

Victims and Witness of Crime Bill

CVOCNI –Consultation Response

Submission: Committee for Justice – Call for Evidence

Deadline: 25 September 2026 (Extended to 02/10/2026)

Parts covered: Part 1 - Commissioner for Victims & Witnesses of Crime for Northern Ireland.

Part 2 – Criminal Evidence & Procedure

Part 3 - General

These responses were intended to be copied directly into the [Citizen Space consultation survey](#) and are therefore set out clause by clause, following the consultation prompts in sequence. At the time of submission, the Citizen Space survey has closed / is no longer accessible.

PART 1

Clause 1 - Commissioner for Victims and Witnesses of Crime for Northern Ireland

Clause 2 - Principal aim

Clauses 3 to 8 - Functions of the Commissioner

Clauses 9 to 15 - Charter service providers

Clauses 16 to 19 - Strategic plan, business plans and annual reports

Clauses 20 to 23 - Supplementary

PART 2

Clauses 24 to 27 - Criminal evidence and procedure

PART 3

Clauses 28 to 30 - General

PART 1 – Commissioner for Victims and Witnesses of Crime

Explanatory note: Part 1 of the Bill provides for the establishment, appointment, principal aim and functions of a Commissioner for Victims and Witnesses of Crime for Northern Ireland.

It also provides the meaning of a 'charter service provider' and that the Commissioner must monitor compliance with the Victim Charter by charter service providers. These duties can be extended to the Witness Charter. Charter service providers must provide Victim Charter statistics to and co-operate with the Commissioner. They must also record complaints made against them by victims and witnesses and send a report each year to the Commissioner summarising the complaints and if they have been resolved. Charter service providers must also respond to annual reports published by the Commissioner.

CLAUSE 1 & 2 – Establishment and Principal aim of Commissioner

Clause 1 establishes the Commissioner for Victims and Witnesses of Crime for Northern Ireland, who will be appointed by the Department of Justice. It introduces Schedule 1 which relates to the constitution and operation of the Commissioner and the office.

Do you agree with Clause 1 and Schedule 1 of the Bill?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate welcomes the introduction of this legislation and the establishment of the Commissioner for Victims and Witnesses of Crime.

In relation to Schedule 1, the Commissioner Designate would welcome further consideration of how staffing within the Commissioner's Office is configured. Whilst the Commissioner Designate has no objection to staffing being seconded from the NICS pool where possible, she would stress that the office requires specific expertise in victimology, policy, and trauma-informed practice which may not always be readily available from NICS. In such cases, to ensure the success of the office in meeting its strategic objectives and requirements of this legislation, the Commissioner Designate would prefer that Schedule 1 provides more flexibility when seeking to fill posts which require particular expertise. For instance, under 4(5) of Schedule 1, it may offer more flexibility to enable the Commissioner to employ staff via an external recruitment process, subject to those staff being employed with conditions similar to seconded staff but with the requirement that those staff would not become NICS staff or have the ability to join NICS on account of their tenure at the Commissioner's office. In such cases, such appointments should not require the permission of the Department of Justice and Department of Finance, as there would

be no risk of eligibility for the appointee to become a NICS staff member through this means so long as strict fiscal discipline was maintained.

Having greater flexibility governing the recruitment of staff can help ensure operational stability, build institutional memory and promote public confidence so that it is not viewed merely as an internal extension of the Department of Justice.

Under section 11 of Schedule 1, the Commissioner Designate suggests that the Committee may wish to consider whether it is necessary for the office of the Commissioner to be constituted in such a way that requires externally audited accounts and reporting to the NI Audit Office. Given that the office of the Commissioner will be a small organisation, with a limited pot of funding that will mainly be utilised for staffing costs for seconded civil servants, the Committee may wish to consider whether the requirement for external audit of accounts is the best use of public money. External audit would necessitate the employment of an accountant to meet the requirements of that process and would likely involve considerable staff time, which may be better focused on meeting the strategic objectives of the office. The Commissioner Designate would query whether such a process is necessary given the indicative budget for the office, when similar financial rigour could be achieved through internal accounting processes.

Clause 2 provides that the principal aim of the Commissioner is to promote the interests of victims and witnesses.

Do you agree with Clause 2 of the Bill?

Yes

Draft response – supporting information (for submission)

The principal aim of the Commissioner is to promote the interests of victims and witnesses and amplify their voices within and beyond the criminal justice system.

Do you have anything further to add on Clause 1 or 2 or Schedule 1 of the Bill?

CLAUSES 3 to 8 - Functions of the Commissioner

Clause 3 – General Duties

Clause 3 provides that the Commissioner must: promote an understanding of the rights of victims and witnesses and an awareness of matters relating to their interest; keep the law and practice relating to victims and witnesses under review to ensure adequacy and effectiveness; advise the Northern Ireland Executive or Departments on issues concerning victims and witnesses; and must take steps to raise awareness of the role and functions of the Commissioner, encourage victims and witnesses to

engage with their office and seek the views of victims and witnesses regarding the exercise of the Commissioner's functions.

Do you agree with these as suitable for the general duties for the role of Commissioner?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate is supportive of these general duties.

She does query whether it may be prudent to include an enabling provision in the Bill that could be activated in future to allow the Commissioner to act as a monitoring mechanism for Domestic Homicide Reviews.

DHRs are a critical learning mechanism but their impact depends on whether recommendations are implemented and sustained. In England and Wales, the Domestic Abuse Commissioner (DAC) has been given a statutory role in relation to DHRs and has established an oversight mechanism to monitor implementation and hold agencies to account.

Whilst there are good reasons for not including a monitoring mechanism in this Bill, such as model design and the resource implications that would need to be worked through, an enabling provision may be a way to help future proof the legislation.

Clause 4 – General Powers

Clause 4 provides the general powers of the Commissioner including the power to conduct, fund or support research or education activities; to compile information; provide advice and information; publish any matter concerning the interests of victims or witnesses of crime; and to make representations and recommendations to any body or person concerning the interest of victims or witnesses.

