



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Child Sexual Exploitation Legislation:
Department of Justice

19 November 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)

Ms Linda Dillon (Deputy Chairperson)

Ms Sinéad Bradley

Ms Jemma Dolan

Mr Gordon Dunne

Mr Paul Frew

Ms Emma Rogan

Miss Rachel Woods

Witnesses:

Ms Susanne Corr

Department of Justice

Mr Brian Grzymek

Department of Justice

The Chairperson (Mr Givan): I welcome from the Department of Justice Brian Grzymek, director of the criminal justice policy and legislation legacy division, and Ms Susanne Corr, from the criminal policy branch. The session will be reported by Hansard, and a transcript will be published on the Committee web page in due course. Brian, I will hand over to you for an overview of the proposed way forward, and then Committee members will have some questions.

Mr Brian Grzymek (Department of Justice): Thank you very much, Mr Chairman, for the opportunity to give the Committee a bit more information about the legislation and what we are doing about some of the other issues that came out of the consultation exercise and the review.

The Committee saw the earlier paper, so forgive me if there is a degree of repetition in this overview. It will set that information in a good context.

The aim of the child sexual exploitation review was to improve the criminal law to provide better protection to children who are victims of sexual exploitation. Following on from that consultation on the review, we are bringing forward four elements of legislative change, as part of the justice (miscellaneous provisions) Bill. Briefly, they are the removal of references in legislation to "child prostitute", "child prostitution" and "child pornography"; the inclusion of live-streaming images in child sexual exploitation offences; the prohibition of adults masquerading as children online; and the creation of a new offence of upskirting.

Three of those issues — terminology, live-streaming and upskirting — received very strong support from consultees as part of the consultation. For the fourth, adults masquerading as children, the Department did not originally propose to change the law on that area. We felt that the existing law was probably sufficient. A number of respondents felt strongly, however, that a new offence was required.

In addition, the Police Service also advised us that a specific offence would allow it to intervene and safeguard children at an earlier stage. Based on that response and the police advice, the Minister agreed that it would be included as a new offence.

You will also note that one of the four — upskirting — is not technically a child exploitation issue. The consultation provided an opportunity for us to include it as part of the overall consultation. It is not an offence that we see as necessarily being related specifically to child sexual exploitation, although there may be elements of it. That new offence will, however, allow us to improve the law around voyeurism and offer increased protection to those who are subject to that objectionable behaviour. Of course, convicted offenders will also be subject to the sexual offender notification requirements. That is what we will be putting into the miscellaneous provisions Bill.

There are three other areas of particular interest to which we are giving careful consideration. It is fair to say that we see these things as being part of legislative change in the next mandate. They are widening the scope of abuse-of-trust offences, which currently apply only in statutory settings; amending the defence of reasonable belief in offences against children; and granting the police powers to request information on guests in hotels and other premises. Essentially, in each of those areas, we see that there would be a value in legislating, but, for legal and other reasons, we need a bit more time to develop the relevant policy.

On abuse-of-trust offences, the Department's initial view was that those did not need extending to include sports coaches and those working with young people. The responses to the consultation were clear, however: the vast majority of respondents wanted the scope widened. I have to say that that also included a number of sporting bodies, which themselves would have been subject to any widening of the legislation. Overwhelmingly, respondents felt that the protection provided by abuse-of-trust offences should apply much more widely. Recognising that, the Department has revisited its position, and we will be engaging with relevant stakeholders to develop a wider robust definition of "positions of trust", with the intention of bringing forward legislation in the next mandate. There will be a bit of work on that definition, as it is not as straightforward as it might seem. We will therefore work with our legal advisers, stakeholders and other interest groups to produce a robust definition, and we will be able to take that forward.

There are two other areas in which we are working on to bring forward legislation in the next mandate. Those areas are amending the burden of proof for the defence of reasonable belief and police powers relating to information on guests. Both issues are fairly well supported in the consultation. In each, however, there are some important legal issues that need to be bottomed out before legislation can be developed. I note that the Bar of Northern Ireland, the Law Society and the Public Prosecution Service (PPS) all expressed concerns about the impact that shifting the burden of proof of reasonable belief to the defendant might have on the right to a fair trial. Clearly, we have to make sure that the legislation is crafted in a way that ensures that people's rights under the European Convention on Human Rights are protected, while, at the same time, meeting the policy intent. Again, that will take a bit of time.

Finally, granting police the power to request information on guests staying at hotels and other such premises also raises important legal questions. Although the priority must always be the protection of those who may be vulnerable to exploitation, any new legislation must also be compliant with the individual's right to privacy and the data protection legislation. The Minister is keen to strengthen the law in that area, and the Department is working closely with the Information Commissioner to ensure that any measures that are brought forward will be fully compliant and not open to challenge.

The priority for the Department in all those areas of work is the protection of those who may be vulnerable to child sexual exploitation. Where there is a clear need for legislation, the Department is committed to bringing that forward in the most appropriate and timely manner. It is important that any new legislation be well focused and thought through, in order to ensure that it delivers the required outcomes and can withstand challenge. The development of legislative proposals and the subsequent drafting take time, and the Committee will well appreciate the importance of getting the legislation right from the outset. I can assure members that the Minister and officials are focused on improving protections for young people and stand with the Committee in wanting to protect the young and the vulnerable in our community.

