

Committee for Justice – Justice (SOTV) Bill

Record of Issues raised by – The Individual (Individual)

Informal Meeting conducted via MS Teams on 7 January 2022 at 11am

Members Present: Mervyn Storey MLA (Chairperson), Doug Beattie MLA, Jemma Dolan MLA and Rachel Woods MLA

Attendees: The Individual (Individual), Justin McCamphill (NASUWT) & Maxine Murphy-Higgins (NASUWT)

Staff in Attendance: Christine Darrah, Kathy O’Hanlon, Clairita Frazer, Stephen Corr

Introduction and Background

Justin McCamphill introduced Members to the individual, one of two teachers in a post-primary school who were victims of “upskirting” perpetrated by a student. The individual wanted to discuss their experiences and outline why they didn’t believe the current proposals would address the type of issue that they faced.

Personal Experience and Issues raised

The individual began by detailing their experience as a victim of upskirting – a student had taken video footage over a sustained period of time, in their place of work; a post-primary school. The individual described to Members how this experience had led to experiencing PTSD, as a result of both the act itself but the aftermath, including the inaction of those authorities investigating the matter – the School, Police and Public Prosecution Service. The individual indicated that a colleague was also a victim of this nature and that their contribution would be on behalf of them as well.

The individual welcomed the inclusion of “upskirting” in the proposed legislation, as one of the main difficulties for the individual and their colleague from the outset was that what happened to them was not recognised as a sexual offence by any of the authorities investigating the events. The individual used some illustrative quotes drawn from their written submission to highlight the language used by senior officials within the PPS investigating the case. In the individual’s opinion the words used demonstrated that even though the PPS took forward the case for prosecution, the PPS were more focused on their duties towards the suspect and not the victim. The individual believes that the current Bill as drafted would still create a grey area in their case and would elicit the same response from the PPS, particularly if the

offender was under the age of 18. In the individual's opinion, the response of the PPS was derogatory and insulting to them with no account taken of their experiences as a victim; his word was taken to explain his behaviour. To this day the victims have not had access to his PACE interview and are unaware of his motivations or what he has said about his victims.

The individual also highlighted the attitude of the school Board of Governors to the events also by highlighting some extracts of their correspondence. In their case the student was not expelled as his behaviour was not classified as a sexual offence; instead, he was suspended for 17 days. The individual pointed out that Education Authority guidelines allow for a pupil to be expelled for a one-off sexual offence, but this was not classified in that way by the school and they therefore the school chose not to abide by the policy.

However, the individual was removed from teaching the perpetrator's class and this removal caused significant difficulty for the individual and their family. Rumours and gossip circulated that they were having a relationship with the student due to a misunderstanding of what had taken place; this had a profoundly negative effect on their children and husband. In the individual's opinion, if people had been properly informed of the reasons and motivations behind the events and they had been classified in the correct way, this would have prevented rumour and speculation that compounded the trauma experienced by the individual.

The attitude of the school authorities was that the student's behaviour was a "school boy prank" and that "boys will be boys", the language used throughout all correspondence reflected this attitude. The individual also highlighted the fact that the student was made a prefect by the school in the Moving Image Arts Department which involves film and camera work.

In the individual's view a clear and robust law is needed to ensure that there is no grey area – what happened in their case and the language used to the individual and trauma inflicted on them ensured that the student was protected not the victims.

Proposed Legislation

The individual firmly believes that if the Bill in its current form is passed with the requirement to prove **motivation/intent** then the perpetrator in their case would not be prosecuted. If that there are certain requirements to be met for the behaviour to be an offence, then surely that says there are other occasions where the behaviour is OK and is not an offence.

The individual and their colleague had to go through a judicial review before prosecution could be secured for their case. At the time of the judicial review it was discovered that the PSNI did not even watch the videos taken before they interviewed the student and there was no attempt made to investigate the motivation behind his action.

The individual agrees with Prof. McGlynn's suggestion for an offence for the creation and sharing on **non-consensual images** – in their case it took a long time to

actually obtain access to the images and when they did they could see that they were grossly invasive and graphic in nature. Despite this, they were continually told that it was a “one-off” and the perpetrator’s young age was highlighted – the individual argued that he consistently took a series of images over a period of 18 months and he knew exactly what he was doing. If they had earlier access to the images they would have been able to provide more details to the police to prove this.

In the individual’s opinion there needs to be a clear message sent out that this type of behaviour is wrong in any circumstance and that when people make a choice to behave in this way they will face the consequences.

Another issue highlighted by the individual was around **distribution**. In their case the USB with the material on it contained 2 screen shots taken from the video deliberately to capture the most invasive moments. There was also footage where the perpetrator deliberately angled the camera so he could be seen smiling while taking the upskirting videos. The individual questioned why he would do this if not for the aim of distribution and in their view these images were his trophy. The perpetrator said that it was part of the school culture at the time – a prank/bravado, yet no one actually investigated if these images were shared. This continues to haunt the individual 5 years on and will do for the rest of their life - they constantly wonder whether people they meet in their everyday life have seen these images, this is made all the most upsetting given the individual’s profession of teaching children. The victims will never know what the perpetrator did with the images or how many people saw the images. This has caused immense personal and professional damage to the individual who still suffers flashbacks. In their opinion, the Bill needs to address distribution as an offence as well as non-consensual sharing of images. This would provide better protection to them.

The individual also feels that more work is also needed alongside **education** of young people and society as a whole. There needs to be a greater understanding of the devastating impact this can have and send a clear message that this is wrong, especially with modern technology advances.

