

Solace submission to Home Office consultation on creating an offence of public sexual harassment

About Solace

Solace Women's Aid (Solace) is the leading provider of violence against women and girls (VAWG) services in London and one of the largest single providers in the UK supporting around 30,000 survivors a year. Our services include refuges and other accommodation based services, community based services and prevention work with children and young people. We also run North London Rape Crisis Centre and are involved in several projects with partners supporting women with multiple and intersecting disadvantages and inequalities.

Our position on public sexual harassment

While our work tends to be with survivors of the most serious harms, it is rooted in intersectional feminist values and we recognise sexual harassment as a form of male violence against women and girls (VAWG). Public sexual harassment is on the spectrum of offences all of which limit the lives of every woman and girl and which create the conducive context for the most serious offences.

Police forces across the country and no more so than in London, as well as the wider criminal justice system have far to go to improve the experiences of survivors of domestic abuse, sexual violence and other forms of VAWG and the outcomes they see from reporting their perpetrators to public authorities. We recognise the limited resources of those systems and the risk of adding an additional legislative burden to them.

We also recognise and take seriously the risks of introducing a law that that could disproportionately criminalise Black and Minoritised men as a result of institutional and societal racism they are already targeted by.

In making our recommendation that a single standalone offence of public sexual harassment be created, we see it as part of the existing commitment the Government has made to make ending VAWG a strategic policing priority that therefore requires additional resourcing. We do so alongside our demands that the Angiolini inquiry into the Met's response to Sarah Everard's murder be made a public inquiry into institutional racism and sexism.

We also hear the voices of young women, including those we work with in schools and in the community, who are asking for more to be done to change the culture of casual misogyny and sexual harassment which breed acceptance of the kinds of behaviours reported by 'Everyone's Invited' in schools and universities across the country. We recognise the intersectional nature of sexual harassment experienced particularly by Black and Asian women, Muslim women, Disabled women, lesbian, bisexual, trans and queer women, and young women.

We therefore see this as an opportunity to send a strong public message about what constitutes sexual harassment in public spaces in the same way the Domestic Abuse Act has helped communicate that domestic abuse is not just about physical violence, to

empower women and girls subjected to harassment and bystanders to object and report it, and to demonstrate to perpetrators that there are consequences to unwanted sexual behaviour.

This must be done in parallel to tackling racism and misogyny within police forces and urgently improving the charge and conviction rates for reported rape, sexual violence and domestic abuse cases through improving victim and survivors' experiences of the criminal justice system.

We support the proposal put forward by the campaign group Our Streets Now in collaboration with Plan UK, of a new standalone offence which makes clear the definition of unwanted sexual behaviour and with examples of behaviours covered by the offence.

Answers to the consultation questions

1. How widespread a problem do you think that public sexual harassment is in this country?

Public sexual harassment (PSH) is widespread in this country. The majority of women and girls in the UK will experience this at some point, and it will often begin during their childhood. Research by Plan International UK in 2021 found that three quarters (75%) of girls and young women aged 12-21 have experienced a form of sexual harassment in a public space in their lifetime.

The research also found:

- 92% of girls and young women who consider themselves to have a disability have experienced PSH.
- 90% of non-heterosexual girls and young women have experienced PSH.
- 88% of mixed-race girls, 82% of Black, African, Caribbean and Black British girls, 75% of white girls and 70% of Asian and Asian British girls have experienced PSH.
- 81% of those who have experienced PSH have experienced it outside, 46% have experienced it in school, college or on university grounds, 37% have experienced it on public transport and 33% have experienced it inside a public building or facility.
- 62% have avoided doing something due to either experiencing or feeling worried about public sexual harassment, including exercise, socialising, hobbies, work and education.
- The impact on girls' wider rights is stark for lesbian, gay, bisexual or non-heterosexual girls (78%) and for disabled girls (83%).
- Only 26% of those who have experienced PSH have ever reported an incident to the police. Of those, 26% said the police took their case forward and dealt with it as a crime.

A separate study by [UN Women UK](#) supports these findings, and found that 71% of women of all ages had experienced some form of PSH in their lifetime, with the number rising to 84% among 18-24-year-olds.

