

FROM THE OFFICE OF THE JUSTICE MINISTER



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Room 242
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24 August 2020

Dear Christine,

DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL

Thank you for your letter of 28 July 2020 in which the Committee sought information relating to the Review of the Law on Strangulation and the delivery of the proposed advocacy service for victims of domestic and sexual abuse.

As regards the first issue, the *Review of the Law on Strangulation*, the Committee has specifically asked for:

- (i) a copy of the draft terms of reference of the Review of the Law on Strangulation;
- (ii) clarity on who is involved in the expert reference group and what sectoral interests are not currently represented on it; and
- (iii) information on the make-up of the Review Board being set up to oversee and steer the work of the Review will be.

I attach a copy of the draft terms of reference at **Appendix A**. The Committee may wish to note that consideration of the so called "rough sex" defence will form part of the review. This element has been added in light of the recent move, by way of a

Government amendment to the Westminster Domestic Abuse Bill, to outlaw the defence in cases of serious injury or death. It was considered appropriate that the Department should seek the public's views on whether similar legislation is needed in Northern Ireland, and that this was an appropriate opportunity to consult due to the obvious synergy with the strangulation law review.

The expert reference group to assist with the Review includes representatives from:

- the Department
- Cara-friend
- HEre NI
- Men's Advisory Project
- Northern Ireland Human Rights Commission
- Northern Ireland Association for the Care and Settlement of Offenders
- Public Prosecution Service
- Police Service of Northern Ireland
- Rainbow
- Victim Support NI
- Women's Aid local representatives
- Women's Aid Federation NI

The Department noted the important contribution HEre NI, Cara-friend and Rainbow could make, having followed the Committee's evidence sessions. The organisations were approached and freely agreed to join the group. The Department wishes to have a balanced and inclusive review and is pleased to welcome these new members to the group.

The Review Board, which will oversee the work of the Review, will be chaired by Brian Grzymek, Deputy Director Access to Justice Directorate, and will include senior members representing PSNI, PPS, PBNI, as well as senior Departmental officials with responsibility for policy on victims and witnesses and domestic abuse.

Turning to delivery of the *proposed advocacy service*. Committee members raise specific points regarding: the Department's engagement on a consortium arrangement; the barriers to reaching agreement of parties involved; and they ask whether the Department would be prepared to re-engage on this issue. The following information seeks to address these specific points and I hope it is helpful in clarifying the Department's position.

At the beginning of the development and consultation phase of the advocacy proposal, officials established a dedicated working group of key voluntary sector organisations who could assist in progressing its proposal. Specifically, the Department chose organisations who it considered could possibly form part of a consortium arrangement in delivering the new service and who could best inform, develop and refine a working model. The organisations involved in the working group were Men's Advisory Project, Nexus, NSPCC, Victim Support NI and Women's Aid Federation NI.

From the outset, the Department stipulated the preference to deliver the service via a consortium arrangement which would involve establishment of a grant agreement in terms of its management. The Department believed that such an arrangement would enable a degree of flexibility in how the service could be shaped, grown and managed going forward.

The Department consulted extensively on all aspects of its proposed model, including on the role of the advocate, holding collective meetings of the group, separate meetings as required with individual members and with those existing support service workers currently employed by both Women's Aid NI (Criminal Justice Support Worker, Domestic Abuse Support Worker, Independent Domestic Abuse Advocate) and Victim Support NI (Independent Sexual Violence Advisor pilot). Officials also held a dedicated workshop, which also included PSNI colleagues to help inform discussion.

Following a six month period of consultation on the proposal, the Department tasked the working group to consult independently on how a consortium arrangement could operate in practice, including identification of associated costs. Officials also asked that

the group identify a lead agency who would be responsible for leading management and delivery of the service on the part of the consortium going forward. It was important that a lead was identified and agreed collectively within this group as it was not a decision that could be taken by the Department.

