Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (Sexual Offences and Trafficking Victims) Bill: Department of Justice

16 December 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Mervyn Storey (Chairperson)
Mr Doug Beattie
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Robin Newton
Mr Peter Weir
Miss Rachel Woods

Witnesses:

Ms Lorraine Ferguson	Department of Justice
Mr Brian Grzymek	Department of Justice
Mr Andrew Laverty	Department of Justice

The Chairperson (Mr Storey): I welcome Brian Grzymek, deputy director of the criminal justice policy and legislation division, who, I understand, joins us from London. I also welcome Andrew Laverty, head of criminal law branch, also of the criminal justice policy and legislation division, and Lorraine Ferguson, head of the criminal policy unit. The session will be reported by Hansard, and the transcript will be published on the Committee's web page.

We will take each Part of the Bill in turn. Officials will be given the opportunity to make opening remarks on the relevant Part and any comments that they wish to make on the issues and proposals made in the written and oral evidence received by the Committee. There will be an opportunity for members to ask questions and explore issues before we move on to the next Part. I trust that it is helpful to have a structure for working our way through the Bill.

We come to Part 1, "Sexual Offences", and I ask Brian and his colleagues to comment on Chapter 1, "Criminal Conduct", which covers "Voyeurism: additional offences", "Sexual grooming: pretending to be a child" and "Miscellaneous amendments as to sexual offences".

Mr Brian Grzymek (Department of Justice): Chair, thank you very much for inviting us to attend the meeting. As you said, I am speaking from London; I am taking a break from my summer holidays to come to the meeting, so excuse me for being inappropriately dressed.

I am happy to go through the Bill and respond to comments and questions from members. Clause 1 covers upskirting. It raised a number of very interesting points from people who gave evidence to the Committee, so I will try to pick up some of them. The key issue for us is that the provisions address an important legislative gap. We consulted on upskirting in 2019 as part of our review of child sexual exploitation and other sexual offences. The proposal was to legislate for it in the Bill. There was

overwhelming support for the proposal, and there were no concerns expressed at that time about motivations. The removal of motivations, in our view and that of our legal advice, dilutes the offence and does not provide the ability to identify those who pose a future risk. We also have concerns about criminalising children and young people who act in a thoughtless or reckless manner when they carry out that sort of activity without thinking through the consequences of their actions. We understand the issues about motivation that were raised with the Committee, but we are very clear that there is, in fact, quite a wide range of people who might get picked up in the offence. The aim of putting motivation in is to differentiate between people who might become serious or potentially dangerous offenders downstream and those who carry out the activity for reasons that are, perhaps, of lower concern and who, therefore, may not be best dealt with by criminal law.

That is all that I want to say at this point. My colleagues and I will be very happy to pick up any comments or questions from the Committee.

The Chairperson (Mr Storey): Thank you, Brian. One of the issues raised came from the NASUWT. It pointed to research that concluded that the difficulty of proving the nature of an offender's intentions beyond reasonable doubt might contribute to cases never reaching court. Have you any comment to make on that?

Mr Grzymek: I echo the comments — I am not sure what is happening: I seem to be getting a lot of echo. Someone may have two microphones on. Anyway, I echo what the Committee heard from the Public Prosecution Service (PPS) and the police. They are very familiar with the notion of intent. The agencies involved in the justice system appreciate that and have been party to our drawing up the legislation insofar as we consulted them carefully. They are content that this is doable. In fact, it is a normal part of an investigation to look at intent. I am not pretending that it will be simple in every case, but it is practical and doable, and the justice system is quite used to taking that sort of thing on board.

The Chairperson (Mr Storey): Jemma?

Ms Dolan: Thanks, Chair: I think that my question has been answered. Brian, on the idea that an individual carrying out the act is doing so for the purposes of sexual gratification or humiliating, alarming or distressing an individual, are you saying that the Department is willing to take that on board?

Mr Grzymek: I am sorry, but I am not sure that I understood your question. Will you repeat it, Jemma?

Ms Dolan: A number of organisations have said that clause 1 is too narrow in relying on proving that the individual carrying out the act was acting for the purposes of sexual gratification or humiliating, alarming or distressing an individual. It seems to be an obvious gap that requires attention. In your previous answer, did you say that the Department agrees with that point and would take it on board?

Mr Grzymek: No. What I said was that it is our view, and the view of our legal advice, the Public Prosecution Service and the police, that that is sufficiently wide to catch those offences. Clearly, at the margins, there are always grey areas. The reality is that it is about the intent. It was previously said that the clause does not capture people who do things for money or a monetary award. However, the reality is that someone who takes an image may sell it on for somebody else's gratification. Equally, if it were sold on, it could cause fear, distress or alarm. By and large, it is our sense — the Public Prosecution Service, from which you took evidence, also said this — that the clause is sufficient to capture the offences that we are concerned about.

I am conscious that, at the other end of the scale, there are people who take photographs of that nature on a whim, without thinking, or even accidentally. We are not trying to criminalise those sorts of people. When intent is part of it, the expectation is that, if it is reported, the police will look at the intent of the individual. A person who has, let us say, a learning disability or is a child who acts foolishly, on the spur of the moment without thinking through the consequences, is not the type of person that the offences and penalties are aimed at.

We are conscious, however, that there are people out there who have the intent. I heard a recent example about the police picking up someone who had hundreds of similar images on his phone. That was not by chance or an accident. That person deliberately went out of his way to undertake that sort of activity. Those are the sort of people on whom the legislation should be focused. In that situation, the motivation helps.

We do not want to end up diluting the offence by going for the lowest common denominator. Clearly, some people who commit those offences need to go on to the sex offenders register, and some may be potentially dangerous predators, so we do not want to go for the lowest common denominator. What we want to do is differentiate between people who technically commit the offence but do so without real malice or the intent to cause harm or distress or to obtain sexual gratification and others who are, in fact, more dangerous or are of greater concern. They are ones against whom we want to use the law. I hope that I have answered your question, Jemma.

Ms Dolan: Yes. You are basically saying that it will cover those instances.

Mr Grzymek: Yes, indeed. That is what the PPS said in its evidence to you as well.

Ms Dolan: Why does our upskirting offence carry a lesser penalty than the one in England and Wales? Would you consider an amendment?

Mr Grzymek: I think that I answered that the last time, Jemma. I will refresh your memory. We noted that, in England, they had put that into law but had not commenced the law, so, in theory, they could give it a higher penalty, but they do not. That 12-month level has not been implemented in England. What we are suggesting is that the six-month maximum, which is the norm for most cases involving summary jurisdiction in the Magistrates' Court, is consistent with what is actually happening in England.

Ms Dolan: I was just testing you there, Brian.

Mr Grzymek: Did I get the answer right? *[Laughter.]*

Ms Dolan: I have another question. Would you consider amending the Bill so that it refers to "image-based sexual abuse" instead of "revenge porn"?

Mr Grzymek: When you see the amendment, you will discover that we do not use the phrase "revenge porn". That phrase has been used possibly by us and by Committee members, so if I am guilty of that, I am not the only person who should be prosecuted. The reality is that we are not using that. We do not really like the term either. We may have occasionally used it, because, in fact, it gets some degree of recognition. To make sure that we were talking about the same things, we may have used it in the past. You are exactly right: it is not the right term. We will not put it in the amendment, and, when you see that, which I hope will be fairly soon, I think that you will happy enough.