Do you agree with the general powers as outlined in Clause 4?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate is supportive of these general powers. It is important that the Commissioner is furnished with the appropriate powers and duties to engage with, and make recommendations to, any body or agency whose work might impact on victims of crime. The concerns of victims do not solely sit with Justice – victims often require healthcare to recover from trauma and injury caused by crime, as well as housing and financial support in instances where their lives and livelihoods have been impacted by crime. In the prevention sphere, education and the infrastructure

of our cities, towns and villages additionally have an impact on how crime, and consequently the number of victims, can be reduced.

For the avoidance of doubt, the Commissioner Designate also reads this power to mean, that notwithstanding the provision outlined in Clause 6 (6), the Commissioner may make representations or recommendations under subsection (3) to persons or bodies exercising judicial functions on systemic issues affecting victims and witnesses.

Clause 5 - Review of the Victim and Witness Charter

Clause 5 stipulates that the Commissioner must review the operation and the effectiveness of the Victim and the Witness Charters at least every 3 years or as directed by the Department; prepare a report and, in doing so, consulting the Department and any other person the Commissioner considers appropriate; and publish a report.

Do you agree with the provisions at Clause 5?

Yes

Draft response – supporting information (for submission)

Whilst it may be inferred that any review of the Charters by the Commissioner may include making recommendations and proposals for changes and additions, it may provide greater certainty if we were to include an express power akin to that in place for the Victims Commissioner in England and Wales that the Commissioner may:

make proposals to the Secretary of State for Justice for amending the code (at the request of the Secretary of State for Justice or on his own initiative)¹

The Commissioner Designate would envisage that such a power, if added to this clause, would also fall under the review and reporting mechanism as outlined under Clause 5.

Clause 6 – Guidance

Clause 6 provides that the Commissioner may issue guidance on best practice in relation to any matter concerning the interests of victims and witnesses and that this must be taken into regard by persons exercising public functions; and makes provision in respect of revision, consultation and publication of the guidance. It also prohibits the Commissioner from issuing guidance to a court or tribunal.

Do you agree with Clause 6 of the Bill?

¹ Domestic Violence, Crime and Victims Act 2004, Provision 49 (2) (a).

Yes

Draft response – supporting information (for submission)

Clause 7 - Advisory groups

Clause 7 grants the Commissioner the power to establish advisory groups to provide support and information to the Commissioner on matters related to the Commissioner's functions. The Commissioner will determine membership of the group(s) and how expenses will be reimbursed. The Commissioner may also determine the procedure of any advisory group.

Do you agree that the Commissioner should have the power to establish advisory groups?

Yes

Draft response – supporting information (for submission)

Do you agree that the Commissioner should have the power to determine the membership of advisory groups?

Yes

Draft response – supporting information (for submission)

In order to maintain the independence of the office, it is crucially important that the Commissioner has the power to determine and keep under review the membership of advisory groups, develop and amend Terms of Reference, and run Advisory Groups in a manner that best benefits and provides value to the Commissioner's office.

Clause 8 - Restriction on exercise of functions in individual cases

Clause 8 provides that the Commissioner cannot become involved in an individual case or intervene in criminal or related proceedings.

Do you support the restriction proposed in Clause 8?

Yes

Draft response – supporting information (for submission)

Do you have anything further to add in relation to Clauses 3 to 8 of the Bill?

The Commissioner Designate would seek to ensure that the legislation governing the office enables the Commissioner to seek permission of the court to intervene in judicial review proceedings where the challenge directly impacts an area of system wide failure or cross-cutting policy affecting victims and witnesses. Such a provision

would remove any ambiguity about the Commissioner's ability to contribute to public law proceedings that raise issues extending beyond the circumstances of an individual case e.g. compliance with the Victim Charter, treatment of vulnerable witnesses. It would not permit the Commissioner to take over individual casework or relitigate the outcome of a particular case but rather be confined to cases where the Commissioner's intervention is directed solely to general or systemic issues. Used sparingly and subject to the court's permission, this addition would strengthen the independence of the office whilst reinforcing the focus of the role on systemic improvements.

CLAUSES 9 to 15 - Charter service providers

Clause 9 - Meaning of "charter service provider"

Clause 9 lists the criminal justice agencies which are specified as "charter service providers".

Do you agree with the list of bodies specified in Clause 9?

No

Draft response – supporting information (for submission)

Whilst the Commissioner Designate welcomes the list of Charter service providers outlined, she is of the view that the list is incomplete as it does not include all bodies responsible for the oversight of agencies with specific Charter obligations such as the PSNI. There is a notable gap which has been highlighted under the next section.

Do you believe that there are any other criminal justice agencies that should be added to the list?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate strongly urges that the Office of the Police Ombudsman (OPONI) should be added to this list. OPONI are the principal body that deals with complaints from members of the public (including victims and witnesses of crime) about the PSNI.

A key provision (Clause 10) under this Bill will require the Commissioner to monitor compliance with the Victim and Witness Charters. Clause 14 sets out provision for each charter service provider to maintain and share a record of complaints with the Commissioner on an annual basis.

It would not be possible to effectively monitor either of these fundamental elements of our criminal justice system in the absence of OPONI as a service provider on this list.

The Commissioner Designate has raised this issue with the Department of Justice and understands that work is now ongoing to consider the addition of OPONI. This is a welcome development and the Commissioner Designate urges that a solution is found to bring OPONI within the scope of criminal justice agencies designated as Charter service providers to ensure that robust monitoring of the PSNI's Victim Charter obligations can be meaningfully carried out.

Do you believe that any of the agencies listed should be removed from the list?

No

Clause 10 - Compliance with the Victim Charter

Clause 10 requires the Commissioner to monitor compliance with the Victim Charter and enables the Commissioner to request information from a charter service provider. It requires charter service providers to comply with such a request as far as is practical.

Do you agree with the purpose stated for Clause 10?

Yes

Draft response – supporting information (for submission)

As the legislation mandates that the Commissioner “must” monitor compliance with the Victim Charter, it is essential that it also creates the conditions to enable the Commissioner to succeed in this duty. It is therefore recommended that timeframes are included in Clause 10(3) for when agencies should submit information requested by the Commissioner. For instance, it may be valuable to add language which indicates an upper limit of what is considered “reasonably practicable” such as “no later than 3 months after receiving a request” or similar.

