

DÁIL ÉIREANN

AN COMHCHOISTE UM CHUMARSÁID, GNÍOMHÚ AR SON NA HAERÁIDE AGUS COMHSHAOL

JOINT COMMITTEE ON COMMUNICATIONS, CLIMATE ACTION AND ENVI- RONMENT

Déardaoin, 25 Deireadh Fómhair 2018

Thursday, 25 October 2018

The Joint Committee met at 2 p.m.

MEMBERS PRESENT:

Deputy Timmy Dooley,	Senator Terry Leyden,
Deputy Michael Lowry,	Senator Tim Lombard,
Deputy Bríd Smith,	Senator Michael McDowell.
Deputy Brian Stanley,	

DEPUTY HILDEGARDE NAUGHTON IN THE CHAIR.

The joint committee met in private session until 2.34 p.m.

Digital Safety Commissioner Bill 2017: Discussion

Chairman: We are dealing with detailed scrutiny of the Digital Safety Commissioner Bill 2017, a Private Members' Bill sponsored by Deputy Donnchadh Ó Laoghaire.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. Witnesses are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Any submission or opening statement made to the committee will be published on the committee website after this meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable. I remind members and witnesses to turn off their mobile phones or switch them to flight mode.

I welcome the Minister, Deputy Richard Bruton, who is accompanied by Ms Triona Quill, principal officer, broadcasting policy division; and Mr. Dualta Ó Broin, assistant principal, broadcasting policy division. Also present is Deputy Ó Laoghaire, who has sponsored the Bill. Before I ask Deputy Ó Laoghaire to give us an overview, I take the opportunity to congratulate the Minister on his new appointment. We look forward to working with him and his Department.

Deputy Donnchadh Ó Laoghaire: I thank the Chairman and congratulate the Minister. I am very pleased to have the opportunity to present this Bill this afternoon. It has been discussed in previous meetings of the committee and I commend the Chairman and am encouraged by the sentiments expressed by the committee on the need for a digital safety commissioner at this time. There is no doubt that online safety has become one of the most significant challenges facing Irish life and is arguably one of the most significant child protection issues of our times. It is one which legislators very urgently need to face. While it is the case that this requires a policy response and an educational response, it is also my belief that we need strong regulation and a statutory office with real powers and teeth. In most areas of policy, we generally accept that self-regulation is no regulation, and I do not see how this area is any different. It is for this reason that I have introduced the Bill, which I think would be a significant move towards promoting a positive and safe online culture for all. There should be a permanent statutory body rather than an office internal to the Department. I acknowledge the work of the Law Reform Commission in producing the report on digital safety and harmful communications, upon which the Bill is built, and acknowledge particularly the primary author of the report, Dr. Fiona

O'Regan.

We face significant challenges and many, especially parents, are concerned about what is happening online. It is hard to blame them when we read the stories of predatory behaviour, harmful material and online bullying. While bullying in any circumstances is bad, the idea that it can follow the child home bothers many parents and must be a very difficult experience for the children affected. However, the digital safety commissioner is not intended as an office solely responsible for preventing harm to children online, but for the population as a whole. It should be responsible for the promotion of a positive online experience. I said on Second Stage that the Internet is a significant public space. It is part of the life of most citizens and increasingly of the lives of younger citizens. As well as the risks it contains, it creates great value which must also be reflected in discussions on the risks and harms associated with it. Our philosophy should not be to be hostile to the Internet or to see it only as a source of danger. We must try as best we can to ensure that Irish citizens will be protected from those who use the Internet for harm and abuse but can also access its benefits. We need a measured, proportionate and sensible response to the risks and hazards. This Bill and a digital safety commissioner are a part of that.

Technology and online platforms evolve very rapidly and dramatically. It is vitally important that the remit of the office is drawn in such a way as to ensure that it stays abreast of all changes and is in a position to evolve. The primary proposed functions of the commissioner as outlined in the Bill are, among others, to promote digital safety for all, and to support and encourage the implementation of measures to improve digital safety, including oversight, regulation and, crucially, a timely and efficient procedure for removal of harmful digital communications. This would ensure that take-down procedures and removal of material are made available to all affected individuals by digital service providers free of charge. The commissioner would ensure that there is a code of practice of safe and responsible Internet usage, develop national digital safety standards and ensure compliance with them, and he or she would have powers to revoke a certificate of compliance with same. Crucially, the commissioner would be responsible for ensuring digital service providers such as websites and social media platforms abide by those codes of practice and national digital safety standards.

There should be recourse directly to the office, but we should seek to have quick, effective and timely remedies put in place by the platforms themselves without having to be forced to do so by the commissioner, to reach the standards because if there is a significant delay in dealing with harmful material, then some damage is already done by the time the material is eventually removed. Some providers have good mechanisms, but some do not. We also need legislation to ensure that where they are not stepping up to the mark and putting in place safeguards, they are made to do so.

