

<b>Section A</b>		
<b>Institution:</b> Durham University		
<b>Unit of Assessment:</b> 18 Law		
<b>Title of case study:</b> Criminalising rape pornography and image-based sexual abuse		
<b>Period when the underpinning research was undertaken:</b> Between 2007 and 2017		
<b>Details of staff conducting the underpinning research from the submitting unit:</b> Clare McGlynn, Erika Rackley, Ruth Houghton		
<b>Name:</b> Clare McGlynn	<b>Role:</b> Professor	<b>Period employed by HEI:</b> since 1999
<b>Name:</b> Erika Rackley	<b>Role:</b> Professor	<b>Period employed by HEI:</b> between April 2006 and August 2014
<b>Name:</b> Ruth Houghton	<b>Role:</b> Research Associate	<b>Period employed by HEI:</b> between September 2016 and August 2017
<b>Period when the claimed impact occurred:</b> Between 2013 and 2020		
<b>Is this case study continued from a case study submitted in 2014?</b> N		
<b>Section B</b>		
<b>1. Summary of the impact:</b>		
<p>McGlynn's research (with colleagues) recommending the criminalisation of rape pornography and image-based sexual abuse (including 'revenge porn' and upskirting) has had significant legal and political effects, including:</p> <ul style="list-style-type: none"> <li>(a) direct influence on the campaign which led to the introduction of a new criminal offence in England &amp; Wales, and Northern Ireland, of possession of rape pornography in the Criminal Justice and Courts Act 2015 and Justice Act (Northern Ireland) 2016;</li> <li>(b) research provided evidence base for the adoption of specific amendments to the new Scottish law criminalising the non-consensual distribution of intimate images ('revenge porn') in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;</li> <li>(c) research and advice shaped Parliamentary amendments, NGO campaigns and public debate regarding the Voyeurism Act 2019 which introduced the new criminal offence of upskirting in England &amp; Wales (between 2015 and 2019);</li> <li>(d) briefings and advice led directly to Parliamentary amendments (influencing Labour Party, Liberal Democrats, and Women's Equality Party) and NGO campaigns to strengthen the criminal law on non-consensual sharing of intimate images (Criminal Justice &amp; Courts Act 2015) (between 2015 and 2019);</li> <li>(e) Research and bespoke briefings directly led to inclusion of new measures criminalising image-based sexual abuse and strengthening laws on extreme pornography into the draft Isle of Man Sexual Offences Bill (between 2018 and 2020);</li> <li>(f) Research has assisted Facebook to better understand the harms of image-based sexual abuse and develop better reporting tools and prevention mechanisms (between 2018 and 2020);</li> <li>(g) Research generated new terminology of 'image-based sexual abuse' which has been adopted nationally and internationally by government organisations, voluntary organisations, policy-makers, politicians, survivors of abuse, police and regulatory authorities, and in public and media debates.</li> </ul>		
<b>2. Underpinning research</b>		
<p><b>Criminalising image-based sexual abuse (including 'revenge porn' and upskirting) [R1 and R2].</b> McGlynn and Rackley developed the concept of 'image-based sexual abuse' to better characterise and conceptualise all forms of the non-consensual creation and/or distribution of nude or sexual images, including 'revenge porn' and 'upskirting'. The existing term 'revenge porn' minimises the seriousness of the harm and does not include all forms of these abuses. The research argues for a comprehensive approach to criminalising all forms of image-based sexual abuse (recommendations applicable across all jurisdictions); as well as specifically arguing for laws focussing on the harms to victims, not the motives of perpetrators, and the categorisation of these abuses as sexual offences. The research also analysed English and Welsh, and Scots law in detail, making specific recommendations for reform, particularly by removing the distress threshold (and introducing recklessness) for the non-consensual distribution of images and in relation to upskirting, and recommending automatic anonymity for all complainants.</p>		

**Recommending criminalisation of extreme pornography, including rape pornography [R3 and R4].** Research by McGlynn and Rackley argued that ‘rape pornography’ should be characterised as a form of ‘extreme pornography’ and that its exclusion from the Criminal Justice and Immigration Act 2008 could not be justified. Criminalisation was justified by developing the concept of ‘cultural harm’ which emphasises the adverse effects of rape pornography across society. Recommendations for reform also included an extension of the specified defences, improved definition of ‘realistic’ images and ensuring that the ‘context’ of images is taken into account when determining the scope of the law.

