

Revenge porn: time for action

Emily McFadden examines the growing impact of image-based sexual abuse & the importance of securing anonymity for its victims



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IN BRIEF

► The law has been slow to recognise the scale of the problem of revenge porn and put in place proper legislation to deal with it. However, positive steps have been taken recently with the Online Safety Bill and an announcement that victims will have anonymity in revenge porn cases.

Revenge porn is rarely out of the headlines—in December last year, reality TV contestant Stephen Bear was found guilty of voyeurism and two counts of disclosing private, sexual photographs and films. In June 2022, Rob Kardashian and Blac Chyna reached a settlement in their revenge porn case as the trial began.

However, revenge porn isn't something that just affects the famous. According to Refuge's 'The Naked Threat' report in July 2020, one in 14 adults in England and Wales have been threatened with sharing an intimate image. This increases to one in seven young women aged between 18 and 34 having experienced threats to share intimate images. The overwhelming majority (72%) of threats to share intimate images are made against women by current or ex-partners.

What is revenge porn?

The current legislation relating to image-based sexual abuse, or 'revenge porn', is the Criminal Justice and Courts Act 2015 (CJCA 2015).

By their very nature, incidents of image-based sexual abuse or revenge porn are sexual crimes. Section 33, CJCA 2015 defines this as follows:

- '(1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—
- (a) without the consent of an individual who appears in the

photograph or film, and
(b) with the intention of causing that individual distress.'

Inevitably, if the crime requires an image to be 'private' and 'sexual', then in my view revenge porn must be a *sexual* crime.

Why has change taken so long?

While it has been clear to campaigning organisations, those working with victims, and the Law Commission that these crimes are sexual crimes, it has taken a long time for the government to be convinced of the need for reform.

It seems that the original drafting of the offence in CJCA 2015 was focused on this being a communications offence in terms of the way the offending was perpetrated, rather than being focused on the nature of the content, which is clearly sexual.

The Law Commission recommended reform in February 2021, in its proposals on 'Reforms to laws around intimate image abuse proposed to better protect victims'.

How does anonymity work?

Section 1 of the Sexual Offences (Amendment) Act 1992 (SO(A)A 1992) provides for anonymity for victims of sexual crimes:

- '(1) Where an allegation has been made that an offence to which this Act applies has been committed against a person, no matter relating to that person shall during that person's lifetime be included in any publication *if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.*
- (2) Where a person is accused of an offence to which this Act applies, no

matter likely to lead members of the public to identify a person as the person against whom the offence is alleged to have been committed ("the complainant") shall during the complainant's lifetime be included in any publication.'

Section 2, SO(A)A 1992 provides a list for the specific offences to which s 1 applies. However, currently, victims of revenge porn are not automatically granted anonymity, which is a huge barrier to people coming forward.

Online Safety Bill

Thankfully, positive steps are being made. The Online Safety Bill is continuing its long journey towards becoming approved by Parliament and being brought into force. It is this eventual Act in which it is proposed that the added protections for victims of image-based sexual abuse will now be included.

It will also make root-and-branch changes to the offence itself. The government seems to have genuinely listened to the Law Commission's recommendations and understood the need for change and for better protection for these victims.

This means that it will no longer be a requirement to prove that the alleged offender intended to cause distress to the victim, which currently is a huge barrier for prosecutions. It will also include an offence for computer-generated or adapted images, known colloquially as 'deep-fakes'.

What difference will anonymity make?

It has also been reported that the government is currently drawing up plans to change the law to grant anonymity for victims/survivors of revenge porn. Ensuring that victims of revenge porn remain anonymous in their report to the police and the subsequent process through the criminal courts is likely to make victims feel more able to come forward.

There remain many hurdles for victims of these crimes, including that the police will often require sight of the images themselves in order to conduct their investigation, when other people seeing the images or videos is exactly what the victim is trying to prevent.

But allowing victims anonymity in these crimes may mean that more feel able to report, and therefore get the support and justice they so desperately need.

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