Big Voice London

Model Law Commission Report 2014

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Big Voice London

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Foreword note by the Big Voice London Project Directors

Last year saw Big Voice London launch the first Model Law Commission in the UK, an ambitious project that gave the Big Voice London students a chance to explore and comment upon issues such as prostitution, domestic violence, the internet and immigration. With the student's reform report deemed a resounding success, it was important to us that we provide another group of young people with the opportunity to have their voices heard in the same way.

At an age where their opinions usually go unheard, the Model Law Commission lets the students review some of the most important problems in today's society, problems which they will not only face in the future, but in some cases, are already dealing with in their day to day lives. The students have even approached subjects like the reform of extradition law, a topic that can confound the most experienced lawmakers, with careful and competent reflection, considering all possible challenges and interests.

The project lets our young people use their unique perspective to form their own ideas on what the law should be, before they have the opportunity to inform those ideas further through consultations with their peers and guest speakers. Each group has been fortunate to benefit from the guidance of legal professionals and academics, who have generously volunteered their time to assist the project. We are incredibly thankful for the effort they have put into supporting our students through this process.

Big Voice London is also indebted to its volunteers, without which this project would be unable to run. With many in full time employment or reading for degrees at university, the time and commitment each individual has put into working with their students is remarkable. With their help, we hope the project will continue to empower many more young people, and make sure their voices are heard.

Emily Lanham & Victoria Anderson
Project Directors

Model Law Commission Report 2014

Contents:

Introduction

Big Voice London

Big Voice London was founded in January 2011 with the goal of empowering young people by fostering engagement with the legal system and giving a voice to those who are often overlooked in the world of legal policy. The project has done so by bringing together young people and legal policy makers, including practitioners, judges and legislators. To this end, the students come from state schools in London, whose voices might be particularly unrepresented.

We are entirely volunteer-led organisation, and our team of volunteers are generally post-graduate students who are united through their dedication to increase youth engagement with the legal system. With their help, the project has continued to go from strength to strength this year, running a variety of interesting and challenging activities with our new supporters. In July students partook in an environmental law summer school in collaboration with Landmark Chambers, culminating in a cross-examination of an expert witness in front of a panel of senior barristers.

Over the past year we have been extremely fortunate in acquiring support from a number of organisations, including Middle Temple, City Law School, Landmark Chambers, Cohen Davis Solicitors, Lexis Nexis, and Lanham and Company amongst others. Of course, we have also enjoyed the continued advice and support from the administration of the UK Supreme Court. With this assistance, not only have we been able to provide an engaging program of activities in 2014, but we are also imminently expecting to achieve full charitable status, which we hope will enable us empower even more students in the future.

Model Law Commission 2014

The Model Law Commission is a simulated law reform project, whereby students are split into groups to explore four different areas of law, before going on to offer their own recommendations for how the law in each area should be reformed.

The students work in their four teams mirroring the work of the real-life Law Commission, covering: Criminal Law; Public Law; Commercial and Common Law; and Property, Family and Trusts Law. During the term, the process itself follows the stages used by the Law Commission, with five distinct phases to their work; researching; formulating recommendations; consulting their peers; reporting on their findings; and drafting statutory amendments.

This year, the Model Law Commission began with a two-day conference in late September at Middlesex University, where a number of experts introduced the students to their area of law and flagged up some areas in need of improvement. Following this, students formulated their own recommendations on how the law should be reformed, and distributed these recommendations to their peers in the form of questionnaires. Finally, in early November, individuals from the Law Commission generously gave up their time to speak to our students on their methodology and the intricacies of law reform report writing.

This report is the culmination of our students' findings and presents their recommendations for how the law should be reformed. We have only mildly edited the content (spelling mistakes and the like) to make sure that this report is purely the product of the Big Voice London students.

Our Students

The young people who take part in Big Voice London undergo an application process to join the project, as it is a significant commitment that requires attendance at weekly sessions over the course of two months. Despite the fact that many of our students are currently undertaking exams for their A-Levels, they have consistently shown an ability to balance demanding academic commitments with their enthusiasm for Big Voice London, and have demonstrated great professionalism by doing so.

The continued support of the schools and colleges we work with is essential. The project's success depends on students feeling supported by their academic institutions, and we are extremely grateful for the assistance provided by individual teachers and staff members. This year our students primarily attended City & Islington College, Queensmead School, Nower Hill High School, Uxbridge College, and St Angela's & St Bon's Sixth Form.

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We are extremely grateful to the LexisNexis team for kindly sponsoring this publication and launch event, and for their continued support of the Big Voice London project. We would also like to thank the Big Voice Management Board for their assistance in bringing the Model Law Commission to life.

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Disclaimer

The work, recommendations and opinions contained in this report are solely those of the student authors listed. The views expressed do not represent those of any other external organisation or individuals, including guest speakers listed in this report and the UK Supreme Court and the Law Commission. Big Voice London is an entirely independent organisation, and while we value the ongoing support and guidance of many organisations all views expressed are our own.

Part 1: Property, Family & Trusts

Recommendations on the laws governing rights upon the breakdown of a cohabiting relationship.

Compiled with thanks to:

Gerald Wilson, Tanfield Chambers
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Introduction

Cohabitation is when two people live together as a couple in a household, and it is becoming more popular by the day. In 2013, 2.9 million opposite sex couples were cohabiting (Office for National Statistics) and this would undoubtedly be a much larger figure if it were to include same sex cohabiting couples.

Despite this, currently there are no specific laws to protect cohabitants on the breakdown of a long-term relationship or if one person dies. The only thing couples can do currently is go down a very long and expensive route of proving they own a proportion of the other party's property / money via trust law, whereas if the couple were married, they would have specific laws to protect them financially.

We are proposing that a new law is put in place by the government, a Cohabitation Act that would help people in situations like this, where you are given certain rights to property and family money if you live as a couple with someone for a certain amount of time.

We have conducted a survey with members of the general public so that we could determine the public view on this increasingly pressing matter.

Summary

After examining the results of our research and on the basis of our own discussions, these are the conclusions at which we have arrived:

- For a couple to be considered cohabitees, they must have lived together for at least 2 years.
- If a couple have a baby, they should automatically fall under the new law, regardless of the time they have lived together.
- It would be best for the new law to operate under an opt-out system.
- There should be exceptions to the new law e.g. if domestic violence is involved, your partner would not automatically be able to make a claim against your money or property.
- As in marriage, contribution to family life is to be considered equally important as the financial contribution.
- There must be time limits on when you can make financial claims under the proposed new law.

Current Law on Cohabitation

Cohabitation is a complex subject which is increasingly growing more and more popular as social attitudes towards marriage and partners change in the United Kingdom. Currently, there are no specific laws passed by Parliament to deal with the end of a cohabiting period between a couple and the financial problems that can arise out of it.

One of the main issues is that the current available laws dealing with situations such as this are not keeping up with the common public behaviour to cohabit with a partner instead of living as a married couple. The presently available laws to assist with financial disputes over property purchased by the couple (e.g. Trusts of Land and Appointments of Trustees Act 1996) make the ability of dealing with cohabitation claims complicated, time consuming and extremely expensive.

Laws such as Trusts of Land and Appointments of Trustees Act 1996 were not specifically designed to deal with cohabiting couples. A classic example of those currently using these laws are unmarried couples who live together in a house owned by the employed partner, but the unemployed partner looks after their children in this house and helps redecorate or add value to that property in other ways. Later, that couple separate. Who is entitled to a stake in the property? Would the unemployed partner get any maintenance?

These are all areas that would be covered by law on divorce and would be fair to both partners. However, for cohabitants other laws have to be applied and, simply speaking, a person is not entitled to anything. It is possible to get a financial order from the court or a stake in the property but you must prove your case at court first, it is not an automatic right, no matter if you have lived together for 20 years or so. There would certainly be no entitlement to on-going maintenance for the partner (children from the relationship will be awarded maintenance under Schedule 1 of the Children Act 1989) despite possibly having given up work to care for the couple's children.