### **3. References to the research**

**R1** Clare McGlynn, Erika Rackley and Ruth Houghton ‘Beyond “revenge porn”: the continuum of image-based sexual abuse’ (2017) 25 *Feminist Legal Studies* 25-46: published in internationally recognised journal and accessed over 34,000 times.

**R2** Clare McGlynn and Erika Rackley ‘Image-based Sexual Abuse’ (2017) 37 *Oxford Journal of Legal Studies* 534–561: published in one of the most prestigious law journals.

**R3** Clare McGlynn and Erika Rackley ‘Criminalising extreme pornography: a lost opportunity’ (2009) *Criminal Law Review* 245-260; peer review comment: ‘one of the best articles I have read for some time ... the legal analysis is crisp and intelligent. The critique is thoughtful and sharp.’

**R4** Clare McGlynn and Erika Rackley ‘Striking a balance: arguments for the criminal regulation of extreme pornography’ (2007) *Criminal Law Review* 677-690: published in leading criminal law journal.

### **4. Details of the impact**

#### **(a) Direct Impact on introduction and scope of new rape porn criminal law in England & Wales, Northern Ireland and the Isle of Man:**

In 2015, as a result of a campaign led by Rape Crisis and the End Violence Against Women Coalition, drawing on the McGlynn/Rackley research, England & Wales adopted a new criminal law prohibiting the possession of rape porn.

- **Direct effect on campaign to reform English & Welsh law to criminalise rape porn (between 2013 and 2015):** McGlynn worked closely with the organisations leading the campaign, giving advice on law reform options, and shaping their policy decisions, lobbying and press statements. The campaign put the issue onto the public and Government agenda, resulting in Prime Minister David Cameron announcing the change, reversing existing policy. [E1]

- **Government acknowledged McGlynn’s role:** The Government acknowledged the influence of McGlynn, stating that its ‘justifications for the provision are based on work carried out by a number of academics and NGOs, in particular by Professor Clare McGlynn and Professor Erika Rackley of University of Durham, the End Violence Against Women Coalition (EVAW) and Rape Crisis.’ [E2a]

- **Research shaped legislative debates:** The research shaped the legislative decision-making process, for example the parliamentary Joint Committee on Human Rights Report on the Bill endorsed the McGlynn/Rackley justifications for criminal regulation, namely that rape porn is a form of ‘cultural harm’ and the measures are ‘human rights enhancing’. The House of Lords Library Note on the Bill cited this Report and specifically these justifications. [E2b]

- **Research and advice led to Labour party Bill amendments:** McGlynn/Rackley prepared a briefing on law reform options and met with Labour Party spokespeople to give advice, leading to Labour Party amendments being introduced in the House of Lords by Baroness Thornton (Shadow spokesperson for Equalities), including reference to ‘cultural harm’ as a justification for action, as well as specific amendments relating to definition of ‘realistic’, extending the defences and including ‘context’ when interpreting images. [E3]

- **Justice Act (Northern Ireland) 2016:** the impact extends to Northern Irish law, which extended its extreme porn laws to include rape porn.

- **Influence on Isle of Man Sexual Offences Bill (between 2018 and 2020):** On request of the Isle of Man Dept of Home Affairs, McGlynn prepared briefings on law reform options which led to specific changes to Sexual Offences and Obscene Publications Bill, including new offence criminalising rape porn with specific provisions on the ‘context’ of images. The Bill is currently going through legislative process. [E4]

**(b) Direct Influence on Abusive Behaviour & Sexual Harm (Scotland) Act 2016 including amendments to law on non-consensual sharing of intimate images ('revenge porn'):**