In order to ensure that agencies are taking their obligations under Clause 10(3) sufficiently seriously, it would also be valuable to include a power for the Commissioner to challenge in court a refusal to provide information as noted in the comments for Clause 11.

Clause 11 - Statistics relating to the Victim Charter

Clause 11 provides that charter service providers must collect and retain data in relation to the provision of services set out in the Victims Charter and to provide

statistical information to the Commissioner. The Department must make regulations setting out how the particular statistics, or category of statistics to be provided to the Commissioner are to be determined. The Department must consult with the Commissioner and charter services providers it considers appropriate before making regulations, which will be subject to the draft affirmative procedure.

Do you agree with the intent behind Clause 11?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate is aware through collaboration with equivalent bodies in England and Wales, that there are challenges obtaining the necessary data from criminal justice agencies there. She would therefore recommend stronger wording to be included in this provision under 11(4) & 11(5) to reflect that it is a statutory requirement to provide this data. The words ‘may’ could be replaced with the word ‘must’.

In Scotland, if a criminal justice agency refuses to provide requested information, that agency can be referred to the civil courts to determine whether they are within their rights to refuse such a request or requirement:

(6) Where a criminal justice body refuses, under subsection (3), to supply information, the Commissioner may report the matter to the Court of Session for determination if the Commissioner considers that the criminal justice body was not entitled to so refuse.²

There is an opportunity for NI to learn from both the positive Scottish experience and negative English experience by avoiding pitfalls in the establishment of the Commissioner’s office that have been evidenced elsewhere. It is hoped that such a power would not need to be utilised and that all criminal justice agencies would continue to work with the office of the Commissioner in good faith, as they have done throughout the tenure of the Commissioner Designate. However, it is also important to futureproof the office of the Commissioner against potential barriers to the fulfilment of its duty under law. The Scottish approach, whereby their Victims Commissioner can make a referral to the court in the event of refusal to share information as legally mandated, may act as a helpful safety net.

² [Victims, Witnesses, and Justice Reform \(Scotland\) Act 2025](#), Sect 15, Paragraph 6

Clause 12 - Power to extend sections 10 and 11 to the Witness Charter

Clause 12 allows the Department to extend the provisions regarding the Victim Charter at Clauses 10 and 11 to the Witness Charter.

Are you content with Clause 12?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate would like to propose that the language and the requirement on the Department be strengthened in this provision so that it places an obligation for agencies to provide data on the Witness Charter as well as the Victim Charter. The following amendment to the language in Clause 12 is proposed:

‘The Department will by regulations amend sections 10 and 11...’

It is acknowledged that further work is required before this could be commenced, however the revised wording can provide greater legal certainty for witnesses in the future and secures parity between the two Charters.

Clause 13 - Co-operation with Commissioner

Clause 13 relates to co-operation with the Commissioner and states a charter service provider must comply or provide the reasons for non-compliance.

Do you have any comments on Clause 13?

No

Draft response – supporting information (for submission)

Clause 14 – Complaints

Clause 14 relates to the duty to record and report on complaints received in each financial year that relate to alleged breaches of Victim or Witness Charter entitlements and the outcome of each complaint.

Do you agree with Clause 14 of the Bill?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate would like to see the scope of complaints under this provision broadened so that it is not restricted solely to breaches of the charter service provider’s obligations under the Victims or the Witness Charters.

This provision should cover all complaints made by victims and witnesses against a Charter service provider so that a comprehensive picture of failings or shortcomings can be established and areas for improvements identified.

In essence, this provision should enable and facilitate service improvement as well as monitoring.

Clause 14 (2) could be updated to include a further provision that notes '*all other complaints received from or on behalf of a victim or witness, or which otherwise relate to the treatment of victims or witnesses by the provider*'.

Under clause 14 (3) further provision should be made so that more data rich details about a specific complaint should be provided. This data should include crime type, motivation, sex/gender/disability and other section 75 details (where available) so that the system can learn from complaints and use that information to improve services and support for victims.

Additionally, under this provision it would be common and reasonable practice to place a timeframe on the requirement for charter service providers to provide a report after the end of the financial year. In the view of the Commissioner Designate, three months might be a proposed reasonable timeframe. This would ensure that the Commissioner is able to monitor progress in real time and be satisfied that remedial action is being taken to address any recommendations made.

Clause 15 - Disclosure of information

Clause 15 relates to the disclosure of information between charter service providers and the Commissioner if the information would assist or enable the Commissioner to carry out their functions. These disclosure powers are subject to restrictions set out in subsections (3) to (5) – namely, they do not override patient confidentiality, data protection legislation or prohibitions on disclosure in the Investigatory Powers Act 2016. The sharing of information does not affect any other power that exists to disclose information.

Do you support the intention behind Clause 15?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate welcomes that the Bill includes provision for disclosure of information to the Commissioner. This is an important measure to enable the Commissioner's office to receive information about victims of crime to assist with the function of the office.

Do you believe that there should be other restrictions to the disclosure of information other than those set out in subsections (3) to (5)?

No

If yes, what other restrictions should be placed on the disclosure of information between charter service providers and the Commissioner?

Draft response – supporting information (for submission)

Given that nothing in this clause seeks to override the principles of data minimisation or data protection, it is the view of the Commissioner Designate that no further restriction would be required within this clause.

Do you have anything further to add in relation to Clauses 9 to 15 of the Bill?

No

CLAUSES 16 to 19 - Strategic plan, business plans and annual reports

Clause 16 & 17 - Strategic & Business Plans

Clauses 16 requires the Commissioner to prepare a strategic plan setting out objectives and priorities, how they will be achieved and how the outcomes will be monitored. The Commissioner must specify groups of victims and witnesses to whom they will have particular regard and why. The Commissioner may review the strategic plan at any time during their tenure. Clause 17 requires the Commissioner to send an annual business plan to the Department of Justice setting out how they propose to carry out the Commissioner's functions.

Do you agree with the provisions at Clauses 16 and 17?

