escalating risk of so-called “honour” based abuse, violence or killing.

We acknowledge the Law Commission’s concerns regarding knowledge and awareness of harm caused by such images among the general public and perpetrators of such abuse, however we question whether the public are not aware of the harm caused by such images and point out that the law itself plays a significant role in educating the public on the harm

⁴ Oakley, 2018

offences can cause even if this is not the case. Offences relating to stalking and coercive control are examples of where this has been the case.

We are concerned that the Law Commission's framing of this form of intimate image abuse focuses on attire. **We would recommend that any offence should not be limited to attire but take account of the context of images as this could be much more harmful for the victim-survivor**, for example - if a woman who does not drink in accordance with their religious or cultural norms is photographed with alcohol or outside a drinking venue. Similarly, Jewish Women's Aid, a domestic abuse charity led 'by and for' Jewish women, have advised that a picture of an orthodox woman eating at a non-Kosher restaurant would be much more harmful than one with her lower leg/ankle exposed, for example.

While we understand that there might be a concern regarding the risk of vagueness in the legal framing, however we believe that accompanying guidance with diverse examples would strengthen the understanding of such an offence among the public and ensure it is enforced properly. **We also recommend close consultation with the specialist led- 'by and for' VAWG sector** to ensure that the offence and any accompanying guidance properly reflects the experience of women affected by such abuse.

For reasons further detailed in our response to Chapter 10, we do not believe such images should only be included in the more 'serious' offence as this would create a two-tier system, requiring primarily Black and minoritised women to meet a higher evidentiary burden than other victim-survivors of abuse. **We recommend that there is no secondary more serious offence relating to motive which is very hard to prove.**

Chapter 7 - The Acts

We agree that the behaviour prohibited by the current voyeurism and "upskirting" offences should be combined in a single taking offence (*Question 16*).

It is important to recognise that 'downblousing', i.e. the taking of images, usually from above, down a woman's top in order to capture her bra, cleavage and/or breasts, often taken in public spaces can involve three different types of image:

- (a) An image of a woman who is voluntarily choosing to show some underwear and/or cleavage (though she may not be expecting to having images of her underwear/cleavage taken and/or shared);
- (b) an image taken down a woman's top showing partially exposed breasts and/or underwear (e.g.) from a balcony or standing position on public transport of a seated woman);
- (c) An image of a woman's breasts which exposes the breasts in a manner not of her choosing, such as if she was wearing a loose-fitting top and an image revealed her breasts as she bent down.

The current Law Commission proposals would include images (b) and (c).

We do not think downblousing requires a specific exemption in law. Downblousing images would fall within the nude or semi-nude requirement of an 'intimate image' and so would not require a specific exemption. Additionally, in cases of downblousing we think the general provision that images taken in public are only covered where there is a 'reasonable expectation of privacy' should apply. This approach would offer clarity and consistency. A specific exemption risks an assumption that all downblousing is covered which misleads the public, victims and criminal justice agencies regarding the scope of the law.

We agree with the Commission that it should not be an offence to possess an intimate image without consent, even when there was never any consent to possession. We believe that an offence focused on the taking, making and sharing of intimate images without consent is reasonable and would avoid unwarranted criminalisation of anyone sent an intimate image by accident and/or without their consent (*Question 18*).

Prevalence, motivation and harm related to making of intimate images without subsequent sharing, or threats to share (*Question 19*)

In *Shattering Lives and Myths* by Prof. Clare McGlynn et al.,⁵ a report on intimate image abuse based on interviews with victim-survivors, describes the 'profound social rupture' victim-survivors experience following intimate image abuse which can be described as:

- a significant devastation that drastically changed victim-survivors' lives
- an extreme, unsettling and intrusive violation
- victim-survivors distinguished their lives and sense of self into 'before' and 'after' their experiences

Quotes from victim-survivors below detail the harm experienced by the taking of intimate images without consent:

'It's an abuse of me and my body. It feels like it's sexual abuse' - Lucy

'It's still a picture of you ... it's still abuse' - Stakeholder working with victim-survivors

'It's a type of rape, it's just the digital version' - Deborah⁶

Such testimony highlights the need to locate intimate image abuse within the context of VAWG and the gendered norms of popular culture that can reinforce harmful stereotypes and gender inequality. Thus, it must be understood as a form of online sexual abuse. The key issue to understand therefore is the lack of consent for the taking, making, sharing or doctoring of images and the subsequent harm and violation this poses for victim-survivors, regardless of what the perpetrator seeks to do with the image thereafter.

For instances of sharing/threats of sharing intimate images victim-survivors experience this as:

- Life-threatening and paralysing
- Intense isolation from friends, family, the online world and society in general characterises many experiences

⁵ McGlynn et al, (2019) [Shattering Lives and Myths: A Report on Image-Based Sexual Abuse](#)

⁶ Ibid., p.3

- Abuse that is constant, ongoing and relentless; that shatters not only their lives, but also the lives of those who love and support them (*Question 22*).

McGlynn et al.'s research into key motivations of perpetrators of intimate image abuse can be summarised as control, misogyny and entitlement. Her research confirms that there is a strong relationship between image-based sexual abuse, domestic abuse and coercive control and other forms of VAWG.

