

Legalising sexual activity in public toilets

**How the Sexual Offences Bill effectively
legalises a major public nuisance**

“...public lavatories are not places for sexual activity. If we say anything less than this, we imply that there are circumstances in which sexual activity in a public lavatory is acceptable. If there is anything less than a total prohibition, we run the risk of making public lavatories no-go areas for the general public and in particular for children.”¹

Baroness Noakes, Conservative

“For me—and this has absolutely nothing to do with prejudice against gay people, straight people or any other people—public lavatories should be sex-free zones.”²

Lord Carlile of Berriew, Liberal Democrat

“...some public facilities are extensively used for sexual purposes, and the law needs to be able to deal with this problem as part of wider powers to deal with sexual activity in public places.”³

The Government Sex Offences Review, 2000

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Introduction

- The most controversial aspect of the Sexual Offences Bill is the proposal to effectively legalise homosexual activity in public lavatories.
- Under the present law homosexual activity in public toilets is illegal. It is covered by the specific offence of ‘gross indecency’. If the activity takes place in a public toilet it is illegal. But the Government is proposing to repeal gross indecency without putting any equivalent protection in its place. The public will be left without a law that specifically protects them from sexual activity in public toilets.
- The Government says that this repeal can go ahead and we can rely on the existing law of ‘outraging public decency’, and a public order offence, to deal with the problem. But these are very weak and ineffective laws. Outraging public decency requires proof, not just that the activity took place, but that members of the public could see the activity and that it would result in outrage. These tests may be difficult to prove. These laws are not up to the job of protecting the public (see pages 11 - 14).
- Sexual activity in public toilets is already causing severe problems around the country (see pages 6 – 10). This is causing anxiety amongst parents who, naturally, are very concerned about the possibility of their children being present in a public toilet when sexual activity is taking place. A young child would be very alarmed if sexual activity took place in the cubicle next to the one they were using. Under the bill, more public lavatories will become no-go areas for children and families.
- Since the police will have no effective law to tackle this problem, homosexual activity in public toilets will effectively be legalised. There is no demand from the public for this to happen. The public, and parents in particular, want to see all sexual activity in public toilets– whether heterosexual or homosexual – completely banned.
- This aspect of the bill will soon be debated in the House of Lords. Christians need to argue for a specific law that makes all sexual activity in public toilets a criminal offence.

Northern Ireland

- Most of the Sexual Offences Bill applies only to England and Wales.
- However, in a surprise move, the Government has recently announced that it will now use to the Bill to repeal the gross indecency law in Northern Ireland. The move pre-empts the review of sexual offences that is currently underway in the Province (see page 5). The Government is pushing through this highly controversial gay rights measure even before a consultation paper has been issued.

Scotland

- The repeal of gross indecency does not apply to Scotland.

The repeal of gross indecency

The Government's Sexual Offences Bill will repeal the law of gross indecency. This law currently makes all homosexual activity in toilets a criminal offence. It carries a maximum penalty of 2 years.

The element of the law that specifically covers public lavatories was introduced in 1967 – less than forty years ago. Although the Government repeatedly claims it is removing 'Victorian' laws this is clearly not the case here.

1967 was the height of the sexual revolution. It was the year Parliament legalised homosexual acts "in private". Nevertheless at the same time it was felt necessary to make clear that "private" did not include "a lavatory to which the public have or are permitted to have access".⁴

Roy Jenkins, then Home Secretary, noted the offence during the passing of the bill and explained that:

"...the view was taken in another place that there should be included this special provision relating to public lavatories, which is obviously a social feature of homosexuality as opposed to the heterosexual act." [House of Commons Hansard, 3 July 1967, col. 1453]

Explaining the same section of the Act the year before, the Under-Secretary of State at the Home Office, Lord Stonham, said it was:

"...intended to cover a case where two men committed an act in a locked cubicle, and it would clearly be objectionable if those two men were seen to enter the cubicle and their activities though not seen might well be thought to offend other persons who might be using the public part of the lavatory." [House of Lords Hansard, 23 May 1966, col. 1194]

The offence of outraging public decency existed as a criminal offence at the time of the 1967 Act (see page 11). Significantly, it was discussed during the debates on the 1967 Act.⁵ **There were also various public order offences on the statute books. However, parliament still believed a specific provision for public lavatories was necessary. If outraging public decency had been adequate to tackle the problem of sex in public toilets, section 1 of the 1967 Sexual Offences Act would have been unnecessary. Yet parliament at that time believed that no other law existed that would suffice.**

Yet the Government is now relying heavily on outraging public decency and public order offences to replace gross indecency.

How Northern Ireland came to be included

On Tuesday 20th May at 2 o'clock in the morning, during a debate on the Sexual Offences Bill, a Government Minister made the unexpected announcement that the Government was to repeal the offence of gross indecency in Northern Ireland.⁶

The repeal of gross indecency in the Sexual Offences Bill was only to have applied to England and Wales. But the Government is now changing the law in Northern Ireland as well.⁷

In repealing gross indecency in England and Wales the Government can at least claim to have consulted on the matter. However, the new proposal concerning Northern Ireland has been made when the review for Northern Ireland has only just begun. The consultation paper has not yet even been published.

The evidence

Sexual activity in public lavatories is still a widespread problem.

The Home Office Sex Offences Review, published in 2000, concluded:

“...some public facilities are extensively used for sexual purposes, and the law needs to be able to deal with this problem as part of wider powers to deal with sexual activity in public places.”⁸

Judging from local newspapers around the country, sexual activity in public toilets (overwhelmingly homosexual) is a major public nuisance. The following extracts from newspapers give an idea of the scale of the problem.

‘Arrests for indecency follow police patrols at Baker Street lavatories’

“A five day police operation targeting lavatories at **Baker Street station** has led to 34 men being cautioned for gross indecency... ‘We have had a series of complaints about homosexual activity taking place in the lavatories, some of it witnessed by young children’, a Force spokesman said... ‘We hope as a result of this operation that this activity will cease...No one should be in any doubt that these are serious sexual offences and will be treated as such.’” (British Transport Police, Press Release, 24 February 2003)

‘Jailed after sex acts with boy (14)’

Man convicted for sex acts in toilet. “The **Cleethorpes** lavatories were notorious for attracting gay men looking for depraved sex sessions...” The Judge told the defendant “It’s quite clear that you went into a public lavatory, which was a known haunt for homosexuals, to carry out sexual acts there”. (*Grimsby Evening Telegraph*, 12 February 2003)

‘Police clamp down on lewd behaviour’

“**Guisborough** Police are clamping down on the misuse of the public toilets at Newton under Roseberry...Operation Newton will be running over the next few weeks, with extra officers drawn in to patrol the area. The toilets have become a meeting den for gay and bisexual men, and the problem has escalated to such an extent that on occasions, cleaning staff cannot gain access to clean and close up the premises at night, due to the number of men ‘using’ them.” (Cleveland Police, News Release, 8 January 2003)

‘Notorious toilet to get upgrade’

“Plans to upgrade public toilets, which locals claim are used as a venue for gay sex sessions, are likely to get the go-ahead. Councillors are due to approve external renovation work at the building in Alexandra Road, Wolstanton, following complaints. Families living near the building have called for action after claiming it has become a regular meeting place for homosexual men.” (*The Sentinel [Stoke on Trent area]*, 7 November 2002)

‘Police to patrol toilets following complaints’

“Town centre toilets in **Padiham** are being used as a meeting place for homosexual men... [they] are being used as a ‘cottaging’ venue for men who meet for casual sex... Police have had a number of complaints about the toilets.” (*This is Burnley*, 26 October 2002)

‘Sex site toilets to get police guard’