Ms Dolan: That is good. I am happy to hear that. I have a last question. We have an opportunity to lead the way on these islands by introducing a cyber-flashing offence. Has the Department done any work on that?

Mr Grzymek: As you know, when it comes to cyber, to start with, if you look at the Bill, you will see that it picks it up. It does not differentiate between different types of — let me see if I can find it. Rather than me looking it up, Lorraine, can you pick that up for a second, and then I will come in again? I have lost my place in my notes. You need to unmute.

Ms Dolan: She might need to be brought into the spotlight.

Mr Grzymek: I am not sure what has happened. We have had a little bit of trouble getting into your system. Lorraine still seems to be muted, so I will pick it up.

When it comes to cybercrime, we are conscious that there is a UK dimension to it. We cannot operate in isolation, not least because the cyber world does not end at the borders of Northern Ireland or even in the Irish Sea. In essence, we have to operate as part of a national approach. It is also an international approach, because it goes beyond the UK and Ireland's boundaries.

It is not that we have not considered it. For example, in another Bill that you are looking at, on stalking, we make provision for the use of cyber as part of an offence. It is not being ignored, but we clearly cannot legislate to manage cyber offences that are transnational. It is not within our power. Does that answer your question, or is there anything more detailed that you want to pick up?

Ms Dolan: No. That is fine. Thank you, Brian. That is all from me.

Ms S Bradley: Thank you, Brian and team, for being here again. You referred to hearing other presentations to the Committee. Some compelling arguments were put to us on parts of clause 1. The Department seems to be standing by the position on motivation and the descriptors that it adopted at the outset, in the first draft of the Bill, on the motivation piece. We discussed the descriptors that reference parts of the body and things of that nature. Are you minded to put forward any amendments to the clause that we are unaware of? I am surprised to hear that there has not been a bit of movement on this issue in your thinking at this stage.

Mr Grzymek: It is fair to say that we have listened very carefully to all the evidence that you have taken. We have noticed that it has been contradictory in some areas. To be honest, we are happy that the Bill is in as good a place as it can be. We wholly understand the lines that were put forward on motivation. They were put forcefully, and I appreciate that. At the same time, the advice that we are getting on motivation from the PPS and the police is that they are comfortable with it. They believe that it will cover the work. They are the people on the ground who deal with the offences when they appear. They are comfortable and confident that the provision is sufficient. Trying to move away from motivation opens a host of other issues. If I wanted to move away from motivation, I would not do it by putting in a half-baked amendment. I would take it out altogether and then put it into another Bill. In reality, you cannot make good law by knee-jerk reactions to comments, no matter how authoritative or good they are. The reality is that, in Northern Ireland and the UK, we build policy and legislation on the basis of resolved policy. The only practical way to make a radical change to the policy at this stage would be to withdraw that whole section of the Bill, rewrite it, and come back with it at a future date. Based on what I have from the PPS and the police, I do not believe that that is necessary. I believe, as the police and the PPS do, that this law fills a gap. There are ways to improve any law. I am not pretending that this is the perfect law, but it is what we have available, it will come into force, and it will cover the vast majority of offences in a way that is consistent and appropriate.

Getting away from motivation raises a whole host of issues, not least the situation that I described about diluting the offence if you go for the lowest common denominator. You might be able to produce different components and different levels, but, to be honest, we have not given anything other than cursory thought to that, so far. We will not produce new instructions or law between now and next week, or even between now and next month. That would probably require us to go out and consult again. When we first consulted, from the responses that we got, only one raised the issue of motivation. All the others who responded, which included a number of major legal organisations, were happy enough with the Bill as it stood.

I am faced with the fact that we went out to public consultation and received input from the public and the justice and voluntary sectors in which this was not raised as an issue. To bring it up now and suggest changes, I have some real issues about how that would work in practice. It would not be prudent or appropriate for the Minister or the Department to try to make a last-minute change of such a significant nature without thinking through the consequences. To be honest, at this stage, I am not sure that the consequence would not be to produce worse law. We have no intention to amend that at this point. I certainly understand that there are different views on that. There are some compelling arguments, but some bodies produced a number of compelling counterarguments to some of those arguments, and I hope that I have flagged a few of those.

Ms S Bradley: Thank you, Brian. I suppose that the biggest compelling argument that you presented today is that the net may be too wide, in that it could take in people and offences that are not intended in the objective of the Bill.

I appreciate that the Department put up the draft and is presenting the Bill. Heaven knows that there is not enough in the Bill. I can give you a long list of what should have been in the Bill that is not in it, so I do not want to engage in any conversations in which we even contemplate the possibility of taking anything from the Bill.

Am I reading this right, Brian? Is this a slight warning shot from the Department to the Committee and its members to say that, were there to be an amendment of such a fundamental nature — because, as you know, there are different players in the legislative process — the Minister might not move that clause?

Mr Grzymek: It is not my job to fire warning shots towards anyone. I am just noting that building up legislation is a complex process. I previously told the Committee that it typically takes us a year to get

from the start of the process to the point that the drafted instructions go to the Office of the Legislative Counsel (OLC). We have made changes to the Protection from Stalking Bill. In that case, the Committee asked us to make changes that were not complex and did not raise any fundamental issues but actually went into detail that we might have gone into anyway. In that case, therefore, we were both pointing in the same direction, so clearly the Minister was able to take that on board. Indeed, I think that she even tabled some additional amendments on that one.

That shows that there is willingness to work with the Committee. Certainly, however, if the Committee asks us to do something that will fundamentally change the nature of what is being proposed, when we have not had time to consider it or to consult on the new direction, my responsibility to the Department and the Minister, as a civil servant, is to make it clear that there are real problems with that.

Clearly, if the Committee wants to make a minor change to something and wants to put in an amendment, it can, of course, do that. However, if you are making a major change that changes the fundamental nature of an element, as someone who has spent my whole career writing policy and drafting legislation, I am not comfortable with picking something out of a hat and saying, "Let's do that because somebody said it is a good idea". No matter how persuasive that might be, I would still like to go through the normal process and consult. We consulted on this previously, and there was the option for people to flag this. As a Department, if we consult and get responses, we cannot really ignore those responses, so, for me, the direction of travel has to be the direction of travel pointed out by the consultation. Otherwise, there is no point in us consulting. It would be a sham.

If the Committee feels that this is necessary, I am just saying that it is a complex area, and my concern is that, if we cast a net so wide that we catch everybody, we will have big fish in there and very small fish. Ultimately, the concern for us, from the legal perspective and the criminal perspective, is the bigger fish, but if we are mixing them up with a lot of people whom we do not want, they will get cover. That is our big concern.

Ms S Bradley: Thank you, Brian. I hear you, and I assure you that I would be shouting the loudest if there had not been consultation, so I genuinely take your point. The Committee Stage of a Bill is when you hear voices, hear the arguments and counterarguments and you weigh those up. That is the stage that the Committee is facing at the moment, and that is why it is good to hear this, because you are presenting a counterargument. We need to take that on board. Thank you. I have a ton of other questions, but I am conscious that I am taking up a lot of Committee time. Thanks, Brian.

