



Police Service
of Northern Ireland

Justice (Sexual Offences and Trafficking) Bill

Written Evidence from the Police
Service of Northern Ireland

Detective Chief Superintendent Anthony McNally
Head of Public Protection Branch

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Introduction

The Police Service of Northern Ireland welcomes the opportunity to provide written evidence to the Committee for Justice on the Justice (Sexual Offences and Trafficking) Bill.

As an impartial public service provider, we recognise that it is the role of elected representatives to make decisions about policy and legislative direction and provision. In providing comment on these matters through consultation responses and other forms of government and parliamentary engagement, our primary aim is to ensure any new legislation is enforceable from a policing perspective and delivers the best possible outcomes for victims of crime. Our comments on these proposals, and others, should be considered in this context. Through training and effective operationalisation, the Police will ensure that any new legislation would be correctly implemented.

We warmly welcome the provisions currently under consideration noting that the creation of additional offences and the strengthening of current provisions will help prevent crimes of this nature and provide the opportunity to safeguard vulnerable people and for improved criminal justice outcomes.

However, we feel it is important to highlight to the Committee the significant additional resource burdens that will be placed on the PSNI as result of the additional demand these welcome provisions will create. Given that it is our collective ambition to encourage reporting of crime, it is important from the outset that the experience of victims is not compromised due to over-stretched resources. In our view, this could have the counterproductive impact of dissuading victims of crime of this nature from coming forward.

Chapter 1: Criminal Conduct

1. Voyeurism additional offences

New offences have been created that capture the highly intrusive behaviours known as “up skirting” and “down-blousing”. This can be found in Part 1 (Sexual Offences) Chapter 1 Criminal Conduct.

The offences as now represented provide appropriate legislation to cover the following scenarios:

71A – Voyeurism: additional offences (genitals and buttocks); and,

71B – Voyeurism: additional offences (breasts).

The above provisions allow for the scenarios where a person operates observational equipment or takes a picture beneath a person’s clothing in order to observe or record an image of a person’s genitals, buttocks or underwear without the persons consent. The down-blousing offence relates to similar behaviour in relation to breasts.

Both offences are triable either way with maximum sentences of 6 months imprisonment on summary conviction and 2 years imprisonment on conviction on indictment.

The construction of 71A outlines clearly the behaviours, the conditions in which the offence would be complete, this will ensure that all parties know that whilst there is a reference to sexual gratification this is not the only mechanism for this offence to be complete.

This is then mirrored in the construction of 71B whereby the similar offence is outlined in respect of breasts whether this is under or over clothing.

It is difficult to fully appreciate the additional demand that this may bring to PSNI however we anticipate it will indeed be additional demand. It is important to consider that demand will be made up of:

- Those cases that are being investigated as a technical common assault;

- Those cases that are being investigated as part of a harassment investigation; and,
- Those cases that will contain completely new demand that would never have been reported to police previously.

We do however warmly welcome the creation of these new offences as an opportunity to improve safeguarding and criminal justice outcomes for victims- however, we would ask that the Committee consider these additional resource burdens as part of their deliberations and note the potential adverse impact on the experience of victims if our ability to deliver an effective and victim-centred service is compromised by resource pressures. The sentencing suggested appears to be reflective of those available in England and Wales

It is also essential to note the potential demand on those agencies who have responsibility for Public Protection Arrangements for Northern Ireland (PPANI). If, when convicted, offenders of the new voyeurism offences are notifiable and if they have a Sexual Offences Prevention Order (SOPO) this will place significant demands on policing but also on other Statutory agencies to manage in a multiagency manner.

2. Sexual grooming: pretending to be a child

This relates to the provisions which give effect to the outcome of a review of the law on child sexual exploitation and sexual offences against children to include live streamed images in the definition of exploitation for sexual purposes and to create a new offence of adults masquerading as children online.

22B Communicating with a person with a view to grooming a particular child

22C Communicating with a group with a view to grooming a particular child

22D Communicating with a person with a view to grooming any child

22E Communicating with a group with a view to grooming any child

The above provisions allow for the scenarios where an adult is representing themselves as a child in order to potentially “catfish” anyone that would respond or

whether they are seeking a particular child to respond, without the content of this discussion at that time being of a sexual nature. This allows for the potential precursor to the grooming offences as currently represented.

We have given consideration for areas that there would need to be a provision for lawful excuse in respect of this matter and have as a result liaised with our covert policing colleagues. This has been discussed with the National Lead who has not identified any potential concerns in respect of the introduction of the new offences provisions.