“A village’s public toilet which has appeared on a website telling men about meeting places for casual sex will be guarded by police... After a meeting to decide the building’s future, **Barnsley** Council decided against backing calls to demolish the toilets – on the condition police keep them under surveillance. However, the toilet block will be kept closed for the immediate future and a campaign will be mounted to ensure the toilets are returned to the use of law-abiding citizens... Shocked Cawthorne residents had called for the toilets to be completely flattened after learning the block had appeared on a website advising men of the best places in England for ‘cottaging’ – casual homosexual sex in public toilets.” (*Yorkshire Post*, 18 October 2002)

‘Toilet facilities in Grantham are to be further reduced because of perverts and vandals’

“South Kesteven District Council Deputy Leader Peter Martin-Mayhew said some of the authority’s toilets were “degenerating into dens for homosexuals and paedophiles to operate.” (*Grantham Today*, 3 October 2002)

‘Loos axed threat to economy’

“Deep concern was expressed at a meeting on Monday night that the closure of toilets at Catcleugh reservoir near Byrness could threaten rural businesses still vulnerable after the foot-and-mouth outbreak. Members of Rochester Parish Council agreed that providing no public toilets on the England to Scotland stretch was not the answer, despite fears that new facilities could become a notorious venue for homosexual liaisons like the ones vandalised at Catcleugh reservoir.” (*The Hexham Courant*, 20 September 2002)

‘Public toilets in city parks may have to close because of gays’

(*Aberdeen Press and Journal*, 4 September 2002)

‘Paedophile alert at town centre toilets’

“Detectives were last night investigating fears that paedophiles are using public toilets in a West town. Police in **Malmesbury** are to step up patrols around the town centre loos. The move came after obscene messages arranging times and dates to meet, apparently from child abusers, were spotted in the block by the town mayor.” (*Western Daily Press*, 20 May 2002)

‘Police bid to flush out cruising at city toilets’

“Police are warning members of **Edinburgh’s** gay community that using public toilets as a meeting place will not be tolerated... Some members of the public say they have gone to use the toilets, and seen men ‘cruising’ for sex.” (*Evening News*, 16 May 2002)

‘Gross indecency in station toilets’

“A father-of-three was caught in the toilets on **Blackburn** railway station committing an act of gross indecency with a 14-year-old boy.” (*This is Lancashire*, 6 April 2002)

‘Library installing toilet alarms to stop readers having sex’

“Library bosses in **Aberdeen** are installing alarms in the toilets to stop readers having sex in them... Aberdeen Central Library staff have been forced to close both the Ladies and the Gents.” (*Ananova*, 3 November 2001)

‘Mothers to protest over gay sex at public toilet’

‘A group of mothers are set to launch a protest against men having gay sex at a public toilet. The mums are furious the toilet near their Abbeyhill homes is being used as a meeting place for sexual encounters, known as “cottaging”. The move comes after a man from Abbeyhill – a partner of one protester – claimed he was groped by a group of men at the toilet.’ (*Edinburgh Evening News*, 13 September 2001)

‘Neighbours plead – knock down gay meeting place’

“Residents are demanding that a public toilet in **Derby** is demolished because it is frequently used by men for homosexual activity... ‘I’ve got three children and I’m a childminder and I would never let children use those toilets. What makes it worse is that there is a children’s play area in the park.’ ‘...It’s awful really – you see the men standing in the bushes waiting for a car to pull up and then go inside. And we can see all this from our living room.’ ‘...The best thing to do would be to close them down.’” (*Derby Evening Telegraph*, 22 June 2001)

‘Net names gay sex sites’

“Gay men are being encouraged to cruise public places **across Staffordshire** in search of sex. Homosexuals are using the internet to promote public toilets, parks, a lorry park and a railway station as venues for gay sex.” (*The Sentinel*, 30 March 2001)

‘Council closes gay sex haunt toilets’

