



Northern Ireland
Assembly

Committee for Health

OFFICIAL REPORT (Hansard)

Abortion Services (Safe Access Zones) Bill:
Police Service of Northern Ireland

11 January 2022

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Colm Gildernew (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Gerry Carroll
Mr Alan Chambers
Mrs Deborah Erskine
Ms Órlaithí Flynn
Mr Colin McGrath
Ms Carál Ní Chuilín

Witnesses:

Chief Superintendent Melanie Jones Police Service of Northern Ireland

The Chairperson (Mr Gildernew): I welcome Chief Superintendent Melanie Jones, the head of criminal justice in the community safety department in the PSNI. Melanie, will you please go ahead and give us your briefing? We will then take some questions from members. Thank you.

Chief Superintendent Melanie Jones (Police Service of Northern Ireland): Certainly. Like many pieces of legislation of this nature, there is real importance in balancing human rights. In particular, I will highlight to the Committee the key components of human rights that would come into play here. The article 7 right to respect for private and family life would particularly apply to people who work in such establishments and those who are using and accessing the services in the establishments. That is against, or opposed to, the rights of groups that may seek to gather and protest around the establishments. There, articles 8, 9 and 10 would apply. Those are the usual articles that we see exercised by those engaging in protests and are the right to freedom of thought, conscience and religion, freedom of expression and opinions, and freedom of assembly. Those are the key human rights that would come into play if any such legislation is granted.

Looking at the draft legislation — I refer to the letter that I provided specifically in response to it — I highlight the potential implications of the Dolan ruling in England and Wales. Although not identical, the challenge in that ruling, which was around what was tantamount to a blanket ban against assembly, has some similarities. There are potentially some considerations for the Committee and the legislators around the specifics that are contained in the Bill of preventing any activity of seeking to influence people within a protected or safe zone. That could arguably be interpreted as a blanket ban on assembly and protest, so there is potentially consideration there for the legislators to make sure that that would not be the case.

It was difficult for me to give any commentary about the exact definition and location of any safe zone because of a lack of clarity in the Bill. Clearly, the operational outworking of any protest or counterprotest is usually to give a zone that would satisfy human rights, which, quite often, can be within line of sight. Without that clarity on the safe zone, it was difficult for me to make exact commentary on that. However, a safe or exclusion zone can sometimes bring challenges.

I was asked to provide an additional response in the commentary towards the end of my letter about the overriding health considerations, where I put the word health in inverted commas. To clarify for the Committee, that was to give the broadest possible interpretation of "health", bearing in mind that different groups and campaigning groups have a different priority around health: health of the unborn child; health of the expectant mother; and, of course, not forgetting the health and well-being of people who are employed at the clinics and other places that offer such services.

There are a couple of potential loopholes in the proposed Bill. The defence, as outlined in clause 6, would mean that it would be difficult to disprove a lack of knowledge on behalf of the protesters. Realistically, we would be able to take enforcement action against repeat offenders only where we could demonstrate beyond reasonable doubt that the protester or person present knew that they were inside the safe zone. That would probably require us to be able to record and document warnings in relation to it. That means that the activity of them being there would have to be tolerated for some time, which could have an adverse impact on persons attending the place to access treatment or to work.

In clause 7, around enforcement, there does not appear to be any requirement for those who are removed from the safe zone to provide their personal details to the police. That provides a difficulty if people are to re-enter that safe zone and continue in the same conduct, in that they could, potentially, rely on the defence of lack of knowledge that is provided in clause 6, unless it happens to be the same officers at the same place and time. It would be helpful, for enforcement, to have a requirement to provide personal details at a time when they are asked, or forced, to leave the safe zone.

Finally, on enforcement, there is no specific power of seizure in relation to recording equipment. There is the power to ask and instruct persons present not to film, but there is no specific power to seize the equipment. While provisions under the Police and Criminal Evidence Order will be adequate for a criminal investigation, it would not be effective to prevent further offending if persons then re-entered the safe zone and continued with the same behaviours.

Those are my observations on the complexities of the Bill. It would be remiss of me not to talk about the resourcing implications of enforcing the legislation for the police, as there are for all legislation. Protests of this nature can be frequent and spontaneous, and they can be elongated. Effective policing would probably require a continuous police presence for the duration of any such activity to ensure that we have monitoring and evidence gathering in place so that we understand who is moving in and out of the safe zone and, potentially, committing offences, and so that we can prevent a breach of the peace and provide a reassurance to those working and accessing services at such places.

I have also looked at what other policing powers might be applicable. Would that be helpful?