It must also be noted that evidence suggests there is rarely a single, clearly identifiable motive for perpetrating intimate image abuse. Motives are overlapping, interconnected and also closely linked to overarching cultural attitudes of entitlement, dominant masculinity and power. Seeking to separate motives does not reflect the reality of these abusive practices and risks undermining our developing understanding of motives. It also risks minimising the reality of cultural attitudes around dominant masculinity and entitlement which underpin much image-based sexual abuse. It risks individualising motives and does not recognise that motives can (and do) vary and change over time. Introducing specific motive requirements risks the law becoming dated and ineffective as new harmful cultures and motivations emerge.

We agree with the Commission's proposals that the 'sharing' of intimate images should include:

1. sharing intimate images online, including posting or publishing on websites and social media platforms, sending via email, sending through private messaging services, live-streaming and sharing via file sharing platforms;
2. sharing intimate images offline, including sending through the post or distribution by hand; and
3. showing intimate images to someone else, including storing images on a device for another to access and showing printed copies to another (*Question 20*).

Altered/deepfake images

The Law Commission proposals acknowledge the harms of altered images and deepfakes and recommends including them within the definition of 'intimate image'. **We recommend supporting Law Commission proposal to include altered/deepfake images.** It is important that any forthcoming offences are 'future-proofed' as much as possible and take account of new and emerging forms of intimate image abuse. Therefore, we support the Law Commission's approach which also follows existing practice in Scotland and Australia for example (*Question 21*).

Chapter 8 - Without consent

We agree that the consent provisions in sections 74 to 76 of the Sexual Offences Act 2003 should apply to intimate image offences (*Question 23*). Consent and a woman's ability to control the boundaries of their intimate lives is the core issue of intimate image abuse. Furthermore, intimate image abuse must be understood as part of a wider continuum of VAWG that exists offline.

Chapter 9 - Proof of harm

We agree that proof of actual harm should not be an element of intimate image offences (*Question 24*). To require victim-survivors to provide evidence that they have been harmed by intimate images would compound the abuse, with potentially re-traumatising effects and might act as a barrier to reporting. To require proof that the particular victim-survivor experienced harm, would not cover all cases such as where harm manifests at a later date. This is an example of how online abusive behaviour against women mirrors abuse offline and so is why intimate image abuse must be seen as part of the continuum of VAWG and must draw on what we already know about the complexity, causes and consequences of VAWG.

Further, a prosecution should not be precluded on the basis that a particular victim-survivor did not suffer specific harms (or is unable or unwilling to testify), while many others would have done so.

Chapter 10 - Fault requirements

We recommend one comprehensive, straightforward offence of taking/sharing intimate images without the need to prove specific motivations of perpetrators (*Questions 27-31*).

We reject the Law Commission’s proposals for a more ‘serious’ additional offence requiring proof of specific motives as we believe this would create an unjustified hierarchy and would send the wrong message to both victim-survivors and those tasked with enforcement. Such proposals would suggest that some breaches of an individual’s sexual autonomy and privacy are more ‘serious’ than others, and so resulting in suggestions that some are not or are less ‘serious’. Additionally, we think this would make the law unnecessarily complicated that would require more complex understanding from police and prosecutors for a crime at a time when online VAWG already suffers from poor understanding and responses from criminal justice agencies.⁷ Any new law must be clear and have longevity.

The hierarchy of offences also risks sustaining a narrative and focus on ‘revenge porn’; that the ‘worst’ cases are those where malicious ex-partners take or share images. The creation of a hierarchy of offences risks undoing the work to educate the public that intimate image abuse happens in many different ways, for many different motives, and all of which are potentially seriously harmful. There is no evidence that victim-survivors experience more serious harm when the defendant acts with the specific purposes to cause distress, for sexual gratification or for financial gain (*Questions 28 and 29*). In fact, victim-survivors experience considerable harms when their images are taken or shared by those seeking to boost their social status, such as via private social media groups or by ‘collectors’.

⁷ McGlynn et al. op. cit., p.10

Furthermore, motives of perpetrators of intimate image abuse are in practice overlapping, interconnected and closely linked to overarching cultural attitudes of entitlement, dominant masculinity and power. Seeking to separate motives individualises intimate image abuse and does not reflect the reality of these abusive practices which can vary and change over time.

It is worth noting that there is no general requirement in the criminal law, including the vast majority of sexual offences to specify particular motives. Where there are criminal offences that might be considered hierarchical, they are based on different levels of harm (such as with assault offences), as opposed to motivations.

The core wrong of these offences is non-consent. Creating an offence that is more 'serious' if perpetrated for a specific motive undermines this key point. Public education and cultural change need to focus on challenging all non-consensual conduct, regardless of motives.