‘Public toilets have been closed after residents living nearby complained men were using them for sex. They claim the loos at Bradwell Lodge in Bradwell Lane, Porthill, have become a regular haunt for gay men.’ (*The Sentinel [Stoke on Trent area]*, 20 March 2001)

‘Villagers seek ‘gay toilets’ closure’

“A village parish council wants its public toilets closed after an internet site promoted it as a place to go for gay sex. Residents say the public toilets in Bramhope, near **Leeds**, have been a notorious haunt for homosexuals for a number of years...” (*Yorkshire Post*, 17 March 2001)

‘Couple found having sex in court toilets’

“A female defendant and her boyfriend were caught having sex in a court toilet as she prepared for an expected prison sentence... [they were found] in the women’s toilets next to courtroom one of **Reading Crown Court**...” (*The Scotsman*, 7 March 2001)

R v Helen Georgina Waring (2001)

“Late at night on 20 October 2000 W attended a nightclub where she went to the men’s lavatories with a man (‘C’) and had sexual intercourse with him in a cubicle. Some friends of C discovered what was happening...” [2001] EWCA Crim 1674

‘Two men arrested at toilets’

“Two men have been charged with gross indecency after they were arrested at a **Carmarthen** toilet block... They are the latest to be arrested at the toilets in recent months.” (*South Wales Evening Post*, 8 September 1999)

‘Arrest warrant for sex charge councillor’

“A warrant for the arrest of a county councillor has been issued after he failed to attend court to answer a gross indecency charge... Eccles was charged with an attempt to commit an act of gross indecency with another man in public toilets at Spring Wood picnic area, **Whalley...**” (*This is Lancashire*, 3 June 1999)

‘Deterring public inconvenience’

In Lancashire there are police-led funding initiatives to enable, “action against the use of public toilets for a variety of criminal purposes. Several such facilities had effectively become ‘no go’ areas for members of the public, who felt threatened and offended by the frequent instances of drug abuse and gross indecency taking place there.” (*Lancashire Partnership Against Crime*, Initiatives funded in 1999. See <http://www.lanpac.co.uk/csin.html>)

‘Crackdown on gay sex at loos’

“Toilets just yards from a school bus stop in **Lymm** are being advertised on the internet as a venue for gay sex. Now police have put an action plan in place in a bid to stop indecent acts being committed at the public conveniences at Lymm Dam... The dam is one of Lymm’s biggest attractions, and is visited by people from all over the area with their young children.” (*This is Cheshire*, 4 December 1998)

‘Common well-known as gay meeting place’

“**Clapham Common** is one of London’s most popular pick-up spots for homosexual men... So many men were having sex in toilets – known as cottaging – that some in Clapham’s Old Town area were shut two months ago.” (*The Mirror*, 28 October 1998)

‘Pop star triggers toilet act’

“A **Swansea** Valley man committed an act of gross indecency at a notorious roadside toilet after being influenced by the arrest of pop star George Michael.” The judge told him: “Members of the public are entitled to expect that if they want to stop at a public convenience on a busy road they should be able to do so in the knowledge that the sort of activity you were engaged in there is deterred to the utmost by the courts.” (*South Wales Evening Post*, 26 October 1998)

As some of the articles above indicate, some gay websites actively promote such activity and give advice on which public lavatories to use. Even some gay groups which receive health authority funding – such as ‘Action for Men’, based in Essex – have web pages with titles such as “cottaging and cruising and other places to meet guys”.⁹

The CASH project, which promotes gay health and is supported by North Derbyshire Health, produced a series of ‘Safe and Sexy Cruising Cards’. Advice includes “Be subtle. If you’re hanging around a cottage for long periods of time you may attract the wrong kind of attention. Think ‘queerbashers’, think police. Only when you’ve eliminated these possibilities should you move in on other cruisers”.¹⁰

The weakness of the Government's proposal

Outraging public decency and the public order offences

The Government says it is concerned about sexual activity in public toilets. However, its only proposal is to fall back on the common law offence of 'outraging public decency' and the Public Order Act 1986.¹¹

These laws will not provide adequate protection for the public from sex in public toilets. Neither are specifically designed to tackle the problem. It is a recipe for confusion that can only benefit those who carry out these appalling activities.