I hope that the Committee finds this briefing helpful, and I am very happy to take questions on those areas and any others covered by the consultation.

The Chairperson (Mr Givan): Thank you, Brian, for that overview of a very important piece of work. I have no doubt that, whenever the legislation is brought forward, the Committee will look at it in great

detail, and probably at the areas that are not being included by the Department. That is something to bear in mind when we get to Committee Stage, as I suspect that members will be interested in some of those areas. This again shows the depraved nature of some people out there, but why do we need to undertake further engagement on the issue of the selling and possession of child sex dolls to make that illegal? Should not that be straightforward?

Mr Grzymek: There is some work going on nationally looking at the impact and use of child sex dolls and whether they are contributing to child sexual exploitation. At the moment, what we do not have is good evidence of the link between the production and use of those dolls and child sexual exploitation. There is work going on nationally, but, for legislation to go forward, it should be informed by good research and a clear link between the production of those dolls and a criminal offence. It is not that we are saying that the work should not happen but that we do not have the information at this point that would suggest to us that there is a direct link that would justify legislation. There is work going ahead, and we are linked into that work. Once that is complete, we will be in a much better position to advise the Committee on whether it would make good sense to proceed in that area.

The Chairperson (Mr Givan): I will bring in members straight away, because I could cover a lot of things, but members may raise issues and that will save my raising them.

Ms Dillon: Thank you, Chair. You have covered one of the questions that I wanted to ask, so I appreciate that.

I would like to discuss the issues that have not been included in abuse-of-trust offences in particular and the defence of reasonable belief in sexual offence cases.

First, on abuse of trust, I am a wee bit concerned about what is not included, on the basis that there is substantial evidence that there are a number of outstanding cases that cannot be brought forward. One of the issues for me is that, and I will admit that I am looking at this with a very simplistic view, it looks as though you can be guilty of abuse of trust only if you are a professional person, such as a teacher or a doctor. If you are a sports coach or someone who volunteers to work with young people, however, somehow you cannot be guilty of it.

That is a concern. I accept that it is easier to control those issues in a professional body. In a school, it is part of your teacher training. I get that. It is very difficult, at the best of times, to get people in place to volunteer to work with young people, because there are so many hoops to jump through. It is not difficult to get them to volunteer in the first place, because people in our communities are very good at volunteering for such roles. It is now more difficult to get volunteers, however, because people are more nervous about doing it and about having to jump through all those hoops. I understand the challenges to this, but we have to balance it out. Is this about protecting children? That is what we are about with this legislation. Although we have to take everything into consideration, the protection of the children involved has to be the utmost priority. I am not suggesting that it is not, but my concern is that a difference is being made, and it is that you can be guilty of the offence only if you are in a professional body or a professional person.

On the defence of reasonable belief, others may go into this, but I have all sorts of concerns. The main concern is around placing the responsibility on a victim to prove that that person did not know that you were underage. In my simplistic view, I am incredulous and do not understand it. I accept that further work may need to be done on both of those areas, but I am surprised that it does. I am looking at both areas with a very simplistic view, I accept that, but sometimes the issues have to be looked at with a simplistic view in order to get them right.

I will let other members come in, Chair. I am keen to hear what other members' views are.

The Chairperson (Mr Givan): OK. Brian, will you like to give a brief commentary on Linda's comments?

Mr Grzymek: Yes. First, on abuse of trust, I absolutely understand where you are coming from, Linda. The position is that we are talking about the main abuse of trust being related to children of 16 and 17. Clearly, any sexual activity with any child younger than that would be charged under child sexual offences, and it would be fairly clear-cut. We are talking about children in that age group, where you are finding people in positions of trust are using that position of trust to gain sexual advantage or to sexually exploit a child. In fact, had there been a ready-made definition that everyone agreed with, we might well have included that in legislation now. What we are saying is that we need a little bit more

time to get to a definition that is acceptable on the legislation. Really, it is not about saying that we should not legislate. We are just saying that, when we legislate, we must make sure that it is robust legislation that captures just the sort of people you are talking about. Ultimately, trying to get that definition will be where the extra work is required. I see this as coming in at the beginning of the next mandate as part of the next round of changes. We are not in a position at this point to have that robust definition. Clearly, we have looked at some definitions. I know that the Republic of Ireland has used some, and there are others in the air. However, we need to consult a bit more widely with legal and other experts to see whether we can come up with a robust definition that we can stand over and that will allow the legislation to go forward.

On the defence of reasonable belief, the majority of respondents were, in fact, in favour of the burden of proof regarding reasonable belief being passed over to the defendant. However, the responses from the PPS, the Bar Library and the Law Society all raised real concerns about the potential for that to interfere with the right to a fair trial. Ultimately, moving the burden of proof to the defendant is quite a significant change, so, again, what we are saying is that we need to have some more careful thought about that. These sorts of decisions can impact significantly on people's lives, so it is important to make sure that we have a very clear understanding of how the law will work and whom it will cover. Given that we got such significant advice from legal quarters, we felt that it was necessary to give that some further consideration. We recognise that it is a complex area of work. Ultimately, our aim is not to inadvertently pick up someone who has genuinely had a misunderstanding about someone's age or whatever. Clearly, we have to make sure that we do not criminalise people who should not be criminalised. The reality is that we need a good, robust working definition. That will allow us to move forward and put this into law.