Mr Weir: I will follow on from where Sinéad left off. Brian, I appreciate the point that you made. I am a little bit disturbed by what is being said. I appreciate that you are not suggesting that we do not have the power to do this, but it seems that you are saying that, essentially, the Committee can table any amendments that it wants so as long as the Department, largely speaking, agrees with them and they are not regarded as being a significant change. That seems to strike at the broader legislative process, because, ultimately, the Assembly will be sovereign. We have all, at times, been stuck with changed legislation that we either greatly approve of or, alternatively, deeply dislike, but that is the process. I have a little bit of a concern about that. Maybe it suggests that, when consultation took place, if you got one response that raised the issue of motivation —. Certainly, as a Committee, we have had quite a number of responses of that nature. That has been a pretty consistent message. I do not know whether that is because some of the initial respondents did not realise it or took their eyes off the ball. That is more of a point.

There are two points to raise. There is a suggestion that an alternative would be based around where there is not consent to pictures being taken and also around the sharing of those pictures. The twin elements of that would be sufficient, rather than motivation. I appreciate the argument about throwing the net too wide. On the flip side of the coin, we have all, at times, seen prosecutions not take place where there has maybe been a bit of doubt in the PPS's mind about whether it would be able to prove motivation. The question of motivation could inadvertently become a high hurdle to overcome. I can understand if it was simply about the taking of a photograph, although it is difficult to see how, for example, upskirting could be done absolutely accidentally. That would be a very rare occasion.

Mr Grzymek: Yes.

Mr Weir: If somebody is doing it without the consent of the individual and then sharing it, again, it is difficult to see how that could be done entirely accidentally. By way of counterargument, on the unintended set of prosecutions — call it that — to again use the analogy of casting the net widely and

catching the big fish, any fisherman will always have discretion as to which fish they throw back into the sea. If we genuinely get cases where there the police or the PPS have a concern that someone has committed a crime by accident or lacks mental capacity, in those circumstances, it would be fairly commonplace for the PPS not to prosecute. Maybe a warning will be given to the person. As for the idea that we would treat the big fish and the smaller fish on the same basis, surely the point of sentencing and a judicial process is that the worst offenders will receive the greatest sentence. It may well be that someone who was found guilty of a lower-level offence will get a much lower sentence. It is not a direct question, but can you respond to those points? I am not entirely convinced by the slight level of threat that the nuclear option will be used if a change of that nature happens.

Mr Grzymek: Peter, I am very happy to respond to all those points. First, previously, I was asked whether the Department would bring amendments, and my answer was not about the Committee. I am not trying to create a constitutional crisis. I was asked if the Department was considering —

Mr Weir: We may have to refer that to —

Mr Grzymek: — amendments, and that was my answer. The Committee has the right to raise whatever amendments it considers. Clearly, if the Department has been asked to take an amendment, it has to look at that in the context of its understanding, and that was my answer. I was not suggesting for a second that the Committee has not the power or responsibility —

Mr Weir: Except you said, essentially, that with an amendment of that nature, that was fundamental to the Bill, there would be a question mark over whether that should constitute entirely new legislation, with a veiled implication that if something of that nature was pressed, the Department or the Minister may simply say, "Actually, we have to withdraw". I am trying to think of the exact procedure, and whether that is a question of withdrawing a clause, but, in those circumstances, the Bill might be withdrawn. I am not quite sure. The Department may indicate that it wants to propose that clause 1 stands part as amended, or something of that nature. I am not sure that the Department can withdraw a clause and leave the rest of the Bill intact.

Mr Grzymek: I do not want to get into the minutiae of how it would work. I note that I was asked whether the Department was considering an amendment. I noted that, in fact, if the Committee suggested that it wanted the Minister or Department to make such a fundamental amendment that we had not consulted on or developed an appropriate policy for, that was a real problem. In fact, that was where I was saying clearly that if you were to have that amendment in, you could not stand over it. That would be a significant issue. Certainly, if the Committee felt that there was a fundamental error in the law that required a substantial change, it would make more sense to have that worked up and issued at another time. It was not a threat by any means. I was just noting that developing law is a dynamic process.

The Committee can, of course, bring in any amendments that it likes. However, if the Committee asks the Department to bring amendments, they have to be looked at in the context of the policy development. If the amendment suggests that we do not have sufficient background, supporting evidence or that we have not worked through the elements, putting forward the amendment would be substantially problematic. That is my point. I certainly was not trying, in any way, to suggest that the Committee did not have the power to put its amendments forward. I was just noting the practical problems because I want to produce good law. It is about bringing in bits that the Department has not thought through.

At the Committee, there may well have been points made about motivation. However, I will come to your question now. I understand that people have made particular points about motivation. It is a complex area, and there are some swings and roundabouts involved in that. I would not like to say, "Yes. That is fine. Go ahead", without actually working through the detail. It is not something that you could do very quickly. I am conscious that we are getting close to the end of the mandate. As I have already said, the Minister and Department have been happy to pick up amendments from the Committee, but, where they will actually require substantial amounts of work, we just do not have the time to build the policy base on which to do that ourselves. If the Committee wants to raise an amendment, of course, it has an absolute right to do that, and it will be decided on in the House by the Assembly, as the legislative authority. I have never suggested anything else on that basis.

Looking at your questions, if I can now read my writing. I cannot read my writing.

Mr Weir: Brian, just to reiterate then —

Mr Grzymek: Yes, if you could, please.

Mr Weir: One thing that has been suggested to us is that, if the offence were based on both the lack of consent and the sharing, it is, first of all, difficult to see where a combination of those things would happen and it be entirely innocent. If it were a question of somebody's lacking capacity — clearly, if somebody lacks capacity, they should not be prosecuted in the first place — prosecutors would always use a level of discretion where they feel that it is not appropriate or in the public interest to take a case through to prosecution. There would always be that level of flexibility.

Mr Grzymek: In some ways, what we are saying is that, in fact, the motivation and intent come in here. Obviously, the legislation is not designed to cover an instance when someone takes a picture for their own personal use and it will not be used either to cause fear and distress or for sexual gratification. Obviously, you could have someone who takes an image for their own sexual gratification or to make someone else uncomfortable. In that case, it would be covered. With regard to sharing, I am conscious that what may have been suggested was that you could have someone taking the picture whose only motivation was money, and he intends to sell the photograph on to other groups. If those groups who are sharing the picture are buying it to humiliate the individual or for sexual gratification, it would still be covered by the offence.

When an offence is apparently committed, clearly the police will investigate it. You are quite right: if someone accidentally takes a photograph, that would be dismissed fairly quickly. As regards whether it should be a criminal offence if somebody purposely takes a photograph, but has done so because they have been stupid or, in fact, reckless, we have tried to differentiate between people who do things for foolish reasons without actually having any intent to cause humiliation, harm or distress, or for sexual gratification, and people who, clearly, are taking that approach, which includes those who take pictures to sell on the basis that that will then produce sexual gratification for others, or, indeed, will allow other people to, perhaps, humiliate someone or otherwise cause them alarm or distress.

