

## **PUBLIC PROSECUTION SERVICE RESPONSE**

Alistair Ross MLA,  
Chairman,  
Committee for Justice  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
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3<sup>rd</sup> December 2015

Dear Mr Ross

I am writing in response to your letter concerning the proposals for legislative reform raised with the committee by Mr Jim Gamble. You have asked for the Public Prosecutions Service's views and I am responding on behalf of the Director of Public Prosecutions Barra McGrory QC. We have been written to separately by Ms Darrah asking for some statistics in respect of this area and I will refer to some of the relevant figures in this letter.

I will deal with each of the points made by Mr Gamble in his paper in order.

1. Mr Gamble suggests that a child or person under 18 who takes, makes, shows or distributes an image of themselves will commit no criminal offence but where they do any of those things in respect of another child under 18 with malicious intent that this would be an offence.

When the PPS receives a file from Police a prosecutor will decide whether there is an evidential basis to prosecute but also, crucially in these cases, whether a prosecution is in the public interest. This public interest aspect is contained in our Test for Prosecution and applying it is a key part of our role. Between 1st March 2013 and 31st March 2015 the PPS received 48 files relating to 79 suspects below the age of 18 in cases of indecent images of young people and other indecent image offences. These figures cover both where the indecent image is of the young person themselves and where it is of other young people and include cases where young people shared indecent images of themselves by agreement, where young people sent other young people unsolicited indecent self-images and where a number of young people had shared a self-image sent by a further young person. In each case we considered whether the evidential test was met and if so what action was in the public interest. Of the 75 prosecution decisions made to 31<sup>st</sup> March 2015, one was for prosecution, 8 were for non-court diversions such as youth conferences or cautions and 66 were decisions of no prosecution, either on an evidential basis or made in the public interest. We believe the law works well at present where we as prosecutors can decide in each case whether, if the evidential test is met, a prosecution, a non-court disposal or a decision not to prosecute is merited. To de-criminalise the offences around self-images would allow for young people to distribute images

of themselves unsolicited to others, possibly other young people, which can be distressing for the recipient. To require the prosecution to prove a malicious intent in other cases would present an evidential hurdle which could prove difficult to overcome. At present where someone commits an offence intending, for example, to cause particular distress to the victim this will be an aggravating factor when it comes to sentencing and not an element of the offence itself and we believe that this generally works well.

2. The use of anonymity for the purposes of harassment.

Our experience of the Protection from Harassment (Northern Ireland) Order 1997 is that it provides sufficient protection for those affected. Again if a court found that a defendant had caused further distress to a victim by the use of anonymity or of multiple accounts this could be considered an aggravating factor when sentence was passed.

3. Masquerading as a person under 18.

There is no offence that would currently directly cover this situation. If legislation in this area was considered appropriate the view of the PPS would be that careful consideration would need to be given to guard against overlapping or causing confusion with the 'grooming' offences contained within the Sexual Offences Order 2008.

Please note more generally that when deciding whether a prosecution in such cases involving young people is in the public interest we will look at all the circumstances of a case. Those can include any disparity in age between the young people, how many people the images were shared with, the nature of the images and what was the attitude of the child's parents, the school, if a school was involved and, if appropriate, social services. Only when all of these factors have been considered do we make a decision what whether a prosecution would be in the public interest. In many of these cases the Police will contact us for advice without formally opening an investigation. This option for prosecutorial advice is a useful way in which Police and prosecutors can work together to discuss a case at an early stage and, if appropriate, avoid a young person being brought fully into the criminal justice system.

I hope this has been of useful to the Committee and please do not hesitate to contact me should you require anything further.

Yours faithfully

Ciaran McQuillan  
Assistant Director