The Chairperson (Mr Gildernew): We will leave that to one side for now, unless members seek that information. Perhaps that could be sent through to us, Melanie.

I will move to questions from members. I will begin; I have a few. You mentioned the lack of clarity in relation to the safe zones, their size, and how they will be structured. What is your advice, from a policing perspective, on how those could be assessed and set up?

Chief Superintendent Jones: Careful consideration should be given to the competing human rights at play, and any designated safe zones should be carefully balanced against those individual rights. When we use similar powers around article 4(2) of the Public Order (Northern Ireland) Order, where we designate places that people can assemble and express views held, we try to do so in a way that upholds their rights around articles 8, 9 and 10. Generally speaking, where possible, that is within line of sight of whatever they are expressing a view about. Of course, the impact on the people who are working at the centres and those who are accessing the services has to be carefully considered in terms of the line of sight and the fact that that line of sight may mean that their conduct is more intimidating and deters people from accessing the services. So, it is around the careful consideration of what upholds the individual rights and would be least likely to bring the application of the safe zone into conflict or challenge legally with making sure that it has the net effect of making a safe space for people to access work or services.

The Committee Clerk: Sorry, I think that Colm's connection has frozen.

Chief Superintendent Jones: I thought that it was me who had frozen. I thought that I had said all that and am frozen.

The Committee Clerk: Sorry, Melanie. We will try to get him back on again.

The Chairperson (Mr Gildernew): Am I back online now?

The Committee Clerk: Yes, I can hear you.

The Chairperson (Mr Gildernew): I do not know what happened there, Melanie. I got everything right up to the end. I have not had any trouble with broadband earlier today, so I am not sure what happened there. Hopefully, it will not happen again.

I will follow up on some of the specific details that you very usefully highlighted around, for example, the providing of details to the police and the specific power of seizure, which may be missing from the Bill. Has there been any ongoing liaison between you and the Department of Health around the Bill?

Chief Superintendent Jones: No, other than I was asked to provide the letter that you have a copy of. It is routine with any new legislation that the PSNI is generally asked to provide commentary around the draft legislation that was proposed, and that is the nature and extent of any involvement that we have had.

The Chairperson (Mr Gildernew): OK. That may answer my next question. Has there been any contact with the sponsor of the Bill?

Chief Superintendent Jones: Not with me and, to my knowledge, not with the PSNI at all.

The Chairperson (Mr Gildernew): This question is slightly different and slightly separate. Has there been any exploration by you independently of how this operates and has operated outside of here? For example, I think that it is currently operating in Scotland. Have you looked at other jurisdictions where similar legislation is in place to see what can be learned from that?

Chief Superintendent Jones: The only place that I am aware of is the Ealing case, which was fairly similar and was taken to judicial review. The issue of the safe zone was found by the Court of Appeal to be compliant with human rights and not denying a right to protest. The judicial review dismissed both the appeals, holding that the safe zone was human rights compliant and did not take away a right to protest. The Ealing case is the only one that I am aware of, and that is from 2020.

The Chairperson (Mr Gildernew): As it stands, do you have concerns around enforcement or do you feel that, with some amendment, this is something that could be put in place in a way that does not challenge those Dolan issues that you identified at the start of your presentation?

Chief Superintendent Jones: I have to be honest and say that I do think that enforcement will be subject to challenge. I have no doubt about that. Particularly fundamental to the right to protest is to influence other people, so the fact that this legislation restricts activity within the safe zone and that that activity would likely be things like handing out leaflets or holding placards to try to influence choices and behaviours will undoubtedly bring it into legal challenge. That said, I am not saying that that legal challenge would be either successful or unsuccessful, but I do think that there is a high likelihood that this would be challenged because of the very nature of the legislation. I think that that would be unavoidable, and it probably would be naive of me to say that it would not be subject to challenge.

The Chairperson (Mr Gildernew): OK. Thanks, Melanie. I will go to members now. First, I am going to check with Colin, who has to leave for another Committee for a time. Does Colin McGrath want to come in with a question at this stage or later on?

Mr McGrath: I am OK at the minute, Chair. I am fine, thank you. Thank you very much for that opportunity, though. I appreciate that.

The Chairperson (Mr Gildernew): OK. We have indications from Deputy Chair, Pam Cameron. Go ahead, Pam, please.

Mrs Cameron: Thank you, Chair, and thank you to Chief Superintendent Jones for her presentation. I had to nip down stairs there. The dogs were kicking off at the door, so I might have missed a little bit, but I do have some questions for you, if that is OK.