Our feeling, and, certainly, the PPS line, which it gave you separately, was that the motivation is an important part of it and should allow the system to differentiate between accidental or low-level behaviours and ones that are more sinister. If you produce a wider net that catches everyone, you are quite right: clearly, you would have to sort the wheat from the chaff, but you will end up with a lot more people in the net. If just taking the picture alone is sufficient to commit an offence, rather than the motivation, that is the lowest common denominator. Clearly, in that group, you may well have people who have sinister reasons for taking photographs. Even just sifting through the larger number of people to actually ensure that you focus on those ones is important. Plus, of course, while it may well have been done for sexual gratification, the offence would just be the basic one of upskirting, which would certainly dilute the actual nature of the offence. That is certainly our understanding of the law. Our concern was, in fact, that you would, perhaps, want to put some people on the sex offenders register, and take other actions, but, if the offence is the lowest common denominator, it is, perhaps, harder to differentiate between those people and others in that group.

Your other point was about the Public Prosecution Service. Sorry, can you remind me of your other point? I gave too long an answer to your first point.

Mr Weir: You have sort of covered it, Brian. I was making a point about something of a nature that is either innocent, someone lacking capacity or whatever. In those circumstances, the PPS would use a level of discretion not to prosecute. The idea of the net being cast so widely that it drags people in who should be nowhere near the courts is a slightly moot point. You have covered that point already.

Mr Grzymek: I think that I have, but, certainly, you can find people who in fact took accidental photographs. It might well have been a deliberate photograph but not with any malign intent. You could say that it might be hard to take an upskirting photograph accidentally. It might be that somebody is being silly or they think that they are being clever at the time but they do not intend to humiliate the individual because they have not thought it through. That can particularly be the case with young people who sometimes are not as capable of thinking through the consequences of their actions as adults might be. Potentially, you can have a situation where someone does it on purpose but, at the same time, you do not want it to be an offence. It might be a case of the police warning them to be more sensible but not one for which you want to prosecute.

I am conscious that there are probably other examples, and that is why we have law and courts. Ultimately, there are myriad possible explanations. We are trying to capture the important ones and not to, inadvertently, criminalise people when there might be better solutions.

Mr Weir: I appreciate the point. The counterargument could be that there are a lot of crimes where, if a watertight defence was, "Well I was not really being sensible" or, "I did not think through all the consequences of the actions," there would be a lot of those in different spheres of life where crimes are committed. I do not think that is a sufficient level of defence to negate a crime being committed.

The next member is looking to come in so I will not press the point any further.

Miss Woods: Thank you, Chair. I am keeping my camera off because I am having some tech issues. Apparently, in Bangor, it is 9.45 on Monday previous rather than whatever time it is now.

There has been much focus in the last half an hour on the motivation and the intent. I do not want to exhaust that too much. The Committee has had conversations with people giving evidence around what this offence, as it is currently drafted, will and will not cover. Certainly, Professor McGlynn was very clear that the offence of upskirting that happened in Northern Ireland, and which we are all aware of, would not be covered by this Bill, as it is worded. The PPS said that if there was no evidence of sexual gratification and no evidence of humiliation, alarm or distress but there was on the exertion of control, it would not be covered under the motivation currently outlined in the Bill.

Brian, you warned against changing the wording of motivation and deeming it to be about consent only. Is there room for additional motives to be added or would that have the same effect? Again, picking up on the cyber-flashing, with regard to operating internationally and nationally, I understand that cyber-flashing has been outlawed in Scotland since 2010. Is there something in there that we can look at for this Bill for Northern Ireland?

Mr Grzymek: I will start off on the area of motivation. If someone is trying to use an image for coercion or control, I would be astonished, under our reading of the clause, as drafted, if it did not cause distress, anguish and humiliation to the person being controlled. If the person does not recognise that it is coercion or control, that does not mean that it is not happening. It is similar to the Domestic Abuse and Civil Proceedings Act: coercion is not seen as a benign activity; it is seen as a malign activity, even if the person does not recognise that it is causing them damage, or whatever. I am not sure. It is something that the court would determine. It is hard to see how that would not be included.

The PPS gave its evidence separately and, in the main, it was happy that this was deliverable and covered the majority of the cases. That has certainly been the view of the police, as they reflected to you. When it comes to putting in additional elements, the Committee could consider that, but the question is what, precisely, you would do and whether it would add any significant value. I am struggling to see how someone who is using imagery for control would not be covered in the interpretation of the clause. Even if the individual who is being coerced or controlled is so beaten down that they do not recognise that it is humiliation, and causing them anxiety and distress, a third party who looks at the situation would probably come to a different conclusion. It is not unusual for the police to pursue cases in which the victim does not see themselves as a victim, but they clearly are. Therefore I am not sure that I agree that it would not be covered. In law, there is always a problem about where you start and where you stop. We have tried to widen it for those more serious cases. If you wanted to raise something clever and different regarding motivations, we would consider it — we want the law to be as good as it can be — but, as the clause stands, it covers all activities pretty well, as we see it.

We have taken the line that cyber-flashing tends to have a broader line. We will have a look at what the Scots have done on that. I would never say never, but I am nervous that we are getting close to the end of the mandate, and we still have a lot to do on the Bill. I will have a look at what the Scots have done, and, if there are lessons that we can learn, I will look at them. This is not the end of the story. I am clear that there may be issues flagged up with the Committee now that are outside of the Bill, particularly since we wanted the Bill to be wider than it is. Some things that were there previously fell off when we were obliged to narrow the Bill. There will be a miscellaneous provisions Bill — it will probably be the first Bill of the next mandate — and there will be a possibility there for any more fundamental issues that come up. We will look at those downstream.

I am also conscious that the Law Commission is looking at that area. It is looking at a refresh of the entire system, so picking up things in isolation is problematic for the commission. We have had conversations with the Law Commission. My suspicion is that it will produce a report some time in 2022. We will look carefully at that. The Law Commission has spent the past couple of years developing that report. By the time it gets to the end point, it will be an opportunity to look afresh at the issue. The fact that we are putting in legislation now means that we pick up points from this point in time. If the law changes, nationally, or if new ideas or refreshed thinking come about, that will be for

the next mandate. The Department and the Justice Minister — whoever that might be in the next mandate — will, of course, look at this very carefully.

Miss Woods: Thanks, Brian. I appreciate that. We cannot predict what is going to happen in the next mandate, but there is nothing to stop a miscellaneous Bill from becoming a not miscellaneous Bill, again, just as happened in this mandate. I appreciate your commentary on that. The Scots made a legislative change in 2010, and I believe that there is a similar offence in the Republic of Ireland. It is something that we have been actively encouraged to look at. It is becoming an increasing problem in Northern Ireland. Even in the last couple of weeks, there have been reports of it happening. If we can do something *[Interruption.]*

Mr Grzymek: Just to help me a little bit, when you talk about cyber-flashing, we are talking about upskirting. To have cyber-flashing relating to upskirting, there has to be an image, and if you trade an image, and it is being put out and is going to humiliate, distress or, indeed, provide sexual gratification in relation to the victim, I am not sure how it is not covered in the current legislation.