I wish to address some of the criticisms of the Bill, which I take in the co-operative spirit in which they were intended. These were stated on Second Stage by the then Minister for Communications, Climate Action and Environment, Deputy Naughten, who has since been replaced by Deputy Bruton. I am anxious to engage with the new Minister on this. I hope that the Minister, like his predecessor, believes there is value in a body of this kind and in a robust digital safety commission. I am open minded about these issues and proposals and about any issues people may flag. Moreover, I am amenable to any potential suggestions or amendments.

I will address some of the points made by the former Minister. The first relates to a definition of harmful communications, a term used in this Bill to denote when a take-down mechanism could be engaged. The former Minister stated that the Bill does not define what is meant

by harmful communications other than those which will be addressed through criminal law. It is possible that it would be appropriate for this to fall within the ambit of the digital safety commissioner's office. Such an office could draw up the definition. In any event, it certainly should not be left to the provider. The commissioner could define what harmful communications would be suitable for take-down mechanisms. However, on balance, I believe it would be appropriate for the sake of legal certainty to provide a definition, especially given that there would be a legal requirement to be in compliance with sections 4 and 5. I am developing a draft of a definition, as I believe it will be necessary.

We should look to the Law Reform Commission recommendations for guidance in this regard. The recommendations did not define harmful communications in terms of a specific stand-alone offence or conduct. Rather, they provided a description of a category of offences that already exist, including section 10 of the Non-Fatal Offences Against the Person Act 1997. That provision would require updating in terms of communications as well as in terms of what the Law Reform Commission proposes. Potential new offences are outlined within pages 5 to 7 and pages 167 to 172 of the Law Reform Commission report. These behaviours require legislation to make them clear and specific criminal offences and that, in turn, would require updating existing legislation. While I do not propose to introduce amendments at this stage to make such criminal offences in this Bill, I favour seeking to address these types of behaviours. In general, such behaviours would include: distribution or publication of an intimate image of another person taken without consent, or threatening to do so; taking or distribution or publication of an intimate image of another without consent; distribution or publication of intimate material where it seriously interferes with privacy or causes alarm, distress or harm to the other person; the distribution or publication of a threatening, false, indecent or obscene message to or about another person for the purpose of causing alarm, distress or harm to the other person, or where it is done persistently; and persistently communicating with a person in circumstances which seriously interfere with the other person's privacy or which cause alarm, distress or harm and any other inchoate behaviours related to the same. This formula is one I am working on. I will communicate with the Minister and the committee further on the matter but I believe there needs to be a definition.

The former Minister also said that the Bill provides for a role for the courts where an entity is established outside the State in respect of a harmful communication and that it was not clear how this would work in practice. He did not elaborate on this so I cannot necessarily describe what specific difficulties would arise.

Committee members have a copy of my opening statement and I can elaborate on the detail in response to questions. I note that the extra-territorial elements of the Bill are not particularly radical or unusual. I believe the Law Reform Commission recommendations dealt with this comprehensively. What is drafted is consistent and entirely in keeping with existing practice on extra-territorial proceedings on Norwich Pharmacal orders in the Rules of the Superior Courts. However, I will listen to argumentation and points in this respect. In the interests of absolute clarity, I am willing to consider whether it may be appropriate to include a specific enabling provision in the Bill.

The former Minister also said that the Bill imposes a number of obligations on digital service undertakings established in the State. Clearly that is the intention. This is not intended to be a dead letter or a soft body. It is intended to have teeth and powers. I see no difficulty with that.

The former Minister also referred to overlap with other State organisations with statutory

and non-statutory roles in this area and said the delineation was not clear. I believe this is a matter which requires direction from the Minister. Much of this cannot be dealt with in legislation given that many of the bodies dealing with this area are not doing so on the basis of legislation or statute but on the basis of responsibility assigned by Departments and Government offices. It is possible that some of this could enter the ambit of legislation. Ultimately, if the Minister wishes to support the Bill or a proposal such as this, which I hope he does, he will recognise that there will be a role for the Department in identifying work done by other offices such as the Office for Internet Safety and how any relevant functions could relate to the digital safety commission.

I note this matter was briefly addressed by Ms Niamh Sweeney and Ms Siobhán Cumiskey of Facebook at the Joint Committee on Communications, Climate Action and Environment some weeks ago. I note that they were not opposed to the idea. They stated that Facebook sees great benefit in a single office having the ability to oversee and co-ordinate efforts to promote digital safety. Ms Sweeney went on to state that while it would clearly not be the intention of the Bill to impact on free speech in Ireland, the commissioner's ability to issue a decision ordering the removal of harmful communications should be considered in light of the potential for limiting freedom of speech. She argued that it was important, therefore, to have a clear definition of what constitutes a harmful communication included in the legislation. I accept the point on freedom of speech. We must be conscious of it in all our deliberations. The other point relates to the harmful communications definition, which I have already addressed.

Some other points have been raised with me separately. There has been a suggestion that it might be more appropriate for the parent or key Minister identified in the Bill to be the Minister for Communications, Climate Action and Environment rather than the Minister for Justice and Equality. Given that the Government directed the Bill to this committee, this is clearly the view of the Government. It is probably the view of the committee as well and I am happy to take that on board and agree that the parent Department should be the Department of Communications, Climate Action and Environment.

