



## **WRITTEN EVIDENCE TO THE LAW COMMISSION IN RESPECT OF ITS CONSULTATION ON INTIMATE IMAGE ABUSE**

**May 2021**

### **Introduction**

1. Muslim Women's Network UK (MWNNUK) is a national Muslim women's organisation in Britain ([www.mwnuk.co.uk](http://www.mwnuk.co.uk)) that has been advancing equality, promoting women's empowerment and connecting voices for change for over 18 years. We are a small national charity (reg. no. 1155092) that works to improve social justice and equality for Muslim women and girls. Our membership also includes women of other faiths and of no faith, and men who support our work. We find out about the experiences of Muslim women and girls through research and our helpline enquiries, as well as through our online membership platform, the MWN Hub. We identify policy and practice gaps and use this information to inform decision makers in government as well as informing our community campaigns at a grassroots level.
2. We also develop resources and train and capacity-build women so that they are better aware of their rights, and feel empowered to exercise their own choices. We have a separate website for our national helpline (MWN Helpline: [www.mwnhelpline.co.uk](http://www.mwnhelpline.co.uk)) that provides advice and support on a range of issues including: domestic abuse, forced marriage, honour based abuse, sexual exploitation and abuse, female genital mutilation, intimate image based abuse and mental health matters. Our online membership platform (MWN Hub: [www.mwnhub.com](http://www.mwnhub.com)) is another means by which we share information and resources on a range of issues, and encourage Muslim women to share their views and opinions on contemporary issues (including proposals for law reform, such as the laws relating to intimate image based abuse) and engage with one another.
3. The impact of our work is particularly felt in reducing the vulnerability of Muslim women and girls, reducing the prejudice they face, and giving them greater access to rights and services – all of which allow them to contribute to society like any other citizen. We are also creating a critical mass of voices to influence change with more women being confident to challenge discriminatory practices within their communities and in society and to influence policy makers. To this effect, MWNNUK also acts as the Secretariat for the APPG on Muslim women.
4. Although we work predominantly with Muslim women and girls and will generally focus on the experiences of Muslim women within our Evidence, we wish to clarify that the points we raise may equally apply to non-Muslim women (and men). Additionally, we must make the point that the majority of our service users identify as Muslim BAME and as such, the points and recommendations made within this

Written Evidence are done so having taken into account the intersectionality of experiences of our service users and beneficiaries.

## Evidence

5. As the only national charity working with and providing a frontline service to Muslim women and girls in the UK, it is perhaps no surprise that our work also involves dealing with intimate image based abuse and advocating for changes in law reform to provide better support and protection to victims of abuse. It must be noted however that MWN Helpline cases which involve intimate image based abuse also tend to include other forms of abuse including risks of forced marriage, honour based abuse, forced hymenoplasty, rape, sexual abuse and sexual exploitation. The support we provide to our beneficiaries range from providing practical and emotional support, liaising with police officers, refuges, social workers and other key stakeholders, providing case work support, providing counselling services and if necessary, providing assistance through emergency funds.
6. Informed by our service users' experiences, we also raise awareness of the issues so that victims and potential victims are better aware of their rights and the support available to them (such as through resource production, workshops and outreach activities) and also campaign for change.
7. In June 2019 MWNUK published its latest research report, "Muslim Women's Experiences of the Criminal Justice System" (henceforth, "CJS Report") which highlights the issues and barriers faced by Muslim women when attempting to obtain justice, and the failings on the part of the criminal justice system. This includes limitations in the law. The issues, as highlighted in our CJS Report, are in our opinion disempowering victims and doing the opposite of what a world-renown criminal justice system (and its institutions) should be achieving and upholding. Whilst we will refer to our CJS Report at times within this Evidence, we recommend that our report is read in full so that you can understand the impact on women from minoritized communities and why it is imperative that any changes in law related to intimate image based abuse takes into account their experiences and needs. Please see the following link to access our report and hard copies can also be provided upon request:  
[http://www.mwnuk.co.uk/go\\_files/resources/Muslim\\_Women\\_and\\_Criminal\\_Justice\\_FINAL.pdf](http://www.mwnuk.co.uk/go_files/resources/Muslim_Women_and_Criminal_Justice_FINAL.pdf)
8. Additionally, we wish to draw your attention to our 2013 report, "Unheard Voices: The sexual exploitation of Asian Girls and Young Women" (henceforth, "Unheard Voices") which also contains information as to how intimate images can be used to trap South Asian victims of sexual exploitation:  
[https://www.mwnuk.co.uk/go\\_files/resources/UnheardVoices.pdf](https://www.mwnuk.co.uk/go_files/resources/UnheardVoices.pdf)
9. For the avoidance of doubt, any names referred to within this Written Evidence are pseudonyms and all case studies contained within this Evidence and our CJS Report have been anonymised.
10. We also wish to bring attention to the following MWNUK resources which include various facts, cases and statistics relating to the calls dealt with by our MWN Helpline which may be useful in your considerations:
  - a. MWN Helpline Evaluation 2015:  
[http://www.mwnuk.co.uk/go\\_files/resources/821325-MWN%20Helpline%20Evaluation%20Report%20\(Jan-Dec%202015\).pdf](http://www.mwnuk.co.uk/go_files/resources/821325-MWN%20Helpline%20Evaluation%20Report%20(Jan-Dec%202015).pdf)

- b. MWN Helpline Evaluation 2016:  
[http://www.mwnuk.co.uk/go\\_files/resources/169284-MWN%20Helpline%20Evaluation%202016.pdf](http://www.mwnuk.co.uk/go_files/resources/169284-MWN%20Helpline%20Evaluation%202016.pdf)
- c. MWN Helpline Evaluation 2017:  
[http://www.mwnuk.co.uk/go\\_files/resources/460507-MWN%20Helpline%20Report%202017.pdf](http://www.mwnuk.co.uk/go_files/resources/460507-MWN%20Helpline%20Report%202017.pdf)
- d. MWN Helpline Evaluation 2018:  
[http://www.mwnuk.co.uk/MWN\\_Helpline\\_Evaluation\\_2018\\_217\\_reportdownload.php](http://www.mwnuk.co.uk/MWN_Helpline_Evaluation_2018_217_reportdownload.php)
- e. MWN Helpline Evaluation 2019:  
[https://www.mwnuk.co.uk/go\\_files/resources/252174-Helpline%20Report%202019%20Final.pdf](https://www.mwnuk.co.uk/go_files/resources/252174-Helpline%20Report%202019%20Final.pdf)
- f. MWN Helpline Data Dashboard (please register to log in and access our Helpline data): <http://www.mwnuk.co.uk/muslim-women-helpline-dashboard.php>

11. We now respond to the questions of the Consultation as follows:

**Question 1: We provisionally propose that an image which: (1) shows something that a reasonable person would consider to be sexual because of its nature; or (2) taken as a whole, is such that a reasonable person would consider it to be sexual, should be included within the definition of an intimate image. Do consultees agree?**

12. We agree with this proposal and in noting the wording of section 35(3) of the CJCA 2015, would like to stress that it is very important that images which are not sexual by nature but which would be deemed sexual by a reasonable person should be included within the definition of intimate images so as to avoid any gaps in the law as to what is and is not going to be deemed an offence. Victims of intimate image based abuse, particularly Muslim women and girls, are already hearing far too often that their abusive experiences do not fall within the remit of criminal law and that they cannot be helped and we must do all to close the gap. In that vein therefore, we ask the Law Commission to consider the meaning of a 'reasonable person' and what factors would be taken into account when assessing the objective viewpoint of a 'reasonable person'. As has been noted within the Consultation Paper, MWNUK have previously raised with the Law Commission that interpretations of what may be deemed 'sexual' or 'intimate' will differ between minoritized communities, and the Muslim community in particular. Similarly, the impact of the taking and sharing of an image can depend on the personal, cultural and religious factors which may be at play. For example, at para. 6.41 of the Consultation Paper, reference is made to someone posing provocatively in underwear which would fall within section 35(3)(c); however, for a young Muslim woman, a photograph of her in the same pose but wearing a 'short' dress is likely to be deemed of a sexual nature too within the Muslim community. This is a point that we expand on further within our Written Evidence but nevertheless wish to raise at this stage that in adding the lens of a 'reasonable person', it is important to consider what it is that this 'reasonable person' test is able to take into consideration, and whether the range of cultural factors which may be involved can be taken into account.