Cohabitants can settle matters for themselves by entering a Deed of Trust to set out what their shares and obligations will be if in the future they break up. Although this is a solution to cohabitation, it is rarely used because couples tend to believe that their relationship will last forever, so their shares seem unimportant at the time. Another way round this problem of shares in cohabitation is where the property is purchased in joint names. When this is done, there is a presumption of equal shares, however the courts will still not take into account fairness or non-financial contributions or award any maintenance payments.

So, if in the example of the couple above, one partner pays for the mortgage but the other partner pays for the food or looking after the home and children to allow the other partner to pay for the mortgage. Under the current laws that partner will walk away with nothing from that relationship on the basis that they did not financially contribute anything to the property itself.

Law Commission 2007 report

In 2007 the Law Commission were commissioned to write a report directly on the topic that we have chosen to consider as part of Big Voice London's Model Law Commission. The project examined the financial consequences of the termination of cohabiting relationships by separation or death. The report worked on the basis that a majority of cohabiting couples believed in the "common law marriage myth": the idea that unmarried couples who live together for a significant period of time are treated for all purposes by the law as if they were married. That belief is false and whilst there are aspects of current law that can assist those on the breakdown of a cohabiting relationship or death of a cohabiting partner, they are inadequate.

Without reciting the exact report, the key features of their proposal were that a remedy should only be available when:

- The couple satisfy all eligibility requirements;
- The coupled had not agreed to disapply the scheme; and
- The applicant had made qualifying contributions to the relationship, giving rise to certain enduring consequences at the point of separation.

The Law Commission believed that their proposals reflected the growing prevalence and public acceptance of cohabitation. They would bring English law in line with other Commonwealth jurisdictions. We agree with the recommendations made by the Law Commission and improve upon their proposals.

Proposals

On the basis of our research and findings we propose that the following ought to be incorporated into a new Cohabitation Act:

1. There must be a clear definition of "cohabitation"

The current definition is "living together as a couple without being married". This is a very short definition and we are proposing that it should specify certain aspects. Many people are unaware as to whether or not they fall under the criteria of being a cohabitant, therefore we want to implement such measures which define a cohabitant. For example a time frame which prescribes the length of a relationship that would meet the criteria of being an official cohabitant.

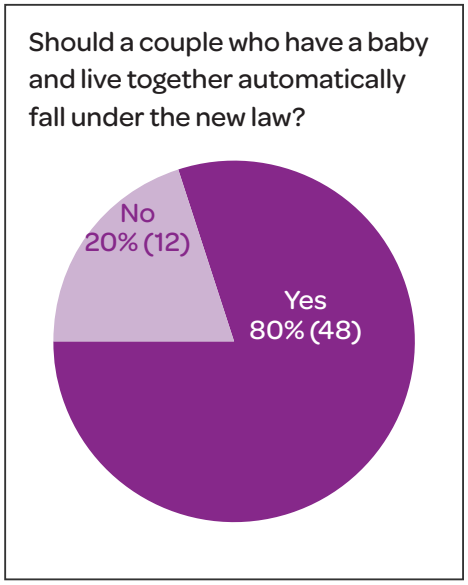
2. Time frames

Our group engaged in much discussion about the length of time a couple should be in a relationship for in order to meet the criteria of being a "cohabitant". The time frame decided upon is between 2-3 years. We felt this is reasonable as it gives the couple enough time to get to know each other and to be in a committed relationship.

We carried out a survey and statistics show that 42% of the people agreed that 2 years was long enough the next highest set of results collected showed that 28% felt that three years was a suitable time frame for a couple to be together. Our survey was answered by a majority of teenagers, and this may have affected the results as teenagers and adults have very different views to how many years a serious relationship falls under.

Overall, by having a time frame within the definition it enables the couple to decide whether or not they fall under this category. The time frame of 2-3 years is also in keeping with the view of the Law Commission in their report on this subject in 2007.

3. When children are involved



Our group are in agreement that, if a couple have a child together (and they cohabit) they will automatically fall under the proposed new legislation irrespective of how long they have cohabited.

We sent out a survey to the public, from which we received sixty replies. We asked the question; "if the couple have had a baby together, should they automatically fall under the proposed legislation, irrespective of the length of time of cohabitation?" Our survey showed that 80% of people say yes.

As a group, we are in agreement with the majority. This is because we agreed that if a couple are ready to have a child together, then their relationship will most likely be at a mature and serious level and simultaneously displays the commitment by both parties.

Although we said 'yes', we have taken into account the fact that there may be the rare case where a child is had with the purpose of receiving the benefits resulting from this new legislation, therefore taking advantage of the system. So, to combat this, we felt that it may possible to require character reports or references from a person's community where there is a very unusually short period of time between cohabiting, birth of the child and a financial claim under the proposed new law that would be considered by the court.

4. Opt-in or Opt-Out?

An opt-in system is when a couple have to sign a register in order to officially make them cohabitants. This allows them to claim cohabitation rights if they break up. If a couple fail to register, a partner is most likely unable to claim any rights in any circumstances as they were provided with an option to protect them

financially but failed to take it. This system helps to distinguish between the people that the cohabitation law applies to and who it doesn't apply to. It also would mean that a new law isn't forced upon people.

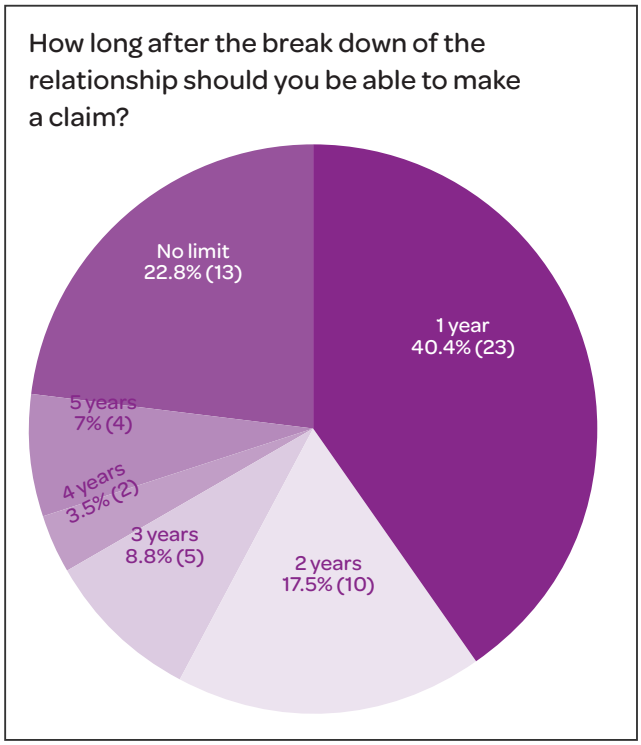
An opt-out system is when the cohabitation law automatically applies to all cohabitants, knowingly or otherwise. However, if a couple do not wish this law to apply to them then they have the option to opt-out by signing a document. This will exclude them from claiming against each other. It is proposed that a couple can opt-in again at a later stage if they wish. However, the time period of their relationship will only be formally recognised from that date onwards and will not take into account any previous cohabitation.

Our group believe that the opt-out system ought to be adopted under any cohabitation laws so that it benefits the masses.

5. Exceptions to the Rule

This law may be a disadvantage for certain people. For example a partner may have been forced to stay in the relationship for certain reasons; such as domestic violence. Therefore, if a person has evidence to prove that they remained cohabiting with a violent partner because they were too afraid to leave then the new law may be disapplied. According to our survey, 83% of the responses that we received said that the presence of domestic violence in a cohabiting relationship should be an exception to this law.

6. Time limits for making claims



Under the proposed new legislation there ought to be a specific time frame in which you can make a claim. In our survey we asked what people felt the time limit should be.

The result was that the majority, 40.4%, said the limit should be 1 year after the breakdown. Interestingly, the second favourite answer was that there should be no limit; this was a percentage of 22.8%.

Although the majority of people felt that 1 year was the optimum choice, our group verdict was 3 years, based on the fact that the couple may get back together in this time or it may give them time to get over the shock of the breakdown and/or death of their cohabitee and start to think of practical things such as finances. We felt 3 years was better than no limit purely because it would seem absurd to be able to make a claim 20 years after a period of 2 years cohabitation for example.