Miss Woods: OK.

Mr Grzymek: At the end of the day, you cannot have cyber-flashing without taking an image. The act of taking the image and putting it out there for sexual gratification, or whatever, would, in itself, actually be an offence under this legislation when it comes in.

Miss Woods: It is more in regard to the sharing of images rather than the actual act of upskirting or downblousing.

Mr Grzymek: OK. You get an anonymous image from somewhere and you pass it on to a third party, is what you are saying, but you did not take the image. The offence is the taking of the image. I can understand there being problems there, purely because how does a third party receiving an image on the internet know that it was surreptitiously taken or taken without consent?

I am not saying that it is necessarily a good thing. I am just noting it. Clearly, the offence is taking the image and then keeping it or passing it on for various reasons. If a third party innocently, potentially, got an image on the internet and then passed it on, you would have to show that there was criminal intent. The criminal intent on the first party was breaching the law by taking an unauthorised image. If someone receives an image that is not, in itself, obscene or in some other way unlawful, you get into lots of interesting questions. This is probably a lot broader than just looking at upskirting.

Miss Woods: OK, thank you, Brian.

The Chairperson (Mr Storey): The concern that the Committee has is the evidence from the PPS, which said that if there was a case where there was no evidence of sexual gratification being the motivation or no evidence that there was an attempt to humiliate, alarm or distress, and that the individual's only motivation was, for instance, the exertion of control, that would not be covered by the motivations outlined in the Bill. That view was expressed to us by the PPS.

Mr Grzymek: It is hard to understand how you would get to that situation. On a coercion front, it would have to be a non-domestic abuse case. If it was domestic abuse and you were using coercive control, it would be covered by another law. You are talking about someone who is not in a domestic situation taking a photograph for coercion or control of someone with whom they are not in a relationship. That is one question: who is that sort of person going to be? The second question is if the image is taken and is for coercion or control, how does that not fit into one of the motivations? It is hard to see how that would not fit one of the motivations. I am not sure that I understand where the PPS was coming from on that point. I find it difficult to see how that sort of case would arise. The reality of law is that anything can happen, but, by and large, we make law to try to pick up the vast majority of cases. There will always be one on the margin.

I will have another look at that, but I struggle a wee bit to see how you would find a case that is not a domestic one — so, it would not be someone with whom the offender was in a relationship — but where the offender is trying to somehow coercively control the victim. Perhaps it could be for monetary gain, but it is hard to see how that would not be distressing, humiliating or causing alarm. Thank you for that. I will have another look it. I would be very happy to receive any more thoughts that you may have about what sort of victim that would constitute.

The Chairperson (Mr Storey): The PPS made the other point that proceeding simply on the basis of whether there was consent to taking the image would be in line with nearly all the other offences in the Sexual Offences (Northern Ireland) Order 2008.

Mr Grzymek: Are you suggesting a case where the person who had the image taken up their skirt consented to that at the time?

The Chairperson (Mr Storey): No. The PPS said that, by proceeding simply on the basis of whether there was consent, the taking of the image would be in line with all the other offences in the 2008 Order.

Mr Grzymek: Sorry, you have confused me on the use of consent. Who has consented to what?

The Chairperson (Mr Storey): It is not our view; it is what the PPS said.

Mr Grzymek: I am just not sure that I understand what the PPS was saying. Who has issued the consent for what? I am sorry, Mr Chairman. I am trying to help you, but I am not sure that I understand the point that the PPS was making.

The Chairperson (Mr Storey): The PPS said that, whether there was consent or not, the taking of the image would be in line with nearly all the other offences in the 2008 Order. I want you to clarify that point.

Mr Grzymek: If someone consents to a picture being taken, you are in a different ball game. This is about upskirting or downblousing. Consenting adults can agree to all sorts of images being taken. Other issues may come in: for example, the unauthorised sharing of intimate pictures, which would require an amendment to the Order. That is a different situation. In essence, we are very clear that there is a gap in the legislation relating to upskirting. That is very clear from recent cases. Both the PPS and the police are supportive of the Bill and think that it will add to the armoury of legislation that we have.

The 2008 Order has lots of very helpful law in it, but there is a clear gap. Our aim is to fill that gap, and the Bill intends to do that. Someone consenting to the image being taken changes the situation, and that would fall outwith upskirting or downblousing. If it is done with consent, an offence cannot be committed. If the image is subsequently used for some other purpose, which may be to try to humiliate or whatever, that may be picked up by other legislation. However, the Bill picks up the unauthorised recording of images and their subsequent use for causing humiliation, alarm or sexual gratification.

The Chairperson (Mr Storey): We will refer the PPS's evidence to you. You may have seen it, but we will forward some of it to you again for your consideration.

Mr Grzymek: I will look at that specific point and discuss it with the PPS.

The Chairperson (Mr Storey): OK. Thank you.

Ms S Bradley: I have one very quick point. Brian, I appreciate what you said about going off to give some more thought to the purposes of obtaining sexual gratification, humiliating, alarming or distressing. When you are doing that, will you give some consideration to the thinking on the "threat of"? If the prosecution is charged with finding evidence that it was for sexual gratification or was humiliating, alarming or distressing, how do they do that if there was only a "threat of" that? It might also go back to the Chair's point about consent. There could have been consent at one moment in time and, then, the "threat of" that image being used at a later time. I would appreciate it if you could give some thought to that, Brian, and come back to us.

Mr Grzymek: I am happy to do that, although we will be looking separately at what was — inappropriately — referred to earlier as "revenge porn". The threat of displaying an image that was taken with consent would be covered there, as would a situation where the picture had been taken with consent but was then used as a threat of exposure to force coercion. That may not be picked up in the Bill, but it might be picked up elsewhere. However, again, I will have a look at it.

Ms S Bradley: Thank you, Brian.

The Chairperson (Mr Storey): Part 1, Chapter 2, "Anonymity and privacy", covers the anonymity of victims, anonymity of suspects and exclusion from proceedings. Are there any questions?

Miss Woods: This was brought up in the Victim Support submission, I believe. My computer has now completely crashed, so I cannot access my question. Do the provisions on the people who are allowed to attend court with a victim in a sexual offence case include the likes of sexual offences legal advisers (SOLAs), a pilot scheme of which was launched in April?

Mr Grzymek: The short answer is that they could. A very helpful pilot of SOLAs is ongoing; they are not covered in the Bill. If that pilot were successful and we were moving forward with it, there would be absolutely no reason why they should not be included. There are other groups that support victims that would also be included. The answer is, conditionally, yes. SOLAs are not included at the moment because they are just a pilot but, when that pilot is complete and if, as we expect, it shows itself to be a great success and we are going to roll it out, they could be picked up.

Miss Woods: Thanks, Brian. A victim may have a supporter who they would like to be there as part of the group that can attend. Why would the likes of a Victim Support officer or somebody else who is there with them not be covered by current legislation?

Mr Grzymek: I will pass you over to Lorraine, if her sound is working now. If not, I will pick it up. *[Pause.]* Lorraine, for some reason, is lost for words.