13. To this effect, we would propose a broader definition of what may be deemed 'sexual' and in turn what may be deemed 'intimate'. We do appreciate the concerns around over-criminalisation, however we would like to make the point that the law reforms we are discussing all relate to situations where perpetrators are acting 'without consent' and without any reasonable belief in having consent. Ultimately we should be promoting a culture of consent where individuals do not simply take or share images of others without their consent, or having reasonable belief of the same. To put it bluntly, it is not that difficult to check first. We fully appreciate that mistakes can occur

due to genuine ignorance (for example, an individual may have uploaded a picture of a friend in a so-called provocative pose without realising that if their friend's family saw the picture then the friend could be in danger of honour based abuse) and we would certainly not wish to criminalise such individuals. However, we feel that a balance could nevertheless be struck by adding a further limb which expands the definition of a reasonable person to include a person equipped with the religious, cultural and personal understanding of the victim and the perpetrator would consider the image to be of a sexual nature. That is, would a reasonable person possessing the knowledge that the perpetrator does, consider the image to be of a sexual nature? An approach of this manner could then allow consideration of situations where for example, the victim has made clear previously that certain images would be deemed sexual or intimate due to cultural factors.

14. Ultimately our preference would be for a broader definition, as opposed to a narrow definition, but with sufficient safeguards in place so that genuine errors due to lack of understanding or ignorance are not criminalised.

**Question 2: We provisionally propose that the definition of an intimate image should include nude and semi-nude images, defined as images of a person's genitals, buttocks or breasts, whether exposed or covered with underwear, including partially exposed breasts, whether covered by underwear or not, taken down the depicted person's top. Do consultees agree?**

15. We agree with this proposal. It is especially important that images involving partially exposed breasts are covered and we agree with the Law Commission's proposal in terms of specifying that it relates to those images taken down the depicted person's top. We are aware of some concerns around the wording and that it has been argued that this means any photographs involving partially exposed breasts (such as wearing a low cut top) would fall within the remit of the offence. We disagree with this suggestion as we feel it is sufficiently clear that this relates to situations where an individual has actively sought to take pictures of partially exposed breasts as opposed to for example, taken pictures as part of a group selfie with others. Nevertheless, it would certainly be useful to ensure the laws are clear in this respect so that there are no unintentional consequences.

**Question 3: We provisionally propose that the chest area of trans women, women who have undergone a mastectomy and girls who have started puberty and are developing breast tissue should be included in a definition of a nude or semi-nude image. Do consultees agree? Do consultees think there are additional examples that should be included in a definition of nude or semi-nude?**

16. We agree. The harms remain the same and in fact may be exacerbated for trans women, for women who have undergone a mastectomy and for girls who have started puberty as they may be feeling particularly vulnerable and therefore the mental health impact may be compounded. For example, if pictures were taken of a young girl and she was then told that she could not be supported because her breasts did not fall within the legal definitions, this is likely to add to the mental distress she is already feeling and she would also feel let down by the criminal justice system. This could have a very disempowering impact on the victim. To this effect, we hope that the chest area of trans men is also included within the definition of a nude or semi-nude image.

**Question 4: We provisionally propose that any garment which is being worn as underwear should be treated as underwear for the purpose of an intimate image offence. Do consultees agree?**

17. We agree.

**Question 5: We provisionally propose that the definition of “nude or semi-nude” should include images which have been altered but leave the victim similarly exposed as they would be if they were wearing underwear. Do consultees agree?**

18. We agree.

**Question 6: We consider that images where the victim is not readily identifiable should not be excluded from our offences. Do consultees agree?**

19. We absolutely agree that such images should not be excluded. Whilst the victim may not be readily identifiable, there may nevertheless be indicative factors within the images by which they can be identified and simply blurring a face (for example) may make no difference. An example shared with us by a young Muslim woman was that pictures of her were taken whilst she was in her underwear and wearing a masquerade ball mask and although her face could not be seen, she was still identifiable due to various body marks. However, having to distinguish between readily identifiable images and those that are not is unfair to victims and ultimately, the victim knows it is their picture and that should be sufficient for the purposes of proving an offence. Ultimately there is always an element of mental health impact in such cases and therefore as harm is a given, we do not feel it is appropriate to allow any room for technical loopholes such as whether a victim is readily identifiable or not.

**Question 7: Can consultees provide us with examples of images depicting individuals in a state of undress, showering or bathing, where their genitals, buttocks and breasts are not exposed or covered only with underwear? Can consultees provide insight into the harm caused by the non-consensual taking or sharing of these kinds of images?**

20. There are sadly many examples where images have been taken of victims in a state of undress but not necessarily nude. This includes being in their underwear, being partly covered by a towel (whilst leaving the shower) or being in between clothes. It is very important to note the cultural factors involved in respect of such images and the consequences which flow thereon. For example, a MWN Hub member shared with us how her friend had attended a wedding and the perpetrator (another woman attending the wedding as a bridesmaid) had taken a picture of her whilst they were all getting changed; the picture consisted of her in a petticoat (therefore the lower part of her body was covered) and a bra and she was putting on a blouse. Whilst she was largely covered, this particular image was later used to suggest that she had been seen nude by the perpetrator’s brother and was ultimately pressurised into ending a relationship she was in (she was engaged to be married) and forced to marry the perpetrator’s brother to ‘save her dignity’.

21. In our opinion the harm caused by the non-consensual taking or sharing of such images is equal to that caused by other types of intimate images and therefore need to be treated with equal seriousness.

**Question 8: Do consultees think that images depicting individuals in a state of undress, showering or bathing, where their genitals, buttocks and breasts are not exposed or covered only with underwear, should be included within the definition of an intimate image?**

22. For the reasons referred to above in respect of question 7, yes. The fact of the matter is that at the very least mental distress will be involved in such cases and therefore the law should ensure that victims can be protected and supported in the event that images are taken and shared of them in a state of undress, showering or bathing (whether or not their genitals, buttocks or breasts are exposed or not).
23. Again we understand the concerns around over-criminalisation and note concerns that being in a state of undress could potentially cover situations where an individual is in a swimming costume or bikini. However other than situations where all individuals are in a public place (such as swimming pool or beach), why is someone taking pictures of another in a swimming costume or bikini without their permission? Someone may catch another individual in the frame when taking pictures of themselves or their family and friends in such public spaces but surely the photographs themselves would be indicative of whose photographs are actually being taken?

**Question 9: We provisionally propose that “private” images should be captured by a sharing offence as well as a taking offence. Do consultees agree?**

24. We agree with this proposal. Generally the sharing of images is what, in our opinion, causes the greater harm and we therefore feel it is necessary to ensure that they are included within the scope of offences.