Impact Assessment

Advertising will be necessary to raise awareness about the opt-out system in order for the general public to be aware of it. This will be very expensive and time consuming. Regardless of all the promotion, some people may still be unaware of this system due to lack of resources. As such there will inevitably be some people who remain unaware of any new laws, but that is the case in implementing any new law and should not be a barrier to doing so or progress will never be made.

There is also the concern that soon after new legislation is implemented we may see a great number of claims and this may cause problems in the family courts. However, if any new legislation were to be implemented this would be anticipated and the courts and legal professionals prepared for such change. It may even require new, specialist courts to be introduced.

Conclusion

It is believed that the information presented in this report will positively impact on society, making it clearer and easier to make financial claims in cases of a breakdown of a cohabiting couple or on the death of a partner.

If large numbers of people are already making similar claims by other means e.g. by applying trust laws, then quite clearly there is a need for this new legislation. Given the prevalence of cohabitation and public acceptance of it, it makes sense to introduce a clear and simple law that everyone is aware of and can understand, unlike the application of trust laws that require the need for a legal guidance in light of the complexity of the law.

Whilst this report is limited in terms of scope, and there will undoubtedly be further exceptions or aspects to consider, it is hoped that it provides a clear guide as to how any new law should be applied. What is most important overall is that the law benefits as many people as possible and given that there was a 30% increase in cohabiting couples in the last decade and with the trend continuing to increase, now is the time to make these legislative changes.

Part 2: Commercial & Common Law

Recommendations on the laws governing genetic confidentiality, as it relates to familial disclosure, insurance and employment.

Compiled with thanks to:

Michael Fay, University of Keele
Mark Taylor, University of Sheffield

1. Introduction

The ever-increasing knowledge we have of science means that there are developments in the field of genetics on a daily basis. The question of whether an individual's genetic information remains confidential to them, and if so, in what circumstances this applies, is not currently addressed formally in law in the UK. With this in mind, the Commercial and Common Law group of the Model Law Commission have re-examined the current law which may be applicable in this field and whether this may need updating in light of constantly increasing knowledge in the area.

As part of the process in compiling this report, we considered all relevant law in the three specific areas: disclosure within the family, disclosure to employers and disclosure to insurance companies. We undertook a consultation exercise, to which we obtained approximately twenty four responses, from individuals of various ages and backgrounds. Where relevant, we have referred to the results of this consultation in this report.

We make four main recommendations, namely:

- That everyone born in the UK should be genetically sequenced at birth.
- That individuals, or in the alternative doctors, should be legally obliged to share genetic information which may cause serious harm or death to immediate family members, with those family members.
- That employers should continue to not have the right to ask individuals to disclose genetic information.
- That insurance companies should renew the current moratorium in place with respect to disclosure of genetic information.

This report will begin by setting out the current law surrounding disclosure of genetic information in the UK. It will then go on to examine the reasons there is a need for change, with reference to the results of a consultation exercise undertaken by us. Finally it will make recommendations that we have decided would be appropriate following our consideration of the law and the results of our consultation.

2. Current Law

The following outlines the current law on genetic disclosure in the United Kingdom:

Family

Currently there are no laws in place to allow the genetic screening of new borns.

The Data Protection Act 1998 prohibits the **processing**[1] of **personal data**[2]:

2.1. Unlawful obtaining etc. of personal data:

(1) A person must not knowingly or recklessly, without the consent of the data controller—

(a) Obtain or disclose personal data or the information contained in personal data, or

(b) Procure the disclosure to another person of the information contained in personal data.

Nonetheless, processing personal data is only fair and lawful when at least one condition from Schedule 2 of the Data Protection Act is met.

Processing sensitive personal data requires at least one condition from both Schedule 2 and Schedule 3 to be satisfied.

2.2 Schedule 2:

- The data subject must give valid consent to the processing of personal information; or,
- Processing must fall within one of six exceptions to consent.
- The most significant for us is Schedule 2, paragraph 5(d): processing can be justified if it is necessary 'for the exercise of any ... functions of a public nature exercised in the public interest.'[3]

2.3 Schedule 3:

- Contains ten exceptions to the requirement of explicit consent.
- The most relevant is paragraph 8(1): processing without consent is justifiable if is it 'necessary for medical purposes' and undertaken by a healthcare practitioner or someone with an equivalent duty of confidentiality.
- Medical purposes' are defined broadly in paragraph 8(2) and include 'preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.'
- Schedule 3, paragraph 3(c) might also be relevant: processing can be justified if necessary to 'protect the vital interests of another person, in a case where consent on behalf of the data subject has been unreasonably withheld'.[4]

Employment

Section 60 of the Equality Act 2010 makes it generally unlawful for employers to ask questions about disability and health before you make a job offer. The Commission can take legal action and job applicants may have claims of discrimination where these legal requirements have been breached.

2.4 The Equality Duty has three aims. It requires public bodies to have due regard to the need to:

- **Eliminate unlawful discrimination**, harassment, victimisation and any other conduct prohibited by the Act;
- **Advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
- Foster good relations between people who share a protected characteristic and people who do not share it.[5]

1 **Processing**" is 'any ... performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.' Data Protection Directive, Art 2(b).

2 "**Personal data**" is 'any information relating to an identified or identifiable natural person' and an identifiable person 'is one who can be identified directly or indirectly, in particular by reference to mental, economic, cultural or social identity'. Data Protection Directive (1995), Art 2.
"Sensitive personal data" includes information about 'physical or mental health or condition', s2(e) Data Protection Act 1998.

3 http://www.legislation.gov.uk/ukpga/1998/29/section/7

4 http://www.legislation.gov.uk/ukpga/1998/29/section/7

5 http://www.hse.gov.uk/equality-duty/equality-act-2010.htm

Insurance

The Moratorium[6] means the results of a predictive genetic test will not affect a consumer's ability to take out any type of insurance other than life insurance over £500,000. Above this amount, insurers will not use genetic test results unless the test has been specifically approved by the Government. Only around 3% of all policies sold are above these limits. The only test that is approved is for Huntington's Disease.[7]

The Moratorium

> 2.5. **The Moratorium** on insurers' use of predictive tests makes an exception to the principle of disclosure. It allows customers who have taken a predictive genetic test to obtain significant levels of cover without disclosing the results of that test. Insurers are only prepared to bear the risks and costs of this non-disclosure. On this basis, the Government and the ABI have agreed that the Moratorium should remain in place.
>
> **2.6. The terms of the Moratorium are as follows.**
>
> I. Customers will not be required to disclose the results of predictive genetic tests for policies up to £500,000 of life insurance, or £300,000 for critical illness insurance, or paying annual benefits of £30,000 for income protection insurance (the 'financial limits').

3. Need to change

As a result of scientific advances we are better able to identify and treat genetic disorders. This means it is possible to improve peoples' health, enable people to live longer, and help them to make informed decisions about their futures.

However, that information is personal to the individual and they may not want it shared with others, even those close to them, for example their children or their partner. It may be that they are embarrassed about the illness, or that they are finding it difficult to come to terms with it themselves. Wider disclosure may also have additional negative repercussions for individuals; it may result in increased life insurance premiums (or even the refusal of a policy), or being refused employment. There are therefore a variety of legal and ethical issues about whether to test for genetic disorders at all, and if so which ones, when to test, and who should be informed of the results.

There is currently no specific legislation that addresses this area and so any decisions about genetic testing, or disclosure of results, are dealt with under existing statutes not specifically designed for the issues, or under the common law.

Currently there is no positive duty on an individual to be genetically tested, nor to release those medical results to others, except in exceptional circumstances. The decision to be tested, and to share what may be vital information with others, is currently largely left to the discretion of the individual. In relation to doctors, they owe patients a duty of confidentiality. This means that they cannot ordinarily disclose results of medical testing to others. This forms part of the public interest in preserving confidences, and information given in confidence, is reflected in case law. There is therefore currently a substantial leaning in the common law towards the rights of the individual to keeping any information about genetically inherited diseases confidential should they wish to do so, and some difficulties for the doctor in over riding this.