Ms Dillon: Thank you.

Ms S Bradley: To speak briefly to any one of these items does not really do it justice, but what I will say at this stage is that the summary list of the intentions going forward is a little bit disappointing and that more probably could have been achieved in the remainder of this mandate. The Chair rightly pointed out the obvious one — child sex dolls. It does not appear to me that we have to wait for mounting evidence to prove that that is wrong. I cannot understand the logic in not moving ahead on something like that.

Ms Rogan: You have addressed some of my questions, so this is more a comment on what you said about the abuse-of-trust offences. It is extremely disappointing, given that, as the Department highlighted, the vast majority of respondents were in favour of widening the scope and that the organisations that it affects and will affect have said that they are happy for that to happen. It is one of the most important protections that we could possibly put in place against the sexual exploitation of children. Human rights organisations have also recommended the criminalisation of adults who take part in that abuse of trust. It is really disappointing that that is not as high on the Department's list of priorities as it should be.

A second, brief question. You said that, in the next mandate, you will try to legislate for the defence of reasonable belief. Do you have a time frame or an actual date?

Mr Grzymek: You raise two points. I have to set this into the context that my division is relatively small. It is responsible for a list of programmes and driving a number of those things forward, and also picking up on a number of additional areas. We have limited resource, and we are trying to get all these things to move forward. If I had not had such a full agenda, we might have gotten a few of those moving slightly faster, but the reality is that we have to get the right balance. We absolutely recognise that abuse of trust is an issue. Had we been able to find a definition in time, we would certainly have gone to legislate. The reality was that the clock on the miscellaneous provisions Bill was ticking. Now that we have put the drafting in to the Executive, really, apart from a few additional issues on a priority basis we might be able to put in — we have already identified a few of those — it is quite hard for us to fit anything more into the Bill at this stage.

We have work to do on this one. To be frank, it is important that we get the legislation right, and it is better that we take a little longer to make sure that the legislation is spot on and actually hits all the marks, and that we do not put in something that we then find to be inadequate in some way. Although it is not going to fit into the legislative programme this mandate, as the programme moves ahead, I will be able to redeploy resources to do the preparatory work before the end of this mandate. I would like to think that we will be in a position before the end of the mandate where we are ready for instructions.

We have to get authority from the Executive to draft legislation, but we will then be in a position to do that very quickly.

Your second question was about reasonable belief. Again, when you are actually impacting on people's rights and their capacity in making decisions, it is important to make sure that we get this exactly right. Again, that is one where we feel that a little bit more work is needed to make sure that we can produce robust legislation. It is important that we get this legislation right. It is also important that we do it fairly quickly, so whatever we were able to put into the miscellaneous provisions Bill, we clearly have got that in. In the other areas where we need a bit of additional work, we will do that on the basis of that it will be ready to go at the beginning of the next mandate. It will then be a decision for Ministers and the Assembly as to what order any Bills come in the next mandate, so I cannot give timetables about that. What I can say is that we will aim to have all those things ready to be drafted by the end of this mandate so that there will be no delay.

Ms Dolan: Thanks, Brian and Susanne, for being here. We are probably all aware of the high-profile incident of upskirting in my constituency a few years ago. That highlighted the inadequacy of the current laws, so the proposal for an offence of upskirting is welcome. Obviously, the case that I am referring to happened in a school. Of course, that is not always the case, but there is a need to inform and educate on the fact that something that someone may think is harmless will soon, hopefully, be illegal and could result in getting a criminal record. Are there plans to have conversations with the Department of Education to attempt to educate young people, for a start, on that and the other new offences?

Mr Grzymek: I have not actually spoken to the Department of Education yet on any of these matters. That being said, it is aware, because we approached it about the miscellaneous provisions Bill. As we move ahead with the legislation, as often happens, we will be talking to other Departments about its implications. We will be looking within Justice to make sure that staff are trained appropriately, because clearly it is not sufficient just to have legislation in place; we have to make sure that all our staff are trained. Given that these issues relate more widely, it is important that we provide and promulgate information about the new legislation so that everyone, whether in education, youth clubs or other areas, is aware of the new law and can undertake training if required. I am not sure that it is specific to schools particularly, but certainly, when we have brought legislation in, I have had conversations with Education — not on this issue, but on other issues — well in advance with a view to making sure that that Department is able to take on board any impacts on the curriculum or otherwise. I will tell you now that one of the dilemmas has always been that the education system has so much on the curriculum that usually it is very difficult to bring about additional change, but all these new bits of legislation will have implications across society, and we will certainly be making sure that Justice staff have appropriate training, and we will certainly raise it with other organisations that should be aware of the changes in law and should be acting on them to perhaps make their staff aware, where that is appropriate.

Mr Dunne: Brian, are you satisfied that all social media platforms are covered? We welcome the inclusion of live-stream images as an offence. We are all very much aware of the risks that are out there for young people. There is so much engagement in social media, and the parent's greatest nightmare and fear is that children will get access to and be intimidated and bullied through social media. Have all those aspects been thought about? Are they included as best you can?