The Government is proposing only one minor change to the law. It is amending the Criminal Justice Bill in the House of Commons to allow outraging public decency to be tried in Magistrates Courts as well as in the Crown Courts. It will become a "summary" offence as well as the "indictable" offence it is at present.

However, outraging public decency is a weak law. There are few convictions and often very light sentences, even for the most shocking cases. Magistrates will have the same difficulties with proving the offence that the higher courts have had. Neither will they feel able to ignore the precedents set by the light sentences given by the higher courts.

Outraging public decency

What are the problems with the offence of outraging public decency?

Difficult to prove

Outraging public decency contains a high test. In the leading case of *Knulier Ltd v Director of Public Prosecutions*,¹² Lord Simon of Glaisdale said:

"... 'outrage'... is a very strong word: 'Outraging public decency' goes considerably beyond offending the susceptibilities of, or even shocking, reasonable people... recognised minimum standards of decency... are likely to vary from time to time..."¹³

This makes the offence of outraging public decency difficult to prove. In Lord Simon's words: 'outrage is a very strong word'. And this judgment was given in 1973. Some lawyers will argue that 'recognised minimum standards of decency' have become much more liberal than those of 30 years ago. They will say that sexual activity in public toilets no longer 'outrages public decency'. There is a real danger that courts will accept this argument.

Outraging public decency also requires proof that the act complained of must have been capable of being witnessed by at least two members of the public.

The leading case of *R v Mayling*¹⁴ concluded that it had to be proved that the act was committed in public which means that "more than one person must at least have been able

to see the act”.¹⁵ If the act is capable of being seen by one person only, it is not an offence. In the Mayling case, the homosexual act took place in the open part of the public lavatories, in full view of those entering the lavatories. Mayling was convicted.

In the 1995 case of *R v Walker* the Court of Appeal re-stated the requirement: “that the offence be committed in a place where there exists a real possibility that members of the general public might witness what happens.”¹⁶

Clearly a sexual act that takes place in full view of those entering the toilets can be caught by outraging public decency. But if two men step into a toilet cubicle and lock the door, how is it possible for two members of the public to see their activities, as the offence requires? It may be perfectly obvious what they are up to, but they cannot be seen.

Low conviction rate

In 2001, Home Office figures show that 173 persons were proceeded against in England and Wales for outraging public decency where this was the principal offence. Of these, only 34 were found guilty – a conviction rate of 20%.¹⁷ This is very low when compared with many other offences. For example, some wildlife protection offences have conviction rates of between 60% and 80%.

Low sentences

Even where a conviction is secured, the offence appears to attract low sentences. Of the 34 people convicted of outraging public decency in 2001, only 6 were sentenced to immediate custody. 19 were given a community punishment order. 2 were fined. 5 were absolutely or conditionally discharged and 2 were dealt with otherwise.

An infamous example of a serious case that attracted a trivial penalty took place in 1998. A couple had full sexual intercourse on the bonnet of a car in the short-term car park at Terminal 4, Heathrow Airport, followed by further sexual acts, at 4 o’clock in the afternoon, all for the benefit of a film crew making a pornographic video.

They were charged and convicted on two counts of outraging public decency. They each received a conditional discharge for 18 months.¹⁸ There was evidence that around 6,000 cars a day passed through this car park. Several members of staff at the airport witnessed the offence and gave evidence that they thought the behaviour was outrageous. Yet the perpetrators walked away without so much as a fine.

A broad offence

Outraging public decency is a broad offence that is not targeted solely at sexual activity. One of the most famous cases involved a so-called art exhibit that displayed earrings made from human foetuses.¹⁹ It is not designed specifically to cover sexual activity in public toilets.