Several meetings of the working group were held from the point of commissioning this work in July 2019 and an extended period for an expected response (which was to be received during the autumn) was agreed by the Department at the request of the group. In December 2019, the Department was informed that the voluntary sector organisations could not reach agreement on which organisation should lead any consortium. Both Women's Aid NI and Victim Support NI were keen to take up this role. Despite intervention by the Department to resolve this matter agreement could not be reached and in late February 2020, Victim Support NI, on behalf of all working group members, wrote to the Department to advise that a consortium could not be formed.

The Department is disappointed in the decision taken by the working group and has, therefore, no alternative but to proceed with a procurement process in order to secure a service provider to deliver the new service. In the circumstances, this is considered the fairest way to those organisations who may have expressed an interest. To do otherwise and have selected a service provider, in the absence of an independent selection process, could also have been subject to legal challenge. We also considered it unfair to victims if we were to further delay development of our proposed support service.

As has been highlighted, the Department has consulted extensively with all parties involved in the consortium development process and whilst it is disappointed that no agreement could be reached, it does not consider that any further negotiations would help resolve the issue at hand. Both Victim Support NI and Women's Aid Federation NI are keen to lead the consortium and the position on this will not have changed.

In a bid to progress the matter, the Department is currently making relevant preparations in progressing procurement for the new service. A robust specification

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document is currently under development and we are also engaging with Central Procurement Division, in the Department of Finance, on timetabling. It is hoped that a service provider can be appointed by the end of 2020, with a view to introducing the new service as early as possible in the new financial year.

While the previous update to the Committee advised that “with a tender process, there can be no guarantee that the service will be awarded to a local organisation” we would fully expect that relevant key local voluntary organisations, particularly those with whom we consulted, will make an application to deliver the service. It is possible, therefore, that one of them could be successful. This will however, obviously, be outside the control of the Department in terms of the outcome of the tender process.

Further to the written update provided to the Committee on the initiative, I thought that it may be useful to provide members with some further detail on the proposed service, this is attached at **Appendix B**.

Departmental Assembly Liaison Officer (DALO)

Enc. Appendix A and Appendix B

Strangulation Legislation Review: Terms of Reference
Introduction

1. The offence of strangulation is most often committed in the domestic abuse context but may also be committed as a standalone offence.
2. The offence is found at section 21 of the Offences Against the Person Act 1861:
“Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall by any means calculated to choke, suffocate, or strangle, attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life . “
3. It is an indictable only offence, carrying a maximum sentence of life imprisonment, but can only be prosecuted if there is evidence of intention to commit another indictable offence.

Background to the Review

4. In its June 2019 inspection report “No Excuse: Public Protection Inspection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland”, Criminal Justice Inspection Northern Ireland (CJINI) recommended that:

DoJ should review, with input from relevant stakeholders, how potential inadequacies in current legislation regarding the act of choking or strangulation by defendants could be addressed.

5. The Department of Justice convened a working group and carried out early scoping work late in 2019/early in 2020.
6. Following the return of the Northern Ireland Assembly the issue has been aired with the Justice Minister who has commissioned a full review to identify and address any inadequacies in the current legislation.
7. In June 2020 a Government amendment to the Domestic Abuse Bill before Parliament sought to outlaw the “rough sex” defence, to ensure that a person may not consent to being seriously injured or killed in the course of consensual sexual activity.

8. In light of the potential for this defence to be raised in strangulation cases, the need for similar legislation in Northern Ireland will also be considered in this Review.

Purpose of the Review

9. The purpose of the Review is to:

- a. consider the law in relation to the offence of non-fatal choking, strangulation or suffocation;
- b. consider the need to legislate in relation to the “rough sex” defence;
- c. make recommendations for improvement where appropriate; and
- d. take account of non-legislative approaches already being taken and under consideration and, where appropriate, recommend further steps.

10. Where the review determines that changes to the current arrangements may be appropriate, its analysis and proposals will be subject to public consultation.

11. Following preliminary scoping work, the review will commence in September 2020 and complete its final report with recommendations in the spring.