The requirement of closing this potential legislative gap has been supported by Barnardo's, Children in NI, Education Authority for NI, PBNI, NOTA NI and some sporting organisations. All, including previous police responses, had highlighted that there need to be further child protective measures and where necessary defences could be considered – for example where there is a law enforcement requirement, or a parent engaging as a young person in an attempt to safeguard their child where they feel they are at risk of harm from another.

Secondly in respect of online offending / Indecent images is captured under **miscellaneous amendments as to sexual offences** (ii) extends to offences that relate to the recording of indecent images to the streaming or other transmission of such images removes any reference to child pornography appropriately categorising the material as indecent images of children. This provision will also allow for the wider legislative cover for live streaming which then may be captured / recorded by the recipient but not shared by the child in the form of video of images.

From the review that was undertaken in respect of the new provisions “Review of the law on Child Sexual Exploitation – Summary of responses to the Consultation and next steps” there is a clear agreement that the removal of “child prostitution and child pornography” should be removed.

There is likely to remain further discussion about the terminology that will replace this to ensure that it is not narrow in scope and that it provides a consistency between the legislative and non-legislative definitions of CSE.

However in respect of the removal of “child pornography” to be replaced with indecent images “an indecent image of B is recorded or streamed or otherwise transmitted” is clear in legislative terms. There is a recognised structure and grading system in respect of classification of indecent images of children.

There will be a need for operational guidance in respect of live streaming and how this would be captured and explained by the child involved to provide the required evidence. It may be that Live streaming services can be used by Child Sexual offenders to incite victims to commit or watch sexual acts via webcam. There will also be those occasions where Child Sexual offenders will stream / watch live contact of sexual abuse or indecent images of children with other offenders. In some instances they will pay facilitation to stream live contact abuse with the offender then directing what sexual acts are performed by or against the victim. Therefore it would be key in offences of this nature that not only lines of enquiry in respect of indecent material are explored but also financial enquiries which may identify evidence of the offence and other offenders involved.

This will provide an increased demand on resources within Public Protection Branch, Economic Crime Branch (or those with appropriate training within PPB) and Cyber Crime Centre resources.

PSNI would also highlight that whilst the above strengthening of the legislation in this area is a welcome step, there remains a potential legislative gap in respect of grooming offences given the continued requirement for the perpetrator to be 18 and over. This does not appear to address the increased incidents of “peer on peer” abuse of this nature. The Justice in the 21st Century Report highlights some provisions which could be introduced to ensure that there was a balance between recognition of where there has been abuse and exploitation against when there has been no “malicious intent” where the individuals have consensually and without coercion provided the images for example. The PSNI therefore recommends further research and legislative considerations to address these concerns.

3. Miscellaneous amendments as to sexual offences

This closes a number of minor legislative gaps and does not highlight any issues in terms of the manner in which new additions have been formulated or for the operational practice. The key development within this is *(ii) extends offences that relate to the recording of indecent images to the streaming or other transmission of such images*. This has been reflected alongside the other online, grooming and indecent image provisions above.

Chapter 2: Anonymity and privacy

There are a number of provisions within chapter 2 which outline the course of action in respect of monitoring and protecting anonymity of victims and suspects whether this is in respect of reporting restrictions, court hearings, and opportunities for victim to be revealed by information being released about the suspect.

The provisions in respect of length of time for victim anonymity appears appropriately measured which will allow anonymity to continue beyond their death for a reasonable period (25 years) this will protect children and young people related to the victim and the impact that disclosure may have on them. This is reflected in respect of the length of time that a suspect may, in certain circumstances be granted anonymity where it may lead to victim identification

The length of time in which the provision is relevant highlights the gravity of the offence if anonymity is breached. However, it should be noted that the sentencing guidelines around this do not reflect adequately the impact that this could have on victims, and their wider family.

The provisions state *“A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.”* The impact of exposure

removes the control of the victim, will mean that people will be aware of their victim status from a criminal justice perspective and may present significant mental and physical health implications.

The PSNI therefore recommends aligning the sentencing provisions towards the maximum period of 24 months that are possible within Magistrates court.

Section 12 presents the provisions that will allow action to be taken where information is published, reported, in various media forms which will impact on both the victims in terms of their mental health and wellbeing but also the public safety and well-being of the suspect. The provisions are clear in respect of each of the elements within the offence and how they could be complete and progress to criminal justice outcomes. The provisions suggested, and the sentencing guidelines attached, may go some way to reducing the inherent risk of becoming a victim of public information share by Online Child Activist Groups (OCAG) whereby their information is shared widely on social media platforms.

In respect of the outcomes the provisions outlines *“A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both”*. It should again be noted that the potential outcomes are limited given the impact on the victim and / or suspect and their wider families.

There would be a requirement to discuss with the PPS whether or not an investigation into breach of anonymity provisions would be progressed alongside the substantive offences – for example rape / sexual assault.