First, what, if any, consultation has the PSNI or the community safety department had with the Bill sponsor prior to the introduction of the Bill?

Chief Superintendent Jones: I have had no contact at all, and I am not aware of any contact into the PSNI other than the letter asking for the PSNI opinion on the draft Bill.

Mrs Cameron: Would the implementation of the Bill as drafted result in more rather than fewer police officers being deployed to challenging public order situations in this area?

Chief Superintendent Jones: It would definitely increase the number of deployments, because, realistically, effective policing of the safe zones could only be done with a fairly static policing presence at times when there was intelligence or information that there would be or may be some kind of gathering within the safe zone where offences might be committed and those accessing services or working at the premises may be prevented, hindered or intimidated.

At present, we spontaneously deploy when sometimes we have information about planned activity around some of the establishments. I think that there was one in the last couple of weeks. With the implementation of the safe zone, there would be a need to make sure that that safe zone was effectively managed.

There may be opportunities to think about that within the Bill around it being not solely a police role. Most gatherings are fairly compliant, so there may be scope for the establishment and enforcement of the safe zone to fall to street wardens or other statutory resources. That would be a matter for the legislators.

Mrs Cameron: Thank you. Following on from that, do you have an indication as to how many working hours on average are spent by police on incidents with relevance to the scope of the Bill?

Chief Superintendent Jones: That is difficult to say without knowing how many premises would have a designated safe zone. How many premises would offer the services that would fall under the legislation and would then apply, as part of the legislation, to have a safe zone would be very difficult to say.

Mrs Cameron: You touched on the influence issue. Would you agree that the concept of influence, directly or indirectly, is extremely broad and would, inevitably, see legitimate activities wrongly criminalised?

Chief Superintendent Jones: Legitimate activities, such as handing out leaflets, would potentially be criminalised if those activities were undertaken within a proposed and identified safe zone. Yes. That is where the potential for this to come into conflict with the law and be challenged puts it much further up the scale than perhaps other legislation, because what would be a normally lawful activity would be a criminal activity if it was undertaken within the safe zone. Actually, however, the handing out of a leaflet, for instance, is probably an inherently recognised part of public protest and campaigning to influence behaviours and decision-making.

Mrs Cameron: If such a concept was to make it onto the statute book, what mitigations would the PSNI have to take to protect itself from that legal challenge?

Chief Superintendent Jones: The important thing would be the effort that we would need to make to gather evidence for any criminal case. At the moment, the wording used to describe the activity is quite bland. We would need to prove beyond reasonable doubt that there was an intention to intimidate rather than to persuade. That would clearly bring about an investigative requirement to present evidence to the Public Prosecution Service (PPS) in order to take cases through the courts successfully.

Mrs Cameron: Thank you for that. Are harassment laws working at present? Does the PSNI believe that amending that legislation would provide a more proportionate response to increasing concerns in this area?

Chief Superintendent Jones: The difficulty, which is well documented in case law, is that, under public order legislation and harassment laws, it cannot be construed as a public order issue or harassment to hold and articulate a view that may be distasteful or that may cause upset to some parts of society. The difficulty with using that legislation is determining where the marker is. What is distasteful and unpleasant to some people may be seen as harassing, alarming and distressing to others. There is much case law to show that the threshold for that determination is quite high. People must be able to demonstrate views that may be unpleasant or upsetting to others without breaking the law.

The other, slightly more nuanced issue is that, in order to reach the threshold for the police to be able to intervene and take action in cases of harassment, the behaviour has to be tolerated for an amount of time. That means that the people engaging in that behaviour at, for example, a premises offering abortion services or information will have achieved what they wanted to achieve by having intimidated people into not wanting to attend that premises or not attending work. The fact that the behaviour has to be tolerated for a time probably takes away the effectiveness of the legislation: it is no better than not having it there in the first place. That was a bit long-winded, but I hope that it made sense.

Mrs Cameron: Yes. That is very helpful. Could the harassment laws be strengthened to be effective in those scenarios so that this type of legislation would not be needed?

Chief Superintendent Jones: That could be explored, but, again, it might bump into rights under articles 8 and 9. There is always a right to express views, even if they are unpopular or distasteful views to a large section of the community. That is inherent in the right to freedom of speech. It would be difficult to strengthen the laws to the point of crossing into that territory. Doing so would mean that the laws would probably be subject to legal challenge.

It is a difficult area. Each case would be judged on its merits. Some behaviours are clearly harassing, alarming or intimidating, but there is a scale, without restricting the right to freedom of speech. You can quite easily overstep the mark in strengthening the law.