**Question 10: We welcome consultees' views on whether and to what extent images which are considered intimate within particular religious groups should be included in intimate image offences, when the perpetrator is aware that the image is considered intimate by the person depicted.**

25. We very strongly feel that there needs to be an element in the provisions which take into account what may be considered intimate in particular religious groups, though we would wish to expand that we need to broaden the scope to consider cultural factors, as more often than not it is about culture rather than religion on its own.
26. We are aware of the concerns shared that it could be difficult to prove whether an image is intimate or not and there is the added concern of the risk of criminalising individuals who simply could not have known that an image could be deemed intimate for the victim or their family or the community the victim is from. Indeed we note that one of the difficulties is that the victim themselves may not consider an image to be intimate but they know that if shared with their family or members of their community, those individuals would view it as an intimate image. However, we feel this can be counteracted by focusing on the ‘knowledge’ that would have been held by the alleged defendant and whether, based on their knowledge and understanding of the victim, their family, community and culture, they knew that the image would be regarded as intimate. Therefore, if an individual was not aware and it could be reasonably ascertained that they could not be aware, then no offence will have been caused. In the cases we deal with, we generally find that the victims and perpetrators are largely of a similar cultural background or at the very least aware of the cultural factors involved. Whilst we appreciate that knowledge may be difficult to prove at times, it would not be impossible and we certainly do not think that it is correct to ignore the many women and girls from minoritized communities who are being abused and exploited and many of whom are resorting to self-harm, due to intimate image based abuse, where the image is deemed intimate within the confines of their community and culture.

27. Moreover we feel that those genuinely unaware that an image could be deemed intimate would in our opinion generally also take steps straightaway to rectify the situation; granted that the damage may have been done if an image had already been shared but such steps (trying to minimise harm to the victim) would be evidence that they did not know that the image was intimate and could cause any harm or distress to the victim.
28. We wish to stress at this point that there is a very serious risk of domestic abuse, forced marriage, honour based abuse, sexual abuse and mental health issues when considering the harms caused by intimate image based abuse. The consequences are too severe for this not to be given due consideration and we believe that with appropriate wording, it will be possible to ensure that victims from Muslim and other minoritised communities can be protected without over-criminalising innocent or ignorant mistakes.
29. In a case study shared in our CJS Report, both social services and the police failed to identify and take action in respect of a clear risk of honour based abuse in a matter where the potential victim in question had already once been forcibly sent abroad to Kurdistan by her parents after they had found that she had sent a sexually explicit photo to a man she had met online. After being allowed (by her parents) to return to the UK and attend college, she started a relationship with another male student – and her family threatened to kill her. Although the MWN Helpline reported the matter to social services and the police, the social worker seemed to believe that the parents were just being "protective", despite the threats to kill and having once already sent her to Kurdistan (where she was subjected to physical and emotional abuse). This case study is an example of how the disclosure of an intimate image can have long-lasting consequence for victims. Although this case did involve an image that would be deemed intimate without the need to take into account cultural factors, the fact of the matter is that the consequences she faced would be the same if the image was only deemed intimate by her family. This case study has highlighted how victims' voices can be ignored by criminal justice agencies and how the impact on victims of crimes are being disregarded. The CJS Report also highlights various instances where police failed to identify risks of forced marriage. It is imperative therefore that the Law Commission's proposals ensure that no victim is ever turned away and told there is nothing that can be done to help them when they seek support from criminal justice agencies.

**Question 11: Are consultees aware of any images “of a kind ordinarily seen in public” that should be excluded from the scope of intimate image offences (other than images of people kissing)?**

30. We must admit that this is a difficult question for us to answer because on the one hand, we do understand why images such as people kissing or hugging or even holding hands (which we feel are examples of images of a kind ordinarily seen in public) should be excluded. However on the other hand, these are the exact examples of images which can lead to a risk of harm for Muslim women and girls, which is why we are reluctant to want such images to be excluded from the scope of intimate image based offences. The consequences of any such images being circulated can be exceptionally severe and we feel it would be unfair to allow exclusions which could place victims from some communities at risk. We do note the counter-argument that where a victim is at risk of forced marriage or honour based abuse that other laws could be relied upon to support them, but why allow a matter to be escalated to that extent in the first place? Additionally, we are very aware of the range of hurdles involved in victims trying to seek support and protection in cases involving forced marriage (such as a reluctance to send their parents to prison) and

therefore we must remember that simply arguing there are other laws that could be relied upon is not sufficient because there may be a very high likelihood that the other laws will not be relied upon at all.

**Question 12: Do consultees think that there should be: (1) a “not ordinarily seen in public” element to intimate image offences; or (2) a list of images that should be excluded from intimate image offences, for example images of people kissing?**

31. Although we do fully appreciate the reasoning behind wanting to exclude images which would be ordinarily seen in the public, the issue we have is that unfortunately the term ‘ordinary’ is subjective and depends on cultural and other intersectional factors. Whilst images of people kissing may be considered ordinary for some sections of society, for others such an image would be precisely what would increase risks for Muslim women and girls as it would be considered an intimate image and would be evidence of being in a relationship. As such, there is a very real risk that by excluding images based on an overall majority view of what is ordinarily or not ordinarily seen in public, we will effectively be excluding victims from Muslim and other minoritized communities from being able to rely on these laws and ultimately allowing them to remain at risk of forced marriage and honour based abuse.
32. We fully appreciate that there is a much bigger issue at hand whereby it is important to change cultural attitudes so as to remove the stigma around being in a relationship outside of marriage (whether or not that is a sexually active relationship) as well as end the obsession with the concept of virginity, which is ultimately the reason why perpetrators are able to abuse victims from Muslim and minoritized communities. There is also a very clear need for greater education on healthy and toxic relationships. However such changes in attitudes will take a very long time and until then, we need to do all we can to ensure victims of abuse are protected, supported and able to access justice.

**Question 13: Are there any forms of “taking” that the current voyeurism or “upskirting” offences, or the taking offence in section 1 of the PCA 1978, fail to capture?**

33. Not as far as we are aware.

**Question 14: We provisionally propose that a taking offence should only include such behaviour where, but for the acts of the perpetrator, the image would not otherwise exist. Do consultees agree?**

34. We agree with this proposal and note the distinction that has been made between taking screenshots of ‘time-limited’ images, such as those sent to an individual via Snapchat, and a screenshot taken during a video call. We do wish to raise the query however, what if an individual has sent pictures via Snapchat and expressly told the recipient that they do not give permission for these pictures to be retained? It does feel morally incorrect that the message sent across is that this is acceptable in law. Whilst we fully appreciate the complexities that may be involved if the offence was extended to include ‘copying’, especially in potentially trying to establish reasonable belief in consent, we must make the comment that it is nevertheless necessary to promote consent around the subject of intimate images and therefore provisions need to be made to promote education of such issues, and also raise awareness of the intimate image abuse laws once they are in place.



**Question 15: Do consultees have evidence of, or a comment on the prevalence of, installing equipment in order to take an intimate image without consent, where the taking did not then occur?**

35. We do not have any specific examples of any cases where equipment has been installed for the taking of images but then the taking did not occur. However, we feel this is likely to be a possibility that is perhaps undisclosed or unreported (perhaps the perpetrators were testing to see if they are uncovered before taking any pictures or perhaps they pick and choose when they will take pictures?) and we do feel that perpetrators preparing to take intimate images without consent should also fall within the remit of the law. Whilst we appreciate that usually the 'act' is what is criminalised rather than mere 'intention', given the seriousness of the crime involved and potential consequences, we feel that preparation to take intimate images should also fall within the remit of the law. The sentencing provisions could reflect the fact that images were not in fact taken, though we must also consider the possibility that equipment may have been installed so that a victim thinks images have been taken of them. In such a case, the sentencing should reflect the harms inflicted upon the victim as a result of manipulating the victim into believing that intimate images of them had been created.