At the end of the day, we want to support victims in the best way that we can. A range of people could provide support in that circumstance. Victim Support does not normally provide support in the location; it normally provides support to the victim outside the courts. However, organisations such as the Witness Service and others, including a friend who is supporting the individual, could be included. Our aim is to make the process as easy for victims as possible. We very much recognise that these are often very difficult things to hear in a court. We believe, and Gillen believes, that one of the reasons for victims not coming forward is the spectacle component. The aim is to remove that and give the victim the capacity to be comfortable. If, as part of that comfort, they need support, that absolutely should be managed, and those people would be admitted. *[Pause.]*

Miss Woods: I do not know if you can hear me. My internet connection cut out completely there, so I will revert to Hansard to see what Brian said.

Mr Grzymek: I agreed with you. Victims need support. The SOLAs are still at pilot stage. If that pilot successfully completes, I would expect SOLAs and other support organisations to be able to go into the court. Victim Support does not usually support the person in the trial, but rather around it. Therefore, Victim Support might not actually be the best people. However, certainly, our aim is to support victims so that they can give evidence in a comfortable way and without it becoming a public spectacle.

The Chairperson (Mr Storey): I will try to help Rachel. The NSPCC spoke on the variances in, and interpretation of, what constitutes a "serious sexual offence". The NSPCC recommended that, in the interests of legal clarity, the exclusion of the public from court be extended:

> *"to all sexual offence cases involving a child, whether ... in the Crown Court or Magistrates' Court."*

That would extend the exclusion a fair bit, but it is all around the issue of what constitutes a "serious sexual offence".

Mr Grzymek: We read that. In the family courts, there are restrictions already. Children are treated as vulnerable individuals, so special arrangements are made for them. That includes children being given the capacity not to appear in the court. There is a variety of potential ways that they can be supported to give evidence in a safe and secure manner.

I understand where the NSPCC is coming from, but there is already quite good provision to ensure that children — and, indeed, other vulnerable individuals, including vulnerable adults — are appropriately supported when they are giving evidence, and to make the process as stress-free as possible. I also note that there are number of recommendations on aspects of this in the Gillen report that are progressing and that, I suspect, will go forward during the next mandate. Those include the

Barnahus approach for children. A number of things are in place, and work continues in those areas. If they are not picked up in the Bill, I see them being picked up as we go forward.

The Chairperson (Mr Storey): They would probably be picked up in a sentencing Bill, which is being considered; would they?

Mr Grzymek: They might be picked up in a sentencing Bill. I do not want to predict what legislation we will have in the next mandate, and it will be my successor who will deal with that. However, we will certainly have a miscellaneous Bill of some form and a sentencing Bill. There could also be a Bill coming out of the Gillen review, because a number of elements of Gillen are still to be legislated for. There are a number of potential ways in which those could be taken forward, including through a separate Bill. A number of areas are being worked on. My expectation is that, once they have resolved policy, the Department and the Minister of the day will give consideration to how they should be taken forward in legislation.

The Chairperson (Mr Storey): OK, thank you. For clarity, Barnardo's, the PPS and the Women's Policy Group also recommended the expansion of that exclusion. A number of organisations have raised that issue with us.

If there are no other questions on this Part, I will bring you to the issue that was raised by the police about clause 6, "Increase in penalty for breach of anonymity". They recommend aligning the sentencing supervisions with the maximum period of 24 months that is possible in the Magistrates' Court. The police said in their submission to us:

> *"the sentencing guidelines around this do not reflect adequately the impact that this could have on victims, and their wider family."*

They are of the view that it should reflect, and align with, the sentencing supervisions that are possible in the Magistrates' Court, which is a maximum period of 24 months.

Mr Grzymek: We have given some thought to that. Ultimately, judges will make the determination about what constitutes the right sentence. Sentencing guidelines are there to help them to deliver that. Increasing the maximum sentence does not, in itself, necessarily mean that sentences will change. We feel that that level of sentence is consistent with other equivalent legislation. In my division, we try, by and large, to ensure a degree of consistency across legislation that brings in offences and penalties. On that basis, we opted for that level of penalty.

The Chairperson (Mr Storey): If there are no other questions on that, we will go to Part 3, "Prevention Orders", and Part 4, "Final Provisions". Are there any questions from members on those Parts of the Bill?

Miss Woods: I might cut out in the middle of this. We may have covered this in discussions on the legislative consent motion (LCM) on the Police, Crime, Sentencing and Courts Bill, but could we get a brief outline of the differences between the sexual offences prevention orders (SOPOs) as they operate in Northern Ireland and the operation of the same or similar orders in the rest of the UK?

Mr Grzymek: I am sure that you could, Rachel, but I am not sure that I can give it to you today.

Miss Woods: No worries.

The Chairperson (Mr Storey): We will write about that, Brian.

Mr Grzymek: We will drop you a note on that. I am working from a hotel room in London, and all my papers are on my laptop; I am trying to talk to the Committee and also find things. As used as I am to electronic media, it is much easier to have paper copies so that you can put your hands on things immediately, rather than going between several documents in the background. I suspect that, had my colleague Lorraine been able to speak on this call, she would have given you an answer straight away. I cannot put my hand on it immediately, so we will write to you on that one.

Miss Woods: No problem. I have follow-on questions on the same theme. If it is OK, I will send them through to the Committee Clerk.

Mr Grzymek: Yes, do that. We will be happy to respond.

Miss Woods: I appreciate that you do not have the stuff in front of you, so apologies.

The Chairperson (Mr Storey): Members, if there are no other questions about that, we will deal with the amendments that have been proposed by the Department. Brian, do you want to comment on those?

Mr Grzymek: Yes. I will see whether I can find them on my computer.

The Chairperson (Mr Storey): They are on the abolition of the rough sex defence, and the widening of the scope of and strengthening of the current law on abuse of trust.

Mr Grzymek: On the rough sex defence — again, we are trying not to use that phraseology — it is fairly clear-cut. There is a clear gap in the legislation, and we are trying to fill it. At the moment, the common law works and does not normally treat rough sex as a defence. However, we are conscious that, on the margins of the common law, there are a few question marks. We want to get certainty. In essence, on rough sex and the inappropriate use of images, we are trying to give the legislation clarity. Our sense is that, although those offences are covered in common law, there have been some challenges on the margins of the common-law offence, and that, if those continue, there could be less certainty. That is important. We are trying to put certainty into the law in the interests of victims.

Ms S Bradley: I appreciate that update on the amendments. I am conscious of the time frame that is in front of us as we wait for a fulsome picture of what is playing out generally with all the moving parts of the Bill. To be fair, it is, perhaps, not your role to answer this, but I will chance my arm anyway, just to try to get a fuller picture. Are you aware of any other conversations, or other ongoing work, on amendments? The Committee will have a very short window in which to tighten up where we think that we could add value.

Mr Grzymek: The short answer is no, I am not. The reality is that any departmental amendments will have to be run past the Executive. We have alerted you to amendments and given you the text of some, but not all, of them. We are still working on a few of those amendments. I am not aware of amendments other than those. Clearly, an MLA can table any amendment that they wish, when the Bill goes to the next stage. We are not working on any, and I am not aware of any. That being said, I would be surprised if some did not come out of the woodwork.

