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Rt. Hon. Alistair Carmichael MP
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POLICING AND CRIME BILL

You tabled a number of amendments to what is commonly referred to as the revenge porn offence at section 33 of the Criminal Justice and Courts Act 2015 (“the section 33 offence”). Unfortunately a lack of time prevented me from responding to your amendments during the debate on 13 June and I am therefore now writing to address your points and a number of others that were made during the debate.

Your new clause 46 sought to extend the protection of automatic anonymity to victims of the section 33 offence. Whilst victims can in some circumstances feel violated by the malicious disclosure of such images, the offence is not a sexual one. It does not require any element of sexual contact or sexual gratification and it does not attract sex offender registration. Alleged victims are not entitled to automatic anonymity in court proceedings as victims of a sexual offence are.

Transparency and open justice are fundamental aspects of the criminal justice system and witnesses’ names and details are almost invariably disclosed in court. In certain circumstances, however, the reporting of such information may be prohibited, and judges have discretionary powers to prohibit the naming of victims if their identification would adversely affect the evidence they provide. We do not consider that automatic anonymity is necessary or desirable in the case of revenge porn.

New clause 47 sought to make specific provision to enable a court to make a compensation order where the offender is convicted of the section 33 offence.

Sentencing in individual cases is a matter for our independent judiciary, taking into account all the circumstances of each case and the maximum penalty for the offence. The courts have significant powers to require offenders to pay back for the cost of their crimes, including compensation to victims. A compensation order may be imposed for any offence, as a sentence in its own right or as an ancillary order, in addition to another disposal.

Courts are obliged to consider making a compensation order in *all* criminal cases where personal injury, loss or damage has resulted, under section 130 of the Powers of the Criminal Courts (Sentencing) Act 2000. ‘Personal injury’ in this context includes mental injury and sentencing guidelines are clear that mental injury includes “temporary mental anxiety (including terror, shock, distress)”.

Therefore, it is unnecessary to make such an amendment, as courts are already taking compensation into consideration when sentencing for the section 33 revenge porn offence.

New clause 61 proposed to extend the revenge porn offence to include those who *threaten* to post or disclose private sexual photographs or films without the consent of the individual appearing in them and with intent to cause that individual distress. The section 33 offence rightly only deals with the act of disclosing private and sexual images as it is the actual disclosure of the images which causes the harm which criminalising this behaviour seeks to prevent. Threats to disclose could, depending on the circumstances, be captured by existing offences that tackle harassment, malicious communications or blackmail.

You also propose to target those who disclose such images with the intent to cause not only distress but also fear or alarm to the victim and to those who are reckless as to whether such disclosure would cause distress, fear or alarm. It is difficult for me to see what would be gained by including an intention to cause fear or alarm to the victim as distress is sufficiently broad a term for these purposes.

Your amendment also sought to make it possible for the offence to be committed recklessly as well as intentionally. The offence is targeted at those who deliberately seek to cause distress to victims through the dissemination of private and sexual material. This malicious intent – the ‘revenge’ element of revenge porn so to speak – is a key feature of the offence and I believe it would be wrong to dilute this by enabling the offence to be committed recklessly. Similarly, the proposal to extend the offence to those who knowingly promote, solicit or profit in relation to revenge porn material would shift the emphasis away from those who disclose the relevant images with malicious intent, the mischief which this offence is intended to address.

Finally, new clause 62 would significantly extend the range of material that could be considered sexual for the purpose of the offence by including images of a victim’s breasts or buttocks (whether exposed or not). Again, the offence is carefully drafted to capture material which is sufficiently sexually explicit that its dissemination would be likely to cause real distress to those depicted. The offence also provides that images that are photo-shopped, for example so that a non-sexual image of an individual becomes sexual, should not be covered by the offence as the disclosure of such an image, though still distressing, does not have the potential to cause the same degree of harm as the disclosure of images that record real private, sexual events. To change this, as proposed by your new clause 62, would I believe unjustifiably extend the scope of the offence.

During the debate, you also raised the issue of how the criminal justice system deals with victims of the section 33 offence. Special measures, set out in the Youth Justice and Criminal Evidence Act 1999, are well embedded in the criminal justice system to support vulnerable witnesses giving evidence. These measures include the use of screens, live-link, including from non-court locations, and the use of intermediaries to support communication. We also recently piloted pre-trial cross-examination, allowing vulnerable witnesses to be cross-examined before the main trial and for a recording of this to be played at the trial without requiring the witness to attend. The evaluation report of this will be published shortly. We have also committed to introduce measures to further increase the rights of victims of crime. Plans for this will be announced in due course.

Lastly, Sarah Champion MP also proposed that the Government conduct a thorough review of the effectiveness of the revenge porn offence which would consider the number of prosecutions and convictions and the suitability of the sentences given. The offence has been in place since April 2015 and in the period from then until the end of December last year there have been over 60 convictions. I believe that this is strong evidence that the offence is working well. However I think it is too soon meaningfully to assess its effectiveness and the way it is operating within the criminal justice system and believe that a review at this time would serve no purpose. In the normal way, the Criminal Justice and Courts Act 2015 will be subject to post-legislative review in due course.

I am copying this letter to Sarah Champion MP, Lord Rosser and Lord Paddick and placing a copy in the library of the House.



Karen Bradley MP