Reference was made to sections 3(e) and 3(f). I believe these provisions require some amendment. The onus placed on the Ombudsman for Children should perhaps be revised. Certainly there is a role for the Ombudsman for Children but the key responsibility for directing and initiating any material for the curriculum should be from the digital safety commissioner in consultation with the Ombudsman for Children and the Department of Education and Skills as well as perhaps the National Council for Curriculum and Assessment and any other relevant bodies. Rather than simply producing material and documentation, I believe the commissioner should be focused on working with the NCCA to hard-wire digital literacy into schools. I know the Minister has done good work in the Department of Education and Skills in respect of digital literacy already.

In general, these are constructive positive suggestions. I am keen to hear the views of committee members. I will be open to potential amendments across a wide range of areas. I am keen for the Bill to improve and progress. I want to see a digital safety commissioner established in this jurisdiction. I have included my contact details in my opening statement to all committee members and the Department. I am open to people for any contact following this meeting.

Chairman: I thank Deputy Ó Laoghaire very much for his comments. We look forward to engaging with him over the coming weeks and months on what is an important Bill. The Minister for Communications, Climate Action and Environment, Deputy Bruton, is next.

Minister for Communications, Climate Action and Environment (Deputy Richard Bruton): I thank Deputy Ó Laoghaire for the Bill. This issue is part of the Government's digital strategy and we are keen to work with the committee in this area. I have a little experience in this area from the work I was doing in the Department of Education and Skills. For example, we required all schools to consult parents regarding the use of smartphones in schools. Some 87% of primary schools have policies of absolute disallowance. Others have some form of usage restriction. There are differing practices. Some schools have developed codes that cover not only in-school usage but the attitude of parents to the ownership and use of smartphones among their children. That consultation will give us some idea of the direction parents and school communities want to go in this area.

Deputy Ó Laoghaire raised several points. We have been active in the area of developing materials through *www.webwise.ie*, which is part of our continuing professional development section of the Department. This involves developing materials that can be used in the classroom by students as well as teachers. We are keen to use students as ambassadors for improving people's resilience to deal with some of the experiences they have had with social media. Their work is particularly innovative. It is supported by the European Union.

One of the major initiatives in the Government's plan was to set up an interdepartmental group which is being chaired by the Department of Education and Skills. I attended its first meeting to emphasise the importance of working across the silos and developing a coherent response. As the committee is probably aware, the action plan has a range of goals around online safety for all groups, better supports, stronger criminal protections and better arenas for influencing policy. In that context, it set up an advisory council which involves people right across the sector helping to guide Government in the development of a strategy. It has many valuable initiatives, of which I am sure the committee is aware, such as having a single access point, equipping teachers, the curriculum and so on around the school, developing supports in the arena of mental health and the new criminal offences which are not part of this Bill but are being developed and which I believe are also part of a Labour Party Bill. There is very strong momentum now for implementing change in the digital safety arena.

Turning to this Bill, I agree with Deputy Ó Laoghaire that it is time to move beyond self-regulation in this area but we have to make sure that whatever we do is robust and workable. My understanding of this area in the context of the European Union is that there are different levels of regulation. It has not yet addressed the take-down issue but where it has addressed regulation it has different dimensions of regulation. In the audiovisual area, for example, it envisages regulation that would involve the oversight of a code of practice but not taking on third party complaints. Clearly, the idea of having third party complaints is probably integral to what the Deputy is proposing and I can see the sense in that. However, the other models would have ensured that the codes, as the Deputy said, some of which are good and some of which are bad, would be overseen. In other words, somebody would be riding shotgun on the companies in terms of their implementation of their codes whereas this model goes a step beyond that and says that where there are disputes that are unresolved, they would be arbitrated upon. That is the context in which it is probably important to have one's definitions right if one goes from having general oversight of codes to having third party arbitration with respect to what it one will have arbitration upon. That probably needs to be spelt out. I note that the Deputy is working on this. As I understand it, what he spelt out were largely criminal offences. He seems to be envisaging that the take-down power would be in regard to matters that were already unlawful. There is an issue that probably needs to be teased through and I will be asking the Attorney General to help us tease through this. If we introduce powers for a body, a data digital safety

commissioner, to require take-down of material in areas where something is illegal, there is also the issue that the Garda will be examining illegal activities and working to ensure they are taken down. In that category we will need to examine what is the relationship with the Garda and the investigation it might be doing. I understand the companies would have strict liability if they leave up something that is illegal that would expose them to liability, whereas if we move beyond the illegal ones to another category - which I understand has been done in Australia where they have defined other areas such as cyberbullying which would be short of something that is illegal but is nonetheless undesirable and should be taken down - we need to decide what is the realm within which we are working. That is one of the issues on which I am very happy to get advice from our own legal people as to how we would define that range and to make sure that if we are envisaging, as the Deputy is, take-down rights in regard to matters that are illegal already, that what we, or the digital safety commissioner, would be doing would not interfere with the Garda investigation, prosecution and so on. I am not saying that is insuperable but there is an issue to be addressed there. While I recognise the work the Deputy is doing on those issues, clearly some more work needs to be done. Like the Deputy, I am not an expert on what the extraterritorial effect might be. The Deputy said he would work with whatever advice we get from the Attorney General. Our officials will be coming back to the committee later and, hopefully, we will have some more advice for it at that point.