Yes

Draft response – supporting information (for submission)

Regarding Clause 17, whilst the Commissioner Designate is not opposed to a requirement to produce an annual business plan, she would wish to query the timeframe set within this clause to produce it. On the basis of her experience as Commissioner Designate to date, she would argue that it is not possible to make a realistic and deliverable business plan until the previous year's plan has been completed and evaluated, or without knowledge of an indicative budget with which to implement such a plan.

The Commissioner Designate has raised this concern with the Department of Justice, who have indicated their willingness to reassess the timeframe within the clause to ensure that all business plans produced by the Commissioner's office are informed, considered and realistic.

To that end, the Commissioner Designate recommends amending Clause 17(6) to replace the requirement to produce a business plan one month before the beginning of the financial year. The amendment could either require the business plan to be produced 'as soon as reasonably practicable', which is the phrasing used in the law establishing the Domestic Abuse Commissioner for England & Wales, or opt for a more solid timeframe such as within 3 months of the beginning of the new financial year.

Clause 18 - Annual reports

Clause 18 requires the Commissioner to produce an annual report and sets out what it must include.

Do you agree with Clause 18?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate has no objections to the proposed content of the annual report or requirements to lay it before the Assembly. However, to enable the Commissioner to meet these requirements, it would be helpful for provisions regarding the sharing of information to the Commissioner to be strengthened (see previous comments).

Clause 19 - Duty to respond to annual reports

Clause 19 places a duty on charter service providers to respond to recommendations made in the Commissioner's annual report and state how they will be addressed, or provide reasons why a charter service provider does not propose to act on a recommendation. The response must be published within 56 days of the publication of the Commissioner's report.

Do you agree with the intent and purposes of Clause 19 of the Bill?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate welcomes the statutory obligation for relevant agencies to respond to the Commissioner within 56 days. This time frame is in keeping with convention applied to similar offices in other parts of the UK, such as the Domestic Abuse Commissioner and Victims Commissioner for England and Wales.

The Commissioner Designate notes, however, that the Commissioner is likely to issue thematic reports, research and other ad-hoc reports throughout the year that contain important recommendations for providers. For instance, during her current

tenure, the Commissioner Designate has produced reports which include recommendations for criminal justice and other agencies on areas such as Third Party Material Disclosure, Victim Personal Statements, and reform of private family law proceedings. Clause 19 as drafted may be a drafting oversight but it currently does not require providers to respond to recommendations in such reports which weakens accountability and undermines the role's ability to drive change on emerging issues. It could be strengthened by including a duty for public bodies to respond to recommendations made by the Commissioner, and by attaching a similar time frame of 56 days to respond. Such a duty is included in the Domestic Abuse Act 2021, requiring public bodies to respond to the recommendations of the Domestic Abuse Commissioner that are published under Section 8 reports. Section 16(4) of the Act outlines specifically what is required in such responses:

(4)The comments must include, in respect of each recommendation made in the report, an explanation of—

(a)the action which the relevant person has taken, or proposes to take, in response to the recommendation, or

(b)why the relevant person has not taken, or does not propose to take, any action in response.

The law also stipulates that the responses must be published and shared with the Commissioner. The addition of a similar duty under the Victims & Witnesses Bill would overcome the existing weakness in the Bill as it stands, by ensuring that public bodies are obligated to publicly respond to the recommendations of the Commissioner in a manner that is timely and constructive.

Do you have anything further to add on Clauses 16 to 19 of the Bill regarding strategic plans, business plans and annual reports?

No

CLAUSES 20 to 23 – Supplementary

Clause 20 - Privilege for certain publications

Clause 20 provides that publications made by the Commissioner under the Act are privileged and exempt from challenge under the law of defamation.

Do you support Clause 20 of the Act?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate welcomes the principle underpinning Clause 20 and the protection it seeks to provide to the Commissioner when publishing material in the exercise of their statutory functions.

However, she considers that greater clarity is required as to what constitutes a "publication" for the purposes of this provision.

In carrying out their statutory functions effectively, the Commissioner will need to communicate through a range of channels. This is likely to include formal reports and publications, but also statements published on the Commissioner's website and social media channels, press releases, media interviews and other public commentary. The Commissioner may also be required to discuss, explain or repeat findings and recommendations contained within published reports when engaging with the media.

The current wording may create uncertainty as to whether privilege extends to this wider range of official communications. In particular, it is unclear whether the oral repetition or explanation of material contained within a privileged publication, for example during a media interview, would attract equivalent protection.

This distinction is important in practice. The Commissioner's role should include being a visible, independent and authoritative voice for victims and witnesses, capable of commenting publicly and robustly on matters affecting them. The potential for uncertainty as to whether particular forms of communication attract protection could have a chilling effect on the Commissioner's willingness or ability to engage openly with the media and wider public. This could, in turn, undermine the policy intention behind creating an independent statutory Commissioner.

Appropriate protection should not be limited by the particular medium through which the Commissioner communicates. Rather, the relevant consideration should be whether the communication has been made in good faith and in the proper exercise of the Commissioner's statutory functions.

Clause 21 - Meaning of Victim

Clauses 21 sets out the meaning of "victim" for the purposes of Part 1 of the Bill.

Do you agree with Clause 21?

Yes

Clause 22 - Interpretation of this Part

Clause 22 defines the terms used in Part 1; and Clause 23 introduces Schedule 2 which makes minor and consequential amendments in connection with Part 1 of the Bill.

Do you have any comments to make on Clauses 22 or 23?

No

Do you have anything further to add in relation to the supplementary provisions at Clauses 20 to 23 of the Bill?

No

PART 2 – Criminal Evidence and procedure

Part 2 makes provision for amendments in preparation for the introduction of direct committal. The 'No Bill' procedure will be replaced by an application to dismiss under section 14 of the Justice Act (Northern Ireland) 2015. Where a defendant has been charged with murder or manslaughter, that charge is not to be dismissed unless the charge of the section 5 offence under the 2004 Act is also dismissed (the application to dismiss procedure). Section 5 is an offence of causing or allowing the death or serious physical harm of a child or vulnerable adult. Where a defendant has been charged with a 'relevant offence' under 7A(2) of the 2004 Act and the section 5 offence of causing or allowing a child or vulnerable adult to die or suffer serious physical harm, the relevant offence is not to be dismissed unless the section 5 offence is dismissed.