Mr Grzymek: That is a good question. Our aim is to make sure that the legislation is universally applicable. In other words, we recognise that social media opportunities keep changing, so our aim has been, on the live streaming, to work on the assumption that the legislation will also apply to any new forms of social media that come along. It is always hard to say that, in the future, there will not be new mechanisms which people find a way of abusing, but the aim of the legislation is to be a general cover. We are not saying that it is specific to one form of social media or another. We are saying that live streaming, regardless of what mechanism or platform is used, will be covered. To that degree, I think that it is as good as we can get. If people devise clever new ways of getting round this, then clearly our job is to update the law and make sure that it continues to be applicable. As it stands, we are confident that it is covering all the bases to make sure that social media is covered.

Mr Dunne: OK. Thanks, Brian.

Miss Woods: A lot of what I had wanted to ask has been covered, but I just want to clarify the legal position on the abuse of trust. At the moment, adults in a non-statutory setting, such as sports coaches, are legally allowed to engage in sexual activity with 16- and 17-year-olds in their care.

Mr Grzymek: There is no restriction; 16- and 17-year-olds have the capacity to consent to engage in sexual behaviour. At the end of the day, this is an issue about people who have, if you like, privileged access to those people and are able to influence them to gain sexual favour on the basis of their position of trust. We recognise that this is an issue, and we are looking to see how we can get a suitable definition so that we can address it. That is actually our intention. Somebody asked earlier why we are just focusing on professionals and people who are easy to get at. On one level, they were the people who were initially the real concern, but we are quite clear that there are other people who are in positions of trust. How we define them is much more problematic, because, clearly, you get people who work professionally, you get voluntary workers and you get people who serve in all sorts of capacities who could be in a position of trust, and we need to get some robust definition to make sure that they can be held to the same degree of account as those in the statutory sector, where we already have legislation in place.

Miss Woods: OK. Is there any other legislation in effect in the rest of the UK and Ireland? Do any other European countries have this in place?

Mr Grzymek: That is one of the things that we are looking at. I know that Ireland has some legislation, which I think is more or less in loco parentis. That is something that we can look at. Also, there is some legislation for those who are responsible for the education, supervision, training or welfare of the child. That goes quite a bit of the way, but we are not absolutely sure if it goes the whole way. With our legal advisers, and by talking to other interests and stakeholders, we want to see whether we can get as good a definition as we can. Whatever definition you get, you always draw a line somewhere, but the trick is to draw the line in the place where —. Our intent is the same as the Committee: we want to stop sexual exploitation. The question is how we do that in a safe and effective manner. That is why we need a good definition.

Miss Woods: OK. Thank you for that. You said there that it was brought up earlier on, using the term "professionals", and said that that was the issue. In the 2019 consultation document, the Department asserted that there was no clear evidence of children experiencing sexual harm from those in positions of authority in non-state sector settings. Has there been research to suggest that, or is at the result of a lack of data collection?

Mr Grzymek: It may be because of a lack of data collection, but it may also be that, where offences take place, they are not spotted or are labelled as something else. I am not sure that there is widespread abuse here, but, at the same time, it is very hard to tell. We are quite happy that, in fact, having had the consultation and the responses that we have got from a number of very well-informed bodies, it needs legislation. It is not about whether we should do it but how we can do it in a safe and effective manner. Although it will take us a little longer to get those definitions, we have looked around the UK and are looking elsewhere to see if we can find best practice. From that, we will bring forward legislation. By the end of next year, we will have arrived at a definition with which we are happy and which we can then take forward into legislation.

Miss Woods: Thank you. I appreciate that you outlined the pressures that are on the team and that resources were an issue in putting different aspects of it into legislation. I want to pick up on what you said about the end of next year. Your time frame for getting a definition of what an abuse-of-trust offence looks like is the next 12 months. Maybe I am again looking at it in a simplistic kind of way, but, if it is already in legislation elsewhere — you said that you have conducted work on this — why would it take another 12 months?

Mr Grzymek: It is not going to take 12 months of solid work. Realistically, if we cannot get it into legislation in this mandate, which we are not going to be able to do, what we will do is set it up so that we are in the right place by the end of the mandate. At the end of the day, the team that are looking at it are also looking at things like strangulation. We have a rough sex consultation out, and we are looking at Charlotte's law alongside this. There are a number of things that we are doing at the same time. My aim is to make the best use of my resources to ensure that we use them effectively to get to where we need to be. Clearly, where we have got things that are likely to go into legislation in the next mandate —. For me to prioritise those against, say, a strangulation review, rough sex or Charlotte's law —. If I was putting those forward, I would be pushing some of those other things backwards. I cannot do anything about putting in new legislation on that in this mandate, so the timetable I will work to is one where I will get this done alongside all those other things so that the information can be used effectively.

If you like, the time frame for the legislation will be that I want to be in a place where I can draft instructions by the end of the mandate so that I can get the authority to do that with the Office of the Legislative Counsel (OLC), and then that can be ready for fairly early in the next mandate. If I were to prioritise this in front of some of the other things that my teams are doing, I would push back the other work, and that might generate a lesser advantage. If I were to get it finished earlier, I would just sit on it. I could not do anything more than I would be doing once I am at that point. It makes more sense for me to time it so that it, in fact, fits into the best use of my resources. That is not in any way to undervalue it. It is just that, realistically, if I cannot get it into legislation in this mandate and it has to go to the next one, I want to make sure that I am at the right place for when it needs to be ready.