In some ways that is the most core function of the Deputy's Bill. It refers to most of these functions around paragraphs (c), (d), (e) of section 3 and so on. We need to do some more work on that but moving away from self-regulation is absolutely right. Let us define the scope of it and decide on how the third party complaint is defined and proceeded with.

With respect to the wider sections of the Deputy's Bill, we need to think more clearly about what it is we are trying to achieve. The Government has established an interdepartmental committee where each person represented on that committee has the functions and powers to execute change. We strongly believe in all of these areas that we need to ensure that it works across the silos, and we are creating that momentum to work across the silos. We are also creating an outside advisory body to input into and critique what is being done within Government.

I would ask the Deputy to consider what added value would occur with respect to someone who had a co-ordination role on top of that structure. The structure that is now in place will report back to a Cabinet committee and will have Ministers judging if this is being proceeded with quickly enough, if we are doing the right things or do we need to add new measures to the action plan. That is a tried and established tier of power, authority and execution. Where a digital co-ordinator would fit into that is open to question. To take the example of the education area, if the Deputy is saying the digital commissioner should become the driver of educational change, is he saying that the Professional Development Service for Teachers, PDST, or Web-wise would transfer to the office of the digital commissioner from the Department of Education and Skills, which the Department would consider is its natural home? The work of the National Council for Curriculum and Assessment, the PDST, the continuing professional development agency within the Department of Education and Skills is a co-ordinated and effective structure for designing, delivering and executing education content to improve people's digital safety online. Does the Deputy envisage a research capacity whereby the digital safety commissioner could ask had they thought of that or should they be thinking of something else? However, for those people to be co-ordinating when they do not the power structure creates a danger that we have someone with a parent responsibility without the tools to execute, whereas the Cabinet committee, the interdepartmental group driving to implement the changes and the advisory committee have a structure that has been thought out and it is designed to get maximum impact

in this area by driving across Government activity, forcing Departments to work across the silos and to work to agreed goals set by Government, with report-back responsibility to the Cabinet committee. It is a structure I have certainly seen work from my experience when I was working in the employment area. I would not have been advocating then for creating a tsar for employment outside of those structures because I would be questioning its capacity.

I am not sure joined-up research is being carried out across the system. Perhaps this strategy needs to think more clearly about research. Presumably, that will evolve from the work of the advisory committee working into the structure that is being put in place in government. The committee ought to think seriously about taking many of these roles out of a structure we put up. It is there and I am sure members have read it but as far as I can remember, there are 50 actions here. They are quarterly and 25 of them relate to this year. There are about 60 next year. The horse is in motion and the train is moving and has gone out of the station. A good deal of work is being delivered. I ask members to think about that dimension of the Bill. I would certainly have some misgivings about whether it would add value to what is being done. That is not to say we should not be critiqued for what is being done. The advisory group will be there to critique, as will the Dáil and the Seanad.

That is really it. There are some technical things there that must be worked through. We will get advice from the Attorney General so that when officials come back - I am only a week in the job myself and do not pretend to be right about all these issues - they will come back if there are technical and legal issues that need to be teased out as the committee proceeds. I thank the Deputy for the Bill. I see the value in moving away from self-regulation and accept that we need to design a structure that is effective in this area but we do not want to create something in these other areas that may not add to the effectiveness of an Internet safety strategy that is well under way. When this was launched, we recognised that this is a dynamic area that keeps changing. We need that advisory committee and to scan the horizon to ensure that what we are doing is effective as the threats change.

Chairman: Before I bring in members, I thank the Minister for his response. I know the issue was raised with regard to other jurisdictions. This committee will visit Strasbourg to meet the European Commissioner for Digital Economy and Society. That is a very important strand of this. The best law could be put in place here but if online content that needs to be moderated originates in another jurisdiction, it is very hard to deal with that so we want to work at a pan-European level on that as well and see if we can progress that area. With regard to looking at best practice across the world, the Minister made reference to Australia. I heard an interview with the Australian digital safety commissioner. Her view was that she has the power to fine, so the stick and carrot are used but she never really needs to use the stick and fine. It is engagement with these social media platforms that encourages them to take down content that is abusive or illegal. I assume the Commissioner would work in tandem with the law enforcement agency in that jurisdiction. That is why we need to work at a European level as well. I will bring Deputy Dooley and then Deputy Stanley.

Deputy Timmy Dooley: I thank Deputy Ó Laoghaire for the work he has done. He has given recognition to the Law Reform Commission with which he has worked in bringing the Bill to its current level. We have supported and will continue to support this initiative. I may have some amendments at a later Stage because I certainly think we need to strengthen the powers a digital safety commissioner would have. I take the point about the definitions but I think it is important that fines would be set out in the legislation. I think they must be very significant because, quite frankly, I do not trust the social media platforms to adhere to anything unless

there is a very significant monetary penalty.