Other Issues

Justin pointed out that a prosecution only took place in this case under the Offending Public Decency legislation which is outdated and is not the right solution for dealing with these behaviours. The prosecution was only able to be taken when it became obvious that there were more than two people present and so would not protect someone where there is nobody else present. He stressed his view that the test should be that the action is done intentionally and without consent. Justin believes that the ‘unintended consequences’ that such an approach could have that have been highlighted in evidence to the Committee can be dealt with – for example, with a reasonable person test.

Comments from and discussion with Members

The Chair thanked both Justin and the individual for taking the time to make a submission to the Committee and in particular thanked the individual for giving the Committee an opportunity to hear about their very personal experience.

Jemma Dolan MLA indicated that they knew the individual on a personal level and commended their bravery in speaking out about their traumatic personal experience.

Rachel Woods MLA also thanked the individual for their submission and for the amendment they put forward. Although it may be difficult to base the offence solely on consent, Rachel advised she was strongly of the view that the “for a laugh/banter” defence should be addressed and eliminated potentially. She also advised that she was not convinced by all the arguments around unintended consequences and believes that many of the issues raised can be managed through guidance around Clause 1.

Rachel asked Justin if reports to the Union about sexual assaults are becoming more common in recent times. Justin advised that the incidents have always been there but with the rise of technology they are starting to get more, but pointed out that it is mainly pupil-on-pupil. The individual and their colleague’s case was distinguished as it was pupil-on-teacher. Justin also referenced a recent Tik Tok craze which targeted both men and women.

Rachel asked the individual if the school explained their reasons for handling the events in the way they did, why they did not class it as a sexual assault/offence or why the student was not expelled for his behaviour.

The individual explained that they asked why the pupil wasn’t being expelled and were informed that wouldn’t be proportionate and the acts were opportunistic. The individual said calling the offence opportunistic is particularly offensive as it’s saying that they provided the opportunity by wearing a skirt and he just took it. They questioned what message was being sent out to others if someone was allowed get away with the behaviour. The individual also indicated that they believed that as the school was in its first year of existence as a newly amalgamated school the Board of Governors were not focused on the truth but on protecting the reputation of the school – to them it was politically motivated.

The individual felt silenced because of child protection and that the key concern was to protect the perpetrator. They and their colleague won a LRA grievance against the school’s decision not to expel, when the individual was not allowed to do their job fully and had done nothing wrong but was not allowed to talk about it. The evidence showed that the perpetrator was protected above everyone else. Instead of him being expelled, the school’s answer was to put a management plan in place, taking them off the class and providing daily emails on where the perpetrator was in the school. They were constantly vigilant about his location in the school yet he could come and go freely including in and out of the individual’s room. This fear of bumping into him would be replicated in the individual’s hometown and in related school activities. The individual said that the school has created this but the school would say they’ve done everything ‘by the book.’

There was no thought given to the impact on them as the victim – the individual gave further examples of where the perpetrator's involvement in a carol service superseded the individual's right to be involved in the planning and organisation of the event as they would normally would be.

The Education Authority apparently had legal advice that expulsion of the pupil would be overturned yet the authorities didn't even attempt to send out a message that what he had done was wrong – there was no attempt made to make him look at his behaviour to educate him that he was wrong, until he was found guilty and even then it was a fight to get the appropriate method.

The perpetrator was also involved in a pantomime with the individual's partner and child and had attended rehearsals with them after his arrest but before they became aware of what had happened. The individual's partner contacted the Education Authority after finding out what he had done due to concerns about child protection but was told they couldn't do anything as they only knew about the issues as their partner was involved in the case. He won an award and a trip to Belgium while the individual believes he posed a risk to others.

There were no rehabilitative initiatives undertaken with the perpetrator – for example to make him realise the impact or consequences of his actions – until after he had been convicted.

In the individual's opinion when someone commits such an offence there needs to be an examination of duration, frequency etc. The individual's fear is that these behaviours will become normalised in our society – there also needs to be a preventative curriculum.

Doug Beattie MLA also thanked the individual for their testimony and stated that it was quite clear the lifelong impact this would have on them. He also asked the individual if they believed that it would have the same impact if robust legislation had been in place to deal with it. The individual indicated that yes absolutely, and it was clear to them that what happened was very clearly a crime and should be punished. They shared information on the initial response from the PPS advising that the offence was not voyeurism and nor was it an act of outraging public decency. Those investigating just seemed to accept what the perpetrator told them – in the individual's opinion they didn't have any understanding of what they as the victim was going through. Although the prosecution eventually proceeded as an offence of Outraging Public Decency, this was not justice on a personal level for the individual or their family but for the wider public. The individual's child submitted a victim's statement during the court case and it was clear that there was a huge impact on all lives. The individual feels that if they didn't have to live with the uncertainty of seeing the perpetrator every day, if it had been recognised that what happened to them was wrong and had an impact then it may possibly have been slightly easier for them to move on.

In the individual's opinion if this law was in place there would have been a recognition of what happened being a sexual offence and they would not have had to face a huge court battle. Instead the individual has spent the last 5 years lobbying for

change to ensure that others like them can't be silenced like they were. Society's victim-blame culture, particularly for women and girls, has had a huge impact on them and done damage. Guidance from the bottom up – the school, Education Authority, PSNI, PPS etc. – would have meant they did not have to endure, or keep having to endure, the trauma caused.

Doug raised the issue of the sex offenders register.

The individual felt it was important to look at the guidance and guidelines around this and the appropriateness of that action but that if you looked at the pattern of behaviour something like upskirting can be a gateway offence leading to more serious offences.

Concluding remarks

The Chairperson thanked the individual for taking the time to make the Committee aware of what happened and giving Members such an insight into their experience. He also thanked Justin for his submission and for facilitating the meeting. The Chair indicated that this meeting would help inform a positive outcome and the concerns raised addressed in the legislation.

The meeting ended at 11:49 am