The Public Order Act 1986

The Government is also attempting to rely on Section 5 of the Public Order Act 1986. But this too will not work. The offence requires that the person uses “threatening, abusive or insulting words or behaviour, or disorderly behaviour... within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby”. This is a high test.

A case that illustrates this and which relates specifically to sexual activity in a public toilet is the 1982 case of *Parkin v Norman*²⁰. This was before the 1986 Act. The defendant was prosecuted under a 1936 public order offence. The court found that:

“Offensive or disgusting behaviour by a homosexual in a public lavatory does not amount to ‘threatening, abusive or insulting... behaviour... whereby a breach of the peace is likely to be occasioned’ under section 5 of the Public Order Act 1936.”

If such behaviour was not thought enough to cause a breach of the peace, it suggests it would not be enough to cause harassment, alarm or distress. It appears the police do not regard section 5 of the 1986 Act as a satisfactory means of dealing with sex in public. It is difficult to find examples of public sex being prosecuted under the offence.

Section 5 provides little protection against sex in public toilets.

CCTV cameras

The Government seems to recognise that falling back on these offences will not be problem-free. Therefore the Home Office Minister in the Lords, Lord Falconer, has made the extraordinary suggestion that CCTV cameras in public lavatories will help.²¹

Lord Falconer suggested that sexual activity behind a closed cubicle door would definitely constitute offence if filmed on CCTV. He claimed it would be caught by both outraging public decency and by Section 5 of the Public Order Act 1986.

This raises the ludicrous prospect of CCTV being fitted in public toilet blocks throughout the country, with cameras being trained on the cubicles inside. Most of the general public would find this grossly intrusive and totally unacceptable.

An open door or a closed door?

The original Sexual Offences Bill contained a new law of ‘sexual activity in public’.

When the bill was introduced Lord Falconer said:

“The offence will send out a strong signal of our intention to protect people from being the unwilling witnesses to overtly sexual behaviour in public that most people consider should take place in their own homes...” [Hansard, 13 February 2003, col. 775]

However, the proposed law was widely derided. There was considerable confusion as to what sort of activities the law would cover. And so the Government has now dropped this proposal. It has been removed from the bill.

One of the greatest arguments was over public lavatories. It was debated in national newspapers. The question was: would an offence have been committed if the door was closed, or only if it was open?

It seemed it would only have been a crime if the door was open. Ironically, this may also be true for outraging public decency. Outraging public decency requires proof that at least two members of the public could see the act take place.²² It is true that a public lavatory has been held to be a public place for the purpose of the offence where the sexual acts could be seen on entering the toilets. But what about where the acts take place inside a locked cubicle? Can it really be said that it is possible for members of the public to see the acts in question?

The fundamental problem is this – the Government is proposing to repeal gross indecency without putting any equivalent protection in its place. The Government is content to rely on existing offences that are very weak.

What Peers have said already

Baroness Blatch, Conservative: “Public lavatories are no places for sexual activity—be it homosexual or heterosexual; whether the cubicle door is shut or open. What mother would want to send her young child into a public lavatory if she believed that homosexual activity might take place there? How would the Minister feel if a son of his was using the cubicle next to one in which homosexual activity was taking place? The Bill will make public lavatories no-go areas for families in Britain.”²³

Lord Carlile of Berriew, Liberal Democrat: “For me—and this has absolutely nothing to do with prejudice against gay people, straight people or any other people—public lavatories should be sex-free zones. I do not want to hear people moaning and groaning in a cubicle when I take my grandson into a public lavatory to use it for the purpose for which it was designed. I am glad to hear that the Minister and the Government are open to discussion and persuasion on this matter and I look forward to a change in the Bill in due course.”²⁴