**Question 16: We provisionally propose that the behaviour prohibited by the current voyeurism and "upskirting" offences should be combined in a single taking offence. Do consultees agree?**

36. We agree. We feel it would be beneficial to victims and criminal justice agencies alike to have the offences combined and simplified in this way as this will help make the laws clear and in turn, will allow better consistency in implementation of processes. One of the key issues highlighted by our CJS Report in respect of hurdles faced by Muslim women when attempting to access the criminal justice system, was the lack of information or inaccurate or incomplete information provided to them by police and legal representatives. Therefore, it is very important to promote clarity within the law to avoid similar issues occurring.

37. We do wish to make the point however that the current voyeurism offences do include wider offences and those additional elements need to be retained too.

**Question 17: We provisionally propose that taking or recording an image of someone's breasts, or the underwear covering their breasts, down their top without consent ("downblousing") should be a criminal offence. Do consultees agree?**

38. We agree.

**Question 18: We provisionally propose that it should not be an offence to possess an intimate image without consent, even when there was never any consent to possession. Do consultees agree?**

39. We hesitatingly agree. We appreciate the concerns of over-criminalisation and understand that a 'fault' element is fair and necessary for such offences so as to avoid criminalising those who accidentally and/or innocently come into possession of images. However in our experience, we tend to find that perpetrators are very adept at finding loopholes by which to abuse and exploit victims and we hope that this does not also become the case in this instance. What if perpetrator A sent images of the victim to perpetrator B using whatsapp on a burner phone and then destroyed the phone so that it cannot be proven that perpetrator A sent the images, perpetrator B alleges that it was sent to them by an unknown party and perpetrator B is holding onto these images (and perpetrator A is using this fact to blackmail the victim)? In

that situation it may be difficult to bring charges against perpetrator A due to lack of evidence and unable to bring charges against perpetrator B due to lack of legal offence? What options would the victim then have?

40. We would certainly prefer to have at least a limited possession offence that covers situations where there was no consent and the individual to whom the image was sent to was aware of this fact; perhaps retaining the image despite being asked to remove or delete the image by the victim could be the point at which an offence is committed? As stated, we do agree with the proposal but would urge the Law Commission to consider any alternatives which may be useful to ensure protection for victims. At the very least, we would ask that this particular aspect is reviewed again soon after the laws are introduced so that organisations such as MWNUK can report back on any loopholes or other issues which may have been discovered after the laws are put in place.

**Question 19: We invite consultees' views on the following three questions: (1) How prevalent is making intimate images without consent, without subsequently sharing or threatening to share the image? (2) What motivates individuals to make intimate images without consent, without sharing or threatening to share them? (3) How, and to what extent, does making intimate images without consent (without sharing or threatening to share them) harm the individuals in the images?**

41. In our view, making intimate images without consent and without subsequently sharing them is very common and usually because a threat to share was made and the victim has complied with their demands which stopped the sharing. We are also aware of instances where intimate images have been taken and the victim has been informed of the same but there has been no sharing and no actual threat of sharing. However, we feel that in those situations there tends to be an implied threat, in that the perpetrator is subtly informing the victim that they 'could' share if they want to but without verbalising the threat. This appears to be the case in relationships involving domestic abuse and coercive control, where the perpetrator may be suspicious that the victim may be trying to leave the relationship and so there is an implied, non-verbalised threat of what could potentially happen if the victim were to decide to leave.
42. We also wish to make the point that ultimately, the making of images without sharing or threatening to share could be about asserting power and control on the victim, and distressing them because simply knowing that someone has images of you that you did not consent to can have a detrimental effect. On that note, whilst we appreciate that this may be outside the scope of the Consultation Paper, we do feel that there should be harsher punishment for perpetrators who are in a position of trust and abuse their power and authority to harm victims through intimate image abuse; this would include the likes of sports coaches but also spiritual healers and tutors.
43. Additionally, images may have been made (but not shared nor threats made to share) so that they can be used for sexual gratification.
44. As mentioned above, in our opinion the mere knowledge that intimate images exist and are in the possession of a third party that you have no control over (regardless of whether they are shared or a threat to share has been made) can have an adverse effect on an individual as ultimately they will be living in fear of these images one day being shared. Given that the consequences can be especially severe for Muslim women and girls, including risks of honour based abuse and forced marriage, the impact on mental health must not be underestimated. It is important to highlight that that self-harm can be very prevalent in such cases, as well as eating disorders.

Linked to this issue is the issue of Islamic only marriages, as where victims are in a marriage that is not legally recognised, they are at even more risk of harm where intimate images exist as their husbands could unilaterally divorce them on finding out about the intimate images and/or previous relationships and in such a situation (marital breakdown) a victim is unlikely to have much recourse to law. We appreciate that the subject of Islamic only marriages are outside the scope of this Consultation Paper but we raise this because it highlights the additional vulnerabilities that Muslim women may face and why it is important to ensure that these laws are fit for purpose and able to protect and support Muslim women and girls.

**Question 20: We provisionally propose that “sharing” an intimate image should capture: (1) sharing intimate images online, including posting or publishing on websites, sending via email, sending through private messaging services, and livestreaming; (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. Do consultees agree?**

**We invite consultees’ views on whether there any other forms of sharing, not outlined in the paragraph above, that should be included in the definition of “sharing”?**

45. We agree with the proposal and believe the different forms of sharing have been covered within the paragraph, though we would ask that a broad approach is taken to take into account any changes in technology in the future.

**Question 21: We provisionally propose that a sharing offence should include images which have been altered to appear intimate (e.g. images which have been photoshopped to appear sexual or nude and images which have been used to create “deepfake” pornography). Do consultees agree?**

46. We absolutely agree.

**Question 22: Can consultees provide us with examples, or comment on the prevalence, of: (1) images depicting sexual assault being shared with the person in the image; (2) intimate images that were taken without consent, or where the person in the image was assured that the image had been deleted, being shared with the person in the image; and (3) intimate images being shared with the person in the image by someone who did not take the image and was not originally sent the image with consent?**

**We invite consultees’ views as to whether there are there other examples of sharing an intimate image with the person in the image without consent, not included in the paragraph above, which should be criminalised?**

**Can consultees describe the harm that sharing an intimate image with the person in the image without consent can cause?**

47. We would refer you to our Unheard Voices report for examples of instances where images depicting sexual assault were shared with the victim within the image. It is sadly a very common tactic amongst sexual predators and grooming gangs to target vulnerable Muslim/BAME victims, rape and sexually assault them and film the whole ordeal and then share these with the victim as part of a threat that these will be shared further if the victim does not comply with their demands.