The Data Protection Act 1998 weighs up the competing interests of the individual who has the sensitive personal data and the circumstances in which that information should be disclosed. The law does therefore provide for circumstances where there the public interest justifies disclosure. However, because there is no specific legislation which sets out how this balancing act should be undertaken in relation to genetic disorder

6 A temporary prohibition of an activity; UK insurance policy that prohibits insurers' from asking for genetic test results

7 Insurance Genetics Moratorium extended to 2017, https://www.abi.org.uk/News/Newsreleases/2011/04/Insurance-Genetics-Moratorium-extended-to2017

disclosure, each case has to be considered individually and the general principles applied. Both the BMA and the GMC set out professional guidelines on how to balance the public interest in preventing harm to or protecting others and the benefits of enabling medical research, as against the possible harm to the patient and the overall trust between doctors and patients. The Report of the Joint Committee on Medical Genetics also recognises this dilemma.

The lack of any codified law on the subject means there is a risk that there is no consistency of approach, there are no safeguards for the individuals, and no clear limits on where the public interest lies.

UK legislation is required to be compliant with the European Convention on Human Rights. The Convention rights seek to protect the rights of the individuals while at the same time recognising that there may be other interests of society that outweigh those personal interests. It is therefore open to Parliament to legislate as to when the information should be disclosed and when it should not.

However, the situation is further complicated by the different situations which may arise under the law and the reality that it may not be appropriate to have one rule that applies to all circumstances. For example a law that requires disclosure of inherited diseases that can kill but which are treatable and curable, may be more justified in the public interest than disclosure of a minor genetic disorder which may or may not cause their offspring some minor problems in the long term.

The consultation undertaken showed that there was significant public support for genetic disorder testing at birth (70%), with 95% of people saying they would want to know if they were at risk of an inherited disorder. However, public opinion was evenly divided on issues such as whether it should be legally enforceable to disclose, and whether there should be an opt out, or opt in system of notification. While there seems to be considerable support for disclosure that helps individuals on their medical issues views are divided on issues about disclosure to insurance companies and employers. The law therefore needs to be drafted to make sure that any disclosure of information is carefully managed.

4. Recommendations

Genetic Sequencing at Birth

4.1 We as the Model Law Commission have come to the agreement that sequencing at birth should be permitted however it should purely be based upon the parent's decision. Parents will be advised at birth that this would allow future diseases to be recognised earlier and therefore would be beneficial however an option to 'opt out' is provided. Essentially, we recommend a choice to be given to the parents of the child.

A Form of Disclosure to Immediate Family Members

4.2 We, as the Model Law Commission agree that family members should disclose information, relating to a genetic condition, to immediate family members. However, in the likelihood that this is not the most reliable method, we have agreed that the sole duty of disclosing information should fall upon the doctor reviewing the certain individual as he holds a neutral position.

1. The doctor should use reasonable methods in attempting to disclose information to immediate family members.
2. If the doctor has not reasonably attempted to disclose this information and therefore resulted in the death or any health related issues of an individual then he or she can be liable.

Employers do not have a right to ask for genetic disclosure

4.3 Our initial idea was that employers can ask after the interview stage for a job whether the employee has any genetic conditions but that the employee could opt out if they wanted; however, on receiving the results from our consultation paper, we reviewed our idea and now recommend that employers do not have a right at

any time to ask for disclosure on any genetic condition, under the Data Protection Act 1998[8] and the Equality Act 2010[9]. We also recommend that, as good practise guidance for employers, regular health checks be carried out by the workplace.

Renewal of Insurance Moratorium

4.4 We recommend that, though looking at the current system we decided that there was no need for change, the moratorium[10] currently in place between insurers and the government should be renewed once it expires in 2017. We believe that insurers should not have access to genetic information and this moratorium effectively protects people with genetic conditions from discrimination[11] and will not discourage people from not taking tests:

3. In their report in 2005, Breakthrough Breast Cancer found that women may not take the BRCA tests, even with family history of breast cancer, if they had to reveal the results to insurers[12]. This could not only apply to people susceptible to cancers but other genetic conditions as well [13], meaning that people may be discouraged from taking tests due to fear of results and then having to disclose them.
4. It is unfair to discriminate someone on something they cannot control and could lead to the creation of a genetic underclass.[14]

5. Conclusion

This report finds that, after looking at the law and the results from our consultation paper, several areas of the law surrounding genetic confidentiality disclosure could be updated.

In the matter of health, we recommend that the government introduces legislation to have all babies genetically sequenced, amongst other obligatory health tests at birth. We believe that this is an appropriate course of action as it will benefit not only the family in question in allowing for them to prepare for the future but will also benefit the future of public health in general. We recommend that the government consider bodies such as the General Medical Council and the Genomics England Project in order for this to be introduced in an effective manner that is also sympathetic to the concerns and medical expertise of the NHS.

In addition, we recommend that legislation be introduced that will place a legal obligation upon doctors to disclose risk of developing genetic conditions to immediate family members (genetically related parents, siblings and children.) If a doctor fails to use reasonable methods to contact immediate family members, which then result in their death or serious harm to health, then they will be found liable, and could result in the suspension of their medical license. We believe this to be a matter of public concern which will significantly benefit public health in the future. We recommend that close discussion with the medical profession, such as the GMA and the BMA, in order for this to be introduced in a manner that is both effective and sympathetic to the concerns and medical expertise of the NHS.

8 http://www.legislation.gov.uk/ukpga/1998/29/section/55

9 https://www.gov.uk/rights-disabled-person/employment

10 Voluntary agreement between the Association of British Insurers and the Government, agreeing to not ask for or about genetic testing results (https://www.gov.uk/government/publications/agreement-extended-on-predictive-genetic-tests-and-insurance)

11 http://www.theguardian.com/science/2000/sep/19/genetics.internationalnews1

12 http://www.parliament.uk/documents/lords-committees/science-technology/stgmbreakthroughbreastcancer.pdf (page 6, section 5.8-5.9)

13 http://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49e4/GeneticTestingUpdate2006.pdf

14 http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1413&context=plr

In the matter of employment and insurance, based on our own findings and our consultation paper, that there was no requirement for statutory changes. However, we do recommend that, in the matter of insurance, the current moratorium between the ABI and the government be renewed once it expires in 2017, and that future governments continue to consider legislation in both of these areas, especially when further scientific developments arise in the field of genetics. We would also recommend that wider surveys be carried out to ascertain the opinion of a larger percentage of the public on the matters of insurance and employment within the field of genetic disclosure.

Part 3: Public Law

Recommendations on the laws governing extradition.

Outlining the Problem

During our examination of the UK's extradition provisions, we have been able to appreciate how vital cross-jurisdictional extradition treaties are to aiding the fight against international crime. However, we have also identified a number of areas of weakness that depletes the standard of legal protection that UK citizens could expect to be provided with if their case was being heard by a UK court. This has been particularly evident in our analysis of the UK-US treaty and the Extradition Act 2003. During the course of the report we have outlined a number of cases in which UK citizens have been let down by international extradition procedures and, consequently, suffered human right violations. Taking all of our research into consideration, we recommend a fairer, more symmetrical structure for conducting extraditions. Having analysed the European Arrest Warrant, the principle of mutual recognition is something that we believe should be implemented in all extradition treaties. In addition, we would like to see the power imbalance between the United Kingdom and the United States rectified.

Case Studies

The two main case studies that we have examined are the cases involving Babar Ahmad and Talha Ahsan. In this document we hope to explain why these two people were deported as well as outlining the implications of the UK-US treaty on real defendants.

Babar Ahmad

Babar Ahmed is a British Citizen who was born in May 1979 in London. In December 2003, Ahmad was arrested at his house in London under anti-terror legislation. At the police station Ahmad sustained seventy three recorded injuries. Six days later he was released without charge. In August 2004, Ahmad was re-arrested in London and taken to prison since there was an extradition request from the US. The US had suspected that in the 1990s Ahmad was a supporter of terrorism; however Babar denies any involvement.

