



## **Written evidence to Committee for Justice – Justice (Sexual Offences and Trafficking Victims) Bill**

**24<sup>th</sup> September 2021**

Victim Support NI welcomes the introduction of the Justice (Sexual Offences and Trafficking Victims) Bill, and the opportunity to provide evidence to aid the scrutiny of the Justice Committee.

In the course of our work, we support victims of sexual violence and abuse, including both adult and child victims. In particular, our Children’s Independent Sexual Violence Advocates (ChISVAs) support child victims of sexual violence and abuse, providing advocacy and support as they engage with the criminal justice system. Our Witness Service offers support in every criminal court across Northern Ireland to all victims of crime, including victims of sexual crime. Through our Community Service, we offer support in the immediate aftermath to anyone who has been victim of sexual crime, and work closely with colleagues in across the voluntary sector to ensure that victims are given the right support when they need it.

We wish to note our disappointment that the Bill as introduced is not the full Miscellaneous Bill envisaged by the Justice Minister. It is now 2 years and 4 months since Sir John Gillen delivered his report and recommendations on how the law and procedure in dealing with sexual offences. In the intervening period, thousands more people in Northern Ireland have become victims of sexual crime.<sup>1</sup> Those victims deserve a system that is able to deliver justice and capable of doing so without revictimizing and retraumatizing its most vulnerable participants.

We welcome that the Minister has committed to bringing a further Miscellaneous Bill to the Assembly at the beginning of the next mandate, and we urge all parties to work together to ensure that the provisions of the bill are for the utmost benefit of victims of crime.

This submission does not purport to examine the finer legalistic detail of the mechanics of this legislation and its clauses. For our part, we wish to focus on our area of expertise where we can provide added value to the scrutiny of the Committee – the issues relevant to victims of crime.

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<sup>1</sup> For instance, PSNI Recorded Crime bulletins spanning from August 2019 – July 2021 (which is the latest available statistics), show that 7,012 reports of sexual crime were reported to the police, including 2,080 rapes. This figure is the tip of the iceberg, with no doubt many more sexual crimes committed against victims who have felt unable to report.

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## Clause by Clause analysis

### Clause 1: Upskirting and Downblousing

- Victim Support NI welcomes the addition of this clause to the Bill. It will address the gap in the law that to date does not specifically criminalise such invasive and abusive behaviours.
- We welcome that the amended section 71A(1) does not require a recording to have been made for an offence to be committed.
- In clauses 71A(1)(a) and 71B(1)(a), we seek clarification on whether the phrase “operates equipment” would effectively cover a scenario in which a mirror or reflective material is placed under a skirt or over a blouse in order to facilitate viewing of a woman’s genital area or breasts. We recommend that the definitions within the law or within accompanying guidance are clarified to ensure that the offence covers such conduct.
- In terms of 71A(3) and 71B(3), we would ask the Committee to consider whether proof of specific intent for sexual gratification or humiliation is necessary if an act of upskirting or downblousing has been carried out and it has been established that consent was not given.
- That said, we welcome that the intent in the offence is not only limited to obtaining sexual gratification whether for the person committing the act or another person, but also humiliating, alarming or distressing the victim. Sexual offences, particularly against women, are often conducted with an intent to debase and humiliate either primarily or as well as for explicit sexual gratification. The reinforcement of patriarchal power dynamics are often motivation for sexual offences, including upskirting and downblousing.
- We would ask that the concept of humiliation, as included at 71A(3)(b) and 71B(3)(b), be defined in guidance to include humiliation of a person where they are not aware of the humiliation and affront to their dignity that has taken place. Without such definition there may be a risk that a defendant may escape criminal liability if they argued that their intention was to “have a laugh” by showing others upskirted or downbloused images to others, even if the images were taken without consent and the feeling of violation of a victim’s dignity and bodily autonomy existed even without an express intent for that victim to find out about the images and feel humiliation and distress. The following example highlights the potential issues that may arise if this is not clarified:

*John and Sandra are both 18. They used to date. One evening while they were out at a pub John covertly took a photo of down Sandra’s top without her consent. Sandra’s friend Nancy caught him in the act and told Sandra what he’d done, and she reported to police. Sandra felt completely shaken and violated that John had taken the photo without her consent. John claimed that he and his mates had been having some banter earlier that day, and John told them that Sandra had a wonky left breast that included a misshapen nipple. John stated that the reason for him taking the photo was to*

*prove his claim to his disbelieving friends and win a bet. John insisted that the photo, while taken without consent, wasn't intended for the express purposes of sexual gratification. He said he couldn't have intended to cause her humiliation or distress as he had no intention of her ever knowing that he had shared the photo. Regardless, Sandra felt ill at the thought that he had taken the photo of her intimate parts without her consent and with the intention of sharing it with others. The act of sharing the non-consensual photograph was an affront to Sandra's dignity and was an act of humiliating her in front of others, even if it hadn't been intended for her to be aware of it.*

## **Clause 2: Sexual Grooming – pretending to be a child**

- We welcome the proposed legislative amendments. It is essential that Northern Ireland has a strong legislative framework to protect children from grooming, and the proposed amendments will address existing gaps to that framework.

## **Clause 3 / Schedule 2, Part 1**

- Victim Support is pleased to see the move to remove the terms “*child pornography*” and “*child prostitution*” from our laws. These terms are outdated and fail to recognise the reality of the offences, which is that they are in fact child sexual abuse and rape / modern slavery.

## **Clause 4: Extended anonymity of victims**

- We welcome the proposed amendment to extend anonymity of victims to 25 years after death. This move will recognise the inherent dignity of victims of sexual crime and their rights to dignity and privacy should they wish it even after death. Sexual crimes require victims to recount intimate details about what happened, a process that can often be accompanied by a sense of humiliation and further violation. This clause will offer victims the privacy and reassure they may need to participate in the justice process.

## **Clause 6: Increase in penalty for breach of anonymity**

- We welcome the inclusion of this clause within the bill. Victim anonymity is often necessary to prevent withdrawal from the justice process and preserve the dignity and privacy of victims, and it is vital that the law is clear that breach of anonymity will not be tolerated.
- Our world and how we communicate within it have evolved swiftly in the last decade, and the avenues for breach of anonymity have multiplied. So too have the impacts of breaches – whereas in years gone by a mention in a newspaper might expose someone's identity to its local readership, today's breaches on social media can expose

a person's identity to a global audience. The evolution of social media, including 'private' groups that can nonetheless contain thousands of members, has made sharing of information about someone's identity both easier to do and easier to deny direct culpability if one is 'only sharing or retweeting a post of another stranger'. Stronger sentencing will disabuse people of such notions that they are not complicit in breaking the law, and will go some way to reforming the online culture which sees people commit such acts without feeling the weight of responsibility for their consequences.

### **Clause 8: Restrictions on reports as to suspects of sexual offences**

- We support this clause, and believe it strikes the correct balance between the rights of the accused and those of victims. This is the conclusion that Sir John Gillen reached in his consideration of the matter during his review of the law and procedure on sexual offences.
- There is a need to balance the presumption of innocence and the impact that accusations of sexual assault and rape have on the accused, while also recognising that victims need support to come forward and report. Victims often fear that they will not be believed and therefore often do not report. This belief is often grounded in reality, especially if a perpetrator is deemed to be a respected member of the community with high social standing, or the victim has a history that may be considered 'problematic', such as drug addiction. In fact, predatory perpetrators often choose their victims on this basis, as it reduces the risk of that victim reporting or being believed. It is often not until multiple victims have come forward that society lends credulity to accusations. One must only look to the conduct of powerful men like Harvey Weinstein, who operated with impunity until multiple victims stepped forward to tell their stories. Those women would undoubtedly never have done so if Weinstein's identity was protected even after charges were brought. For these reasons, we believe that the Gillen recommendations have struck the right balance by recommending anonymity for the accused up to the point of charge.