Clause 24 - Special measures in cases involving hostility

Clause 24 of the Bill provides that witnesses are eligible for assistance with giving evidence in cases dealing with an offence involving aggravation by hostility. It inserts into the Criminal Evidence (Northern Ireland) Order 1999 Order that the definition of "an offence involving aggravation by hostility" means an offence of any kind in respect of which an allegation that the offence is aggravated by hostility is specified alongside the offence in accordance with section 33(1) of the Criminal Justice (Sentencing etc) Act 2027 [see more information]. Do you agree with the provisions in Clause 24?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate welcomes the inclusion of Clause 24 and supports the extension of eligibility for special measures to witnesses involved in cases where an offence is aggravated by hostility.

Victims and witnesses of hostility-motivated offending can experience distinct harms arising from the fact that they have been targeted because of an actual or perceived characteristic. Such offending can affect how an individual engages with the criminal

justice process and may create additional barriers to giving evidence before the court.

The Commissioner Designate therefore considers it appropriate that victims and witnesses in cases involving aggravation by hostility should be automatically eligible for consideration of special measures. This reflects the findings of the Independent Review of Hate Crime Legislation in Northern Ireland (2020), chaired by Judge Desmond Marrinan, which recognised that victims of hate-motivated offending may face particular challenges in engaging with the criminal justice system and recommended that complainants in hate crime cases should automatically be eligible for consideration of special measures.

The Commissioner Designate notes, however, that the practical reach of this provision will depend upon the scope of the hostility-based aggravation framework to which it is linked. While the extension of special measures is welcomed, consideration should also be given to whether the characteristics protected by hostility-based provisions adequately reflect the forms of identity-based hostility experienced by victims in Northern Ireland.

The Commissioner Designate has previously supported the inclusion of transgender identity within legislative protections relating to hostility-motivated offending and has also highlighted the strong case for recognising misogynistic offending within the criminal justice system. Should such protections be introduced through sentencing legislation, equivalent provision should be made under this Bill so that victims affected by those forms of hostility-motivated offending are afforded access to the same protections and special measures as other victims covered by these provisions.

The Commissioner Designate also considers that further consideration should be given to the process by which special measure specifically live link, are granted. Under our current framework the prosecution must apply and provide evidence to justify live link for eligible adult victims, even though our understanding is in practice around 95% of such applications are granted. The process creates delay and unnecessary uncertainty for victims who must wait for a discretionary decision before knowing whether they will be able to give evidence in a way that reduces fear and distress. The Commissioner Designate has heard from victims who endured this uncertainty right up to just before or on the day of the contest or trial. Whilst the Lady Chief Justice has recently issued a Practice Direction to ease some evidential requirements there is still an administrative burden on the prosecutors to prove what is, in most cases an appropriate and routine protection.

By introducing a rebuttable statutory presumption that eligible victims who wish to use live link will do so if they wish – unless the defence can satisfy the court that it would be contrary to the interests of justice- the Assembly would codify good practice, improve consistency of approach across courts and send a clear signal to victims that the system is considerate of their needs thereby strengthening

confidence in the criminal justice process. Such an approach should require clear and adequate notice to be given that the defence wishes to challenge the complainant's use of Live Links, and should require judges to give reasons where the use of Live Links has been refused.

Subject to those observations, the Commissioner Designate supports Clause 24 and welcomes the additional protections it will provide to victims and witnesses participating in criminal proceedings.

Clause 25 - Protection from cross examination in cases involving aggravation by hostility

Clause 25 provides that no person charged with an offence involving aggravation by hostility may cross examine in person a witness, including a child, who is the complainant in connection with the offence or any other offence with which that person is charged in the proceedings. Do you support the inclusion of Clause 25 in the Bill?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate supports the inclusion of Clause 25 and welcomes the enhanced protections it will provide to victims and witnesses involved in cases where an offence is aggravated by hostility.

Victims of hostility motivated offending are often targeted because of an actual or perceived characteristic. This can result in harms that extend beyond the immediate offending and may affect a victim's ability to engage effectively with criminal proceedings. The Commissioner Designate considers that it is inappropriate for a complainant in a hostility-aggravated case to be subjected to direct personal cross-examination by the defendant. Such an experience may result in further harm and may create an additional barrier to a victim's effective participation in proceedings.

The Commissioner Designate notes that this provision reflects recommendations arising from the Independent Review of Hate Crime Legislation in Northern Ireland (2020) which recommended that complainants in hate crime cases should be protected from direct cross-examination by defendants. The Review recognised the particular risks associated with requiring victims of hostility motivated offending to engage directly with the person accused of targeting them on the basis of an actual or perceived characteristic. The Commissioner Designate therefore considers this provision to be an important safeguard which will help ensure that victims can participate in proceedings without being exposed to unnecessary additional harm.

Overall, the Commissioner Designate supports Clause 25 as a proportionate measure which will strengthen protections for victims and witnesses and contribute to a more victim centred criminal justice system.

Clause 26 - Protection of complainants in proceedings for sexual offences

Clause 26 introduces provisions for complainants in sexual offence cases in the Crown Court, to make oral or written representations to the court, be legally represented and entitled to be present at any hearing of an application for documents or records which relate to the complainant and which they could have a reasonable expectation of privacy in relation to. It makes similar provisions in relation to applications made to the court relating to the complainant's sexual history. Do you agree with the inclusion of Clause 26 in the Bill?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate welcomes the intention behind Clause 26 and supports measures which strengthen the rights of complainants to participate in proceedings concerning the disclosure of records and information in respect of which they have a reasonable expectation of privacy. The right to attend hearings, make representations and be legally represented are important safeguards which recognise the significant impact that disclosure decisions can have on victims of sexual offences.

However, the Commissioner Designate does not believe that Clause 26 goes far enough to address the concerns that have been repeatedly raised by victims, victim support organisations and legal practitioners regarding the disclosure of third party material in sexual offence cases. The Commissioner Designate's concern is that the clause largely places elements of existing practice into legislation without addressing a number of the underlying problems that have already been identified through victim experiences and previous research.

