



Written evidence to Justice Committee – Criminal Justice (Committal Reform) Bill

February 2021

Victim Support NI welcomes the introduction of the Criminal Justice (Committal Reform) Bill to the Assembly, and the opportunity to provide comment on the Bill to aid the scrutiny of the Justice Committee.

Reform of committal proceedings have been a key campaign issue for Victim Support NI for several years. We see first-hand the impact that such proceedings can have on victims of crime. This retraumatising impact can be seen in sharpest focus with victims of sexual assault and rape, whose experience of the criminal justice process has been described by some as ‘second rape’ or ‘judicial rape’.¹ Submitting to cross-examination once in the pursuit of justice can be harrowing. We would argue that the practice of holding Preliminary Inquiries (PIs), and forcing victims of crime to give traumatic evidence more than once in an adversarial trial setting, is inhumane. Moreover, we believe it is unnecessary, as can be evidenced from the decision to abolish the practice in other UK jurisdictions.

We recognise that the primary aim of the Department in making this change is to reduce delay. While no one reform can be a panacea for all the ills of the system, and that there is no single magic solution to eradicate delay, removing committal hearings will go some way to making the trial system more streamlined. In short, in our system where every component and stage brings new risk of delay, adjournment and postponement, removing one additional and unnecessary step is a positive development.

We appreciate that other submissions of evidence from legal practitioners and professional bodies will go into the finer detail of the mechanics of this legislation and its clauses. For our part, we wish to focus on our own area of expertise where we can provide added value to the scrutiny of the Committee – the impact on victims and witnesses of crime. For this reason, we will focus our submission on arguments relating to the clauses which abolish Preliminary Investigations and Mixed Committals (Clauses 1 and 2).

Committal hearings and the rights of victims:

Courts can be intimidating places for victims and witnesses. Even with the use of special measures, the thought of having to appear and recount what happened can be highly stressful.

¹ See Gillen Review into the law and procedures in serious sexual offences, May 2019, available at <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

It is essential that justice organisations and systems are set up to minimise the harm we may cause to victims as they engage with the Criminal Justice System. As part of our key role to support victims to effectively participate in the criminal justice system, we have found that the delivery of justice can and does cause further harm to victims of crime. One potential cause of further harm is the Committal hearing process which incorporates giving oral evidence, including via cross-examination, during Preliminary Investigations and through mixed committal proceedings. The cross-examination process is considered by many as the most traumatic part of the trial for victims and the most akin to a rape like experience².

We believe that this archaic process serves only to further intimidate and traumatise victims of crime, in particular victims of sexual violence, and contravenes one of the key aims of the EU Victims Directive to prevent secondary victimisation. It also infringes the positive State obligation under the Istanbul Convention to protect female victims of gender-based violence, such as sexual assault and domestic abuse, from “*intimidation, retaliation and repeat victimisation.*” This includes in legal processes where they seek justice for the harm done to them.

In our experience, which has been mirrored by the findings of the Gillen review and the Department of Justice’s own work on this area, PIs and Mixed Committals are typically used in sexual and domestic violence cases as a means to put victims off continuing with trial. Our Witness Service staff and Independent Sexual Violence Advocates (ISVAs), often report that a victim may be called for a PI, only to turn up on the day and be told that it has been changed to a PE only. Such tactics tend to be used as sexual offences cases tend to have high attrition, and the threat of having to be cross-examined not once but twice may be enough to cause a victim to withdraw from the case altogether. By asking for a mixed committal hearing, defence teams can then wait until the day of the hearing to see if the victim shows up, and may downgrade the hearing to PE only if they do. Whilst the injured party may be spared giving evidence that day, it does not remove the fear and distress victims experience coming up to the case. We would respectfully submit that using such tactics to put people off giving evidence cannot in any way be characterised as being in the ‘interests of justice’.

In those cases where victims are compelled to be cross-examined during a Preliminary Investigation, the process of compelling them to be cross-examined under oath an additional time is gruelling, stressful, and contrary to the rights of victims not to be revictimised by the justice process. The oral committal system adds an additional layer of evidence giving that is utterly unnecessary, not least because of the physical and emotional toll giving oral evidence at this stage of proceedings has on those who already have to live with the after-effects of criminal activity.

In our experience, the committal hearings system in its current form is also a barrier to enabling witnesses to give their best evidence. It is a confusing addition to the trial process, which some victims have endured believing it to be their trial, only to be horrified when told that they have to go through it again at trial. The stress, anxiety and confusion creates an

² Knowles, Georgia (2013) *Evaluating Law Reform Using Victim/Survivor Stories from the Criminal Justice System* Sexual Abuse in Australia and New Zealand, December 2013; 5(2): 40-47

environment in which achieving best evidence is unlikely, particularly if a complainant has additional vulnerabilities to those caused by the crime itself.

The committal hearing system may be intended to test the evidence; however in our experience, the system does not test the evidence but the victim and their resolve to endure the trauma of a drawn out criminal trial with multiple cross-examinations, and this is not and should not be its aim.

The Gillen Review into sexual violence cases 2019, articulately outlines the numerous barriers that exist for victims of sexual violence and recommends the removal of mixed committals. The implementation of this recommendation will help reassure victims and wider public of the government's commitment to increase the confidence of victims in the system.

Committal hearings and the rights of the defendant:

In our view, the effect of this Bill will not be to infringe upon the rights of the accused to a fair trial. Evidence is tested at multiple stages during the criminal justice process, from the PPS's review of the PSNI file and careful decision-making process on whether to prosecute, right through to the trial itself which includes multiple mechanisms to safeguard the accused and their presumption of innocence. Prosecutors are duty-bound by the Code For Prosecutors to act in the interests of fairness and justice at all times, including to hold to the presumption of innocence, ensure fair disclosure of evidence, and be committed to the rights of a fair trial.

The fact that multiple other common law jurisdictions, such as England, Wales, Republic of Ireland and New Zealand, have already abolished oral and mixed committal hearings is indicative to us that they are not necessary to ensure a fair trial or uphold the rights of the accused. On balance, the trauma to victims and the potential for these hearings to be used to pressure witnesses to withdraw from giving evidence presents a much more tangible threat to fairness and justice than their abolition.

Delay and costs:

Committal hearings can last several days, and there is an additional cost to the public purse of running additional hearings. Therefore, it is fair to say that committal hearings are impacting on delay in the criminal justice process.

As stated above, the case is tested at multiple other points, including before a case reaches the point of committal hearing. When a case comes forward the PPS will already have considered the evidence and information available. Further testing of the evidence is unnecessary, slows the process down and suggests that the PPS has not done its own work

in ensuring that both the Evidential and Public Interest Tests are met.³ Having met these tests it seems wholly unnecessary to test the evidence again through a PI when it can be tested at trial. The fact that so few cases are dismissed at this point would indicate that the PPS are appropriately adhering to these guidelines.

For further information about this response, please contact:

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³ Prosecutions are initiated or continued by the Public Prosecution Service only where it is satisfied that the Test for Prosecution is met. The Test for Prosecution is met if: (i) the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test, and (ii) prosecution is required in the public interest – the Public Interest Test.