Miss Woods: I appreciate that. So, just in terms of prioritisation, getting a definition for an abuse-of-trust offence is below the prioritisation of the strangulation and rough sex defence, which has not been consulted on yet, where this has.

Mr Grzymek: No. Sorry, maybe I did not make myself clear. If I were to push it ahead of those things and push them back, that would be fair enough. However, if I had a definition in the next three or four months, it would then just sit somewhere, because I would not have the authority to draft legislation going into the next mandate. I cannot do that at this stage. It is for Ministers to decide on the priority orders of the legislation in the next mandate, but what I can do is have this ready to go and ready to get authority to draft legislation as early as possible in the next mandate. Prioritising it so that it sits on my desk for a year would not make an awful lot of sense. What I am saying is that, if I have finite resources, it is important that this goes ahead so that it is ready when we can take it forward. Because it was and is too late for it to get into the miscellaneous provisions Bill, we are, in fact, working to that slightly later timeline.

Miss Woods: Apologies for continuing on with this, because also I have a couple of other questions on different aspects of this. You mentioned not having authority to draft legislation. Is that coming from the Minister?

Mr Grzymek: If I am to engage with the Office of the Legislative Counsel to actually draft legislation, I need the authority of the Executive to do so. That is true of all legislation. The miscellaneous provisions Bill went to the Executive last week, or very recently, to seek authority. In practice, where something like that is coming along, we might get some additional work on, but we are now getting to the stage where that goes forward. We are required to get Executive authority to draft legislation, and that is true for all Bills. The Minister will put the legislation forward when we are ready to deal with that and have instructions ready and are ready to go to the OLC, but we do need authority for the OLC to take on and draft legislation.

Miss Woods: Thank you. I will move on very quickly to different aspects of this. One is child pornography and child prostitution. Maybe it is too early to say what the terms would look like or read like, and I appreciate that we will see this in the miscellaneous provisions Bill when it comes, but are you looking for similarities to the wording used in England and Wales?

Mr Grzymek: We are moving away from those phrases, which are wholly inappropriate to abused children, and that is what they are. They are children who have been sexually abused. In essence, we seem to have inherited archaic expressions that appear to put the responsibility on the child for whatever actions they are engaged in. That is obviously inappropriate. They are exploited children or abused children. Clearly, there may be a number of definitions that you may use, and it will be along those lines. That is not dissimilar from the rest of the UK.

Miss Woods: Have you had any discussions with Ministry of Justice and Department for Education colleagues in England and Wales to assess and understand their experiences of new terms? It is my understanding that, following legislative changes to the Serious Crime Act 2015, there have been difficulties with the terms that they adopted. In the consultation responses, a number of other options have been outlined. Is the Department going down the line of England and Wales? If so, why, and what other options are you considering with that?

Mr Grzymek: When we are developing legislation, we always look at models from other jurisdictions. To be honest, Northern Ireland sometimes has the advantage that, in some of these areas, we are slightly behind them, but we tend to learn from their mistakes. In this case, no doubt the intention was appropriate in England and Wales but, if they got it wrong, we will want to learn from their errors. The terminology is sometimes difficult. It can change over time, and sometimes the same words mean

different things to different people. We are very happy to learn from the mistakes of other jurisdictions, if they have made any. We are in touch with the other jurisdictions. We look at what they have done and the impact of it. If there are lessons to learn, we are very happy to learn them as we go along.

Miss Woods: Thank you. I appreciate that. Just lastly, in relation to the use of remote evidence centres and live links, are there any plans in place to give victims and witnesses access to facilities within a reasonable travelling distance? How are these centres being opened and picked by the Department?

Mr Grzymek: There is always a dilemma when you deal with areas like this. Clearly, what we want to do is get the right facilities. At the same time, you can only run so many facilities and only so many you need. There is always a challenge about where you site them and how accessible they are to people. This is not an area that I myself am responsible for; clearly, I deal with legislation. My understanding is that they are going to start off initially — the Criminal Justice Board agreed a few months ago that we would take a phased approach, and initially produce a basic but short-term contingency facility, just so that we can get things running. The aim is to get that going early next year. From that, we will go to phase 2, a longer-term solution that may run for 12 or 18 months while we develop the final product, which will be long-term remote evidence facilities for the Belfast area. That is the plan. To be honest, I think that this will be a staged approach. Clearly, we will learn lessons from each of those phases, and from those, no doubt, see how best we can move forward. We have the practical dilemma that Northern Ireland is not a large place. The number of cases at any one time will probably not be that great, and you cannot run facilities unless they are being used to a reasonable degree. They are quite resource-intensive. Obviously, to be effective, they need the appropriate support and staff. I am sure that you will get more information from my colleagues on that question. I am not best placed to answer, because I am not directly involved in the planning. However, that will be one of the dilemmas they have: how you locate this facility to give the best service, recognising that you need to give people access, but also you have to put in place expert and scarce resource to provide the appropriate support. Of course, the NSPCC has a remote access place in Bishop Street in Derry. There may be one unit at the outset, but there may also be ample opportunities to work with others to give additional support elsewhere. Again, I am not the expert on this topic. I am just giving you my general perception.