### **Clause 15: Serious sexual offences: exclusion of public from court**

- We welcome the move to exclude the public from court in sexual offences trials.
- Excluding the public from sexual offences trials will not only encourage more victims to engage with the justice process, but will further protect the anonymity of victims in this small jurisdiction.
- We appreciate that this clause limits exclusion of the public to Crown cases only, as recommended by the Gillen Review. However, we suggest that further consideration could be given to extending the exclusion clause to all sexual offences. The impact on victims of what may be considered 'minor' sexual crime can be significant even for what may be considered on paper to be more 'minor' offences, and the intimate detail of more minor offences can nonetheless be a cause of discomfort and embarrassment

for victims. If the aim is to lower attrition rates and protect victim anonymity, a blanket exclusion may be more effective in achieving these aims.

- Under 27A(2), we recommend that it is explicitly stated that support workers such as Victim Support's Witness Service, Sexual Offences Legal Advisors (SOLAs), and NSPCC Young Witness volunteers, and other relevant support staff and victim advocates are included as exempted persons. While these roles may arguably fall under officers of the court, it would remove ambiguity if they were explicitly recognised, for instance in the explanatory memorandum. These workers provide an essential support function for victims and prosecution witnesses, especially in cases where victims are vulnerable or requiring additional support.

### **Clause 16: support for victims of trafficking etc**

- We welcome the extension of provisions to those who are victims of slavery, yet might not meet the specific criteria to be considered 'trafficked' eg via movement from one place to another.

### **Clause 17: reporting**

- We support this change. It is reasonable for reporting to take place over a 3-year period, as it is less administratively burdensome and also allows for a more longitudinal assessment to be made of the functioning of the law while still requiring regular monitoring.

### **Clause 18: Qualifying offences for sexual offences prevention orders**

- We welcome the expansion of SOPOs to cover offences under Article 68 of the Children (Northern Ireland) Order 1995, to provide enhanced protection to looked after children at risk of sexual harm.

### **Clause 19: Time limit for making violent offences prevention orders**

- Dis-applying the time limit will make VOPOs more workable, and also fit better with the reality of how sexual offences are reported. It is frequently the case when someone has been victimised and abused that they do not immediately report, even if they are in danger.

## **Additional proposed amendments**

### **Abolition of the rough sex defence**

- As we noted in our consultation response to the Department of Justice, it is clear that the so-called ‘rough sex defence’ is being used in courts across the UK, including in Northern Ireland, both in cases of serious physical harm and in cases where victims are killed. The law as developed in case law has clearly not adequately resolved this issue to date. Therefore, we welcome proposals that would prevent such a defence from being relied upon.
- Although there is a body of precedent that technically already prohibits such defences from being used in some circumstances, it would be valuable to codify this principle.
- As noted by Laura Farris MP in the Commons debate on the GB Domestic Abuse Bill in July 2020:

*“R v. Brown, the authority for this issue, which is nearly 30 years old, does not cover consent in all forms of sexual harm. There are other cases—contradictory cases—that can be applied, and we saw that pretty starkly in the case of Natalie Connolly, where R v. Brown was applied, but only in part. When it came to her internal injuries—the ones that were the most savagely inflicted, the most serious and the most proximate cause of death—the court applied a completely different case and concluded that the violence in that context was lawful. That could not happen under new clause 20, because it rules out the possibility of consenting to any serious harm for sexual gratification, and the inconsistency goes.”*

- However, we are aware that the approach to codify *R v. Brown* alone may not resolve the problem of a claim of ‘rough sex gone wrong’ being raised in murder cases. It is already not legally possible for someone to consent to their own death; however the question of consent to ‘rough sex’ may still be raised by Defence as evidence of lack of intent. As intent is a required element of a murder charge, the current proposals will not change the possibility that a ‘rough sex defence’ might still be raised during a murder trial, potentially resulting in the downgrading of murder charges to a form of manslaughter. We would point out that shortcomings of the English approach on which the Northern Irish consultation was based are now emerging.<sup>2</sup>

