

21.03.02

3 Deputy I. Gardiner of St. Helier of the Chief Minister regarding legislation to address cyber-abuse, cyberbullying and online trolling (OQ.65/2021):

Will the Chief Minister advise what plans, if any, the Government has to introduce or enhance legislation in the Island regarding online safety, including measures to address cyber abuse, cyberbullying and trolling?

Senator J.A.N. Le Fondré (The Chief Minister):

Jersey has legislation in place that addresses cyber abuse including cyberbullying and the police consider they have the powers to prosecute where appropriate. This legislation was updated in 2016 to ensure it remained fit for purpose in light of rapidly evolving technology and consumer behaviour. I hope all Members, however, will join me and everybody in roundly condemning the abuse that has been received by both the Deputy and other Members. The Deputy will also be aware the Deputy of St. Peter has proactively been looking at this area and the preliminary conclusion of his work is that everyone, including the police, potential victims and potential offenders, could benefit from greater clarity regarding what is legal or illegal, the recourse victims have and the consequences perpetrators could face. I am therefore in the process of instructing officers to work in consultation with the police and the relevant department to put in place new guidance designed to offer greater clarity and certainty and therefore greater protection to Islanders. Separately, Members will also be aware of the work commissioned by myself, which is presently being set up and will be led by Deputy Perchard, specifically on social media and young people which will proceed parallel to this area.

3.3.1 Deputy I. Gardiner:

In the cyber world verifiable report of the abuse of bullying exists, which does not always exist in the world of normal conversation or dialogue. Why is it so much more difficult to enforce laws in the virtual world?

Senator J.A.N. Le Fondré:

I think we are getting into a legal area, which is definitely not my area of expertise. I am not too sure I am particularly qualified to answer that question other than I believe - and this is my guess - that may very much depend on the jurisdiction and where the data is held. I would imagine it is at least one area that requires clarity within the laws. As I said, the advice we have had to date, and the piece of work the Deputy of St. Peter has recently undertaken, is that we put in place some greater guidance which does offer greater clarity and certainty to Islanders. In other words, enabling them to understand their rights and the abilities that they can do under our existing laws.

3.3.2 Deputy L.M.C. Doublet of St. Saviour:

Given the disproportionate impact of many of these crimes on women, including revenge pornography which, as I understand, is currently covered by the Telecommunications Law - but not sufficiently covered - but given these disproportionate impacts will the Chief Minister ensure that the work in this area takes a gender sensitive approach please?

Senator J.A.N. Le Fondré:

As far as I am concerned, all bullying in this area is reprehensible therefore all those areas should be treated with the appropriate levels of sensitivity.

3.3.3 Deputy L.M.C. Doublet:

Does the Chief Minister agree that I think he needs to go and look up the term “gender sensitive” because from my point of view it is not acceptable that that response is still being given, given the moving on of understanding of such terms? Would the Chief Minister perhaps look at that term and then come back to me with an answer?

Senator J.A.N. Le Fondré:

The point I am making is that, as far as I am concerned, I do not care what gender, trait or anything else anybody is displaying if they are being bullied.

[10:00]

I am not going to discriminate in that area. As far as I am concerned, bullying in terms of the social media side that we see particularly is reprehensible. I take the point it does not matter who is on the receiving end of it. If it causes the damage that we refer to then it should be condemned. If there are further things we can be doing on that area we should be doing that. What I said, is that it should be treated sensitively according to the individual circumstances. I take the point the Deputy is making. The point I am also making is that I think it is a wide issue that is shared by many members of the community and therefore that is what we need to be focusing on in an appropriately sensitive way. I do accept the point that the Deputy has made but, equally, I am also making the point that - whether it is male or female - the recipient, if the cyberbullying is of such a level that it causes the damage it causes, then we should be looking at overall the damage and harm that it causes. That is it.

3.3.4 Deputy M.R. Higgins:

It is almost following on from my last question to the Attorney General. We have had trolls for years, some vicious, some who have threatened people’s lives, some who have tried to interfere with the employment of people that they have gone after or their family. Yet they have been reported to the States of Jersey Police and the States of Jersey Police have done nothing. One infamous troll claimed that he had protection ...

The Bailiff:

I am sorry, Deputy, you have spent at least 30 seconds setting out general statements and you have not reached a question. There are a number of Members who wish to ask and we are time limited on each question. Will you ask your question please?

Deputy M.R. Higgins:

Will the Chief Minister speak with the police and find out why they have not been using the law that they have and pursuing these individuals up to now?

Senator J.A.N. Le Fondré:

I am very happy to identify where decisions to charge or to prosecute have not been pursued. One option, for example, would be to request the relevant authorities put in place some guidance on the decisions to prosecute for which, for example, I understand there are examples already existing in relation to domestic abuse. There are also some international examples specifically relating to social media, including U.K. Criminal Prosecution Services’ guidance on prosecuting cases involving communications sent by social media. My understanding is officers have consulted the States of Jersey Police and/or officers and who agree that guidance would be a useful and effective approach. I think that is the initial approach that we would like to take. But after that, if there is further work

that needs to be done I am very happy to direct, for example, the Deputy of St. Peter to expand the work in that area.