McGlynn gave oral evidence to the Scottish Parliament's Justice Committee and advised that the draft Bill did not cover the distribution of upskirt images, but should. The Committee Report includes many citations to McGlynn's oral evidence and McGlynn/Rackley's written evidence, including recommending review of the upskirting lacuna. Following briefings and email contact with McGlynn/Rackley, Elaine Murray (Justice Committee Member and Member of the Scottish Parliament) proposed an amendment based on McGlynn/Rackley's evidence and recommendation. The amendment was adopted in sec 2(5)(b) of the 2016 Act which now clearly criminalises the non-consensual distribution of upskirt images. [E5]

**(c) Upskirting Law: Direct Impact on Parliamentary amendments and public debate on the Voyeurism Act 2019, criminalising upskirting in England & Wales (between 2015 and 2019)**

McGlynn played a significant role in the adoption of this Act through advice and guidance to MPs, parliamentary briefings and submissions, by shaping the actions of many NGOs recommending change, and by extensive media and public engagement (including BBC Radio 4's Today programme and Woman's Hour, BBC Radio 5 Live and quoted in all major UK press outlets). Briefings focused on strengthening the law to cover all forms of upskirting and image-based sexual abuse.

- **Shaping Public Debate leading to Private Members Bill:** In April 2015, McGlynn raised the failure of the law to cover upskirting (with Press Association and reported on ITV news) leading to her working with the Press Association in February 2018 to release new FOI data. The widespread media coverage of the PA story (including over 40 references to McGlynn) helped to initiate the Private Members Bill (March 2018) put forward to change the law and which was later adopted by the Government. [E6a]

- **Parliamentary Select Committee adoption of recommendations:** In June 2018 McGlynn gave oral evidence to Parliament's Women & Equalities Select Committee, and its report (November 2018) cited and endorsed her recommendations for comprehensive law reform including upskirting. [E6b]

- **NGO, Police and Crime Commissioner and Mayor of London adoption of recommendations:** McGlynn gave advice on law reform options to Women's Aid which distributed a briefing to the House of Lords citing and endorsing the McGlynn proposals for amendments to the Upskirting Bill [E6c]. McGlynn submitted her own evidence to the public bills committee and in addition, Victim Support, the Mayor of London and the Northumbria Police and Crime Commissioner also cited and endorsed the McGlynn recommendations for strengthening the Bill (2018) in their evidence [E6d];

- **Direct influence on Parliamentary amendments:** McGlynn worked closely with Maria Miller MP (Chair of Women & Equalities Select Committee) to draft amendments to the Bill, including extending the range of perpetrator motivations and including distribution of images. Miller's amendments were supported by a cross-party coalition of MPs. Miller cited the McGlynn research and briefings in her Parliamentary speeches including: 'I have worked on the amendments with Professor Clare McGlynn'. [E6e]

- **Direct influence on Parliamentarians and proposed amendments:** McGlynn's evidence was also cited and endorsed by other MPs during parliamentary debates; McGlynn's briefing to the House of Lords was cited by peers on why the Bill needed strengthening (e.g. Baroness Barran) and influenced Lord Pannick's and Baroness Burt's proposed amendments to the Bill. Pannick's article in *The Times* calling for changes cited McGlynn. A Women's Aid briefing (endorsing McGlynn's recommendations) was cited many times during House of Lords debate. [E6f]

**(d) Shaping Parliamentary amendments and NGO campaigns to strengthen Criminal Justice & Courts Act 2015 on non-consensual sharing of intimate images [E7]**

In 2015, the distribution of sexual images without consent ('revenge porn') became a new criminal offence in England & Wales. McGlynn's research and briefings shaped proposed

amendments to the Bill, influencing the actions of the Labour Party and directly affecting the campaigns adopted by many NGOs.

- **Research and briefings led to Labour party amendments to 2015 Bill:** McGlynn/Rackley were asked to brief Labour Party spokespeople on the Bill [E7a] and discussed justifications for proposed amendments, including the removal of the distress threshold. In the House of Lords, Baroness Thornton stated: 'Professors Rackley and McGlynn, who have been advising many Members of the House throughout the discussions about revenge porn and rape porn, explained that the focus of the law should be on the offender's actions and the absence of consent, not on the victim's response, and I think that is right'. [E7b]