Chapter 11 - Intimate images previously taken or shared in public

Breastfeeding images

We recommend that consideration is given to specific proposals criminalising taking an image of a breastfeeding woman without her consent that are currently being debated (Question 33). We do not object to there being a provision in legislation that a woman automatically has a reasonable expectation of privacy where she exposes her breast during breastfeeding. However, there are concerns as to whether breastfeeding should be considered by the law to be an 'inherently private' act and not instead normalised as entirely acceptable in public. There is an additional risk, as with downblousing, that it is assumed that the legislation covers all images of breastfeeding which would mislead the public, victim-survivors and criminal justice agencies.

Sharing without consent images that have been previously shared with a 'closed group'

We recommend greater clarity in the law to ensure intimate images shared with a 'closed' group on platforms such as OnlyFans for a fee that are shared on without consent is criminalised (Question 34). The new law must include images originally shared (including for financial gain) to a specific group of people (even a large group).

Current law means that if someone shares an intimate image with their closed/private group of social media followers (as opposed to a fully public account), and the image gets shared on, this is only a criminal offence if it can be proven that the perpetrator intended to cause distress to the victim (which is difficult to prove and should not be such a determining factor).

There is a lack of clarity with the Law Commission's proposals regarding the above scenarios and whether sharing an intimate image with 3,000 Facebook friends, or 20,000 OnlyFans subscribers, is public or private.

Again, the core principle of consent and individuals' right to determine the scope of their privacy and therefore ability to constrain who sees intimate images is important here. We

agree that where images are shared with the public at large, it should not be a criminal offence to further share those images. However, we think the law needs to be clear that everyone has a reasonable expectation of privacy when sharing images with a closed/limited group of people, even if that is a large group, such as OnlyFans. Consent to sharing with a closed/limited group (even if large) does not mean consent to images then being further shared.

Chapter 12 - Threats to take, make and share intimate images without consent

Examples of where threats to take intimate images have been made, and where threats to make intimate images have been made without an accompanying threat to share the image (Questions 37 and 38)

McGlynn et al.'s research includes case studies of victim-survivors that experienced threats to share intimate images:⁸ *Liz: '... he just was not a nice guy and I think ... he was very controlling and manipulative. So, when we were going out ... he would jokingly say ... "If we ever fall out I can show people these photographs" ... And in hindsight now I realise that that is very controlling behaviour.'*

In the case of a victim-survivor of faith or from a faith community, the threat is often used to blackmail women, fearing the repercussions of shaming, dishonouring and disgracing their families and communities.⁹

These examples demonstrates how threats to share intimate images can be a form of coercive control.

We agree that it should be an offence to threaten to share intimate images to make the victim-survivor fear that the threat will be carried out, or where the perpetrator is reckless as to whether the victim-survivor will fear it being carried out (*Question 40*). We also agree that the same definition of intimate image should be used for sharing and threatening to share such images.

Chapter 13 - Reasonable Excuse

We agree that there should be a defence of reasonable excuse available for the examples given by the Law Commission, namely:

1. Taking or sharing the defendant reasonably believed was necessary for the purposes of preventing, detecting, investigating or prosecuting crime;
2. Taking or sharing the defendant reasonably believed was necessary for the purposes of legal proceedings;

⁸ McGlynn et al., op. cit., p.4

⁹ Muslim Women's Network, 'Unheard Voices - Sexual Exploitation of Asian Girls and Young Women' (September 2013)

3. Sharing the defendant reasonably believed was necessary for the administration of justice;
4. Taking or sharing for a genuine medical, scientific or educational purpose; and
5. Taking or sharing that was in the public interest (*Question 42*).

Chapter 14 – Conclusion

We endorse the Law Commission proposal to grant anonymity to all those reporting any form of intimate image abuse (*Question 43*). Automatic anonymity is vital in order to encourage victim-survivors to report their abuse and continue cases.

We also support Law Commission recommendations for further measures to protect complainants during any trial process (*Questions 44 and 45*).

Additional Comments

The following are additional recommendations to ensure all women who might be affected by intimate image abuse can access the protection and support they need:

- The concerns and lived experiences of Black and minoritised women need to be reflected in the development of intimate image abuse, **particularly with reference to religious/culturally intimate image abuse. We recommend further, detailed consultation with the specialist led ‘by and for’ Black and minoritised VAWG sector**, including experts in spiritual abuse.
- Research has shown that better resourcing is needed for specialist VAWG services to help victim-survivors get images and videos taken down and to provide long-term and specialist support. **We recommend that any legal change must therefore be accompanied by a commitment to increase and prioritise sustainable funding for specialist VAWG organisations**, including specialist organisations led ‘by and for’ Black and minoritised women who experience higher levels and distinctive forms of abuse.
- **We recommend that an effective regulatory organisation is established in the UK**, or tasked with powers such as those above to order removal of material(s), as well as supporting victim-survivors, enabling education and public information and overseeing effective regulation and enforcement.
- **We recommend a comprehensive public health approach to tackling online abuse**, including providing clear recommendations to employers on how to help ensure their employees are safe online, and publishing national guidance on digital safety.
- **The Government must commission research into impact of online abuse on women and Black and minoritised communities**, and that intersectional online abuse is reflected in the Online Safety Bill.

- **There must also be an acknowledgement of VAWG as a specific form of online harm within the definition of the Online Safety Bill.**

ENDS

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