Baroness Mallalieu, Labour: “I took a small daughter who could wait no longer into a public lavatory in Oxford where consensual sexual behaviour was taking place in a cubicle with the door shut—which I understand will be permitted. Not only was I embarrassed. I found that situation thoroughly distasteful. I was glad to hear what others said about that proposal.”²⁵

Lord Monson, Cross-Bencher: “Many noble Lords have mentioned the Government’s strange determination to turn public conveniences into public inconveniences or even, at one remove, to eliminate them altogether. As matters stand, all over the country—I have examples from Hexham, Aberdeen, Leeds, Malmesbury, Grantham, Derby and elsewhere—public lavatories are having to be closed down as a consequence of misuse by homosexual men to the great disgust and exasperation of families with children among others.”²⁶

Baroness Noakes, Conservative: “...public lavatories are not places for sexual activity. If we say anything less than this, we imply that there are circumstances in which sexual activity in a public lavatory is acceptable. If there is anything less than a total prohibition, we run the risk of making public lavatories no-go areas for the general public and in particular for children.”²⁷

Conclusion – a new law is needed

There needs to be a new offence – one similar to gross indecency that creates a straightforward offence specifically covering sexual activity in toilets. Gross indecency simply requires proof that the act took place in a toilet. In contrast outraging public decency demands proof that the act gives rise to ‘outrage’ - a potentially difficult hurdle to overcome. The public order offence requires proof of “harassment, alarm or distress”.

The people of Northern Ireland are likely to be very shocked by the sudden proposal to repeal the gross indecency law there and put nothing in its place. There was at least a full government consultation England and Wales on an alternative law. Yet the Government is proposing to effectively legalise sexual activity in toilets in Northern Ireland before the consultation on sexual offences in the province has even begun.

The Police have expressed great concern about sexual activity in public toilets. The Metropolitan wrote in their response to the Sexual Offences Bill:

“Toilets are places in which children are frequently abused by paedophiles. By allowing this activity to take place lawfully it will prevent worried members of the public notifying police, potentially leading to the undetected abuse of children. It is suggested that sex in a cubicle of a public toilet should be illegal for this reason.”²⁸

Such concerns about sexual activity in public toilets can only be intensified by a reliance on a weak law such as outraging public decency. Indeed, the Met’s submission did not even mention the possibility of falling back on outraging public decency. It seems to regard the offence as irrelevant for this purpose.

The Chairman of the Police Federation, Jan Berry, told the Home Affairs Select Committee in April:

“From a police point of view, there are public toilets which most members of the public do not feel able to go to because of the use to which they are put. I think that is unwarranted. I think the law, if it goes through in this stand, will actually make that lawful... it obviously would affect children; it is not an appropriate use of public toilets. I think the law needs to make that very explicit.”²⁹

Relying on the offence of outraging public decency would not explicitly address the use of public toilets for sex.

We need a new law that makes all sexual activity in public toilets – heterosexual and homosexual – a criminal offence. The evidence reveals that this is a serious problem throughout Britain, resulting in police crackdowns using the existing gross indecency law. It cannot be right to remove this law from the statute book and put nothing in its place.

The moral vacuum at the heart of public policy

Christians believe that sex is only for marriage – a lifelong, monogamous union between one man and one woman.³⁰ When a man and a woman are committed together for life, then there is a “one-flesh” union in which God joins the spouses together. This union is strengthened and realised through sexual intercourse which is the proper context for the conception and rearing of children. The right place for sex is in the bedroom, not a public lavatory.

Even in today’s climate it is truly astonishing that there should be any debate at all about allowing sexual activity in public lavatories. There is absolutely no need for it to be permitted and there is an overwhelming case for retaining a ban. It does not matter whether the couple involved are married heterosexuals or male homosexuals. All sexual activity in public toilets should be illegal.

The Government wishes to repeal gross indecency because the offence applies only to male homosexual activity. It says this is discriminatory. But the reason for this law is that it tackles a significant social nuisance which even the late Lord Jenkins, a leading pioneer of the 1960’s sexual revolution, had to admit was a particular problem amongst homosexual men.³¹ The phenomenon is almost unknown amongst lesbians and rare amongst heterosexuals.