"As a British citizen who has lived since birth in Britain, studied, worked full-time and paid taxes, if I am accused of any offence here in Britain I expect at the very least to face trial here in Britain". This is an article that Babar Ahmad had written in 2012 regarding his extradition; our group also believe that Ahmad's case went on for too long and that a person should face trial in the country where they originally committed the crime. Furthermore, we believe that the sheer amount of power that America hold when dealing with extradition is used irresponsibly and should be questioned. He is currently in legal detention in the United States of America.

Talha Ahsan

Talha Ahsan is a British poet, translator and human rights campaigner who was born on the 21st of September. Ahsan has Asperger's syndrome and was extradited to the US on the 5th of October 2012 after over six years of detention without charge or trial. Ahsan was arrested at his home on the 19 July 2006 in response to a request from the USA under the Extradition Act 2003; the act does not require the presentation of any evidence. Talha had never visited America before his extradition. The US has accused him of terrorism-related offences, Ahsan supposedly had involvement with the Azzam London-based publishing house over the period of 1997-2004, and however, he denies all charges. Talha Ahsan has never been arrested or questioned by British police, despite a number of men being so from his local area in December 2003 for similar allegations. All of them were released without charge.

Evidence and Human Rights

The current extradition law in place could be drastically improved to benefit our citizens and ensure that they are treated fairly. This is in regards to the standard of evidence needed to extradite someone to a different state and the rights they are adhered to under the Human Rights Act 1998.

There are many rights we believe everyone should be subject to under the extradition law and if the law is reformed these practises should be put in to place regardless of the location of the crime. This thus means that one uniform specification of human rights should be put in place. In regards to extradition the Human Rights Act 1998 currently specifies that torture or inhumane or degrading treatment is prohibited, citizens have the right to liberty and security, the right to a fair trial, the right to respect for private and family life and that discrimination is also prohibited.

There have however, been multiple cases under which this hasn't been followed and people have been extradited under an insufficient amount of evidence. The standard of evidence under which people have been extradited could be perceived as completely unjust and in total breach of the Human Rights Act. This is due to the fact that multiple foreign states for example the USA are able to arrest UK citizens with an insufficient amount of evidence. If there is suspicion of a crime the US is able to extradite someone from the UK and detain him or her for however long they deem necessary even if there is no satisfactory evidence. This is a clear area where reform is needed and due to this the right to a fair trial stated in the human rights act is not protected to an adequate standard.

In order to tackle the issue raised we would like to suggest a number of possible ways in which we could improve the current legislation. Firstly there should be equal evidence requirements between states. Both the state to which someone is being extradited to, and from should set one standard requirement under which people can be extradited against. If a suspect does not reach said standard, then until the appropriate evidence is collected they should not be detained or extradited for longer than 30 days.

Additionally there should be a higher threshold of evidence to be presented to the state the person is being extradited from. This should be enough to charge the person with offence as otherwise there is no real threat posed to society and the person should not be unjustly punished if their crime is not even of the severity that they can be charged for said criminal act.

The final reform idea we discussed in regards to evidence and human rights is the right to a fair trial and protection and security. This is already under Article 14 of the Human Rights Act 1998 however it is not being abided by, as there have been cases under which people have been detained without proof of the alleged crime committed. As the protection of our citizens is a fundamental area which we should focus on, especially if they are going to be subject to another states laws; the suspected individual should be presumed as innocent until proven guilty and until this point should be fully protected and treated fairly.

Extradition and the European Arrest Warrant

In order to highlight the flaws in the US-UK Treaty, we have found it useful to use the European Arrest Warrant as a comparison. Extradition from the UK occurs under the European Arrest Warrant (EAW). The EAW extradition partners consist of categories 1 and 2. The process of extradition consists of a request being made to the National Crime Agency. The EAW must be received within 48 hours for a court hearing. Following the arrest warrant a certificate can be issued if the person convicted is liable to immediate arrest and detention. An extradition hearing can also be requested by the individual being extradited and should usually take place within 21 days of the arrest, in the hearing the judge has to look over the arrest warrant and make sure that the person's extradition is compatible with the human rights act 1998. If the request is compatible with the human rights act the extradition has to take place.

There is also a time limit as to how long the person can be held in custody without any evidence under the EAW and there has to be enough evidence against the individual demonstrating that the crime committed is an offence in both the UK and the country that is requesting extradition.

The US and UK Extradition treaty is also largely similar to the EAW but has some features that contrast the extradition rights of suspects being sent to the US and the suspects being sent to the UK. As the treaty stands the US only has to have 'reasonably suspicion' to launch an arrest warrant for extradition whereas to have a person sent to the UK through extradition there has so be some sort of evidence. There is also a lack of time constraints in the treaty regarding how long a suspect can be detained in the US without evidence which can cause distress for the individual accused. As the system currently stands some civilians that are seen as suspects are protected but others are still left to face extradition in the example of the relatively similar cases of Garry McKinnon and Talha Ahsan.

Imbalance of the Extradition Treaty 2003

Extradition is the official process whereby one country transfers a suspected or convicted criminal to another country. Between countries, treaties normally regulate extradition. The main imbalance regarding extradition law is Category 2 of the Extradition Act 2003 that deals with the legislation of extradition between the United Kingdom and the United States. Despite recent reports investigating this area of extradition concluding that there was no imbalance, it is clear that there is room for reform.

Under the Extradition Act 2003 there is no mention about how long the United States can hold a suspect in custody before being charged. Some objective evidence of this is the Talha Ahsan case in which he was accused of a terrorist act in the United States and was extradited with no substantial evidence. The United States only need enough evidence to prove a suspicion of the crime in order for the United Kingdom to then extradite the suspect. The imbalance is clear in respect of evidence as the United Kingdom must provide a substantially stronger amount of evidence when requesting for a citizen of the United States to be extradited back to the United Kingdom to face charge for crimes committed.

There is currently no legislation set out in Category 2 of the Extradition Act 2003 that imposes time constraints upon the United States and how long they are able to detain UK citizens who are suspects of criminal activity. In contrast to Category 1 and the European Arrest Warrant, the United States are able to hold suspects for an undetermined amount of time without charge or trial.

This is in drastic contrast to Category 1 of the Extradition Act 2003 which deals with the European Arrest Warrant. Category 1 offers a much higher standard of protection to UK citizens who are facing charges for crimes committed in EU countries.

Legal Aid and Extradition

Under current law, there is no financial support in the form of legal aid available to UK citizens that have been extradited to other countries and are facing trial. This presents huge problems for many suspects.

Those individuals facing trial in other countries are left to either represent themselves, leaving them at a clear disadvantage, or to financially support their own legal representation. Not only does this present issues such as huge legal costs, which could then lead to further issues such as bankruptcy, but it ultimately does not coincide with Article 6 of the Human Rights Act 1998, the right to fair trial.

Despite massive legal aid cuts in recent years, it is still clear that reform is needed regarding legal aid for those citizens who are facing trial, whether they are guilty or innocent these citizens still have the right to Article 6.

Our Recommendations

- The US-UK extradition treaty needs to be re-written. Its current format allows loopholes in the law to exist, thus creating opportunities for defendants to be detained for excessive periods of time without charge.
- The evidence standards required to extradite a citizen from the UK to the US should be the same as what is required in the reverse scenario. At the moment it is far easier for the US to extradite a UK citizen than it is for the UK to have a US extradited to them. The higher threshold of prime facie evidence should apply in both cases.
- Given the ease with which UK citizens can be extradited to other states, we suggest that financial support should be extended to all UK citizens standing trial abroad. The burden should not be placed on the defendant, especially in cases where the threshold for evidence requirements is so low.
- To ensure a globally cohesive system of extradition, we believe that a new global treaty should be created. This would reduce the effects of political action in extradition cases and insure a more universal protection of individual rights.

Title: Extradition Law Reform. **IA No:** **Lead department or agency:** Model Law Comission **Other departments or agencies:**	**Impact Assessment (IA)** **Date:** 27th November 2014 **Stage:** Development/Options **Source of intervention:** International **Type of measure:** Primary legislation **Contact for enquiries:**

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£95.33m	£95.33m	-£8.8m	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?