- **Research and briefings led to Liberal Democrat and Women's Equality Party amendments to Policing and Crime Bill 2016:** McGlynn's briefings and emails with parliamentarians influenced Liberal Democrat amendments to a subsequent Bill, which would have reformed the distress threshold (instead introducing a recklessness standard) and introduced automatic anonymity. Following advice and emails, McGlynn's briefings also shaped the campaigning for reform by the Women's Equality Party. [E7c]

- **Directly shaping many NGO, Parliamentary and PCC campaigns to reform the law:** McGlynn advice, briefings and participation in meetings influenced the *All Party Parliamentary Group on Domestic Violence Report* (2017) on the adoption of the concept of 'image-based sexual abuse' and the McGlynn/Rackley recommendations to reform the law including the distress threshold and anonymity. [E7d]

- *Parliament's Women & Equalities Select Committee Report on Public Sexual Harassment* (2018): McGlynn gave oral and written evidence to the Committee, and the report includes numerous citations of her work and adopts her recommendations, including recognising 'revenge porn' as a sexual offence and that: 'A new law should be brought forward on image-based sexual abuse to criminalise all non-consensual creation and distribution of intimate sexual images, on the basis of the victim's lack of consent rather than perpetrator motivation.' [E7e]

- McGlynn's Briefing influenced policy recommendations of the *Fawcett Society* (2018) including removing distress requirement from law, introducing anonymity and using the term image-based sexual abuse. [E7f]

- McGlynn worked closely with *North Yorkshire Police and Crime Commissioner* (between 2016 and 2018) in developing their campaign for anonymity for complainants, including commenting on draft briefings, surveys and attending a meeting with then Minister for Justice (Philip Lee MP). McGlynn/Rackley research is cited and its recommendations endorsed in the PCC 2018 report on 'revenge porn', calling for anonymity for complainants and broader law reforms. [E7g]

**(e) McGlynn's advice directly led to changes on non-consensual distribution of sexual images in the Isle of Man Sexual Offences Bill (2018-2020):** McGlynn's advice was sought on the draft Sexual Offences Bill and her bespoke briefing directly influenced the drafting of the Bill, which includes a new part entitled 'Image-based sexual abuse' and provides for a comprehensive law covering all forms of non-consensual distribution or taking of sexual images (legislation currently going through Parliament). [E4]

**(f) Assisting Facebook to better understand harms of image-based sexual abuse and develop improved reporting tools and prevention work (2018-2020):** McGlynn was invited to Facebook HQ in the US by the Global Safety and Product Development Teams to present her research (with colleagues), on the harms of image-based sexual abuse, to a closed roundtable in August 2018. In March 2019, Facebook announced new reporting tools and prevention mechanisms, citing the workshop as their research base. McGlynn has also contributed to closed 'concept hacks' to improve Facebook's responses to victims. Facebook's Global Safety Policy Manager commented, in an email to McGlynn: 'Thanks to your counsel this past 18 months, we have been able to expand our policies and enforcement guidelines, develop new tech to combat this abuse and offer more supportive resources to people who encounter this horrible abuse. Your research has helped us better understand the experience of victims, how victims report their experience, what barriers arise when they make a report and what support or tools they needed to feel safe on our platform.' [E8]

**(g) National and international adoption of the new term, 'image-based sexual abuse':**

The term 'image-based sexual abuse' developed by McGlynn/Rackley has been adopted globally by victims, voluntary organisations, MPs, parliamentary reports, criminal justice personnel and is now commonly used in both national and international media and public debates (see above) as well as: reports by Women's Aid, Fawcett Society, End Violence Against Women and Parliamentary Report on Independent Complaints and Grievance Policy (July 2018), police websites (e.g. West Mercia police) providing information for victims, MPs and Parliamentarians use of term in debates, and extensive use in UK media. In Ireland, many NGOs use this term, for example Women's Aid and Irish Council for Civil Liberties in a 2020 election briefing, and it is widely used in the Irish press. International examples include the term being used in reports by New Zealand government organisation Netsafe; YMCA Canada; Human Rights Watch 2020 report on privacy rights; and the Sentencing Advisory Council, Victoria (Australia) 2020 report sentencing image-based sexual abuse. The term is also used by public bodies, survivors, activist groups and media in Australia, Isle of Man, United States and Singapore. [E9]