Miss Woods: Thank you Brian, I appreciate your answers. Obviously, this facility should be based where it is needed for whoever needs to access it. I appreciate that this is not in your direct remit. Thank you for your answers.

Ms Dillon: Thank you for your answers so far. I have a quick question and a suggestion of something that the Committee might want to do. My question is about online anonymity. The Department has stated that cybercrime is not devolved. Will that impact on its ability to tackle online stalking as part of the upcoming stalking Bill?

Mr Grzymek: The stalking Bill should give us the necessary power to deal with that. Ultimately, online harassment fits very well in to the legislation that we are developing; it will be picked up by that. On that basis, there is not a great deal of point in trying to do something specific and different from that; it will be covered. Our expectation is that the stalking Bill will cover online stalking. It will certainly give the police the powers to put in place stalking prevention orders at an early stage if that form of harassment is taking place.

Ms Dillon: That is brilliant. Thank you very much for all of your answers, Brian.

Chair, the issue that Jemma raised about the education piece is important. It is not the responsibility of DOJ, so we might want to write to the Education Minister to flag that up. It has been a while since I was at school, but I asked a few of my younger colleagues whether the age of consent was ever mentioned during their time at school. They all confirmed that it was not. That is a massive issue. We have, potentially, 17- and 18-year-olds who have 15- or 16-year-old girlfriends or boyfriends. Whatever about our beliefs around having sexual activity at that age and outside of wedlock, it is entirely somebody's own place to believe what they want to believe. However, youngsters do not know that they are committing a criminal act. They may think, "I shouldn't be doing this. This is not entirely right. I don't think my parents would approve". People's beliefs are a separate issue. I am pretty certain that most of them do not know that they are committing a criminal act. Some may, but I think that a substantial number do not.

We already have existing legislation that they do not know about. I think that they should; we should be doing education around that. We also have the potential for this new legislation around upskirting and other issues. That is really important. It will not all be down to the Education Department, to be fair; it is legislation, and the DOJ will have a responsibility around creating awareness. Rachel raised this issue earlier: how do we communicate to young people? How do we do things so that young people get it and understand it? The Department took that on board when Rachel asked about how it communicates in a way that is understood and is young people friendly. That is really important. The DOJ has some responsibility, but I think that we should write to the Education Minister about where legislation is most likely to impact many young people. We should try to get that to them through the schools.

If it is not a specific Education piece, there has to be some way of getting it in to schools. That is vital. We, as a legislature, are ignoring the fact that we are potentially allowing young people to commit criminal acts without doing anything to try to make them aware that it is a criminal act in the first place. Our views around the age of consent is a separate issue. Young people have a right to know.

Mr Grzymek: There are a couple of opportunities that Education has. The first is sex education, which can be a mechanism. The other one is good citizenship education, which is about getting children to understand where they are in society, the law and how it relates to them. There are mechanisms that Education can use to deliver that sort of information, but you are right. It probably varies across schools and the Province. It is something that, clearly, has to be brought to youngsters' attention.

Ms Dillon: Will we write to the Education Minister?

The Chairperson (Mr Givan): I am happy to pick up on that point. I suspect that, when we scrutinise the legislation, there will be a lot of issues in which we will be saying that Education and other Departments will need to have a role. At such a premature stage, I am wary of flagging up an issue and saying that the Committee wants the Education Minister to address it, but the Education Minister is not doing it. I put that caveat. From the time that I have spent dealing with Education, I know that sex education and all of that interfaces with parental choice, and some may choose not to have their child involved. Governors also have responsibilities about what happens in their schools. I am not sufficiently across how the education system operates to say, "I want to write to the Education Minister to tell him to tell schools to provide this kind of information".

Ms Dillon: I am not telling schools to do it. I know that that is an issue. However, we should ask the Education Minister what is happening and who he sees as having educational responsibility around this. I agree with Brian that there are places to deal with these issues — sex education, life skills and those things within the education system already — but this is about protecting children from unwittingly carrying out a criminal act. We all know, and I am certain, that it is happening every day. My fear for those young people is that they will end up with a criminal record. It is going to ruin their lives. There is the potential for good kids who would not do any harm to anybody — who do not have an ounce of badness in them — to end up with a criminal record that could affect the type of job they get, if they can get a job. I have real concerns. It brings me back to when I was younger. I certainly would not have known, and I would not say that I was uneducated or did not inform myself about such things. It is an issue.

The Chairperson (Mr Givan): I do not disagree.

Ms Dillon: I do not want to direct the Education Minister — *[Inaudible.]*

The Chairperson (Mr Givan): No, no. I do not disagree with that. I would like to have a lot more information about the current responsibility of the Education Authority, the Department of Education and schools, and whether this is being provided. I am always wary about writing officially on behalf of the Committee without knowing exactly whether what we are pointing out as an issue is, in fact, an issue. We do not know. I am more than happy to try to get information on this, but —

Ms Dillon: Ask the question.

The Chairperson (Mr Givan): — I think that we are going into what an Education Department does. I do not mind; I will write letters to whoever. However, there is a wider issue about us, as a Committee, writing to other Ministers about things, Committees that are here to do that and who is responsible for

all of them. I have no problem writing. We will write out and get a response. That is fine; we will see what the response indicates, but —.