48. Other examples are as follows:

- a. The victim was a young Muslim girl of Arabic descent who was in a relationship that her family were not aware of, though she was hoping to tell her parents when the right opportunity came along. Her boyfriend had intimate images of her on his phone and the boyfriend stated that his mobile phone was picked up by one of his friends, by which the friend obtained access to the images. The friend then shared the images with her via social media and threatened to share these images further and expose her, which frightened the victim because she felt she would be at risk of honour based abuse if her father found out.
- b. The victim was a Muslim woman in her late 40s who was in a relationship with a man and had consented to intimate videos being taken. When the relationship ended, the ex-boyfriend shared the videos on Facebook using fake accounts. The victim was worried about the consequences of her family seeing the videos. Thankfully, with the help of the police and Revenge Porn Helpline, the videos were removed.
- c. A British Muslim women in her late 20s/early 30s had previously been in a relationship. When the relationship ended, she believed that all intimate videos of her held by her ex-boyfriend had been deleted but later found out that the video had been shared online onto a website, which the victim found out about through her a relative. Although the victim was able to have the video pulled down, she was frightened that it could have been shared on other websites and disseminated through social media and was frightened of her husband, children and family finding out.
- d. The victim was a married Muslim woman who, in the early stages of her marriage, had had an affair and became pregnant. When the boyfriend found out about the pregnancy, he ended the relationship and ended all contact with her. The husband believes the child is his and she has been happily married since. A number of years later, she found out from an acquaintance that an intimate video of hers was on a porn site. The victim contacted the ex-boyfriend wanting to know how the video ended up there and he responded saying that his phone had been stolen and perhaps the thief hacked into the phone and uploaded the videos. He then proceeded to suggest to her that since she had gotten in touch, he wants to start a relationship with her again and threatened her that if she does not have sexual relations with him then he will tell everyone the child is his and go to court to seek access/custody for the child. The victim was very frightened and contacted the MWN Helpline for advice, within which she said that she felt it might be easier to simply give in to his demands than risk being exposed because of the dangerous consequences she could then have to face.
- e. The victim broke up with her boyfriend after finding out that he cheated on her. During their relationship she had shared intimate images with him and after they broke up, she asked him to delete them which he said he had. However instead he shared them with his friend and both men then began threatening her to become their 'sex slave' or they would circulate her images. To prove they were serious, they uploaded images onto Instagram and then deleted it after she messaged them asking to do so. She was scared about what to do next as if her family found out, she was sure they would disown her for bringing 'shame' to the family.

- f. The victim was being contacted by some unknown men on Facebook who said they had intimate photos of her and were going to send them to her father. It transpired that one of the men was the cousin of her ex-partner. The ex-partner had photos and videos of her and it appears that he either shared them with his cousin, or his cousin somehow found access them and was now using them to threaten and harass the victim.

49. The level of harm that can be caused, especially for women and girls from Muslim and other minoritized backgrounds can be colossal. As well as the consequences of impact on their mental health, educational and employment prospects, they could be at serious risk of domestic abuse, forced marriage, forced hymenoplasty, forced to leave education and honour based abuse. They could also be disowned and ostracised, can find themselves homeless overnight and may also lead to self-harming and alcohol abuse. It can also lead to marital breakdown, as well as parental alienation due to children finding out and being bullied due to their peers.

**Question 23: We provisionally propose that the consent provisions in sections 74 to 76 of the Sexual Offences Act 2003 should apply to intimate image offences. Do consultees agree?**

50. We agree for the sake of clarity and consistency, though we must make the point that we do feel it is time to also review the consent provisions themselves and consider whether there is a need to have them updated. We appreciate however that this is beyond the scope of the Consultation Paper.

**Question 24: We provisionally propose that proof of actual harm should not be an element of intimate image offences. Do consultees agree?**

51. We agree and wish to add further that there will always be actual harm involved because there will at the very least be an impact on an individual's mental health which must not be ignored.

**Question 25: We provisionally propose that any new offences of taking or sharing intimate images without consent should have a fault requirement that the defendant intends to take or share an image or images without reasonably believing that the victim consents. Do consultees agree?**

52. We agree.

**Question 26: We provisionally propose that it should be an offence for a person D intentionally to take or share a sexual, nude, semi-nude or private image of V if — (a) V does not consent to the taking or sharing; and (b) D does not reasonably believe that V consents. Do consultees agree?**

**We invite consultees' views as to whether there are examples of behaviours which would be captured by this provisionally proposed offence, taking into account our provisionally proposed defences, which should not be criminalised?**

53. We agree with this proposal and the comments shared at 10.59 of the Consultation Paper. Whilst we do fully appreciate the concerns around over-criminalisation, fact of the matter is that intimate image based abuse is a very serious form of abuse that can have devastating consequences for victims and therefore (without of course inadvertently criminalising otherwise innocent situations) it is important to place the voices of victims at the heart of the proposals and consider the best way to support and protect them.

54. We also wish to make the point that the key word in the proposal is 'consent'; ultimately, we should be encouraging all persons to be acting with consent and it really shouldn't be that difficult to obtain consent before taking or sharing a sexual, nude, semi-nude or private image (and the Law Commission has of course already considered some reasonable excuses in this regard). Therefore, whilst we do appreciate the risk of over-criminalisation, perhaps this is an opportunity to change attitudes within society as a whole and encourage healthy, consensual interactions and relationships.

**Question 27: We provisionally propose that it should be an offence for a person D intentionally to take or share a sexual, nude, semi-nude or private image of V if — (a) V does not consent; and (b) D does so with the intention of humiliating, alarming or distressing V or with the intention that D or another person will look at the image for the purpose of humiliating, alarming or distressing V. Do consultees agree?**

55. We absolutely agree with this proposal and we urge the Law Commission to ensure that the provisions include consideration of the intersectionality of experiences and take into account the cultural factors which can exacerbate the harms for victims who are from Muslim and other minoritized communities. We hope that a broad approach is taken to the meaning of humiliating, alarming and distressing not just for the benefit of Muslim women and girls but for all victims because we believe that in every instance, there will at the very least be a mental health impact on the victim which must not be overlooked at any cost.

**Question 28: We provisionally propose that it should be an offence for a person D intentionally to take or share a sexual, nude, semi-nude or private image of V if — (a) V does not consent; (b) D does not reasonably believe that V consents; and (c) D does so with the intention that he or a third person will, for the purpose of obtaining sexual gratification, look at the image of V. Do consultees agree?**

**We invite consultees to provide examples where D intentionally shares an intimate image of V without V's consent for the purpose of obtaining sexual gratification (whether for themselves or another).**

56. We agree with the proposal that it should be an offence to take or share intimate images for the purposes of sexual gratification where the victim does not consent and there is no reasonable belief that the victim consents. An example that was shared by an MWN Hub member was where the perpetrator was the brother in law of the victim and had, unknown to the victim, taken pictures of the victim whilst she had been staying at his home for a few days and was undressing. She does not know how the pictures were taken and did not know about them for some time and eventually found out because the brother in law informed her that he had photographs of her that he masturbates to. This was in the context of the brother in law beginning a campaign of sexual harassment and abuse and trying to coerce her into having sex with him, using the photographs as blackmail. He also said that he would tell everyone they were having an affair already and that that is how he took the pictures and told her that she might as well agree with him because he will be the one that is believed and she would be disowned by her family. This particular victim was brave enough to tell her parents of her ordeal and it transpired that the perpetrator had also been assaulting the victim's sister (the perpetrator's wife). The point we wish to stress therefore is that in a number of instances, the taking or sharing of intimate images may have initially been for sexual gratification but can then escalate to be used for sexual exploitation and lead to rape and sexual abuse.

