

## Why ‘upskirting’ needs to be made a sex crime

August 15, 2017 2.38pm BST



Gina Martin is fighting to change the law on upskirting. [@beaniegigi/Instagram](#)

It started with one woman, Gina Martin, being prepared to put her head above the parapet and say: this is unacceptable and should clearly be a criminal offence. Martin was a victim of the practice known commonly as “upskirting” – the taking of a photo or video up a woman’s skirt without her permission.

When the police told her there was little they could do, she started a campaign and petition, and now many members of parliament and police and crime Commissioners are calling for a change in the law. This is because, at the moment, English law does not cover most forms of upskirting.

### The current law

### Authors



**Clare McGlynn**

Professor of Law, Durham University



**Erika Rackley**

Professor of Law, University of Birmingham

The law on voyeurism was introduced in 2003 to capture “peeping toms” who, for sexual gratification, spy on people in private – such as in changing rooms or toilets. As upskirting mostly takes place in public – in supermarkets, on public transport, at music festivals – voyeurism does not apply.

Sometimes, prosecutors use the ancient law of “outraging public decency”, but the existence of this offence is little known to either police or victims. Nor does it capture all examples of upskirting – as seen recently in Northern Ireland where two teachers had photos taken up their skirts in the school classroom. The police took no action, saying the conduct was neither sufficiently public, nor private, for it to be covered by the criminal law.

This is clearly an intolerable legal situation that urgently needs reform. So, why has there been no change in the law before now?



**beaniegigi**  
BST Hyde Park

Follow



❤️ 221 likes    💬 4 comments

~~👤~~ You know when you and your sister just wanna have fun (Lauper style) and some disgusting awful men ruin it? Yeah. Well bollocks to them, were gonna scream-sing to Mr Brightside anyway. 🎤 ⭐ 🍸

JULY 9



One explanation is that the law struggles to keep up with changing technology: the ubiquity of smart phones now means that this offence is easy to perpetrate and the law just needs to catch up. This is true to an extent, but isn't the whole explanation.

In practice, this type of offending conduct hasn't been taken sufficiently seriously. Many people, including the Law Commission, have been recommending new laws to cover all upskirting for a number of years. But, until now, there has been no political will for change. And opportunities to reform the law have not been taken. When the law against "revenge porn" was introduced in 2015, it

could have covered upskirting. But it didn't, because the focus was only on the panic around "revenge porn" and the urgent need to be seen to "do something".

### **How should the law change?**

Upskirting and "revenge porn" are both forms of what's termed "image-based sexual abuse", namely the non-consensual creation, and/or distribution, of private, sexual images. So, rather than just thinking about upskirting in isolation, it needs to see it as part of a broader phenomenon where women (and it is mostly women) are subjected to forms of sexual abuse and harassment involving the taking and sharing of private sexual images without their permission.

From here, the necessary laws can be crafted to cover all forms of image-based sexual abuse including (but not limited to) voyeurism, upskirting, "revenge porn", sexualised photoshopping, and sexual extortion – a form of blackmail where sexual information or images are used to extort sexual favours from the victim.



**beaniegigi**  
London, United Kingdom

Follow



♥ 438 likes    💬 101 comments

I was targeted by a creep, who put his hand between my legs and took pictures of my crotch without me knowing. 📱😞 I gave the police the phone, the picture and the guy... and they closed my case. 📄 And told me that if I hadn't been wearing knickers they might have been able to do more. 👙👖👙 I started a petition to get him prosecuted and it now has 53,000 signatures. 👤👤👤👤 Now, the fight has changed. I'm campaigning to get upskirting listed as a Sexual Offence and I need your help. 💬♥📝 Sign the petition, share it with the women in your life and listen out, because soon i'm going to need your help to push our MP's to make a change. 🗳️🗳️🗳️ Let's do this, girls. 🗣️ What you're wearing should have nothing to do with how you're treated. You are NOT the stylist of your own abuse. 🙄🗣️ Link is in my bio. 👉👉👉

AUGUST 8



Such a law needs to focus on the harm to victims, not the motives of the perpetrators – voyeurism laws, for example, only apply where images are taken for sexual gratification. Similarly, “revenge porn” laws only apply where the perpetrator intends to cause distress to the victim. This creates a situation where if the image is taken to make money – by selling it to a website – no voyeurism offence has been committed. The same goes with “revenge porn”: if an image is distributed for sexual motivation, there is no offence.

## **A sexual offence**

Upskirting and all forms of image-based sexual abuse must be recognised – and treated – as significant sexual harm. Victims experience these as sexual assaults – the images are sexual, the abuse and harassment is sexualised. They threaten women’s sexual autonomy. So, any new upskirting law must be part of sexual offences legislation. And while we’re at it, the “revenge porn” offence needs to be amended so that it is also seen as a sexual offence.

This is important as it means the police and courts can take necessary action against perpetrators and all complainants are granted anonymity when making reports to the police – a vital measure to encourage victims to report and to protect them from further harassment.

It is clear then that a new law against upskirting is urgently needed – and there are good examples to follow in Scotland and Australia. Ultimately, there needs to be a law that not only deters perpetrators, but one that also protects victims and engenders cultural change. And it’s needed now.

 [Sexual harassment](#) [Sexual abuse](#) [Sexual assault](#) [Revenge porn](#) [sex crime](#) 

**We produce knowledge-based, ethical journalism. Please donate and help us thrive.  
Tax deductible.**

[Make a donation](#)