2. Do you think that there should be a specific criminal offence of public sexual harassment?

- Yes
- No
- Don't know

3. If you do think that there should be a specific offence of public sexual harassment, would this be because (tick all that apply):

- It would criminalise behaviour which is not already criminal.
- It would raise awareness that these behaviours are illegal.
- It would prevent people engaging in these behaviours.
- It would encourage more people to report to the police.
- It would make the law on public sexual harassment clearer to police and others.
- Other (please specify)

Making a specific offence of public sexual harassment would also:

- Attract resources for prevention work such as working with young people in schools and colleges
- Empower victims to assert their rights clearly under the law
- Empower bystanders to intervene with clear reference to the law
- Contribute to cultural change in sending clear messaging from the law that this behaviour is not acceptable.

4. If you think that a new law would criminalise behaviours which are not already criminal, please specify which behaviours.

In 2020, Plan International UK, Our Streets Now and human rights lawyers undertook a legal analysis, setting out which behaviours that they categorise as public sexual harassment, would fall under existing legislation and which have no protection. Behaviours that are not currently adequately protected by the law include:

- Leering or persistent staring
- Following, persistent following, cornering, isolating
- Sexual propositioning
- Sexually explicit comments
- Stroking body; rubbing/pressing against (non-genitalia)

5. If you do not think that there should be a specific offence of public sexual harassment, would this be because (tick all that apply):

- There are already offences that address these behaviours.

- These behaviours should not be criminalised.
- These behaviours are better managed through non-legislative actions.
- It would bring other negative results (if so, please specify which ones)

Questions 6 – 13 would apply if there were to be a new criminal offence of public sexual harassment. We welcome responses both from those who do support and from those who do not support a new offence of public sexual harassment.

6. Would Option 1 be a viable model?

- Yes
- **No** (please specify why)
- Don't know

7. Would Option 2 be a viable model?

- Yes
- **No** (please specify why)
- Don't know

8. If you consider that both Option 1 and Option 2 would be viable models, do you think either option would be more effective? Please explain why.

- Yes (Option 1 would be more effective)
- Yes (Option 2 would be more effective)
- No
- Don't know
- **N/A – I do not consider that either Option 1 or Option 2 would be a viable model**

9. Do you think there is a better way to construct a public sexual harassment offence than either Option 1 or Option 2?

- **Yes** (please provide details of what such an offence could look like)
- No
- Don't know

As well as the behaviours themselves not being properly addressed, many of the offences covered by the existing legislation relied upon by the Government under the Protection from Harassment Act 1997 require a course of conduct, and the CPS has made clear that as there is no law criminalising 'catcalling' or 'wolf whistling' a one-off incident is unlikely to amount to an offence. This means that many one-off incidents are not properly protected by law.

Our Streets Now and Plan UK have worked with lawyers to develop a Public Sexual Harassment Bill to tackle this behaviour. This Bill is our recommended approach for tackling

public sexual harassment, as it would capture the highest number of unwanted behaviours and provoke the greatest behavioural and cultural shift across law enforcement and the general public.

However, in light of the Home Office's proposed approach of using the Public Order Act as the vehicle to tackle this behaviour, they have drafted a new proposed amendment. Whilst not as comprehensive this amendment would prove significantly more effective than either Option 1 or 2 and we support this alternative:

Intentional harassment, alarm or distress, including public sexual harassment

(1) A person (A) commits an offence under this section if—

(a) A uses any form of unwanted conduct of a sexual nature towards another person, or

(b) displays any writing, sign or other visible representation of a sexual nature, thereby causing that other person harassment, alarm or distress.

(2) No offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the person who is harassed, alarmed or distressed is also inside that or another dwelling.

(3) It is a defence for the accused to prove—

(a) that A was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or

(b) that A's conduct was reasonable.

(4) "Unwanted conduct" means as follows –

(a) "conduct": means any behaviour, action or gesture, whether verbal, non-verbal or physical or any combination thereof.

(b) "unwanted": means conduct that is not agreed to by choice, that other person having the freedom and capacity to make that choice.

