



ENDING PUBLIC SEXUAL HARASSMENT: LEGAL BRIEFING

Plan International UK and Our Streets Now are campaigning to make Public Sexual Harassment a criminal offence. This legal briefing defines 'Public Sexual Harassment', explains the gaps in the current legal framework and demonstrates how a new law will effectively address this widespread problem.

WHAT IS 'PUBLIC SEXUAL HARASSMENT'?

We propose a new law that defines Public Sexual Harassment as unwanted sexual behaviour, actions or gestures, which could be verbal, non-verbal or physical, in public places. The term encompasses a wide range of behaviours that blight the lives of young women and girls in Britain today, and that are not protected or properly protected by the law.

'Public places' include any premises, highway or other place to which the public has access. It could be indoors or outdoors and either publicly or privately owned. Access could be gained by payment of money or other consideration or not. The definition of 'public place' is outlined further in the draft Bill. Sexual harassment also occurs online, but this brief and the Bill we have written address sexual harassment in offline life.

LIMITATIONS AND GAPS IN THE CURRENT LEGAL FRAMEWORK

The existing legal framework is fragmented, incomplete and disjointed. There is no piece of legislation that specifically protects the vulnerable from Public Sexual Harassment. The result is that many acts of abuse and sexually harmful behaviour fall through the legal cracks, despite the immediate and longer-term harm they cause to victims.

The best way to test whether the patchwork of antiquated laws on the statute book and at common law are effective against sexual harassment in public, is to consider the following scenarios. These are based on the numerous testimonies Our Streets Now and Plan International UK have gathered from young women and girls from across the country, as part of our research:

- A girl of 14, who is out on a walk during lockdown, has a series of sexual comments about his genitalia and her genitalia made to her by a 50 year-old man. She is not protected.

- A girl of 16 is approached and sexually propositioned by a man suggesting that he can grope her breasts and buttocks. She is not protected.
- A 15 year-old girl is out jogging and is slowly followed by an unmarked van. The van pulls alongside her in the dark and the driver makes sexually explicit comments to her about her body. As she jogs away he beeps the van horn repeatedly. She is not protected.
- Another girl is being leered at in a park by a man; she is wolf-whistled at, as she leaves, he cat-calls persistently and make sexual comments about her breasts and buttocks. She is not protected.
- A girl is walking home in her school uniform when two men approach her from opposite directions and corner her - she backs into an alley. They leer at her body, and ask her about her sexual experience, and say no one could do anything to them as she doesn't know who they are. She is not protected.
- A young woman is going to work on the Tube, using a strap as there are no seats. A man leans against her; he presses his body against her, although not with his or against her genitalia; but he invades her space and whispers obscene comments in her ear. She is not protected.
- A child is on the way to school. A man makes gestures that only she can see, imitating sexual acts. She is not protected.
- A 16 year-old girl has distressing pornographic images air-dropped to her iPhone. She is not protected by the law.
- A man approaches a 17 year-old girl and shows her sexual images on his phone. She is not protected.

This is happening countless times across our country. It is happening daily to some of most vulnerable young woman and girls. The numerous testimonies from women and girls we have worked with speak with unmistakable force and frustration about how their plight has not been recognised or taken seriously. They have been – and remain – unprotected.

It is evident from the above that the existing law in this area is a patchwork of offences that have evolved for different reasons, in different decades, and even different centuries. The result is that there are striking gaps in the protection afforded to women and girls in public. The incidents above fall through the legal cracks – and so does the distress and suffering of the victims. This cannot continue.

A NEW LEGISLATIVE SOLUTION

The table below includes examples of Public Sexual Harassment which are captured by the new Bill we propose. It outlines whether the behaviours are currently unlawful or not, and if they are unlawful, whether the related law is fit for purpose. Further explanation about how some laws are not fit for purpose is provided below.