Mrs Cameron: Thank you very much.

Ms Ní Chuilín: Happy new year, Mel. Long time no see. The legislation is fairly straightforward — or so we thought — but some of the complexities that you have described are concerning. From what you have said, it seems that someone needs to complain that they feel harassed or intimidated before action can be taken. For example, in the past, the PSNI has intervened when people who were hoping to access treatment were harassed as they got out of their car and walked to the entrance of the healthcare setting or when staff were harassed as they took the person from the healthcare setting back to their car. Complaints were made about the graphic nature of the material, but that had to be withstood for a certain time, and then the person had to complain. That needs to be tightened up, and, with this legislation — as Colm said, we are going to talk to the Bill sponsor later — if there are things that we could do now to tighten this up, we should do them. We do not want any unintended consequences, but articles 5, 8, 9, 13 and 14 are completely applicable here.

Again, we talk about competing rights, but what else can the PSNI do? If, for example, someone were with an organisation and stood, without a banner, beside that organisation, and, after being warned, remained there but denied that they were a member of that organisation, what would happen? At times, two or three groups are standing outside the healthcare settings. What does the PSNI envisage its role to be if someone is prevented, by verbal abuse or the handing out of leaflets with graphic material, from accessing health and social care?

Chief Superintendent Jones: The important thing with the kind of scenario that you describe is that we use the full range of evidence-gathering material. As part of a presentation of any case to the Public Prosecution Service, we have to be able to show that there is a prima facie case that somebody has broken the law. The legislation allows people to stand within any safe zone, provided they do not engage in any of the activities specified in clause 5, which sets out the offences.

Merely standing somewhere is clearly not an offence, and it would be for the PSNI to collate broader evidence to show that a person is actually involved in committing the offence. The legislation does not

say that a person has to be holding the banner, but they have to be part of the wider group that is engaged in the activity. Traditional evidence-gathering approaches, use of body worn video and observations by officers are why I have said that this is, perhaps, fairly resource-intensive to get over the line correctly. Otherwise, as you have rightly said, it may be relatively easy to demonstrate that the one or two activists in a group have committed offences, but it is much more difficult to demonstrate that the people in the broader group of 30 have done so if you have not collated evidence on the activities of the group as a whole and the individuals as part of the group.

Ms Ní Chuilín: I understand that, Mel. I would not, for one minute, suggest that for any group that is protesting about women or pregnant people accessing healthcare — it is unfair on the group — but, if individuals are trying to stop people accessing healthcare, it should not be left to the individual who is trying to access that healthcare to make the complaint. I believe that there is a clear demonstration of harassment and intimidation. That is my first point.

Secondly, what graphic material constitutes an offence? I have spoken to women who have been called murderers and who have been shown photographs of fetuses that have been aborted and babies who have died. Some of the women, who were accessing not termination of pregnancy but fertility services, had a history of miscarriage, and they found that horrific. I have also spoken to women who have tried to access advice and support on unwanted pregnancy, and I have spoken to members of staff, and they have all said that they feel harassed.

We asked the Belfast Health and Social Care Trust and other trusts for an example. They have a duty of care to staff, and they are clear on that. The PSNI is clear on what constitutes harassment. However, from what you are saying, Mel, unless a complaint is made, the role of the PSNI in that is not clear. A person has a right to assemble and to protest, but surely they do not have a right to harass or intimidate.

Chief Superintendent Jones: Yes. The PSNI definitely has a role. If the Bill were to be enacted as it is or with some amendments, as and when we have information of planned protest activity or spontaneous activity, it certainly is the role of the PSNI to make sure that the law is upheld within the realms of the Bill or any other applicable legislation that is available.

Ms Ní Chuilín: OK. Mel, I will finish on this point. The Bill sponsor certainly needs to have a conversation with you and the legal advisers about ways in which we can be very explicit about what the intention here is and what could be done to support the rights of people who access those services, because the issue here for us is that we do not want any ambiguity. I want people to be clear about what their responsibilities and, indeed, their rights are across the board. Thank you.

Mr Carroll: Thank you for the presentation. I have two points. In your submission, the first point states:

"Seeking to influence someone is a fundamental aspect of protest and removing that, could be arguably removing their right to protest within the safe zone."