The current extraiditon practises in the UK are ineffective in many areas. These include the suffieicent amount of evidence needed in order to be extradited, the rights the defendant has when being extradited and the bench mark everyone should be subject to in an extradition case.
Additionally our global policies could be percieved as unfair as larger countrys have greater control over the UK, which affects the position citizens of the UK are put in.
The government is a key factor in implenenting the change needed in order to fully benefit the citizens of the UK in terms of the current law on extradition procceddings.

What are the policy objectives and the intended effects?

The objective is to update the current extradition law in place, by creating a global treaty which no longer reflects the injust practises reflected in the present legislation . The default regime in place is biased towards larger intenrational powers such as the United States of America and also does not give UK citizens fair rights when undergoing extradition; including financial aid and a sufficient mental capacity assessment.

The intended effect is to reduce the inequality present whilst ensuring the appropriate action is taken in order to ensure people are given a fair punishment equal to the nature of their crime.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1. Do nothing. This would leave the law outdated and further allow our citizens to go mistreated in other states.
Option 2. Reform the defualt extraiditon act based on a new global treaty. This is the preffered option as it will provide a suitable basis for the bast majority of parties involved to have equal rights and for citizens to receive fair treatment based on the human rights act and mental capacity act. It will also minimise the controversy present and bring more awareness unto the topic of extradition.

Further options were considered but we believe that these would be the most beneficial when considering our current international position and the feelings of the citizens of the UK.

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ..... Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	4.80		0.40	**8.12**
High	4.80		0.60	**9.79**
Best Estimate	4.80		0.50	**8.96**

Description and scale of key monetised costs by 'main affected groups'

Transitional costs: Setting up meetings to form alliances and ensure a fair treaty is produced based on a specification which is suited to all involved states.
On going costs: Cases taken to the court involving the new law and the cost of financial aid and specialists to carry out the mental capacity assessment.

Other key non-monetised costs by 'main affected groups'

There will be a period of uncertainity as all affected groups adapt to the new rules.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		10.11	**84.08**
High	0		14.96	**124.58**
Best Estimate	0		12.54	**8.96**

Description and scale of key monetised benefits by 'main affected groups'

On going benefits: A fair and rational treaty which ensures equality amongst nations. This would further improve our economic and military position with other states as we work in consensus.
There will be fewer disputes over who is eligible to be extradited and the treatment they should receive in any case which takes in to account: evidence and mental capacity standards as well as the right to financial aid.

Other key non-monetised benefits by 'main affected groups'

The increased effectiveness of the extradition treaty will ensure a balanced outcome for all party's involved and will decrease the confusion and debate about who deserves to be extradited which also minimises costs.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5%

Key assumptions: Making the law clearer and easier to understand will lead to increased compliance and attention towards extradition procceddings which will minimise unfair treatment.
Risks: There may be more disputes on the law or a lack of compliance by certain authoratitive bodys present.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.8	**Benefits:** 9.6	**Net:** 8.8	Yes	OUT

Part 4: Criminal Law

Recommendations on the laws governing the issues relating to revenge porn.

Compiled with thanks to:

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Introduction

Technology has advanced rapidly and has expanded our access to information and communication. The invention of the internet has allowed us to access various forms of data and network with people alike. Platforms giving us the ability to share images of our personal life have evolved our means of communication.

The view held in this report will be that Revenge Porn is an escalating issue in which direct legislation along with recommendations need to be made. The themes held in this report will be the issue of Revenge Porn; including current laws, potential laws and the impact of social media. As exciting as this advancement in technology may sound, has it really led to a net benefit?

What is Revenge Porn? What is the Current Law?

What is Revenge Porn?

Revenge Porn is the act of publishing explicit and intimate material, without informed consent, online. This act usually takes place after a split in a relationship, where images of a sexual nature are uploaded to publicly humiliate the victim, in pursuit of 'revenge'. These images would usually be uploaded and shared on sites where they are visible for the friends and family of the victim to view them. Alongside this, personal details of the victim may be published too, which affects the victim's safety, reputation (socially and professionally), as well as their future employment.

Being a victim of Revenge Porn can have a significant impact and cause psychological damage, resulting in depression; this could ultimately lead to suicide. There have been many cases of Revenge Porn victims attempting and committing suicide; however cases surrounding Revenge Porn do not solely include images and break ups, it can include videos, messages and texts.

Alongside this, it can also include scenarios such as dating websites where material could be shared and uploaded without consent, impersonators (i.e. a person pretending to be of another gender to encourage material to be passed on and then uploaded), porn websites, covert scenarios (i.e. when the potential victim does not know they are being secretly filmed or being photographed) and child pornography.

What is the Current Law?

Currently, there is no specific law addressing Revenge Porn directly. If there is no current law, then it would be difficult for Local Authorities, such as the Police, to enforce and deal with the issue effectively; however, elements of the issue fall under many existing laws.

Theft Act 1968 (section 21) - This concerns blackmail which consists of making an unwarranted demand with menaces, with a view to making a gain or causing a loss.

The Protection from Harassment Act 1997 - Refers to giving protection from harassment, however this requires for more than one incident to be classed as harassment; from different perspectives of the victim, Revenge Porn can be seen as harassment.

The Communications Act 2003 (section 127) - Refers to sending by means of a public electronic communications network a message or other matters that are "grossly offensive or of an indecent, obscene or menacing character".

The problems with this Act are that it includes no question of consent, along with the law not being used enough because it is subjective.

The Malicious Communications Act 1988 - Refers to the sending of communication which conveys a message which is indecent or grossly offensive, a threat, or if it contains an untrue statement, which any part of it is indecent or grossly offensive in nature.

The Public Order Act 1986 - Refers to the action of threatening, being abusive, or using insulting words in terms of behaviour and refers to the actions of displaying any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

- Section 4 – deals with the fear or provocation of violence. (Psychological violence)
- Section 4A – deals with Intentional harassment, alarm or distress.
- Section 5 –deals with Harassment, alarm or distress.

The overall problem with the current laws, as above, are that only elements of the law can apply to the act of Revenge Porn and further that these current laws are not being used enough. Both of these issues can lead to a lack of enforcement of these laws, as well as Revenge Porn cases not being dealt with properly as there is a no direct law addressing the issue of Revenge Porn specifically. This can result in the victim's access to justice being limited which is not morally correct and should not be legally correct either.

Our Consultation and Results

Consultation Questionnaire

These were the questions that were distributed via an online survey to family, friends, and other members of the public.

Age:
Gender:

1) What do you understand by the term 'Revenge Pornography'?

NB. Revenge Pornography is sexually explicit media that is publicly shared online without the consent of the pictured individual.

2) Are you aware of cases of celebrity Revenge Pornography?

3) Are you aware of cases of non-celebrity Revenge Pornography?

4) How would you rate the following as cases of Revenge Pornography on a scale of 1-5? (1 being the least serious, 5 being the most serious.)

- Guy/Girl topless
- Guy/Girl in swimwear
- Guy/Girl in underwear
- Guy/Girl fully naked
- Guy/Girl participating in a sexual act
- Guy/Girl engaging in sexual intercourse

5) Would you class the following as Revenge Pornography?

- Guy/Girl in swimwear
- Guy topless
- Girl in T-shirt and underwear
- Guy/Girl in underwear
- Guy/Girl naked, participating in a sexual act or engaging in sexual intercourse, however their face is not shown in the photograph

6) Who can be affected by Revenge Pornography?

- Males
- Females
- Both

7) Which of the below age categories do you think is most affected by Revenge Pornography? (1 being the most affected, 5 being the least affected.)

- Children under 11
- 11-15 year olds
- 16-18 year olds
- 19-21 year olds
- 22 and over

8) Have you been taught about the following topics in school/at your work place?

- Cyber-bullying
- Sexting
- Knife Crime
- Healthy Relationships
- Revenge Pornography

9) If you have you ever reported a photo on a social media site, what was your reason for doing so?