Ms S Bradley: Thank you, Brian.

The Chairperson (Mr Storey): Do members have any other comments on the proposed departmental amendments? Does anyone wish to comment on abuse of trust?

Mr Grzymek: I can say a little bit about that, if it would be helpful. On abuse of trust, we have focused on sport and religion. As I have said in previous meetings, we did that on the basis of the information that we got from, primarily, a panel of organisations of interest that we brought together in a workshop and, also, from some subsequent conversations. We got clear evidence and indication from the associations involved with religion and sport that this is very much needed.

Aside from that, I said to the Committee earlier this year that we propose to take that forward in the next mandate, because it would require quite a bit of time for us to develop the full policy. In the end, because of the interest and the perception that it would be tabled as an amendment anyway, we accelerated the process. In that process, we clearly did not have the opportunity and time to look more broadly. Our perception is that we are covering the areas of greatest risk, but that is not to say that there are not other lesser areas where, in fact, there could be some risk.

We did not go through a full process. The consultation that we undertook gave us comfort in what we were proposing but, surprisingly, did not flag up other issues. We gave people the opportunity to raise those, because they were in our minds. We did not receive any responses that gave us a perception that we needed to broaden it at this point. Therefore, we propose to put in an enabling clause, which, as we get evidence that there are other areas that we could usefully include, will allow us to do that by way of an affirmative order in the Assembly. That would still give the Assembly its place.

I could not state with authority that I could go beyond that and have the evidence to back up what I was proposing. We have gone as far as we can with the evidence that we have from the consultation and our conversations with interest groups, but we have put in place an enabling clause. We will continue to look at it and if, in fact, we get more information and evidence that suggests that there are other areas or groups that we can include later, that will be done through an affirmative order. That should, I hope, reassure the Committee that it is not that we are just not mindful of what others are saying. It is a reflection of the fact that, at this point, we do not have the evidence to go beyond where we have gone. Nevertheless, we will keep it as a live issue. There is the possibility that we could include other groups downstream.

The Chairperson (Mr Storey): You will be aware that, in the evidence that we have received, the NSPCC concluded — and the Women's Policy Group then endorsed that conclusion — that those gaps could be addressed by inserting, for example, a hobby or extracurricular activity, in order to give the definition in the Bill a wider remit and catchment.

Mr Grzymek: I appreciate that. We actually ran that workshop in collaboration with the NSPCC. During our close association and work with the NSPCC, it did not give us any evidence on that or raise it as a significant issue. Obviously, that was several months ago, and the NSPCC has, no doubt, given it further reflective thought. I am just making the point that, if the Department were to table an amendment on that, it would have to do so on the basis that I could stand up in front of the Committee and say, "I have evidence that supports what I'm doing". I do not have that evidence, which is why we have taken the approach that we have. We have given ourselves the capacity to pick it up if we get evidence that sustains our picking it up. The Committee has a right to expect that, if the Department puts forward draft legislation and people like me and my colleagues come here to explain and justify why we are doing it, we do so on the basis of hard fact and good consultation. At the moment, I have neither hard fact nor a consultation process that supports our extending that.

That having been said, my starting point was an expectation that we would go beyond those two groups. At the workshop, we made it reasonably broad. I had expected to get more support for going beyond those two groups, but we did not. I have gone as far as I believe that I can go, based on the evidence and the facts that I have at the moment. At the same time, I can quite believe that, as we go forward, some further information will arise. I am very happy to work with the NSPCC and other organisations. If they can help me to get evidence that suggests that we need to broaden it, the Department will not be backward in raising the issues and extending the legislation — with, of course, the Assembly's approval through an affirmative order.

The Chairperson (Mr Storey): OK. Thank you.

Ms S Bradley: Chair, similar to your point, there do appear to be gaps. Brian, we have had representations from, for example, the Children's Commissioner. She is seeking a legislative vehicle through which to remove from statute the defence of reasonable chastisement. Do you see the Bill as a vehicle that could be used to that end? Did that come up in your workshop?

Mr Grzymek: It was not raised at the workshop, because the workshop was not focused on that; it was focused on abuse of trust. That having been said, the Minister indicated that she was minded to introduce an amendment, because she and, indeed, officials have real concerns about the law as it stands. Such an amendment would have been possible only if we had had a full miscellaneous provisions Bill. The Minister was minded to introduce it as an amendment, but, in the event, we had problems getting the Executive to approve, or even consider, the introduction of a Bill until the Minister agreed to narrow it to its current dimensions. We think that that narrowing had the effect of ruling that out of scope. The Minister could not introduce an amendment of that nature without the approval of the Executive, so she does not think that that is a viable option.

Of course, someone could try to introduce it in the Assembly, but it would come down to whether it fits within the scope of the Bill. If the Minister tables an amendment, she has to get it agreed by the Executive, which sounds unlikely given the different interests. If it were introduced in the Assembly, the Speaker would determine whether it is within the Bill's scope. Neither the Minister nor the Department is the arbiter of scope. The Minister wanted a broader Bill that would have brought this within its scope, but we were not able to take that forward. This is a narrower Bill with a narrower scope. I am not the authority to determine whether such an amendment could or would be within its scope. That would be a matter for the people drafting any amendment and for the Speaker, who would determine whether that amendment was acceptable for inclusion.

Ms S Bradley: Thank you, Brian.

Miss Woods: I will touch on the point about equal protection. It would obviously be the Speaker's decision to determine whether an amendment meets the scope of the Bill, but it would be perfectly viable for the Committee to look at tabling such an amendment. The need for it is loud and clear in the submissions that we have received.

I want to touch on abuse of trust. Brian, you talked about needing evidence to extend what abuse of trust covers. What kind of evidence do you need?

Mr Grzymek: Well, I need some. We heard of lots of good, well-documented examples in religion and sport. We also know of cases from our conversations with the police and others. I must admit that I started off thinking that we would cover hobbyists, music teachers and other groups, but no one came forward with examples of where abuse of trust is a problem among those groups. Sporting and religious organisations came to us and said, "This is a problem. We need to sort it". People from other areas did not come forward, even though our consultation included a broader set of groups than just religious and sporting groups. I am not clear how big a problem it is or is not. I am not saying that we should not extend what it covers but, although we hear anecdotal stories, we do not really have significant evidence on it.

By and large, it is harder to pick up evidence of abuse of trust purely because, as it is not unlawful at the moment, the justice system will not pick it up. Therefore, we are reliant on third parties. Sporting and religious groups came forward and said, "We are the governing bodies. We see this happening. This is causing us concern. The Government need to take steps. Here are some examples of where things have gone wrong". In the absence of legislation, that was very helpful. It was sufficient for me to be reassured in going forward.

I have not picked up anything significant from the other groups to suggest that it is a real problem. My suspicion is that it is a problem in some cases, but I cannot come to the Committee with draft legislation and say, "I have a gut feeling that something is happening here". I need to have a bit more than that. Sporting and religious bodies came forward and told us, "We are the governing bodies. We see these things happening. We are asked for advice about how to deal with individual cases in clubs and whatever". To me, that was quite compelling. I am just a bit short on anybody from any other areas coming forward and giving me equivalent evidence. That is my issue.