The Commissioner Designate's office has previously examined the impact of third party disclosure practice through its report, [A Second Assault: The Impact of Third Party Disclosure Practice on Victims of Sexual Abuse in Northern Ireland](#). That work found compelling evidence that the current disclosure framework is discouraging victims from accessing therapy, engaging openly with counselling services and, in some cases, continuing with criminal proceedings. Victims reported delaying counselling, withholding information from therapists and restricting their engagement with mental health services because of fears that intimate personal information could later be disclosed and scrutinised within the criminal justice process.

The Commissioner Designate remains particularly concerned that victims of sexual crime can find themselves choosing between healthcare and justice. Access to

counselling, therapy and mental health support is often a vital part of recovery following sexual violence. Yet many victims fear that records generated during treatment may subsequently become the subject of disclosure applications. The Commissioner Designate considers this deeply troubling from both a victim care and public policy perspective. Delaying or avoiding therapeutic support can have serious consequences for a victim's recovery and wellbeing, particularly where criminal proceedings take several years to conclude.

The Commissioner Designate is also concerned that counselling and therapeutic records are not created for evidential purposes. Such records frequently contain shorthand notes, professional observations, clinical interpretations and discussions occurring within the context of trauma treatment. They are not intended to function as formal evidential documents and are rarely reviewed or verified by the victim as a complete factual record. The Commissioner Designate therefore considers that greater safeguards are required before such material can be accessed, examined or disclosed during criminal proceedings.

While Clause 26 provides important participatory rights for complainants, the Commissioner Designate believes that the legislation should go further by incorporating elements of international best practice. In particular, consideration should be given to the Canadian model (see Appendix 1), which places clear statutory limits on disclosure applications, establishes a more robust threshold for access to records attracting a reasonable expectation of privacy, and identifies factors which are insufficient on their own to justify disclosure. The Commissioner Designate also supports consideration of elements of the Australian approach, including provisions requiring the court to take account of the harm that disclosure may cause to a victim's mental health and wellbeing. Such an approach would better safeguard the Article 8 rights of sexual offence complainants, and better ensure that the positive obligations under Article 8 to protect presumed victims of gender-based violence are upheld. These positive obligations include the duty to protect a presumed victim of gender-based violence from secondary victimisation through court processes, a duty to protect their image, dignity and private life, including through the non-disclosure of personal information and data that were unrelated to the facts, and the obligation to protect the image and private life of persons coming before the courts from any unjustified interference.³

It is important to emphasise that strengthening safeguards around the production and disclosure of victims' personal information serves a dual purpose: it not only reduces the risk of re-traumatisation for victims but also helps protect the integrity of the trial itself. By ensuring that only information that is truly relevant and necessary is admitted, the law prevents prejudicial, speculative or highly sensitive material from being used to undermine a victim's credibility or to distract the court from the central issues in the case. This protects the fairness of proceedings, upholds the principle

³ [JL v Italy 5671/16 ECHR 2021](#)

that trials should be determined on admissible and probative evidence and reinforces public confidence that the justice system treats victims with dignity while safeguarding the accused's right to a fair trial.

The Commissioner Designate further notes the absence of any requirement to monitor how these provisions operate in practice. If legislative change is intended to improve outcomes for victims, there should be a mechanism for collecting and reporting data regarding disclosure applications, including the number of applications made, the types of cases in which they arise, and the outcomes of those applications. Without such information it will be difficult to assess whether the reforms have achieved their intended objectives.

Furthermore, given the establishment of a complainant's right to make representations to the court in respect of disclosure applications, it is important that corresponding powers to access court documents and papers pertaining to a trial are granted to a complainant's legal representative. In the case of sexual offences, that representation is currently provided by Sexual Offences Legal Advisors (SOLAs) and Child Sexual Offences Legal Advisors (CSOLAs), currently based in Victim Support NI. It is essential that SOLAs, CSOLAs, or any private legal representative, have the correct status as parties to proceedings and that an obligation is placed on the PPS, prosecutors, defence and any other relevant party, to furnish them with the relevant information and papers so that they may fully represent their client and make meaningful representations in court.

The Commissioner Designate therefore supports the inclusion of Clause 26 but considers that substantial strengthening is required if the legislation is to deliver meaningful improvements for victims of sexual offences. She would wish to bring the Committee's attention to recent developments in the Republic of Ireland where the legislature has also been grappling with such issues. Despite earlier attempts to regulate the disclosure of counselling records and other sensitive records, the Irish Government has now brought forward further, more robust amendments in 2026. This development followed the examination of Ireland by the UN Committee for the Elimination of Discrimination Against Women (CEDAW) in 2025, which found that Ireland was not adequately protecting the privacy of survivors regarding counselling notes from therapy session. [CEDAW General Recommendation 35](#) calls on States to protect complainants' privacy and prevent the use of discriminatory evidentiary practices in sexual violence cases, recommending legal measures to ensure that women are not subjected to invasive scrutiny of their private lives and personal histories during criminal proceedings. On the basis of evidence presented to the Committee during Ireland's examination, it made a recommendation within its Concluding Observations that Ireland should "*consolidate sexual offence laws based on consent and prohibit access to survivors' counselling notes*". This would support the argument that it is better to ensure the disclosure provisions in this Bill are as robust as possible, rather than adopting a weaker regime that may later require corrective amendment.

The Commissioner Designate has raised these issues with the Minister of Justice and welcomes her willingness to consider any further amendments that may strengthen these clauses. The Minister has asked the Commissioner Designate to assist the Department in drafting a more robust clause for the Bill which takes account of the issues raised above. It is the Commissioner Designate's hope that the Department will submit an amendment which introduces stronger privacy protections, enhanced safeguards around counselling and therapeutic records, improved monitoring arrangements and a legislative framework that more closely reflects emerging best practice in comparable jurisdictions.

Clause 27 - Limitation of power to dismiss charges involving death or serious physical harm of a vulnerable person

Clause 27 is a technical fix required for the forthcoming introduction of committal reform provisions. It provides that, in cases involving death or serious harm of a child or vulnerable person, charges cannot be dismissed unless the charge of an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 is also dismissed. Do you agree with Clause 27 being included in the Bill?