Section 15 Serious sexual offences: exclusion of public from court

This is a welcome provision which outlines the rules for court hearings in respect of sexual assault and rape matters. This provision clearly and articulately outlines that one person can be nominated by each victim and suspect to support during hearing matters for serious sexual offences. This provision also allows for nominated press personnel, again minimising the number of people present during court hearings of this nature.

It is well documented by victims how daunting court can be, the impact even with special measures at times meaning that they will withdraw from the process.

It is believed that if such provisions would be implemented, where only named persons, known in advance, would be present to support both victim and suspects through the hearings and trial that this may significantly reduce the fear and minimise victim attrition.

Conclusion

The Police Service of Northern Ireland welcomes additional measures to enhance legislative provisions as a way of improving both prevention of crime and criminal justice outcomes for victims.

However, as above, we would respectfully ask the Committee to consider the significant resource impact the inevitable increase in demand will have on the PSNI, particularly the Public Protection Branch, Cyber Crime Centre and Economic Crime Unit.

Collectively, the criminal justice system wants to ensure victims feel confident to report crime and, as such, it is hugely important from the outset that sufficient resources are in place to ensure the best experience possible so as not to dissuade reporting in the future.

We would welcome the opportunity to provide any further information the Committee requires through Oral Evidence or additional Written Evidence.

Annex A

There were four additional recommendations / considerations for comment which are not included in the current draft of the Justice Bill

1. A legislative fix to re-instate four offences incorrectly removed into Schedule 2 of the Magistrates Court Order 1981 to allow for the summary prosecution of these indicatable offences under Article 45 of that Order
2. Abolition of the “rough sex” defence
3. An extension to the existing revenge porn provisions to include the threat of publication
4. Provisions to widen the scope and strength of the current law on abuse of trust

Police welcome the opportunity to re-instate the relevant offences which had been removed from the Schedule 2 of the Magistrates Court Order 1981. This will allow for the full range of legislative provisions being made available and for court matters to be heard in the appropriate venue.

It is essential that consideration is given for the impact of hybrid offences being heard in Magistrates court and whether this will limit the provisions available for other statutory interventions

Police warmly welcome the consideration for the abolition of the “rough sex” defence which has previously been used. It is essential that the construction of the legislation does not seek to criminalise what may be considered as non- conventional sexual encounters between consenting parties. It has not, and is not, the position of police to legislate in respect of morality considerations.

R-v-Campbell Allen [2020] NICA 25 etc referenced at page 12 seems as considerably more practical in the context under consideration. This states, under “aggravating and mitigating factors” *Domestic abuse To be assaulted, imprisoned, and intimidated by someone close with whom the victim should be most secure*

represents an appalling violation of the trust and security that should normally exist between people in an intimate or family relationship Both assaults involved strangulation and in relation to both counts this is a substantial aggravating factor

It is essential that the gravity and high risk indicators that are attached to occurrences of strangulation is recognised. In itself a positive affirmation to previous incidents of “choking or strangulation” would be a high risk factor linked with potential for domestic homicide, recognising that incidents of this nature will and have occurred where there has been no previous violence and abuse, or a long standing relationship between parties. This has previously been used as a defence in nonfatal strangulation assaults, even where victims have openly stated that they did not consent to the assaults and the level of force used during the same. Thus reflected in R v Brown where it has been cited that an individual cannot consent to serious harm

In respect of the extension of legislative provisions to protect against even the threat of “revenge porn” which would see a threat being made to leak intimate videos and images, is welcomed by police. It goes some way to identify and recognise the trauma, embarrassment and on occasions the life altering circumstances that could result.

It should be noted the increase in demand that this will reflect across a number of departments within policing including Public Protection Branch and Cyber Crime. It is highly likely that the threats will be made in some part through online means therefore this may mean that investigations will be lengthy to reach a conclusion and require significant specialists skills to develop the required evidential standards.

It is recommended that Northern Ireland, would at a minimum be brought in line with England and Wales with the introduction of this provision.

Under similar legislation in England & Wales in the **Criminal Justice & Courts Act 2015** that makes threat to publish illegal it states that:

“A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), and

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both)."

It is recognised by policing that there will be a number of organisations which would not be currently considered in respect of the "abuse of position of trust" and therefore would welcome the strengthening of these provisions. It is essential that there is a clear and consistent messaging in respect of the legal requirements for all organisations in respect of child protection and offences committed in this regard.

It should be noted that in respect of any legislative changes there will be an increase in demand within policing which will include preparation for the introduction of legislation, training for the provisions to become operational, and the increase in calls for service in order to meet the demand for new offences.

Contacts

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