10) Have you heard of cases in your school/work place of explicit pictures being shared?

- Yes
- No

11) If yes, how was it dealt with?

12) If a Defendant is found guilty of an act of Revenge Pornography, do you think they should go to prison?

- Yes
- No

13) If yes, how long do you think they should go to prison for?

- N/A
- Up to 6 months
- Up to 1 year
- Up to 2 years
- Up to 5 years

14) Do you think it should be a criminal offence to share an explicit picture?

- Yes
- No

15) Instead of 'Revenge Pornography', what do you think would be a more appropriate name for this type of act?

Consultation Results

Here is a sample of the results we received:

- People understood the term Revenge Porn to mean:
  - Private images released to those who they were not meant for.
  - A way to embarrass and destroy an ex's reputation.
  - Nude videos/photos of women sent around or posted online, usually by their ex-boyfriends, without their permission, as a way to hurt them and get back at them.
  - Posting an Ex's explicit photos via social media as a form of 'revenge'.
  - Pornographic images that have been sent out without the person's permission.
  - Where an ex-partner (person A) shares intimate photos or videos of person B online or publishes them in some other format in order to embarrass them or cause them hurt, for various reasons including because they are bitter about their break up.
- 84.6% of those surveyed were aware of celebrity cases of Revenge Porn in the news.
- 73.1% of those surveyed were aware of non-celebrity cases of Revenge Porn in the news.
- 100% of those surveyed thought both male and females could be affected by Revenge Porn.
- Of those surveyed the following breakdown shows whether they have been taught about the subject at school or work:
  - Cyber-bullying 16.06%
  - Sexting 21.76%
  - Knife crime 20.21%
  - Healthy relationships 17.62%
  - Revenge Porn 24.35%
- 61.5% of those surveyed had heard of cases at school or work of explicit photos being shared.
- There was a 50/50 split on whether someone should go to prison if found guilty of an act of Revenge Porn.
- Of those that answered yes to it warranting a prison sentence this was the breakdown of time:
  - Not applicable 50%
  - Up to 6 months 23.08%
  - Up to 1 year 15.38%
  - Up to 2 years 3.85%
  - Up to 5 years 7.69%
- 84.6% of those surveyed answered that it should be a criminal offence to share an explicit photo of someone without their consent.
- Other suggestions for names for Revenge Porn:
  - Illegal Porn
  - Unsolicited distribution of photos
  - Explicit publication without consent
  - Explicit revenge material
  - Sharing images with malice intent
  - Involuntary Porn

Our definition of Revenge Porn and what it encompasses

Our definition of Revenge Porn is; "media including (but not limited to) photos, videos and text messages of a sexual nature, which are shared without the consent of the original owner and which are not intended by the individual to be seen by the general public." 'Sexual nature' can include media which shows full nudity, partial nudity, or a sexual act. The extent to which the media had been transferred also has an effect on this, since it can be difficult to grasp whether or not the media was intended to be viewed by the general public, although this is more dependent on the situation in which the individual(s) had originally sent the media.

We, however, feel that the term 'Revenge Porn' does not appropriately fit the act; we would want a more appropriate name to replace this term. We feel as though the term 'Involuntary Porn' would better suit the act, since the term 'Revenge Porn' creates a wide range of connotations that could cause the general public to not truly understand the extent of the act.

Test of Severity

In order to determine any means of sentencing, one must first establish grounds for which 'Revenge Porn' material can be categorised – in regards to severity. This has been partially addressed in our recent consensus, in which we questioned what would be classed as 'Revenge Porn.' It is evident in the responses that there are differing levels of severity; therefore, it would be most effective to enforce the implementation of differing categories, proposing the chosen solutions. However, defining 'Revenge Porn' is challenging due to its connotations – which affects the way in which we class its severity. Perhaps 'Involuntary Porn' or 'Sexual Exploitation' would be better suited, as our consultation stated.

However, an implemented 'filtering' system of criminal cases already in place is applied by **The Crown Prosecution Service (CPS)**[1] [2]. CPS is responsible for prosecuting criminal cases investigated by the police in England and in Wales. Thus, the severity of case is protruded by the fact that it has reached this stage – already indicating the severity.

Nevertheless, one cannot wholly rely on CPS to be a test of severity. A particular recommendation would be to incorporate the **COPINE scale**[3]. The COPINE scale is the abbreviation of 'Combating Paedophile Information Networks In Europe', installed into the legal system in 1997.

To adjust and adapt the scale below to 'Revenge Porn' would aid the classifications of severity. An example of an occurrence like such is the SAP scale (still regarding indecent photographs, but of children) – which is not yet designed for use in court. SAP stands for Sentencing Advisory Panel.

1 http://www.cps.gov.uk/

2 http://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html

3 http://en.wikipedia.org/wiki/COPINE_scale

The SAP scale consists of:

The COPINE Scale

1	**Indicative**	Non-erotic and non-sexualised pictures showing children in their underwear, swimming costumes from either commercial sources or family albums. Pictures of children playing in normal settings, in which the context or organisation of pictures by the collector indicates inappropriateness.
2	**Nudist**	Pictures of naked or semi-naked children in appropriate nudist settings, and from legitimate sources.
3	**Erotica**	Surreptitiously taken photographs of children in play areas or other safe environments showing either underwear or varying degrees of nakedness.
4	**Posing**	Deliberately posed pictures of children fully clothed, partially clothed or naked (where the amount, context and organisation suggests sexual interest).
5	**Erotic Posing**	Deliberately posed pictures of fully, partially clothed or naked children in sexualised or provocative poses.
6	**Explicit Erotic Posing**	Pictures emphasising genital areas, where the child is either naked, partially clothed or fully clothed.
7	**Explicit Sexual Activity**	Pictures that depict touching, mutual and self-masturbation, oral sex and intercourse by a child, not involving an adult.
8	**Assault**	Pictures of children being subject to a sexual assault, involving digital touching, involving an adult.
9	**Gross Assault**	Grossly obscene pictures of sexual assault, involving penetrative sex, masturbation or oral sex, involving an adult.
10	**Sadistic/Bestiality**	a. Pictures showing a child being tied, bound, beaten, whipped or otherwise subject to something that implies pain. b. Pictures where an animal is involved in some form of sexual behaviour with a child.

An example of this would be the **2002 Regina v. Oliver case, Hartrey and Baldwin**4, in which the Court of Appeal clarified the definitions in relation to image level classifications. Following R v Wild (2002) the Court of Appeal sought the views of the Sentencing Advisory Panel in relation to offences involving indecent photographs and pseudo images of children. Extracted from page 75 of the **Sentencing Council's sexual offences definitive guideline**5, a new scale replacing SAP commenced on April 1 2014. Previously seen categories have been condensed to the three following ones: Category B - non-penetrative sexual activity.

The effect of these adapted recommendations would be the efficiency of sentencing or providing consequences to those who breach an individual's right via 'Revenge Porn'. This means the sharing of media, including (but not limited to) photos, videos, texts etc. of a sexual nature without consent, not intended by the individual for the general public and that is harmful to them.

Another aspect in which we can incorporate could be the **International Infliction of Emotional Distress (IIED)**6, a civil tort involving terrible conduct. It consists of 4 elements: (1) The defendant must act intentionally or recklessly; (2) the defendant's conduct must be extreme and outrageous; and (3) the conduct must be the cause (4) of severe emotional distress.

Alternative views could be that a new scale is unnecessary and a law already in place can be applicable. Therefore, by identifying the presence or absence of an IIED, one can determine the severity of the case - thus, enabling the sentencing process to occur.

In conjunction with this, we feel that the relevant media should be adduced in evidence in order that the jury are able to see the content and circumstances of the relevant media. This is in order to assist the jury when deciding whether the media involved is sexually explicit in nature and further whether there was a reasonable expectation that the media involved was not intended to be viewed by the general public. This would help to ensure a fair trial for the defendant(s) as the jury would have seen the media itself; it would also seek to minimise distress for victim(s) in court, as it would limit the amount of questions that they would have to answer in relation to the content of the media.