I recognise that the Minister is relatively new to this area but he will certainly have experience from his time as Minister for Education and Skills and would know the concerns of the education sector about the harmful impact of online bullying on children. I hope that in furthering this effort, he will look to address the situation now rather than later because there is little doubt that children and vulnerable adults are definitely in danger and are being harmed every day. We do not want to leave it for five, ten or 15 years. We do not want to allow this to get to a point where we are depending on somebody else to tell us what to do. While I accept that good work is happening in other jurisdictions, it is for us to try to implement insofar as we can rules and laws here that govern to the extent of protecting our own. I am conscious that the Germans have made very significant advances in this area. As a result of that, the digital platforms employ significantly more people there to ensure that harmful content is removed more quickly. They do so because the law penalises them if they do not do so it is certainly worth looking at that. I do not think we can necessarily wait for Europe to force us. I think we can be ground breakers and leaders in that regard. The digital platforms have very significant bases here. I do not want to make a charge against the Minister or Government but I am taken to some extent with the Taoiseach's infatuation with these digital media platforms and their mega-wealthy owners. They are always up for a selfie with the Taoiseach when the opportunity arises. While we must recognise that they are really important employers here, I still think it should not be a wild west for the digital media platforms just because we value their significance in terms of the benefits to our economy. We must also ensure that we have a rule-based society and that these people are brought to book.

I welcome the fact the Minister said it is time to move beyond self-regulation. Facebook and others have appeared before us. They publish their own guidelines and protocols. On the face of it, they look fantastic and anybody would sign up to them yet we saw that investigative programme on Channel 4, which the Minister may or may not have had a chance to see. In respect of what we see them do at management level and how they moderate their own content, it is very clear that the vast majority of the people who watched that programme believed the content was harmful and in breach of the company's own guidelines and regulations yet its moderators said material such as footage of a child being beaten or people talking about self harming was okay. We saw people who were demonstrably affected by that content being left there for very considerable periods of time. The company was aware of it and it was in breach of the company's own stated protocols and guidelines yet it was being used as training material to say it was okay to leave that there. I have great respect for Facebook and the way the company has been built but in respect of the idea that this is not material it wants up there and that it somehow impacts negatively on people who advertise because they do not want to advertise around this content, the model for Facebook and all digital media platforms involves trying to retain the user in their space for as long as possible. Their stated intention is that they will only take down content where the user is gratified by or in some way engages positively with negative or harmful content yet if a user adds a tag to some negative piece of content or video saying "Isn't this awful?", they seem to suggest that this is okay to leave that up there because of free speech. This is furthering their agenda because if I comment negatively about some hurtful, harmful or damaging content, I promulgate that information and others view it. That works for Facebook because it keeps my friends and I longer on the platform. We must stand up to them and protect our own, including our children and vulnerable adults because while much of this debate has been about children, there are vulnerable communities out there. That programme signalled the difficulties for people who have certain forms of mental illness. I was taken by the story of one particular young adult who had an affliction whereby, on certain occasions, she self-harmed

by cutting herself and drawing blood. The idea that there were others talking in an open chat environment about that behaviour was almost creating an impulse to act in that way and encouragement to do more than the last person did. That really is difficult and harmful content. If we heard such news on the radio or on television there would be uproar throughout society. However, one can access all of this information on one's iPad, iPhone or smartphone. Society has not yet understood the extent to which this material is there, personalised to everybody and accessible, yet there is a massive amount of regulation regarding what our national broadcaster, local radio stations and our independent broadcast sector can do. There are phenomenal controls in place there, yet this is far more accessible and direct and we are taking a *laissez-faire* approach. It has not reached the level we expect it to reach yet because it is developing and evolving, and I do not believe that will be an excuse in the long term. We will have to act.

I welcome that the Minister has signalled there will be movement in this area but I believe he will have to do more as he reads his way into the brief. We can build upon this Bill to offer the necessary protections.

Deputy Brian Stanley: I welcome the Minister. It is his first attendance at this committee as Minister, and I wish him well. I also thank Deputy Ó Laoghaire, who has brought this Bill forward.

The Minister discussed the interdepartmental group, and while it has a role, this has become a really big issue. I was here for all of the hearings with Facebook and other platforms. I welcome the Minister's acceptance that the days of self-regulation are over. We must accept, however, that when everyone is in charge no-one is in charge. A clearly defined role is set out in the Bill. The Bill will have to be amended - I certainly will be proposing some amendments - but it provides us with something to work with and sets out clearly the functions of the office, including the promotion of digital safety, ensuring oversight, the removal of harmful material, the power to force companies to take down such material, responsibility for collecting and analysing information, advising the Government and working with the Ombudsman for Children and, indeed, the Department of Education and Skills. It is a very important area.

When my granddaughter started using the Internet I was worried about her, but I think she is more worried about me now because she knows more about it than I do. If I have any problems with my phone I just hand it to her and she sorts it out. She does not tell me how she sorts it out but she does and then she hands it back to me. That is all I need to know. There is a real issue here. A large amount of time is spent online and there is a huge amount of engagement with the various platforms. It can be seen on a walk down the street on any given day. It is important that we move to take action in this area. I heard what the Minister has said about the interdepartmental group and that he wants people to work between the different silos to achieve co-operation. However, at any organisation, when everyone is in charge nobody is in charge. That is particularly the case when we are dealing with something as big as digital safety at State level.