**Question 29: We invite consultees' views as to whether there should be an additional offence where the intent is to make a gain.**

57. We absolutely agree that there should be an additional offence where there is the intent to make a gain, though we would like to stress that whilst the Consultation Paper discusses financial gain in this context, there are other forms of gain (including direct and indirect financial gains) and therefore we would ask that the definition of gain is kept broad to encompass all possible scenarios. As well as seeking financial gain in the form of money or gold (and similar expensive items) from victims, the financial gain can be in the form of sexually exploiting the victim in return for money (please see case study 30 of our Unheard Voices report which provides an example of a victim who was forced to have sex with a number of men) as well as using victims as drug mules and also forcing victims into marriage (to facilitate becoming a British citizen). The gain could also be reputational, in that the intention is for the perpetrator to obtain kudos or acceptance within a group or gang. A further reason is to force the victim to remain in a marriage. It is therefore important to consider the concept of 'gain' widely, but most importantly to allow intent to gain to be a standalone element without the need to also prove sexual gratification. This is because there may be many perpetrators who argue that their reason for taking and/or sharing images was purely for financial gain and it would be wrong as a matter of public policy, to allow this to happen.

**Question 30: We invite consultees' views as to whether there should be an additional offence of intentionally taking or sharing an intimate image without consent with the intent to control or coerce the person depicted.**

58. We believe that there should be an additional offence of intentionally taking or sharing an intimate image without consent with the intent to control or coerce the person depicted. Although we appreciate that the offence of controlling or coercive behaviour already exists, one of the issues we tend to find is that victims of abuse can feel they are trapped in a game where criminal justice agencies are trying to establish which offences have been committed and which laws could apply to them. Intimate image abuse is one of those areas where unfortunately, it appears to be an all too regular occurrence that victims are told a crime has not been committed and other laws are looked at to see if the abuse faced by the victim could be covered by other laws. If we look at this strictly from the point of view of the victim, this can be a very disempowering experience. As such we feel there is merit to ensuring that the new laws have a clear provision in place which covers instances where images are taken or shared for the purposes of controlling or coercing the victim; rather than having them jump between different legal provisions.

59. We also feel that this will ensure that there are no legal loopholes because, as mentioned above, intimate image based abuse can occur in a number of ways and number of circumstances with a number of consequences (some of which we are sure even we have not heard of) and we therefore feel it is important to have a provision in place that will ensure that perpetrators of abuse can be caught no matter what the situation.

**Question 31: We invite consultees' views as to whether having a separate base offence and more serious additional intent offences risks impeding the effective prosecution of intimate image abuse.**

60. No, we do not believe that having a separate base offence and more serious additional intent based offences would impede the effective prosecution of intimate image based abuse. Rather, we feel having the range of different offences will help

ensure that victims are empowered and perpetrators are brought to justice. The only possible impediment would be of course if the laws were not clear (an issue that was raised in our CJS Report) but we do not see this being an issue in respect of these proposals.

**Question 32: We provisionally propose that where an intimate image was taken without consent in a private place, a reasonable expectation of privacy test should not apply. Do consultees agree?**

61. We agree. We do not think there is any merit in requiring the prosecution to need to prove a privacy element to images that were taken in private and this would simply act as an unnecessary burden for both the prosecution and for victims.

**Question 33: We provisionally propose that where: (1) an intimate image is taken in a place to which members of the public had access (whether or not by payment of a fee); and (2) the victim is, or the defendant reasonably believes the victim is, voluntarily engaging in a sexual or private act, or is voluntarily nude or semi-nude, the prosecution must prove that the victim has a reasonable expectation of privacy in relation to the taking of the image. Do consultees agree?**

62. At this point we neither agree nor disagree with this proposal. Whilst we do in principle agree with the overall concept of differentiating between sharing of images and re-sharing of images already available in the public space (as otherwise we would be at risk of criminalising all persons who come across a post on Instagram and take a screenshot and re-post), we feel more detail is required as to what is to be deemed a public place and a semi-public place so that we are able to consider whether the wording will leave scope for loopholes which could be exploited.

**We provisionally propose that legislation implementing this test make clear that a victim who is breastfeeding in public or is nude or semi-nude in a public or semi-public changing room has a reasonable expectation of privacy in relation to the taking of any image. Do consultees agree?**

63. In respect of the proposal to make clear that a victim who is breastfeeding in public or is nude/semi-nude in a public changing room has a reasonable expectation of privacy, we agree. We wish to stress in particular that no one has the right to take pictures of a breastfeeding woman regardless of where or how she chooses to breastfeed. Indeed, the fact that breastfeeding is sexualised in such a way highlights the misogyny that is prevalent and the work that needs to be done to tackle intimate image based abuse.

**Question 34: We provisionally propose that it should not be an offence to share an intimate image without the consent of the person depicted where: (1) the intimate image has, or the defendant reasonably believed that the intimate image has, previously been shared in a place (whether offline or online) to which members of the public had access (whether or not by payment of a fee), and (2) either the person depicted in the image consented to that previous sharing, or the defendant reasonably believed that person depicted in the image consented to that previous sharing. Do consultees agree?**

64. We neither agree nor disagree with this proposal and wish to wait for further information in respect of this proposal before forming a substantive view; in particular we would like to know what the final definition is of a place that is public. Whilst we do understand the comments made within the Consultation Paper as to why this should not be an offence, and we certainly do not wish to go down the route of over-



criminalisation (which could be the case especially where images were shared on the likes of Instagram and other social media platforms), we nevertheless have some concern that this could have unintended consequences by creating a loophole. For example, is there a possibility that in the case of a private Facebook group, after a certain number of members threshold has been reached, the group could be deemed to be public?

**Question 35: We invite consultees' views as to whether threats to take, make or share an intimate image with the intent of coercing sexual activity should raise an evidential presumption that there was no consent to sexual activity.**

65. We do feel that there should be an evidential presumption that there is no consent to sexual activity. In fact we have been concerned for some time that this appears to be an obvious omission that has been overlooked in respect of section 75 of the Sexual Offences Act 2003 and feel that it should be addressed within these law reforms.

**Question 36: We invite consultees to provide examples where threats to take, make or share intimate images have been used to procure or engage in sexual acts with a person with a mental disorder and information about the use of sections 34 to 37 of the Sexual Offences Act 2003 to prosecute such cases.**

66. Whilst we do not have any specific cases that we are able to mention in this regard, we do consider this to be a real and serious concern which does need to be taken into account as part of the law reform proposals.

67. We would also like to make the point that we feel there should be harsher sentencing involved where victims may have additional vulnerabilities such as mental health issues, physical disabilities or learning difficulties.

**Question 37: We invite consultees to provide examples where threats to take intimate images have been made.**

68. We wish to share the following MWN Helpline case examples which we hope highlights the range of individuals and range of circumstances which may be involved in cases involving intimate image based abuse:

- a. The service user was a young Muslim teenage girl who had entered into a relationship with a family friend that she had met on holiday and, in her words, had a physical relationship with and intimate images had been taken of her. Her cousin managed to acquire access to these intimate images using her social media account and then threatened to show these images to her parents, unless she agreed to marry him (the cousin). She did not want to marry him but was very fearful of him sharing the images with her parents, and began self-harming.
- b. A young Muslim teenage girl was being blackmailed by a boy at her college. She had been befriended by him and started dating him. He had persuaded her to send him photos of herself without any clothes except for her headscarf. He then shared these photos with her and others and threatened to send them to her family. She was very worried and upset and had informed her teacher who phoned the MWN Helpline. The teacher was provided with information about the Revenge Porn helpline and advised to work with them and contact the police. The young man was expelled and the college then supported the girl through the process. In this instance, the perpetrator did share the images with some individuals but the threats to share with others

(such as her family members) continued (This case was reported within our 2015 Helpline Evaluation 2015, at page 36)

- c. Please see case study 30 in our Unheard Voices report (at page 120) where the perpetrator filmed himself raping the victim and threatened to share this video widely which would bring 'dishonour' to her and her family. In order to stop him from sharing the video, she was forced to become a drugs mule and was also sexually exploited.
- d. Please see case study 6 in our CJS Report (at page 34) where the victim was being blackmailed by her female friend, who was threatening to send a photo of the victim standing next to a male friend to her parents. Although the photo was not explicitly intimate, the victim was frightened because it would be viewed as intimate by her parents (they would interpret it as the victim being in a relationship with the male friend) and she was worried about the consequences.