But on the Government’s own logic there is no need to repeal a specific law which bans sexual activity in public lavatories. All that would be needed is to include heterosexuals and lesbians under an amended offence.

Even if all sexual offences must apply to heterosexual and homosexual behaviour equally there is no need for sexual activity to be permitted in public. The Government denies that is what it is doing. It says the existing offence of outraging public decency will continue to apply. But any reading of the cases shows what a very weak law this is. All this goes to show that there is a moral vacuum at the heart of public policy. A vacuum that tolerates even the most hedonistic and decadent behaviour.

References:

- ¹ House of Lords, Hansard, 19 May 2003, col. 577
- ² House of Lords, Hansard, 13 February 2003, col. 802
- ³ *Setting the Boundaries – Reforming the law on sex offences Volume 1*, The Home Office, July 2000, page 124
- ⁴ Section 1(2)(b) of the 1967 Sexual Offences Act
- ⁵ House of Commons, Hansard, 3 July 1967, cols. 1433, 1441 and 1453; House of Lords, Hansard, 23 May 1966, col. 1194
- ⁶ House of Lords, Hansard, 19 May 2003, col. 678
- ⁷ The law will remain in Scotland. The matter is devolved to the Scottish Parliament.
- ⁸ *Setting the Boundaries – Reforming the law on sex offences Volume 1*, The Home Office, July 2000, page 124
- ⁹ See <http://www.action4men.org/mainguys.html> as at 23 May 2003
- ¹⁰ ‘Safe and Sexy Cruising Cards’, Outsiders, A North Derbyshire Health Initiative, The CASH Project, undated, see <http://www.cashproject.org.uk/Outsiders%20Postcards.pdf> as at 23 May 2003
- ¹¹ House of Lords, Hansard, 19 May 2003, cols. 585-587
- ¹² [1973] AC 435
- ¹³ Kneller (Publishing, Printing and Promotions) Ltd v DPP [1973] AC 435 at 495
- ¹⁴ [1963] 2 QB 717, 47 Cr App Rep 102
- ¹⁵ [1963] 2 QB 717, 47 Cr App Rep 102 at 106
- ¹⁶ R v Steven Walker (1995) TLR 14/4/95, ILR 8/5/95, (1996) 1 CAR 111
- ¹⁷ Correspondence with Home Office, 18 February 2003
- ¹⁸ R v Vincent James Curran (1998), Court of Appeal, Criminal Division, 29 October 1998 (transcript)
- ¹⁹ R v Gibson; R v Sylveire (1990) 2 QB 619 : (1991) 1 All ER 439
- ²⁰ Parkin v Norman : Valentine v Lilley (1982) QB 92; 3 WLR 523; 2 All ER 583
- ²¹ House of Lords, Hansard, 19 May 2003, cols. 585-587
- ²² R v Mayling (1963) 47 Cr App R 102
- ²³ House of Lords, Hansard, 13 February 2003, col. 789
- ²⁴ House of Lords, Hansard, 13 February 2003, col. 802
- ²⁵ House of Lords, Hansard, 13 February 2003, col. 853
- ²⁶ House of Lords, Hansard, 13 February 2003, col. 855
- ²⁷ House of Lords, Hansard, 19 May 2003, col. 577
- ²⁸ *Response to the Sex Offences Bill*, Metropolitan Police Service, page 7, undated
- ²⁹ Home Affairs Select Committee, 8 April 2003, Uncorrected evidence, Answers to questions 68 and 69
- ³⁰ Matthew 19: 9, Luke 16: 18, Romans 1: 24-27, 1 Corinthians 6: 9, 1 Corinthians 12: 23, Hebrews 13: 4
- ³¹ House of Commons Hansard, 3 July 1967, col. 1453



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