Huge progress has been made on the technology itself. There is a possibility that by the time this Bill progresses through the Houses other forms of technology will be available and other advances will be made. We will have to run to catch up with those developments and we do not have a good record in that regard. This has crept up on us and we are ill-prepared for it.

I read the legal advice on the jurisdiction issues. Complicated jurisdiction provisions are set out in the EU regulation but I would like to see more work done in that area to clarify how we can work to enforce that. I am not suggesting that is a reason to do nothing but it is one of the

challenges we are faced with.

Another part of the Bill concerns penalties. The powers of the commissioner are laid out in sections 8 and 9. Should the commissioner be able to issue a fine? An equivalent example is that under the Control of Dogs Act 1986, the dog warden can issue a fine while any more serious matter will appear before a court. In this case, it is suggested that the Circuit Court would deal with any issues and thereafter it might progress to the High Court if necessary. Should there be provision in the Bill for the commissioner to issue penalties at that point?

I am working backwards through the Bill, but under section 4 the term “harmful communications” is used. I wonder whether the words “harmful” and “illegal” should be used in the same sentence or whether perhaps “harmful” could be replaced with “illegal”. It might be an area we could look at. I am just highlighting some issues I noticed when reading the Bill, the legal advice and the briefing note for today for Deputy Ó Laoghaire. The Bill is necessary and needs to be progressed, and we should not wait for the European Union to act. We are moving to roll out broadband and to give more people access to it, which is one of the other roles of this committee, as I am sure the Minister will discover quickly. More people will be engaging with the Internet and this Bill is very important in that respect.

I do not understand how it is proposed to deal with one issue. Common abuse and bullying must be dealt with, and it may involve a more minor sanction that the commissioner could issue, which might be useful. We lost one Member of this House who was subjected to serious bullying online. Some of us had political differences with him. Indeed, there are some people who are still with us who are subjected to huge intimidation and bullying on the Internet. That is just one area. This type of abuse applies not just to public representatives, but to people in all areas of life. We have to try to protect people from it. One specific area that has emerged in the last number of years is the targeting of elderly and vulnerable people, some of whom are being profiled by people living in this country. Widowers and widows are being targeted by international gangs which befriend them on the Internet and build up a relationship with them. The person believes he or she is talking to a girlfriend or boyfriend in another country and starts to send money to those gangs. I have come across one really serious case of that where an elderly gentleman was borrowing money to send into a foreign bank account, believing he was sending it to a person. I advised him that, in my opinion, he was sending it to a criminal gang. I got another person in the community who might have more influence to speak to the man about it. I am not too sure what one can do about that. I suppose I make the point merely to highlight that the Internet is a wonderful tool and has many purposes but it is also a very dangerous world out there. There are many examples of it. I am not an expert on IT and I am not sure how the example I gave could be dealt with. However, we should move ahead with this and use it as the basis for getting strong, robust legislation in place and getting a digital safety commissioner in place.

Chairman: I call on Deputy Ó Laoghaire to respond.

Deputy Donnchadh Ó Laoghaire: There were a few points. First, merely to clarify, what I outlined is a general basis for a definition of harmful communication. The behaviours I enumerated were general behaviours rather than specific offences. They are not necessarily all criminal offences. Some of them are proposed criminal offences from the Law Reform Commission paper. That is for the purpose of drafting this.

My view is that one could consider whether only communications which are at the threshold of being criminal could be subject to take-down procedures and the regulations proposed in

this. That would not be the right approach. There are behaviours which are extremely harmful which probably fall short of criminal and the definition would have to take that into account.

I also believe that if we were to use the word “criminal” specifically in a definition of harmful communications - I am open-minded on this - it would seem that there is a danger that one could be entering into the area of a commissioner being responsible for the administration of justice, which, obviously, can only happen before the courts and through the Garda and all that is constitutionally provided. My initial view is that it would be better to stick with the phrase “harmful communications” but to define that specifically to take in areas that include issues which are criminal behaviour.

There is much that happens online, in terms of abuse and all the rest of it, that would currently qualify as harassment or as one of a variety of criminal offences - for example, stalking - but that often are not progressed to the Garda and the DPP. However, there has to be a category just short of that that should be subject to take-down procedures as well. There is a balance to be struck because one needs to be conscious of freedom of speech but we should not only be dealing with matters that are criminal.

In regard to the platforms, it is a fair point that it would likely be the case in some circumstances that where they see certain behaviours they would refer them to the Garda. However, that would depend on the nature of the communication or the behaviour and, as I say, every harmful communication that we should be looking at should not be at that level because that is a very high threshold and much of what we want to address would fall short of that.