69. The following case studies were also shared with us by our MWN Hub members:

- a. The victim was a young Muslim girl who had entered into a relationship with the perpetrator, and at his insistence, intimate images were taken. The victim was very uncomfortable about their existence and the next day asked for them to be deleted and the perpetrator said he had. Over the course of their 12 month relationship, the perpetrator became more and more controlling and abusive and eventually the victim decided to end the relationship. This angered the perpetrator, at which point he disclosed that he had never deleted the videos and that he would share them with her family and 'ruin her reputation' so that no one will ever think to enter into a relationship with her again. The victim was frightened of the prospect of her family being 'defamed' and agreed to marry him on the basis that if the images ever became public, 'no one would want her anyway and she would be alone forever'.
- b. The victim came from a very conservative family and was required to wear hijab and long-length, full-armed clothing at all times. Her family were very strict and she was only allowed out the house to attend college and visit the homes of a very small number of friends. When at her friend's home, she would dress differently and on one occasion, whilst she was in shorts and a vest top, her friend took pictures of her where she was making poses which her parents may consider 'provocative'. The friend also took pictures of her with the friend's brother. The friend then threatened to share these images on a number of occasions, whenever she wanted something from the victim. This ranged from demanding money to forcing the victim to say no to an arranged marriage proposal because the friend was interested in the same man that the victim's parents were arranging for her to get married to. The victim agreed with all the demands because she was frightened that if her parents ever found out, they would take her abroad and force her into a marriage and abandon her there.

70. We wish to make the point that these are a select few examples of cases involving intimate image based abuse that we have dealt with or are aware of, and there are unfortunately many more cases of a similar nature. Additionally, we wish to make the point that the cases we know of are, in our opinion, the tip of the iceberg and we believe that there are many, many victims out there who have simply never sought support or advice. Thus, whilst we appreciate this particular point would not be in the

Law Commission's remit, once the law reforms are in place we would certainly ask that the government also considers a promotion campaign by which awareness can be raised of the new laws, so that victims can be informed of their rights and the protections available to them.

**Question 38: We invite consultees to provide examples where threats to make intimate images have been made without an accompanying threat to share the image.**

71. Our response to the previous question and next question (below) provide examples of instances where the images were not shared but we do also have various other examples where the threat was made but the actual sharing did not take place. However, we must stress that more often than not the reason that an image was not shared after the threat was made was because the victim had complied with their demands. The demands in such instances have included being raped (being forced to have sex with the perpetrator and other third parties), being forced into marriage (to the perpetrator), made to hand over money or make payments for purchases on behalf of the perpetrator etc.
72. We would also like to stress that even where intimate images are not shared, the mental health impact on the victim of a threat being made must not be overlooked especially as in many cases the fear that the intimate images may be shared in the future is likely to remain live and is something that will be a concern for them forever. We therefore hope that the law reforms will take into account the seriousness of the threat to share and its impact on victims, including long-term health and wellbeing.

**Question 39: We invite consultees to provide examples where a threat to share an intimate image of V is not directed at V, but is made to a third party.**

73. This is a notable issue within Muslim and South Asian communities, though the exact prevalence of the situation is largely unknown due to under-reporting. Whilst the vast majority of cases do involve threatening the victim, there are also instances where other family members may have been threatened instead. For example, one MWN Hub member shared with us that an acquaintance was blackmailed by the perpetrator in respect of intimate images he held of her daughter. The daughter had been in a relationship with the perpetrator unknown to the family, whilst they were at university. They eventually broke up and some time after the family had arranged their daughter's marriage. The perpetrator at that point approached the daughter and then the mother and threatened the mother that he would share the photographs with the father and also the prospective in-laws, so that the wedding is called off. The wedding being called off and the father and wider community finding out about the daughter's past was a serious concern for the mother and as the perpetrator was seeking financial gain, ended up meeting his demands for money.

**Question 40: We provisionally propose that it should be an offence for D to threaten to share an intimate image of V, where: (a) D intends to cause V to fear that the threat will be carried out; or (b) D is reckless as to whether V will fear that the threat will be carried out. Do consultees agree?**

**We provisionally propose that the same definition of "intimate image" is used for both the offences of sharing and threatening to share an intimate image (which will include altered images). Do consultees agree?**

74. We agree that it should be an offence to threaten to share an intimate image where there is intention to cause fear that the threat will be carried out, or the defendant is reckless as to whether the victim will fear that the threat is carried out.

75. We also generally agree that the same definition of 'intimate image' should be used for both the offences of sharing and threatening to share an intimate image, though this does depend on what is agreed to be the final definition of an 'intimate image'. As noted above in this Written Evidence, we are of the opinion that the definition of intimate image should have an intersectional approach which takes into account the realities of the multi-cultural society we live in and takes into account the religious and cultural factors which may impact what is regarded as an intimate image. Thus whilst we generally agree that the same definition should be used for consistency and clarity, if it comes to a situation that a broader definition of 'intimate image' can only be used for one set of offences or not at all, our preference would be to at least have a broader definition relevant to at least one scenario so that we are able to afford protection to Muslim women and girls in at least some situations.

**Question 41: We invite consultees' views as to whether the prosecution in a threatening to share an intimate image case should be required to prove that the person depicted did not consent.**

76. We disagree that prosecution should be required to prove that the person depicted did not consent, in cases involving the threat to share intimate images. We wish to stress that where Muslim women and women from other minoritized communities are involved, the decision to take the step to seek help and support prosecution efforts is huge and we need to ensure that the laws support the empowerment of victims (including Muslim women and girls). Requiring the prosecution to prove that the person did not consent, in circumstances where the victim has already taken a huge step because they did not consent to what occurred, would be counter-productive. Additionally, as noted in the within the Consultation Paper, the focus is on addressing the threat and not the harm caused by it and therefore the fact that a threat was made by the defendant and with the defendant having the intention of causing harm to the victim, should mean that an offence has been committed. Whether it transpires that the victim had consented or not is irrelevant to the point that the offence (of threatening to share with ill intent) has taken place.