If cases arise, they can be brought to our attention. However, I did not want to wait. Had we kept the Bill back until the next mandate, I would have run a full policy process. We would have gone out on the highways and byways. We would have had more time to gather the information. Because it was decided to take it forward in this mandate, the Department had to run with what we had. As you know, we needed to have drafts with the OLC by the beginning of the summer to get the amendments drafted. At a certain point, we had to cut and run. That is why we put in the enabling clause, which means that, if people come forward to give us more evidence or if we find it, we can take it forward. It is not that there is a lack of willingness to extend; it is just that we need to do so on a rational and logical basis.

At our workshop, religious and sporting organisations gave me very clear evidence that they see these cases and have to give advice to different clubs or whatever, and presumably to parishes or religious bodies. On that basis, they are very keen that there is legal support to outlaw it in their sectors. I did not get that from other sectors, which is why we have gone as far as we have gone and no further.

Miss Woods: Thanks, Brian, I appreciate that. It just does not sit well with me that, although there are anecdotal stories, we need a body or a representative organisation to come forward with examples in order to extend it. That means that examples have to have happened. The whole point of this campaign was to close the loophole. The position of, "We need more evidence of abuse of positions of trust in order to close that loophole", just does not sit well with me.

Mr Grzymek: It does not have to be new evidence; I am happy for it to be historical evidence. Indeed, that is what I received from religious and sporting authorities. Essentially, we had to work with the information that we had. We have gone forward on that basis. I started off expecting to go further, but we have been constrained by the information that we got back. Putting an enabling clause in means that we could act reasonably quickly if people come forward even after today; albeit it would not fit easily into this Bill because we are very tight for time to move things forward.

I absolutely understand where you are coming from, because I had the same sort of feeling. However, we cannot legislate on the basis of feeling; we have to have some basis on which to take it forward. "Anecdotal" usually means someone saying, "I have heard this is happening", but being unable to pin down precisely who it was, where they heard it or whatever. To be honest, I have not received many anecdotes; it has more been people thinking that, theoretically, something could happen. I am not sure that that is a basis on which to legislate. Some hard evidence of historical cases would be very helpful, and that could certainly be picked up. Having that enabling clause will give us the capacity to backfill. Should more cases or new areas where it could happen come along, they could be added later.

Miss Woods: Thanks, Brian.

The Chairperson (Mr Storey): The Human Rights Commission raised with us the Lanzarote Committee's recommendation that the concept of relationships of trust should be afforded a "broad interpretation". The Lanzarote Committee has raised that issue on a number of occasions and has its report.

Mr Grzymek: Yes. *[Pause.]* Sorry, I am trying to think of the detail of that. How does it define "broad interpretation"?

The Chairperson (Mr Storey): The Lanzarote Committee cautioned parties:

> *"to avoid any rigid listing of very specific situations as it risks leaving children in other situations without protection".*

It also suggested that parties:

> *"review their legislation to include a reference to the notion of 'circle of trust' which would comprise members of the extended family (including new partners), persons having care-taking functions (including trainers of any kind) or exercising control over the child professionally or on a voluntary basis".*

Mr Grzymek: Clearly, a range of people could be affected. The Lanzarote Committee may say not to be too prescriptive because a wide range of people could be affected. We usually try to avoid drawing up lists, because, once you draw up a list, the courts may interpret whoever falls outside a list as not being covered.

On abuse of trust, we have looked at what has been provided in other jurisdictions. We have taken a similar approach to what has been progressed in other parts of the UK and beyond. To go further will require us to do a great deal more work on it. Ultimately, we wanted to put this in quickly to cover the highest-risk areas. Doing that in this mandate meant that we did not have the normal full policy development process. That gives you the advantage of getting things in quickly on the areas that we think are the most high-risk. At the same time, it has the disadvantage of us not having had the time to really go through and consider a lot of the other groupings.

We are where we are. We could pick this up and progress and develop it further as we go along, and we will certainly look at that. As it was, to get this into the Bill, we had to make judgement calls about what we could cover. We did that based on the evidence that we had gathered, and that was sufficient to support what we have put down. To go beyond that will require additional work. We have created the opportunity to introduce other groups or categories later. That is, perhaps, as good an answer as I can give, I am afraid.

The Chairperson (Mr Storey): I have one final point, Brian, that I would like you to comment on. Another issue that was raised was allowing child abduction warning notices (CAWNs) to be served on adults regardless of the age and care status of the child.

Mr Grzymek: I will see whether I can dig out my notes on that; sorry. This is not running as smoothly as it does when I am actually at the Committee, because I am trying to work off a single screen on which there are several documents. Give me one second and I will see whether I can find my notes on that. *[Long pause.]* Sorry for the delay.

The Chairperson (Mr Storey): You are all right, Brian. *[Long pause.]*

Mr Grzymek: Ah, yes; here we go. Clause 18, which is on SOPOs, is really about bringing in the offence of the abduction of a child in care. There was a suggestion that we close the gap in the age threshold that is applicable to CAWNs. All that I can say to that is that CAWNs form part of wider work being done by the Department in its review of the law on child sexual exploitation. When we consulted in 2019 on addressing the recommendations of the Marshall report, we looked, amongst other things, at whether there is a gap in the law on child abduction offences. That related to concerns about inconsistencies in age thresholds. Interestingly, the responses to that consultation were mixed. We had arguments presented for and against an extension of the law. The answer from the consultation was that it is complex. Some people said, "Yes, we should do this", and others considered that it would impact on individuals' liberties or free choice. Because the arguments were so mixed, we would need to carry out further work before we consider extending that law. That work would need to be carried out with key stakeholders and interested parties to work out how best to go forward.

It is fair to say that, in that determination, we have to balance the need for any further protection against the rights of young people to enter safe, consensual relationships. There is the potential to criminalise the partners of 16- and 17-year-olds, which would run contrary to the current law that allows those in such age groups to make their own decisions. We propose to take that work forward, but it will be in the next mandate before we can do so. We are aware of the issue. We tried to get clarity on the matter previously, but the consultation had the effect off stopping us in our tracks insofar as we did not get a clear response; indeed, the responses that we got were somewhat contradictory. We would need to do further work on that. Perhaps, when we are looking at this with the Committee in the next mandate, we will reflect again on the issues and the way forward.

The Chairperson (Mr Storey): Thank you, Brian. I appreciate the time that you have given us today. I also thank Andrew and Lorraine; even though we were not able to get them online, we appreciate them being there. We will, no doubt, come back to many of these issues over the next number of weeks.

Mr Grzymek: Thank you very much, Mr Chairman. I hope that, next time, I will be at the Committee in person and that my team will be with me. It is not very easy when the team is in four different places; I am sure that the same is true for the Committee. I look forward to seeing you in the new year. I am sure that I will see you quite a few times in the new year. I will pick up on all the points that I said that I would take forward and respond to those.

The Chairperson (Mr Storey): Thanks, Brian.