The Minister spoke in terms of what added value was involved. As I said, Facebook states it sees great benefit in a single office having the ability to oversee and co-ordinate efforts to promote digital safety. If one is in the space that one is talking about where self-regulation is no regulation and we are going beyond that, then one needs something that is a regulator. This is, essentially, what we are talking about here. If one has a regulator or a commissioner of this kind, it must have real powers. If it has those real powers and is involved in taking down harmful material, intervening with platforms and perhaps, occasionally, having to go to the court to see measures enforced, but it is dealing with that kind of responsibility all the time, then it makes sense. This commission will be the body at the front line of developments in and behaviour on social media and those working for this body will be the first to see the dangers that exist with new platforms or new uses of the platforms and it is right and proper that they would be responsible for co-ordination.

That is not to say that every person who is dealing with online safety in any Department or body needs to be subsumed into it. That is not the case but the commission may need to be the central body for co-ordination and designing policy, and identify issues arising in different platforms and their use. Of course, it is the case that there should still be staff in the Department of Education and Skills, in whatever form that Department may see fit, who would be responsible for addressing this and identifying how this material is worked out through the schools. However, they should be talking to a digital safety commissioner and asking what has been happening recently, what are the new platforms, etc. That is the dialogue that needs to happen. The Ombudsman for Children can have a role in communication but the direction and formulation of research and analysis of what is harmful and what the best way of dealing with it should come from the digital safety commission.

In relation to Deputy Dooley’s points on strengthening powers and on fines and penalties of that kind, I am open-minded in that regard. It is a power that exists in the Australian eSafety

Commissioner and in Netsafe in New Zealand and that is something that is well worth considering. I would be interested in the Minister's views on that. However, if one has a commissioner, it is important not only that he or she has powers to remove material but that, if he or she is not getting co-operation from those platforms, the commissioner can sanction them, not only through the revocation of their certificate of compliance which is an incentive to an extent because it allows parents and users to identify what is safe and what is not but - there is a case for going beyond that - through sanctions, such as fines.

The point has been made in terms of Europe. I recognise a great deal is being considered here but there is nothing in European legislation of which I am aware that precludes us from doing this. If we are talking about proposal formulations that Europe is currently considering, European legislation can take eight or nine years. There is no sense in us waiting. I believe there is a consensus in this country that this is something that needs to be proceeded with. We need serious regulation. Self-regulation needs to be brought to a close. We cannot afford to simply stand around and wait for Europe to take action and see what it comes up with because we could be waiting a long time.

On the point on jurisdiction raised by Deputy Stanley, as I stated at the start, what is proposed, first of all, by the Law Reform Commission, is not particularly radical in terms of extra-territorial effect. It is limited to situations where harmful communication affects an Irish citizen or a person ordinarily resident in the State and the means of communication used in connection with that harmful communication is in the control of an undertaking or company established under the law of the State or such harmful communications affect an Irish person or a person ordinarily resident in the State where the means of communication used in connection with such harmful communications are within the control to any extent of an undertaking established under the law of another state or where a court established in this State would have jurisdiction to give notice of service outside the State in respect of civil proceedings to which harmful communications refer. That is in keeping with Order 11D of the Rules of the Superior Courts 1986 and many other areas of the rules of the courts. As I understand it, this is standard enough. Certainly, there is no great difficulty in bringing cases. I suppose it is fair to say it may be difficult in practice pursuing persons on foot of proceedings brought before the court but there is no difficulty in what I have outlined here in the ability of the proposed commissioner to bring proceedings, which is absolutely possible.

In summary, I will make two or three final points. As I outlined, I believe there is a consensus that self-regulation is no regulation. That is the case across a wide range of sectors. It should be the case here. It is an issue that affects an ever-growing percentage of the population. We need to be ambitious and imaginative. Other common law jurisdictions, such as Australia and New Zealand, have put in place robust regulators and commissioners with real teeth. There is no reason, in another common law jurisdiction such as ours, that we cannot do the same. We need to do that.

I am not sure whether the Minister stated it clearly so I take this opportunity to ask him whether he favours, in general, whatever about the technicalities and details, putting in place a commissioner or an office of regulator of the kind outlined here.

Chairman: As well as working on national issues, it would be remiss of this committee not to work and push this agenda at a European level. We need to examine what we should do in Ireland and we could lead in that space but we cannot ignore the need to work at a pan-European level. Given how long it takes to move things along in politics generally, we must not ignore our European neighbours in pushing something like this forward.

Deputy Timmy Dooley: I have a question for the Minister and Deputy Ó Laoghaire. What is the timescale for this legislation? We have some more work to do.

Deputy Donnchadh Ó Laoghaire: The Minister might be able to answer that better. We are doing this pre-legislative scrutiny and we need to consider the details that arise. We should have Committee Stage of the Bill in the spring and then progress beyond that. While we have to take stock of the issues raised in these hearings, I do not see any reason not to proceed with the legislation.

Chairman: We have meetings scheduled over the next few months. Our next meeting, on 6 November, will be with representatives of social media platforms, the Irish Society for the Prevention of Cruelty to Children, ISPC, the Department and Cybersafe Ireland. We will have to see how we go and try to work as effectively and robustly as possible on this.