**5. Sources to corroborate the impact**

**[E1] a)** Rape Crisis Evidence to Public Bill Committee on Criminal Justice & Courts Bill (2014); **b)** EAW press release **[E2] a)** Report: Legislative Scrutiny: (1) Criminal Justice and Courts Bill', 11 June 2014, para 1.42 and citing McGlynn/Rackley research, paras 1.41, 1.43, 1.50; **b)** House of Lords Library Note, 25 June 2014. **[E3] a)** Briefing for Labour Party, **b)** Baroness Thornton speech in House of Lords; **c)** HL Deb, 30 June 2014, c1597; **d)** amendments 7 July 2014. **[E4] a)** McGlynn suggested amends to draft Sexual Offences Bill; **b)** text of Sexual Offences Bill 2019-20 reflects proposed changes. **[E5] a)** McGlynn's oral evidence to Justice Committee, 17 Nov 2015; **b)** written evidence Justice Committee ABSH3; **c)** Justice Committee, *Stage 1 Report on Abusive Behaviour and Sexual Harm (Scotland) Bill*, 21 Jan 2016; **d)** emails with MSP; **e)** MSP speech citing McGlynn/Rackley and proposed amendment, Official Report, 22 March 2016. **[E6] a)** ITV News online, 'Revenge porn law omits cruel upskirting craze', 23 April 2015 **b)** Women & Equalities Select Committee, *Sexual Harassment of women and girls in public places*, McGlynn's oral evidence, 6 June 2018; McGlynn written evidence (VOB01); Report, 6<sup>th</sup> report of session 2017-2019, HC701, 23 October 2018; **c)** emails with Women's Aid; Women's Aid Briefing to House of Lords, 23 Oct 2018; **d)** Victim Support (VOB06), Mayor of London (VOB08), Northumbria PCC (VOB07) ; **e)** Maria Miller MP proposed amendments 10 July 2018, 5 Sept 2018; Maria Miller evidence to Public Bill Committee citing McGlynn 10 July 2018 col. 19; Maria Miller amendments vol 646 5 September 2018; **f)** House of Lords debate 23 Oct 2018 vol 793; House of Lords debate and Pannick, Burt amendments, 26 Nov 2018, vol 794; Lord Pannick *The Times*, 5 July 2018. **[E7] a)** McGlynn/Rackley briefing; **b)** House of Lords debate citing McGlynn's work 20 Oct 2014, col 522; **c)** Emails with LibDem parliamentarians; briefing to Lib Dem Peers; LibDem amendments to Policing and Crime Bill 2016, 8 June 2016; emails with Women's Equality Party; **d)** APPG on Domestic Violence Report, *Tackling domestic abuse in a digital age* (Feb 2017); **e)** Women & Equalities Select Committee, *Sexual Harassment of women and girls in public places*, McGlynn oral evidence, 6 June 2018; Report 6<sup>th</sup> report of session 2017-2019, HC701, 23 October 2018; **f)** Fawcett Society, *Sex Discrimination Law Final Report*, Jan 2018; **g)** North Yorks PCC Report, *Suffering in Silence*, Nov 2018 ; briefing to North Yorkshire PCC ; PCC briefing 'Making the case for positive change to legislation surrounding image based sexual abuse', February 2017. **[E8] a)** Facebook, 'A research-based approach to protecting intimate images', Facebook Newsroom, 15 March 2019; email 11 Nov 2019 from Facebook Global Safety Policy Manager. **[E9] a)** Submission to CPS consultation calling for need for new term of 'image based sexual abuse'; **b)** Law Commission report 'Abusive and Offensive Online Communications' Scoping Report (Summary), 2018; **c)** Law Commission report 'Abusive and Offensive Online Communications' Scoping Report (Full), 2018; **d)** Irish Law Reform Commission 'Harmful Communications and Digital Safety Report', 2016, **e)** Netsafe – Image based abuse report, 2019; **f)** Journal.ie article, 2019; **g)** Parliamentary Report on Independent Complaints and Grievance Policy (July 2018); **h)** Playright article; **i)** West Australian article.