Proposed advocacy service for victims of domestic and sexual violence and abuse in Northern Ireland.

What is advocacy?

Advocacy involves the provision of support to victims or potential victims in the form of access to a range of information and signposting to available services, as well as risk assessment and safety planning. It helps with understanding of the various processes involved, with advocates acting as a lynchpin to ensuring victims remain engaged in the process. The role is designed to be non-judgemental and impartial in approach. Key roles for an advocate will be to:

- act as a first point of contact for victims of domestic and sexual violence and abuse to enable them to better cope with the aftermath of that crime.
- assess individual need and risk and develop a safety support plan tailored to individual need.
- offer accurate, timely, non-judgemental and impartial support and signposting information in relation to domestic and sexual violence and abuse (on issues such as housing, health and wellbeing, safety planning, welfare rights, benefits and encouraging victims to report crimes/incidents to the PSNI etc.).
- provide guidance and information, referring victims on to other statutory and non-statutory agencies for specialist support as appropriate.
- help maintain and encourage engagement of victims experiencing domestic and sexual violence and/or abuse within the criminal justice system.

Development of advocacy framework

To assist development of a suitable framework, and the level of service needed in Northern Ireland, a comprehensive scoping study was carried by the Department to determine the availability of support services existing locally, to identify gaps in service provision and to explore how this compared with neighbouring jurisdictions. It concluded that dedicated support across Northern Ireland is disparate with inconsistencies in the level of support offered across gender, level of risk and location. Further afield, whilst significant resources are being invested, there is no standardised support service existing across the neighbouring jurisdictions. Whilst there is some commonality in service delivery approach, each area within these larger geographies has established services according to financial resourcing available and on a commissioning basis, which makes overall delivery somewhat inconsistent.

Following development of a draft framework proposal, the Department consulted extensively with statutory and voluntary partners to establish a suitable service for both domestic and sexual violence and abuse victims, proposing management by a consortium of key voluntary partners.

Extent of the advocacy service that will be introduced

We hope to obtain funding for this initiative from the Department of Justice and PSNI in the first instance. At this point in time the service will be available to those engaging with the criminal justice system, as well as victims referred by the Multi Agency Risk Assessment Conference process and the Rowan Sexual Assault Referral Centre. The proposed new advocacy service will build on existing services, by providing a co-ordinated response to the needs of victims of domestic and sexual violence and abuse across Northern Ireland.

Number of advocates likely to be appointed

The contract with the service provider will involve the full-time employment of a minimum of 20 advocates across Northern Ireland. It will be a requirement of the service provider to allocate advocates appropriately to ensure an equitable level of accessibility to the service to victims of both domestic and sexual violence and abuse across Northern Ireland.

Location of advocates

It is anticipated that advocates will be located in police stations within policing districts with one being placed in the Sexual Assault Referral Centre.

Funding of the advocacy service

The Department is currently in discussions with PSNI to finalise and confirm the requisite funding for the new service. It is anticipated that funding will be met on an equal basis by the Department of Justice and police. It is hoped that in time other partners will be able to contribute to the service, thereby allowing for a wider scope of potential victims who could avail of the service such as those that are not engaging with the criminal justice system.

Introduction of advocacy service

The aim is to introduce the service early in the next financial year, 2021/22, subject to agreement on funding and completion of the procurement process within the timeframe. It is anticipated that following procurement process a service provider will be appointed by December 2020. When appointed the service provider will then recruit the necessary

number of advocates and ensure they are vetted as appropriate in order to allow them to work with both adults and young people. Training will also be provided by the service provider.

Monitoring and reviewing the advocacy service post introduction

Following the introduction of the service, the Department will robustly and routinely monitor and review delivery in order to maintain service levels and to ensure compliance and value for money are maintained over the duration of the contract. All necessary remedial action will be taken to address any concerns or issues identified. It is possible that the extent and scope of the service could be expanded upon at a future stage subject to resource availability.