Deputy Richard Bruton: To answer Deputy Ó Laoghaire directly, there is clearly a regulatory task to be done if we are moving from self-regulation to a system of oversight. Someone needs to oversee this, as has been clear from everything I said. The Deputy is correct to anticipate that this will go beyond criminal offences. There is already a liability for criminal offences and a responsibility to remove material from websites and failure to do so will be exposed. This is moving into a realm beyond the criminal and to where we believe it is in the public interest. Deputy Dooley articulated that in some of the examples he cited.

A corollary of that, however, is that if we are discussing the introduction of fines, as Deputy Dooley is, we must set out the potential offences for which people could be fined. The more we go down a route of imposing penalties, the more important it is to define what harmful communication represents and what is the category in which we are creating this obligation. It is important to bear that in mind.

Facebook may like the idea of having one digital safety commissioner. However, would we ask Facebook what is the best way of providing resilience to students in our schools or would we ask that question of the National Council for Curriculum and Assessment, NCCA, whose membership includes trade union officials, curricular experts and others with experience of implementing policy? Would we cut out Webwise, which is on the cutting edge in terms of what it is doing, or wait for someone else to tell it what to do? Deputy Stanley noted the importance of having someone who is accountable. In the structure we have now, accountability goes from the Taoiseach down through the Ministers. There is an action plan we have to deliver and we will be held to account in each Department for that delivery. Each Department has its responsibility and a timeline for delivery. It is not the case that no one is being held accountable.

Deputy Brian Stanley: Could I say-----

Chairman: Please allow the Minister to finish.

Deputy Richard Bruton: In our desire to show that the Oireachtas is serious about online safety, we need to be careful because setting up some central body is not always the correct approach. It is important for the regulatory task that we have someone who regulates and delivers on that. It is not necessarily true, however, that we need to put a sign on someone's door and then state that is where people go if they want digital safety. We need all of these people working together effectively, delivering a suite of programmes and working across the silos, as I said. More thought needs to be given to what this role will be. When this was drafted, the Ombudsman for Children may have been considered to be at the cutting edge in terms of informa-

tion about this issue. Webwise, the NCCA and others would now be considered cutting edge. Under this legislation, Webwise has to ensure there is integration across its curricula and it has to be conscious that it is being asked to develop the primary and secondary curricula. There is a well-being curriculum in place, which has, at its heart, helping people to become resilient in dealing with social media and threats that come their way. Much work has been integrated into what has already been done. I caution against the view that hanging a sign on someone's door will solve the problem. The solution to the problem is doing the daily work under the bonnet.

Deputy Brian Stanley: I want to clarify briefly what I meant.

Chairman: I ask Deputy Stanley to be brief.

Deputy Brian Stanley: I do not wish to demean or diminish the cross-departmental work that is taking place. There is a role for this work. I do not question the Taoiseach's ability to hold people to account for interdepartmental and intra-departmental responsibility. Realistically, however, given everything else a head of Government has to deal with, the Taoiseach will not deal with the minutiae of this issue.

I know where the Minister is coming from, which is at the nub of this discussion. Interdepartmental work and recommendations from different Departments, specifically the Departments of Education and Skills and Children and Youth Affairs, are very important. I envisage that work feeding into the work of the digital safety commissioner and links being made. I am not demeaning anything that is happening, but it would be unrealistic to expect any Taoiseach to try to draw this work together, ensure it is done and keep it moving.

Deputy Richard Bruton: To get anything done, what is needed is the authority, budget and will to do it. What the Taoiseach would do is enforce the will of the Departments to do it. In regard to the other two elements of money and powers, these are set out in the NCCA and the budgets allocated to the Departments of Education and Skills and Justice and Equality. Getting things done requires having the tools of power to deliver. A digital safety commissioner could perform the regulatory role but that office would not have the power, budget or legislative underpinning to do many of the things that need to be done. I ask the committee to consider that.

Chairman: Does Deputy Ó Laoghaire want to come in?

Deputy Donnchadh Ó Laoghaire: This has been a good discussion in which a fair few issues have been outlined. I am looking forward to the next session because it will be very interesting. To boil down the point made by the Minister, he seems to be arguing that self-regulation is no regulation, which is fair enough, but also that the regulator should not be involved in the advisory or policy side of things. That does not seem to me to be-----

Deputy Richard Bruton: Advisory would be fine but execution and co-ordination is for somewhere else.

Deputy Donnchadh Ó Laoghaire: Execution is not necessarily envisaged for the regulator. It is for those who have the powers of statute. The co-ordination and development of policy is something else. These matters can be considered further. The people who want to see changes are engaging with the social media platforms. None of that is to say that Government agencies and Departments would have no responsibility. It would be an issue of ensuring co-operation and communication between them. If there is to be a regulator, it needs to have the ability to feed in to all those other bodies and people with responsibilities about what is happening, what changes are developing and how best to respond to them.

Chairman: I thank Deputy Ó Laoghaire for attending today with his Bill, as well as the Minister, Ms Quill and Mr. Ó Broin. It has been a worthwhile engagement and we look forward to interacting with them over the weeks and months ahead.

All the opening statements will be published on the committee website. Is that agreed?
Agreed.

The joint committee adjourned at 3.40 p.m. until 11 a.m. on Tuesday, 6 November 2018.