That needs to be challenged, in the sense that people who normally protest outside those centres would not be allowed to do so within that small defined space, but, by and large, they could do it pretty much anywhere else in cities and towns across the North. There is a narrative creeping in — not from you, Melanie — that people who engage in that kind of anti-choice protesting and, in some cases, harassment are somehow oppressed or marginalised, and I do not think that that is correct or stands up to scrutiny. As others said, the Bill is quite limited in its scope. You can respond to that, if you want. It is just a comment from me.

I have a question. Apologies, I did not hear some of the presentation, so you may have already addressed this issue. On average, on how many occasions is the PSNI called to medical centres where there are anti-abortion or anti-choice protesters? In an average year, on how many occasions are you called, and on how many occasions do you come out?

Chief Superintendent Jones: I will give a brief response to your first point. I just wanted to highlight the fact that that area may be subject to challenge. It was not a judgement from me at all. The Ealing case in 2020, to which I referred, upheld the establishment of a safe zone, did not provide a blanket ban on protests and was human rights compliant. It was an observation from me that that area would be grounds for challenge rather than a judgement from me.

On the second question, I am not able to give you accurate figures. I can get you some accurate figures, if the Committee feels that that would be helpful. My professional experience is that those kinds of protest activities tend to ebb and flow, sometimes around what kind of media interest there is in it at the time. We may have periods when it is almost a daily or weekly occurrence, and we may have other periods when there is nothing for many months. Certainly, when the clinic was in Belfast, which I do not think is there any more, there was generally some kind of protest activity, and police were deployed weekly. I am aware that, I think, in the past couple of weeks, there has been police deployment to a hospital that gives advisory services. I think that it was in Craigavon in the past couple of weeks, but I do not have the specific numbers to hand. I do not want to mislead you, but, certainly, when there was the clinic in Belfast that offered advisory services, there was usually at least one protest activity and police deployment every week, normally at weekends.

Mr Carroll: Thanks for your answer. Can you supply the information on the average number of calls, responses and call-outs that happen most years? The information will be useful to help to form an accurate narrative around the Bill and the debate in general. I do not want to misquote you, but you used language to the effect that most of the protests have been good-natured, or a comment to that effect. I do not want to misquote you. However, the fact that protesters are outside healthcare clinics is distressing for people, even if they are just holding a sign or an image. Obviously, we have heard distressing cases of abuse and language that is worse than that. The fact that there is a presence to stop people from accessing health services or to pressure them not to access those services is the cause of the distress, but that is just a comment.

Chief Superintendent Jones: To provide clarity, I was not saying that those protests were not distressing to individuals. It was more my giving a judgement as to whether or not they were peaceful or non-peaceful from a policing perspective.

Mr Carroll: Thanks.

The Chairperson (Mr Gildernew): I will check with the Clerk if any other members are indicating, but I have no indications at present. There are one or two things on which I want to touch base with you. From the evidence that we have already heard, some very distressing incidents are going on that not only impact people personally and individually but impact a range of people who are accessing a range of services and the staff who are working to provide those services. As Gerry mentioned, we have heard some fairly harrowing examples of what that can look like in reality. What type of incidents are being recorded or noted by your officers? What kind of feedback are you receiving on how some of the worst cases are unfolding on the ground?

Chief Superintendent Jones: In the arena of pro-life/pro-choice narrative and protest, the vast majority of incidents are the display of graphic images, as has been well articulated by Carál, the handing out of leaflets and tactics that border on aggression to try to influence people around choices and decision-making. Certainly, graphic imagery and banners are very common. There are graphic narratives and articulation of fairly graphic things, some fairly unpleasant name-calling and accusing behaviours and the handing out of leaflets that border on the quite aggressive end of the spectrum. It can be quite confrontational and can get into people's personal space, and protesters very much push their agenda. When people say, "I do not want to talk to you about that", there is a real reluctance on the part of the protesters to desist and back away. That is how I would describe it.

The Chairperson (Mr Gildernew): Thank you. I mentioned Scotland earlier, but the Isle of Man has something in place, as does Canada, parts of Australia and the United States. I am aware that safe zones are being developed in the South. From a policing perspective, there may be a way to draw on some of the learning from those places. However, given the contentious nature and evidence that we have heard in Committee, there is a major issue here that will not be easily resolved but cannot be ignored either. Certainly, it will provide particular difficulties for the police. In light of that, I really appreciate your coming to the Committee this afternoon, your presentation and your taking and dealing with members' questions. It will be useful to get those additional pieces of information, including the other parts of the law that could have a role to play and the numbers that Gerry asked for. For now, I wish you and your team a happy new year and thank you for coming to the Committee.

Chief Superintendent Jones: Thank you very much.