Ms Dillon: I will couch it in a different way: we ask the Minister what education is in place. If we are not content, I would like to come back to the Justice Department and say, "You need to do something, because this is not happening through the Education Department". I see this as problem-solving justice, youth justice and protecting young children from ending up in the criminal justice system.

The Chairperson (Mr Givan): Again, I can write to the Education Minister, but I am more than happy to ask the Department of Justice how it works with the Department of Education, and so on, to make sure that criminal law is informed across government sectors.

Ms Dillon: I do not care how we find out — I just want to find out. That is what it boils down to.

The Chairperson (Mr Givan): We are splitting hairs. There is an issue of principle around finding out how far we go as a Committee in writing to Ministers and the kind of work that that generates for the Committee. I do not mind. I can write to the Department of Education. Paul?

Mr Frew: Thank you. Brian, are you still there, after that conversation?

Mr Grzymek: Yes, I am listening very intently.

Mr Frew: Thank you for your time and your presentation. Your answers have been very informative, and the way that you have laid out your written presentation for our files is very good and very easy to read. Thank you.

Not to open up another debate on that last point, but, if that activity leads to a conviction, not only do young people get convictions but, as I understand it, they go on the sex offenders list. They will not be high-risk offenders, of course. In the previous Assembly term, there was a debate in the Assembly where it was determined that the Department would look at pardoning young people when the age of consent changed. Of course, those young people will not be young anymore. Was there any work done on that, that you know of? If you do not have that to hand, can you get us information on that?

Mr Grzymek: We are looking at that more generally. You mentioned pardoning. There is certainly work looking at things like the rehabilitation of offenders legislation to consider how long it is before an offence is spent. We are doing some work on that currently. I am not aware of work on pardoning. That may have passed me by. I can certainly look at that to see if I can find out. It does not ring any bells for me. I cannot give you an answer, but I am happy to have a look and then come back to you on that.

Mr Frew: Why I think it is important is that, if a Government were to decide to change the age of consent on anything, someone who had been convicted months before that change would not have been convicted months after it. There is an issue of fairness for someone who is living with that, because that type of crime and conviction comes with a long-lasting list aspect or a stigma. I think that I was given a commitment on the Floor of the Assembly by the then Minister to look at that.

Mr Grzymek: It may have been looked at in some other part of the Department, but it has not been looked at in my division. I will have a look to see what I can find out about that.

Mr Frew: Please do. Thank you.

Mr Grzymek: My suspicion is that there is not, in fact, a big number of those offences. By and large, whereas, obviously, the police have to follow the law, I suspect that, where you have near-age cases, they are much less serious than where you find a 20-something-year-old engaging with a youngster for sex. That would be much more serious. I think that, if it is a 17-year-old who has a girlfriend who is 15 and a half, I am not sure that that would automatically result in prosecution. It may well be that the number of cases could be quite small, but I am happy to have a look and come back to you on that.

Mr Frew: I agree with you. I think that the numbers will be small, but I think that it is the principle of the thing. Again, I ask you to have a look at that for me.

Stalking was raised here. I know that it is not in the paper, but do you know when the process that you outlined on the stalking Bill will go to the Executive?

Mr Grzymek: I am trying to think of the dates for the stalking legislation. We are aiming to get it onto the Floor of the House either at the end of December or at the beginning of January. It has slipped a few weeks. It may well be at the Executive now. I have lost track of the date that it was going up to the Executive. We are quite well advanced on that. The legislation is drafted, and we are just jumping through the hoops. Normally, it takes about a month, once we have the drafting finished. The drafting finished a few weeks ago to our satisfaction and that of the Office of the Legislative Counsel. If it is not on the Floor immediately before Christmas, it will be immediately after, and that makes it still on track for us to get it through in the timescale that we advised you of previously.

Mr Frew: Thank you. On today's presentation, the Chair and others have asked questions around child sex dolls. This strikes me as something on which we should not have a wait-and-see attitude or approach. I note that some of the sectors and charities are saying that this is an emerging area of concern. What is it that we are grappling with? Is it the linkage between the ownership and possession of a child sex doll and the protection of children? Is it tariffs? What is the problem that is holding up work in that regard?

Mr Grzymek: This was quite new to me when I came to this job. I did not realise that those things were available. The concern is that you find that people who have tendencies towards abusing children are buying those devices. Psychologists might say that they are a substitute and that they might protect children. Equally, a charity could say that this is just a step in the wrong direction, and therefore, if you were to take those away, it might make a difference. The truth is that it is not clear which it is. The Home Office and the National Crime Agency are doing some work on it. In fact, given that we have scant information — I cannot even tell you how many child sex dolls come into Northern Ireland. We just do not have that information.

Mr Frew: Is there any credible evidence of substitution?

Mr Grzymek: To be honest, we do not have a very good handle on it. I do not recall any cases ever going past my desk about child sex dolls. Nationally, it has probably not been a big issue, though it could well be a growing one if the charities are saying that is the case. We want to get a good handle on whether it is leading to criminal behaviour. That is what the Home Office and the National Crime Agency are working on.