(5) "Sexual" means conduct that a reasonable person would consider –

(a) obviously sexual, whatever the circumstances or any person's purpose in relation to it; or

(b) may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) is sexual.

(6) For the purposes of subsection (1) it does not matter whether or not A carried out the unwanted sexual conduct for the purposes of sexual gratification.

(7) For the purposes of subsection (1) and subsection (4), unwanted conduct may, in particular circumstances, include—

- (a) following a person;
- (b) making an obscene or aggressive comment towards a person;
- (c) making an obscene or offensive gesture towards a person;
- d) obstructing a person making a journey;
- (e) driving or riding a vehicle slowly near to a person making a journey.
- (f) persistent leering or staring at a person.

(8) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court, to a fine or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 1 year, to a fine, or to both.

10. Noting that the list of example behaviours in Option 2 is not exhaustive, do you think that it captures the most common types of public sexual harassment behaviour?

- Yes
- **No**
- Don't know

If No, which additional ones would you include?

- Someone purposely viewing pornography in front of you
- Cyber-flashing or airdropping
- Wolf whistling
- Being leered or stared at
- Being propositioned and/or receiving unwanted sexual proposals

11. Do you consider that any of the example behaviours in Option 2 should be excluded? If so, please state why.

- Following a person;
- Making an obscene or aggressive comment towards a person;
- Making an obscene or offensive gesture towards a person;
- Obstructing a person making a journey;
- Driving or riding a vehicle slowly near to a person making a journey.
- **None of them should be excluded.**
- Don't know

12. Do you consider that the maximum sentence included is the correct one? [Two years]

- Yes
- **No** (please state what you think it should be instead)
- Don't know

The higher level of sentencing on offer is not necessary. We would recommend a maximum 1-year prison sentence, a fine or both. The higher penalty is unnecessary and higher penalties can act as a deterrent to reporting.

13. Do you have any other comments on Options 1 and 2?

No

14. Do you think that introducing a new offence of public sexual harassment would have implications for the resources of the police and the criminal justice system?

- **Yes** (please provide further details)
- No
- Don't Know

We would like to see the introduction of the offence accompanied by a public awareness campaign. There would also need to be training for the police, CPS and judiciary and appropriate support for victims and as with any legal change, this would of course have wider implications for the resources of the police and criminal justice system which would need to be met for full and proper implementation of the legislation.

15. Do you think that the non-legislative actions which the Government and other statutory authorities have been taking to tackle public sexual harassment – as set out in section 2 of this document – are sufficient? We welcome answers both from those who think that there should be a new criminal offence of public sexual harassment and from those who do not.

- Yes

- No
- Don't know

16. If you think that those actions are not sufficient, which additional non-legislative actions do you think that the Government and other statutory authorities should take?

Because public sexual harassment is on a spectrum of offences of male violence against women and girls, it is imperative that all forms are tackled, and interventions and support are properly and sustainably funded. This includes funding for specialist and by and for services that support victims and survivors of all forms of VAWG. There is a current shortfall in funding for accommodation based and community based services for survivors of domestic abuse of an estimated £200m a year.

Migrant victims of VAWG including public sexual harassment are fearful of reporting to the police and other public services because of the risk of Immigration Enforcement. The Government should implement a firewall between the police and the Home Office to enable victims to report crimes whatever their immigration status to prevent immigration abuse.

The Government has not yet published its national perpetrator strategy, and when it does the strategy should include intervention and prevention work with men and young men who perpetrate public sexual harassment as well as more serious offences.

We would also recommend that the Department for Education works with schools to ensure that every school in England has access and funding to work with a local VAWG service and has access to expert provision of VAWG prevention education. The aim should be for an age-appropriate whole school approach that goes beyond relationships and sex education lessons and support teachers, non-teaching staff, governors and parents as well so that every member of the school community recognises and stands against harmful attitudes and behaviours.

17. In particular, are there any other non-legislative actions which the Government should take to tackle public sexual harassment which takes place in the night-time economy?

- Yes (please specify which ones)
- No
- Don't know