4 https://www.iwf.org.uk/hotline/case-laws/r-v-oliver-hartrey-and-baldwin

5 http://sentencingcouncil.judiciary.gov.uk/docs/Final_Sexual_Offences_Definitive_Guideline_content_(web).pdf

6 http://www.law.cornell.edu/wex/intentional_infliction_of_emotional_distress

Sentencing

The group was unevenly split when initially discussing sentencing with regards to our offence, and the minority believed that denunciation should be the primary aim; to amplify the seriousness of the offence, from the damage it causes.

It appears that this offence causes two types of damage, damage that never goes away. The first type of damage is immediate shock, feeling distraught and upset which occurs immediately post-offence; however, victims will then suffer for the rest of their life potential damage to their reputation occuring rapidly once explicit media has been shared. This represents the seriousness of the offence and should translate to the sentence it attracts. The media has already shown us that in some of the worst cases many people have taken their lives, emphasising the need for harsher sentencing.

As a result of the consultation, our discussions and reading, we propose a custodial sentence for the offence due to the on-going damage it causes and in order to show society that this type of behaviour is unacceptable. With regards to the 2 year sentence currently going through parliament it appears practically sound.

It is important to consider the costs associated with different forms of sentencing. Research suggests that it costs just over £40,000 to send someone to prison per year and therefore this is a large proportion of the national budget. Community service projects, whilst generally already set up, do also have significant costs with regards to supervision and equipment.

We think the net benefit lies with a custodial sentence. A custodial sentence acts far better as a deterrent because it highlights how horrific this sort of behaviour is in society. Whilst other sentences also aim to deter individuals a custodial sentence has an authoritative impact which we would deem to be more effective.

We are aware that age is taken into consideration when deciding sentences but it is important to note the public's perception of this; does it devalue the crime and does it encourage one to commit while young because they know they will get a shorter sentence?

The group decided that a mitigating factor, in addition to the general factors, would be if an individual has taken down the image within 60 minutes or similar as recognition of what they have done, this displays clear remorse and should be taken into account. We think it is useful to mention that those facilitating the websites which allow offenders to share the explicit media will be subject to a prolonged sentence merely on the basis that they are those that begin the "chain" of the events as such leading to damage.

Education and Social Media

We believe that we should raise awareness on the topic of Revenge Porn and this can be done by making it compulsory that all secondary schools are to educate their students on Revenge Porn and to think before they share any explicit photo/video/text message, it could potentially lead to less cases of Revenge Porn. This could be done by adding it as a part of PSHE.

Under section 78 of the Education Act 2002 and the Academies Act 2010 such a curriculum must:

- Promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society;
- Prepare pupils at the school for the opportunities, responsibilities and experiences of later life;
- Promote children and young people's wellbeing (Wellbeing is defined in the Children Act 2004 as the promotion of physical and mental health; emotional wellbeing; social and economic wellbeing; education, training and recreation; recognition of the contribution made by children to society; and protection from harm and neglect);
- Promote community cohesion (Education and Inspections Act 2006; Education Act 2002).

If young people gaining knowledge on Revenge Porn, was to be added to PSHE then it would be an advantage as it would be able to cover the education aspect, which will lead to less cases of Revenge Porn for younger people in itself.

Other ways to raise awareness and not only educate younger people but adults/parents too (because in a lot of cases they are also victims) is by increasing awareness of victims that have already encountered it, so that they themselves can share their experience. If new legislation was to be made on Revenge Porn, then victims would be able to share their experience and how it was dealt with in an adept way. This means that more victims would speak out. However, currently not every victim speaks out, possibly because not every victim has had their case dealt with in a fair manner.

After research we have found that most victims of Revenge Porn were exposed through social media. In today's society where most things happen online, social media sites should be more aware of what could be shared and should act straight away. Currently a lot of people have said that in their experience after reporting an explicit photo on Facebook, nothing has happened until several people have reported it and it has been at least 48hours when the damage can already be done.

If an explicit photo was to stay up this long and it was not the victim's fault, it could have a bad effect on them in the future. It could lead to them finding it hard to get employed and being discriminated because their photo had stayed on the Internet for so long and employers were to find it. Therefore, laws should be stricter regarding security on social media sites.

Social Media Reform

As a group we decided that it is necessary for Social Media to have a far more responsive customer service team. Currently you cannot speak to someone and very often when reporting images or content that is explicit/or just inappropriate it takes 48 hours to come down and sometimes if not enough people have reported it, then it won't be taken down at all. Despite that though, so many people could have shared, retweeted and screen shot the information that it could still be in the public domain.

It is necessary that some form of legislation or enforcement is given to the Social Media Network Providers so that there is someone at the end of the phone or things are dealt with in a far better and more effective manner. Yes this may incur extra costs but a lot of money is spent on advertising on these sites and maybe some of that could go to keeping the users of these sites safer on the Internet.

Whilst we have not drafted this in our own legislation proposal, it is something that needs to be looked at, for a multitude of topics, not just Revenge Porn. Also having someone on the end of the phone to talk to about the images being shared is far better than just hitting a report button and victims not knowing if there request is even being dealt with.

We hope that this is considered in the future.

As a group we also looked at how some sort of 'internet policing' would be beneficial in terms of Revenge Porn, and also other areas of cyber-bullying. This would be similar to the paedophile infiltration circles, and would probably target more the Revenge Porn websites rather than social medial (but would still have a presence on social media). The reason for the need for this is that very often victims don't know they are victims until someone happens to see them on these specific Revenge Porn websites or someone contacts them about their photos, as very often ex's upload photos and contact details on to these sites.

This is something which does need considering and needs reform, especially given how fast the Internet changes.

Proposed Legislation

Section 1 - Involuntary Pornography

Involuntary Pornography is deemed to be media, including (but not limited to) photographs, videos and text messages, shared without consent, or a sexual nature, not intended by the individual for the general public, that is harmful to that individual (if shared).

A person (A) commits an offence if –

- He commits the act in Section 1(1), and
- (A) Does not reasonably believe that (B) consents.

Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for up to two years.

A person guilty of hosting or facilitating media in relation to an offence under this section is liable, on conviction on indictment, to imprisonment for up to five years.

Section 2 - Definition of Media

- The definition attached to 'media', including (but not limited to) photographs, videos and text messages in s.1(1) need not necessarily include nude media, but the media must be of an explicit content, i.e. in underwear or revealing to the victim.

Section 3 - Court Procedure

- The relevant media may be shown to the jury in order that they can see the content and circumstances of the relevant media.

Conclusion

In conclusion, we seek to alter the term 'Revenge' to 'Involuntary' on the basis that revenge implies, and as a result may limit the scope of any legislation, to situations where there has been a relationship break up. However, we wish to keep the term 'Pornography' as it amplifies the sexual nature of the offence. Accordingly, we strongly believe that 'Involuntary Pornography' is the most appropriate term to describe this act.

As detailed in this report, technology is constantly evolving and as such we feel that it is important that our proposed legislation is able to adapt to encompass technological changes and new means of sharing media in the future. Moreover, as technology develops and communication of Involuntary Porn media becomes a more prevalent problem in society, it is evident that there is a great need for specific legislation to protect victims of such acts.

As exciting as this advancement in technology may sound, has it really led to a net benefit?

Recommendations

To summarise our recommendations:-

1. The name change from 'Revenge Porn' to 'Involuntary Porn';
2. Our definition as detailed in this report;
3. Our sentencing and draft legislation which makes Involuntary Porn a standalone Criminal Offence and one which has its own law (rather than it being encompassed in a variety of potentially out-dated laws);
4. Raising the awareness of Involuntary Porn in schools via education and PSHE, also raising the awareness in general to parents;
5. Changing Social Media in terms of their level of customer service – ensuring that there is someone to speak to and that victims are not waiting 48 hours to see if something can be taken down, and this applies across the board, not just for Revenge Porn.

Big Voice London is always looking to grow our support from organisations and individuals who share our passion for increasing youth access to the legal system.
For more information or to view our other publications, please visit our website at **http://bigvoicelondon.com**