3.3.5 Senator S.Y. Mézec:

Does the Chief Minister agree that in clear cases where online communications are made which contain a clear threat of violence and where there is a police statement from the perpetrator admitting that it was them that a prosecution should take place? If he does not agree with that, could he explain what he thinks the point of the law is?

Senator J.A.N. Le Fondré:

The reason I am pausing is because decisions to prosecute and to charge, which may be a field blindingly obvious to us as politicians, it may be less blindingly obvious to the people who have to carry out those prosecutions and charges in terms of the legal backing they have, which is why I have made reference to the issues around guidance as a starting point. In fact I believe we have a debate coming up around ... I cannot remember the exact Article in the States of Jersey Law - I have 43 in my head but I think it is wrong - which does refer to blackmail and corruption. Essentially on the existing Article in there, which is mainly about people threatening and coercing States Members or officers of the States to carry out certain things. I always felt that that is quite a wide Article, as a non-lawyer, and I have always wondered whether that has ever been used in anger or not because it has been there for a very long time but I think that is where we need then to go into the issues around the guidance. But as a principle, it does seem to me that not only States Members but other members of the public, when they are in receipt of such abuse, the way the Senator has outlined, do not seem to have had very much recourse in the past and there is always this balance we know between freedom of speech but equally bullying and worse that I think we are seeing more and more of within the social media sphere. and that is partly as social media has expanded to fill the virtual world.

3.3.6 Senator S.Y. Mézec:

Would the Chief Minister agree that when there are such clear cases with admissions from the perpetrators but still no prosecution is taking place that it sends out a message that in fact that sort of behaviour is acceptable and public officials will continue to have to put up with unacceptable behaviour and put off good people from going into public service so long as people are not held accountable for their actions?

Senator J.A.N. Le Fondré:

Let us be very clear, I agree vehemently with the second half of what the Senator has just said because I think it does put people off in terms of the level of abuse that is sometimes received by people in public service. As I said, in terms of the first part, the decision to prosecute is obviously not a political one and that is why I am being very cautious about not interfering in that area. But equally, it needs to be very clear that in today's world it is not acceptable.

3.3.7 Deputy R.J. Ward:

Given that we have recently taken on much more online work and people's workplaces have gone into their homes, does he see an increasing issue, for example, for teachers and lecturers who have taken the classroom into their home and have more online contact with parents where they may face abuse or bullying. What does he feel should happen in order to protect that section of the workforce?

Senator J.A.N. Le Fondré:

The reason I pause again, I am a bit loathe to focus specifically on a specific part of the workforce over and above everything else. The principles though, where we already have physical notices around in the physical world where we say that abuse to members of staff is not tolerated, and always the type of signs that people see. I think that means there is an education programme further, which now needs to start going into the virtual world. This is, I think, the first step on that. From officer advice that we have received, is to basically put guidance out that does then start covering these types of areas. But equally, I think what the Deputy has said in terms of the blending between the virtual and the physical world, i.e. the workplace coming into the home and vice versa, is causing issues particularly in the context of the pandemic and the strains that it is putting on households, relationships and mental health.

3.3.8 Deputy R.J. Ward:

There seems to be a move to more working online and at home and I would just like the Chief Minister to commit to ensuring that any legislation that comes through addresses those issues to protect people who are taking their workplace into their home.

Senator J.A.N. Le Fondré:

As I said, the first starting point for me is to get guidance out in the right place where people know what can and cannot be done in terms of their rights. Hopefully then also reminding people and starting an educational programme, which is pointing out many people would not say to your face what they are very frequently keen to put on the keyboard.

3.3.9 Deputy I. Gardiner:

First, I would like to thank the Chief Minister for him taking it forward to the guidelines and identifying why the complaints are not going to the prosecution because the public perception is extremely important. I would like also to check if an aspect of cyber abuse, cyberbullying and trolling would be included in the hate crime legislation that is currently being drafted?

Senator J.A.N. Le Fondré:

I am not sighted on the hate crime legislation in terms of the specific areas that the Deputy has referred to. I am very happy to go away and determine the position. As I said, the overall view is that apparently the legislation is broadly fit for purpose - it is already in existence - but it is the guidelines in terms of decisions to prosecute, outlining the areas I have already covered in relation for things like the processes that are already in place for areas, for example, like domestic abuse. That is really the starting point. But if it was felt that legislative change needed to be made, very happy to look at that. I do make the point, and it is really difficult this, and I have to keep reminding myself, personally sometimes as well, that we have to make sure we have the balance between genuine and legitimate free speech, at which point some people do get heated versus online abuse. Sometimes those lines can get somewhat blurred but we have to make sure we do not react the other way and be seen to be trampling on people's basic rights of freedom of speech. That is something we have to keep in our minds all the way through, even though it can be really difficult at times. But as I said, first step is look at the guidance and see what else needs to be updated.