Behaviour	Relevant existing law	Is the law fit for purpose?
Examples of non-verbal, non-contact harassment		
Leering or persistent staring	None	N/A
Following, persistent following, cornering, isolating	None	N/A
Sexual gestures	(Possibly) Outraging Public Decency – but requires more than one person being present ('two person rule') rather than acts confined to one person.	No – the requirement is for the behaviour to go 'considerably beyond the susceptibilities of, or even shocking, reasonable people' ¹
Exposure	Sexual offences Act 2003, s66	No
Examples of verbal harassment		
Sexual propositioning ²	None	N/A
Sexually explicit comments	None	N/A
Intrusive persistent questioning	None	N/A
So called 'catcalling' and 'wolf-whistling'	None	N/A
Examples of physical contact harassment		
Groping of genitalia, breasts, buttocks	Sexual Offences Act 2003	Yes – subject to the lack of confidence of young women and girls that the law takes it seriously, it being so much part of 'the way the world is'.
Kissing	Context specific – not necessarily covered	No
Stroking body; rubbing/pressing against (non-genitalia)	None	N/A
Examples of non-contact technology-enabled harassment		
'Air Dropping' unwanted illicit images to someone's phone (also known as cyber-flashing) ³	None	N/A
'Upskirting'	Voyeurism (Offences) Act 2019	Introduced in 2019; too soon to say.
Viewing or showing pornography in public	None	N/A

¹ *Knuller v DPP* [1973] AC 435

² It is an offence to incite sexual activity with a child, if the activity is penetrative: Sections 8 and 10, Sexual Offences Act 2003.

³ It is an offence to incite a child under 16 to look at an image of a person engaging in sexual activity: Section 12, Sexual Offences Act 2003.

WHY A NEW LAW WILL HELP END PUBLIC SEXUAL HARASSMENT

To end Public Sexual Harassment, we need a cohesive, proportionate, tailored law that will provide effective protection. Each of the examples above would be captured by the new law we propose. Having a specific offence, which is effectively a criminal code for the protection of women and girls in public, has immense value - both practical and symbolic.

Practical value: A purposely tailored offence has clear practical value. It provides focus for the police, prosecutors, judges and most importantly, the public. It is vital that the public recognises Public Sexual Harassment for what it is: harmful behaviour that is on the spectrum of violence against women and girls. If we are to change the behaviour of certain sections of the population and better protect women and girls, it is imperative that there is clear and unequivocal messaging that it is illegal.

As there is no law created to tackle Public Sexual Harassment in its entirety, the legal framework confuses both victims and law enforcement professionals. Our new Bill will provide clarification: law enforcement professionals will not have to consider whether the conduct should or should not be a criminal offence – which are acts of undemocratic, undelegated legislating. Instead, their task becomes simply seeing whether the conduct in question fits the clear legal definition.

Symbolic value and deterrent effect: We learned from the campaign in respect of FGM that it is vital to have a clear law: It provides victims with reassurance that their plight is recognised by the law. That symbolic value is incalculable: It makes it more likely that they will report the crime. The vulnerable understand that their situation is taken seriously – that the law is on their side. The law also has a deterrent effect; those who would commit such offences may think again if they knew their actions are criminal offences.

Long-term cultural change: Part of the role of the law is to set the standards of acceptable behaviour in society. At present, it does not fulfil this role in respect to Public Sexual Harassment. As a result, this harmful behaviour remains persistent in our society and relentless in the lives of most girls and young women. Young adolescent girls are learning that it is a 'normal' part of life, they often blame themselves for the harassment they receive, and they are limiting their own freedoms to try to avoid it. With the new law there will be no doubt that all forms of Public Sexual Harassment are not acceptable in 21st Century Britain.

We recognise that behavioural and cultural change are complex matters. They are multifactorial phenomena. But their constituent parts include clear messaging from the law that certain behaviour is not only socially unacceptable, but illegal. Of course, for legal intervention to be effective, it must go hand-in-hand with education. We propose, in parallel to the new law, an education campaign that will reset and recalibrate the conversation about the right of women and girls to have the equal right to enjoy public spaces. The law will help make public spaces significantly safer for 50 per cent of the population.

In this way, we will develop a protective mechanism that safeguards the vulnerable in public, in accordance with our Istanbul Convention obligations, that is proportionate and is fit for purpose in 21st century Britain.