Yes

Draft response – supporting information (for submission)

The Commissioner Designate supports the inclusion of Clause 27.

The Commissioner Designate understands that this provision is intended to ensure the continued operation of existing protections in cases involving the death or serious physical harm of a child or vulnerable adult following the introduction of direct committal arrangements. The Commissioner Designate is supportive of measures which help to maintain procedural safeguards in cases involving particularly vulnerable victims and considers it appropriate that the introduction of wider procedural reforms should not inadvertently weaken existing protections in such cases.

Subject to that observation, the Commissioner Designate supports the inclusion of Clause 27.

Do you have anything further to add on Clauses 24 to 27 of the Bill relating to Criminal Evidence and Procedure?

Yes

The Commissioner Designate welcomes the inclusion of measures within Part 2 which seek to strengthen protections for victims and witnesses participating in

criminal proceedings, particularly those affected by hostility motivated offending and sexual crime.

The Commissioner Designate believes that the overarching objective of these provisions should be to reduce unnecessary trauma, improve participation in the justice process and support victims and witnesses to provide their best evidence. Consideration should therefore continue to be given to whether existing procedural requirements, application processes and disclosure practices are achieving those aims in practice.

The Commissioner Designate would also encourage the Committee to consider the importance of monitoring and evaluation. Where legislative changes are introduced with the intention of improving outcomes for victims and witnesses, there should be appropriate mechanisms to assess whether the desired outcomes have been achieved. This is particularly relevant in relation to the operation of special measures and applications involving records and information in respect of which a complainant has a reasonable expectation of privacy.

Finally, while the Commissioner Designate welcomes the measures relating to hostility motivated offending contained within the Bill, she notes that these form part of a broader programme of hate crime reform. The Committee may wish to note the recommendations contained within the Independent Review of Hate Crime Legislation in Northern Ireland (2020) and the importance of continued consideration of those recommendations as wider reform progresses.

PART 3 – General

Part 3 makes general provision including commencement and short title.

Clause 28-30 - Regulations and Orders, Commencement and Short Title

Clauses 28 to 30 provide for regulation making powers, the commencement of the parts of the Bill and the short title.

Do you have any comments on Clauses 28 to 30 of the Bill?

No

Do you have any other comments or views on the Victims and Witnesses of Crime Bill?

The Commissioner Designate welcomes this draft Bill and is broadly supportive of its aims. However, there are a range of further points which have not been included in the Bill but have been raised by victims which the Commissioner Designate hopes it useful to flag for the Committee's attention.

Criminal injury compensation

The Commissioner Designate would welcome the Committee to consider an amendment to the Bill which would change how evidence relating to Criminal Injuries Compensation is dealt with in court. The Commissioner Designate has identified a pattern, primarily in cases relating to domestic or sexual offences, whereby complainants are questioned about whether they have applied for criminal injury compensation, suggesting that an allegation is therefore financially motivated. This relies on a harmful and unsupported stereotype: that a genuine victim of sexual violence would not seek financial redress. Feedback from victims and support organisations indicates that individuals are still being asked about compensation applications in court without proper justification, despite the safeguards envisaged by the Gillen Review.

While it is acknowledged that an outright ban on such evidence may have Article 6 implications and would undoubtedly require additional time and scrutiny that is not available within this mandate, the Commissioner Designate is of the view that there are a number of practical solutions which may go some way towards addressing the issue.

Members may wish to consider an amendment placing criminal injury compensation evidence within a strict statutory admissibility process, analogous to the protections for previous sexual history. At a minimum, the defence should be required to satisfy the judge, at a ground rules or other pre-trial hearing, that there is evidence supporting its relevance and probative value before any question or material is permitted. The court should give reasons and directions to prevent reliance on rape

myths or negative inferences. The legislation should make clear that questioning whether an application exists is not open to routine exploration in cross-examination.

Death following coercive control and domestic abuse

The Commissioner Designate wishes to draw the Committee's attention to an issue raised by a number of victims' families and campaigners in relation to suicide following domestic abuse. Campaigners have shared stories with the Commissioner Designate about how their loved ones took their own lives due to the impact of domestic abuse and coercive control, and have asked that stronger laws to prosecute those who drive their victims to suicide are put in place.

The Commissioner Designate appreciates that this is a complex legal issue and that prosecutions can already be brought forward under an Unlawful Act Manslaughter offence. However, it is the view of the Commissioner Designate that more can and should be done to ensure that the most robust law possible is in place to ensure that abusers cannot drive their victims to take their own lives without consequence. Whilst this complex legal area may require more time than is available in the current mandate to consider this issue and formulate a stronger legal provision that covers such cases, the Commissioner Designate urges that the Committee adds an amendment to the Bill mandating that the PSNI and the Coroner must record the number of suicides where the person who took their lives had been a victim of domestic abuse, and publish these figures on an annual basis. Such a measure would help scope the scale and nature of the issue, and provide an evidence base to enable consideration of what future legal reform may be needed.

Schedules

Clause 10 of the Schedule sets out the parameters relating to the funding of the Commission. Clause (1) states that 'The Department may make grants to the Commissioner of such amounts as it determines'

There is no reference or clause setting out the office's ability for leveraging funding from elsewhere such as through research grants/partnering with academia. It is important that any legislation does not place restrictions, through omission or otherwise, on the functioning of the Commissioner.

Additionally, in relation to Clause (4), while recognising the need for appropriate accountability and oversight in relation to public expenditure, the Commissioner Designate has some concern about the level of control provided for in Schedule 1 in respect of the Commissioner's staffing arrangements.

The requirement for detailed departmental approval or sign-off in relation to individual staffing posts and associated arrangements creates a potential risk that

resource decisions could, whether intentionally or otherwise, exert a degree of “soft” influence over the operation of the office. This is particularly important for an independent statutory office which may, in fulfilling its functions, be required to scrutinise, challenge or make recommendations to the Department and other criminal justice bodies.

A more appropriate balance between financial accountability and operational independence would be achieved by providing the Commissioner with greater autonomy to determine the internal staffing structure of the office, including the number, grade and nature of posts required, within an overall budgetary envelope agreed with the Department.