**Question 42: We provisionally propose that there should be a defence of reasonable excuse available in the context of our provisionally proposed base offence which includes: (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; (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. Do consultees agree?**

77. We generally agree with the proposal, save for that we feel the definitions need to be tightened and examples given of the circumstances in which the excuses would apply. For example, we feel that 'educational purpose' is too broad a term in the context of intimate image based abuse and further clarity is needed as to precisely who and in what circumstances the defence could be relied upon. We wish to highlight at this point that there is a very serious issue of sexual abuse in religious settings, the dynamics of which also need to be taken into account in the context of intimate image based abuse. There are a number of religious settings which are unregulated and in which the term 'educational purpose' could be misused; please see our witness statement in respect of the Independent Inquiry into Child Sexual Abuse for further information: [https://www.mwnuk.co.uk/go\\_files/resources/843712-](https://www.mwnuk.co.uk/go_files/resources/843712-)

78. Further, in considering the applicability of the ‘legal proceedings’ defence, we wish to share an example of a MWN Helpline case study in which the victim (who had been having an extra-marital affair) believes that the perpetrator, her husband, obtained intimate images of her either through installing cameras or through the use of a private investigator. The husband in this instance was threatening to share these intimate images with the victim’s family if she tried to end their marriage (knowing that this would ostracise her from her family) but our concern is that, in such a situation, the perpetrator could allege that these images were taken in order to use as evidence in family law proceedings (such as to prove adultery in order to obtain a divorce, as currently the law around divorce is still fault-based). If no divorce proceedings had commenced but it is alleged that they would have been commenced soon, could the defence still be relied upon? On the other hand, we can see situations where a victim of abuse may feel that they evidence of adultery in order to, for example obtain an Islamic divorce from the likes of Shariah councils (where a husband refuses to grant an Islamic divorce) but such a purpose would (quite rightly) not fall within the definition of legal proceedings as Islamic marriages and in turn Islamic divorces are not legally recognised. We feel that greater thought may be needed in order to consider what can and cannot fall within such definitions.
79. We would also welcome further clarity of the situations where it would be in the ‘public interest’ to take or share such images.
80. For the sake of completeness, we confirm that we agree that the statutory defence is not compatible with a threats offence.

**Question 43: We provisionally propose that victims of the new intimate image abuse offences should have automatic lifetime anonymity. Do consultees agree?**

81. We wholeheartedly agree with this proposal and would like to stress that this is especially important for Muslim women and girls who are victims of intimate image abuse. We note the comments within the Consultation Paper and we believe that it is very much in the public interest to extend automatic lifetime anonymity to victims of intimate image abuse. A key issue highlighted by cases dealt by our MWN Helpline and the information and experiences shared by our members, is the very real concern that (whether due to taking action or generally) their family, friends and children may find out about what happened to them, the consequences of which could be especially severe.
82. To provide an example from our MWN Helpline, the victim had previously been in a relationship and her former partner was in possession of intimate pictures of her (in this instance sexually explicit images). Some time after their relationship had ended, the victim had gotten married to someone else. The former partner used social media to share the intimate images with her husband. The husband became very angry and upset, and the victim was asked to leave the marital home for a few days and shortly thereafter the husband stopped all contact with her and ended the relationship.
83. Although the above case study did not involve court proceedings, we share it as an explanation as to why many victims of intimate image abuse, especially Muslim women, would be reluctant to give evidence in court. That is, they would be in fear that what happened to them could become known (whether now or in the future) and could lead to ostracization and affect their marriage prospects and relationships. It

could also lead to homelessness and financial hardship where, as the above case study highlighted, they are disowned or their relationship ends due to partners or relatives finding out about their ordeal. For such victims, it can be especially difficult to seek help in such situations as it may be too embarrassing for them to tell other relatives or members of the community as to why they are now homeless or in financial difficulty and why their spouse or family have cut ties with them. Indeed the risk of ostracization remains the same with talking to any relative or members of the community. Another constant concern for Muslim women who are victims of intimate image abuse are that their children could find out, and also that their children could be equally stigmatised and ostracised. For example, one victim was concerned that if images of her with a former partner were shared then not only her but her daughter may face ostracization. Sadly, misogyny remains a very real issue which rears its head across all cultures and communities and despite being the victims, it is women that are demeaned and maligned and treated negatively in such cases. It also goes without saying that the mental health impact of being 'exposed' one day can and does have a heavily toll on victims of abuse.

84. Therefore, given the very real concerns held by victims (especially Muslim women) which can make them reluctant to report sexual offences in the first place, we feel it is important to put in place as many measures as possible that will help them feel safe and secure, and will encourage them to take matters to court so that perpetrators can be brought to justice and others can be protected.

**Question 44: We provisionally propose that victims of the new intimate image abuse offences should automatically be eligible for special measures at trial. Do consultees agree?**

85. We agree with this proposal and feel this proposal is especially important for Muslim women and women from other minoritized communities who become victims of intimate image based abuse because of the additional hurdles they have to face in terms of stigma and risks around honour based abuse. Special measures are a great empowerment tool which allow victims to feel better able to give evidence. As we highlight through our CJS Report, it is absolutely essential that victims are supported through the trial process because otherwise not only are victims unable to access justice but perpetrators are then also free to harm others, perhaps more emboldened than before. As has been stated at 14.87 of the Consultation Paper, complainants in sexual offence cases are automatically eligible for special measures but there does nevertheless need to be an assessment that the implementation of special measures will improve the quality of the evidence. Therefore we see no reason why victims of intimate image based abuse cannot similarly become automatically eligible and it is then for the courts to decide whether special measures are necessary.

**Question 45: We provisionally propose that restrictions on the cross-examination of victims of sexual offences should extend to victims of the new intimate image abuse offences. Do consultees agree?**

86. We generally agree with this proposal, as we do feel that there is a real risk that in cases where intimate images were used to sexually exploit or harm the victim in some other way, a defendant could decide not to take up the option of legal representation so as to further harm the victim (and potentially because they believe doing so would make it more likely that the victim will ask for charges to be dropped). Additionally, we need to be live to the very real possibility that cases involving intimate image based abuse will involve other sexual offences, such as rape and sexual abuse, and it would be useful that the availability of special measures are streamlined so as to avoid any confusion (whether on the part of the victim or on the

part of criminal justice agencies) as to what support is and is not available. As you will note from our CJS report, one very real barrier to accessing justice for Muslim women is the lack of information or mis-information shared by the likes of police and other agencies and therefore the more that can be done to clarify and streamline the processes, the better.

**Question 46: We provisionally propose that notification requirements should be automatically applied for the offence of taking or sharing an intimate image without consent for the purpose of obtaining sexual gratification when an appropriate seriousness threshold is met. Do consultees agree?**

87. We agree with this proposal. We hope that doing so will further help to deter potential perpetrators and will also help protect potential victims of intimate image abuse.

**Question 47: We provisionally propose that Sexual Harm Prevention Orders be available for all of our provisionally proposed intimate image offences. Do consultees agree?**

88. We agree with this proposal and would like to add further that, whilst we appreciate this is not within the remit of the Law Commission's considerations, there also needs to be greater awareness of the availability of Sexual Harm Prevention Orders so that victims and potential victims of intimate image based abuse are better aware of their rights and options.

#### **Final Comments**

89. As a point of clarification, we must explain that whilst our comments and examples may have been limited to those relating to Muslim women and girls and/or women and girls from minoritized communities, this is due to the nature of our organisation and its work. As a national Muslim women's charity our work predominantly deals with Muslim and BAME women and girls albeit we also work with individuals of other faiths and are therefore also aware of issues of relevance to other faith and non-faith communities. We are also aware that some of the issues experienced by Muslim and BAME women and girls can also be experienced by non-Muslim, non-BAME women and girls, as well as men and boys. In turn we wish to clarify that where we make any recommendations, we do so on behalf of all those within wider society who may be affected and may benefit from the implementation of our suggestions.

90. We would like to thank the Law Commission for holding its consultation into intimate image based abuse and thank you for providing us with the opportunity to attend your roundtable events as well as submit Written Evidence. We hope our submissions prove to be useful in your considerations and would be happy to assist further.

**On behalf of Muslim Women's Network UK,  
Nazmin Akthar  
Co-Chair**

**3<sup>rd</sup> June 2021**

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