Essentially, it is better to legislate on the basis of good information rather than supposition. If evidence were to emerge that this is dangerous or leading to criminal behaviour, we would have a basis for moving forward. However, as it stands, we do not have a sound basis for legislating. Like you, I am a bit suspicious about the whole thing, but, at the same time, I cannot tell you whether my suspicions amount to anything substantial or not, so we need more information.

Mr Frew: Are the Public Protection Arrangements in Northern Ireland (PPANI) organisations looking at it or considering it when they look at high-risk offenders, or even suspects, for that matter, with regard to the PSNI?

Mr Grzymek: I would be surprised if they were, because I am not sure that it is something that is on many people's radar. If you were to see someone engaged with a sex doll, I am not sure what conclusion you would draw because we do not have the information. My guess is that this is very low level. I am not sure that this has been a particular issue in Northern Ireland, but I cannot say for sure one way or the other. It is an area of potential concern. We need to get more information. If we get more information that it is a marker towards criminal behaviour, we will move quickly here, as they will nationally, to outlaw them.

At this stage, without good evidence, it might be quite hard to ban a commercial product, which is essentially what this is, on the basis of allegations or unsupported conclusions that it is a dangerous thing. So, we need some evidence. If evidence suggests that it is dangerous or that it leads, promotes, encourages or is a stepping stone towards offending, we can act accordingly.

Mr Frew: I would worry about it. I think that it is a growing area of concern, and knowing the nature of that criminality and the people involved, I think that it would be a marker. If you have an offence or

conviction for that, it could lead to better detection and management going forward. There is a piece of work that needs to be done on that.

My final point is about your capacity as a team. I get it, I have been a man-manager all my life, and there are only a certain number of man-hours in any given team. I get that, but sooner or later, you are going to bump into a thing called the legislative Assembly, and anything can happen on the Floor of the House. Again, some of the issues will be important to Members, not least the Committee. If we need more resource; we need more resource. If we need more capacity; we need more capacity. The Committee would be very interested in having a conversation with the Minister if that were the case.

Mr Grzymek: I will quiz my officials about PPANI and sex dolls to see whether there is any evidence that it is an issue or has been noted. On the use of the resource, civil servants are always told that we have too many resources and what are we doing with them. The reality is that I have 20 staff in my division, and we are covering a very wide range of criminal justice policy and legislation. We are developing policy, managing Bills and researching new areas. Since the Assembly has returned, you and your colleagues have been slightly overactive insofar as we are finding a large number of things coming in at the same time.

The truth is, the division was never resourced to do everything we can do at the same time. The tasks must always be put into some sort of order. Clearly, we take our advice on that order from our Minister, and the Committee will have its own views, which we will, of course, take into account. The reality is that a number of things have been coming out at the same time, and, naturally, the division wants to do as good a job as it can. I cannot justify my resources by salami-slicing, I have to do one piece of work at a time. Resource-wise, I am no worse off than anyone else in the Department. I have a very good team that does exceptionally good work. At the same time, things happen that will divert my resources. If the Assembly or Committee brings issues up during the passage of a Bill, that will create more work and may mean the reprioritisation of work. At the end of the day, my job is to make sure the Minister, the Assembly and the Committee have the legislation and policy that they want, and that is always a challenge.

Mr Frew: I get that. I have been a man-manager all my life, and I have sympathy for you. The legislative Assembly is here to help.

Mr Grzymek: I do not see the Committee as a burden or an obstacle. There are opportunities for us to work constructively and collaboratively to produce good law.

Mr Frew: Absolutely. I could not agree more, Brian. Thank you.

The Chairperson (Mr Givan): Thank you, Brian. We now know that Paul is a man-manager.

There are no more questions from members. We will want to engage further on these topics. There has been very good work done, Brian. Obviously, members will focus in on areas that have not progressed that they want to progress. However, I very much welcome the outlined areas that are going to be included in the miscellaneous provisions Bill, and that is the result of good work. I accept that the Department is under different obligations, such as the need for public consultation and stakeholder engagement that has to be carried out when dealing with very sensitive policy areas that need to go into law. When it comes to Consideration Stage, MLAs are not under the same legal duty, and hence amendments come forward.

In preparation for the miscellaneous provisions Bill, and I will make the point to the Minister, I have no doubt that amendments will come forward on a wide range of issues, and those will require responses from the Department. I do not underestimate the challenge that is going to be posed to the Department. The Department need only look at the course of the Domestic Abuse and Family Proceedings Bill to recognise that Members and the Committee will pursue amendments, even, at times, when the Department does not want that to happen, and we will, very effectively, get those through the Assembly, as we have done. That is more about preparation. I think that there will be a significant amount of work in the miscellaneous provisions Bill, and preparing for that is a precautionary approach that might be worth the Department taking on board. I will make that point more generally to the Minister, but, Brian, you are obviously very important in how officials respond to it. On that, I will say thank you —.

Mr Grzymek: I am not sure about "important", but our job is to produce good legislation. Clearly, Members can table amendments, and we will deal with those as they arrive in the best way that we

can. If I have to divert a big proportion of my resources to do that, that means that other things will go more slowly. However, that is life. Our job is to deliver against those things, so our priorities and timings will vary appropriately.

The Chairperson (Mr Givan): Lovely. Brian and your team, thank you for spending the time with us this afternoon.

Mr Grzymek: Our pleasure. Many thanks.