### **An extension to existing revenge porn provisions to include a threat of publication**

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<sup>2</sup> [Men are inventing new excuses for killing women and judges are falling for them | Catherine Bennett | The Guardian](#)

- We warmly welcome this proposed amendment, and agree that it is necessary to rectify an important gap in the law. In line with other changes to phraseology to better

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suit the crime and avoid stigmatisation of victims, we recommend the phrase “imagebased sexual abuse” is used instead of “revenge pornography”.

- We note that the recently introduced legislation in the Republic of Ireland on sharing of explicit photographs does include threats and attempts. It also doesn’t require victim and perpetrator to be in a relationship for the law to apply.
- Victim Support NI has supported a female victim who has been directly affected by the gap in the law. We include her anonymised case study below in the hope that it is useful to the Committee when considering this proposed amendment:

*‘Valerie’ and ‘Pete’ (not their real names) were in a relationship for a number of years. 4 years after they broke up, a close friend told Valerie that videos and images of her lying unconscious on the bed with Pete performing sexual acts on her had been shared on a local porn site.*

*Valerie reported the matter to police immediately and was asked by police to download the images so they could investigate. At this time Valerie was in a relationship with Ben and sought his assistance in helping to download the images. Ben downloaded the images onto his mobile phone and these were shared with police. Police determined there was insufficient evidence to charge Pete.*

*Following the break up of Valerie and Ben’s relationship, Valerie alleges that Ben, who had retained the images and videos on his mobile phone, hacked her social media account and made explicit threats to disclose the images to Valerie’s parents. Valerie contacted police who informed her that no offence had been committed as there is no current legislative provision which allows them to investigate threats to disclose. This has caused Valerie a great deal of anxiety, she has a history of mental health issues which have been exacerbated by this threat, she now finds herself unable to work and has had to resign from her job.*

*‘Valerie’ has indicated that she would be willing to share further information about her experience should it be helpful as she is very keen to see the law in Northern Ireland reflect that in Republic of Ireland and England & Wales.*

### **Provisions to widen the scope and strength of the current law on abuse of trust**

- We welcome this proposed amendment. As was highlighted by children’s support organisations during the initial consultation on this issue, there is a gap in the law to ensure the safeguarding of children & young people. Extending abuse of trust laws to others in a position of power such as sports coaches or group leaders will close that gap and strengthen protections for vulnerable young people.

## Further comments

As we have already noted, there are a number of issues that have not been dealt with in this Bill that would warrant consideration. We are keen to stress that we do not wish for such consideration to delay the bill or result in it failing to pass by the end of this mandate. Below is a list of potential amendments that the Committee may wish to consider for this bill or, failing that, to commit for inclusion in a Miscellaneous Bill at the earliest opportunity in the next mandate:

- Provision for victims representatives (SOLAs) to have right of audience to address the court, as per Gillens recommendation.
- Provisions to implement Gillen recommendations on juror responsibility and confiscating jurors' electronic devices.
- A provision to repeal Section 5 of Criminal Law Act 1967, at least in sexual offences cases, which the Gillen Review also recommended.
- We would also draw the Committee's attention to the Gillen recommendations around mandatory training for legal practitioners. We appreciate that primary legislation is not the best vehicle for bringing in mandatory training. However, in the absence of cooperation of the relevant bodies on this matter, it may be important to consider as an alternative route in the future to implementing this recommendation.

We would also restate that many of the issues raised in this Bill are addressing criminality which occurs primarily, though not exclusively, against women. The reasons for this are myriad, and are inextricably tied in with wider societal prejudices and patriarchal views about women and girls. To truly tackle these crimes, by preventing them happening in the first place, Victim Support NI is of the view that a Violence Against Women and Girls Strategy will be key to tackle gender-based violence's root causes.

### For further information, please contact:

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