This would retain appropriate control over the overall level of public expenditure while ensuring that decisions about how those resources are deployed rest with the Commissioner, who is best placed to determine the skills, expertise and staffing configuration necessary to discharge the functions of the office effectively.

Appendix 1: Sections of Canadian Legislation protecting privacy rights of victims in cases of requests from disclosure of third party material ([full legislation here](#))

Definition of record

278.1 For the purposes of [sections 278.2 to 278.92](#), record means any form of record that contains personal information for which there is a reasonable expectation of privacy and includes medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records, personal journals and diaries, and records containing personal information the production or disclosure of which is protected by any other Act of Parliament or a provincial legislature, but does not include records made by persons responsible for the investigation or prosecution of the offence.

- **1997, c. 30, s. 1**
- [2018, c. 29, s. 23](#)

Production of record to accused

- 278.2 (1) Except in accordance with [sections 278.3 to 278.91](#), no record relating to a complainant or a witness shall be produced to an accused in any proceedings in respect of any of the following offences or in any proceedings in respect of two or more offences at least one of which is any of the following offences:
 - (a) an offence under [section 151, 152, 153, 153.1, 155, 160, 170, 171, 172, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 286.1, 286.2 or 286.3](#); or
 - (b) any offence under this Act, as it read from time to time before the day on which this paragraph comes into force, if the conduct alleged would be an offence referred to in paragraph (a) if it occurred on or after that day.

- **Application of provisions**

(2) [Section 278.1](#), this section and [sections 278.3 to 278.91](#) apply where a record is in the possession or control of any person, including the prosecutor in the proceedings, unless, in the case of a record in the possession or control of the prosecutor, the complainant or witness to whom the record relates has expressly waived the application of those sections.

- **Duty of prosecutor to give notice**

(3) In the case of a record in respect of which this section applies that is in the possession or control of the prosecutor, the prosecutor shall notify the accused that

the record is in the prosecutor's possession but, in doing so, the prosecutor shall not disclose the record's contents.

Application for production

- **278.3 (1)** *An accused who seeks production of a record referred to in [subsection 278.2\(1\)](#) must make an application to the judge before whom the accused is to be, or is being, tried.*
- **No application in other proceedings**

(2) For greater certainty, an application under subsection (1) may not be made to a judge or justice presiding at any other proceedings, including a preliminary inquiry.

- **Form and content of application**

(3) An application must be made in writing and set out

- *(a) particulars identifying the record that the accused seeks to have produced and the name of the person who has possession or control of the record; and*
- *(b) the grounds on which the accused relies to establish that the record is likely relevant to an issue at trial or to the competence of a witness to testify.*

- **Insufficient grounds**

(4) Any one or more of the following assertions by the accused are not sufficient on their own to establish that the record is likely relevant to an issue at trial or to the competence of a witness to testify:

- *(a) that the record exists;*
- *(b) that the record relates to medical or psychiatric treatment, therapy or counselling that the complainant or witness has received or is receiving;*
- *(c) that the record relates to the incident that is the subject-matter of the proceedings;*
- *(d) that the record may disclose a prior inconsistent statement of the complainant or witness;*
- *(e) that the record may relate to the credibility of the complainant or witness;*
- *(f) that the record may relate to the reliability of the testimony of the complainant or witness merely because the complainant or witness has received or is receiving psychiatric treatment, therapy or counselling;*

- **(g)** that the record may reveal allegations of sexual abuse of the complainant by a person other than the accused;
- **(h)** that the record relates to the sexual activity of the complainant with any person, including the accused;
- **(i)** that the record relates to the presence or absence of a recent complaint;
- **(j)** that the record relates to the complainant's sexual reputation; or
- **(k)** that the record was made close in time to a complaint or to the activity that forms the subject-matter of the charge against the accused.

- **Service of application and subpoena**

(5) The accused shall serve the application on the prosecutor, on the person who has possession or control of the record, on the complainant or witness, as the case may be, and on any other person to whom, to the knowledge of the accused, the record relates, at least 60 days before the hearing referred to in subsection 278.4(1) or any shorter interval that the judge may allow in the interests of justice. The accused shall also serve a subpoena issued under Part XXII in Form 16.1 on the person who has possession or control of the record at the same time as the application is served.

- **Service on other persons**

(6) The judge may at any time order that the application be served on any person to whom the judge considers the record may relate.

When is disclosure allowed under Canadian system?

Admissibility — accused in possession of records relating to complainant

- **278.92 (1)** Except in accordance with this section, no record relating to a complainant that is in the possession or control of the accused — and which the accused intends to adduce — shall be admitted in evidence in any proceedings in respect of any of the following offences or in any proceedings in respect of two or more offences at least one of which is any of the following offences:
 - **(a)** an offence under [section 151, 152, 153, 153.1, 155, 160, 170, 171, 172, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 286.1, 286.2 or 286.3](#); or
 - **(b)** any offence under this Act, as it read from time to time before the day on which this paragraph comes into force, if the conduct alleged

would be an offence referred to in paragraph (a) if it occurred on or after that day.

- **Requirements for admissibility**

(2) The evidence is inadmissible unless the judge, provincial court judge or justice determines, in accordance with the procedures set out in [sections 278.93](#) and [278.94](#),

- (a) if the admissibility of the evidence is subject to [section 276](#), that the evidence meets the conditions set out in [subsection 276\(2\)](#) while taking into account the factors set out in subsection (3); or
- (b) in any other case, that the evidence is relevant to an issue at trial and has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

- **Factors that judge shall consider**

(3) In determining whether evidence is admissible under subsection (2), the judge, provincial court judge or justice shall take into account

- (a) the interests of justice, including the right of the accused to make a full answer and defence;
- (b) society's interest in encouraging the reporting of sexual assault offences;
- (c) society's interest in encouraging the obtaining of treatment by complainants of sexual offences;
- (d) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;
- (e) the need to remove from the fact-finding process any discriminatory belief or bias;
- (f) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;
- (g) the potential prejudice to the complainant's personal dignity and right of privacy;
- (h) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and
- (i) any other factor that the judge, provincial court judge or justice considers relevant.