Call for Evidence on the Victims and Witnesses of Crime Bill

Response by the Public Prosecution Service

Clauses 1 and 2 - The Commissioner

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

Clause 2 - Principal aim

Schedule 1

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.

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?

No.

Please provide information to support your answer here:

PPS had responded to the Department's earlier consultation expressing concern that any extension of the Commissioner's remit to include witnesses as well as victims of crime, without accompanying resources, would increase pressure on the Commissioner and her team. As the Commissioner's role continues to embed, and the public profile of the role increases, we would expect increased resourcing requirements.

We had suggested that it would be preferable for any additional resources to be targeted at improving the experience of victims of crime. We also noted the risk that the service to victims may become diluted due to the number of witnesses / witness issues that may fall within the Commissioner's remit.

It should be noted that many victims of crime are also treated as witnesses, and so in practice the Commissioner's scope already extends to systemic issues concerning witnesses (i.e. who are also victims).

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

No.

Clauses 3 to 8 - Functions of the Commissioner

Clause 3 - General Duties

Clause 4 - General powers

Clause 5 - Review of the Victim and Witness charter

Clause 6 - Guidance

Clause 7 - Advisory groups

Clause 8 - Restriction on exercise of functions in individual cases

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.

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.

Are there any other powers that you believe the Commissioner should have?

No.

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.

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?

Yes.

Please provide information to support your answer here:

PPS supports the proposed duties, subject to careful consideration being given as to how the duties would sit alongside other arrangements, in particular existing structures such as:

- *The Department-led Victim and Witness Strategy and the work of the Victim and Witness Steering Group;*
- *The work of The Executive Office and the Ending Violence Against Women and Girls Strategy; and*
- *All other strategies and governance structures touching on the area of victims.*

Additionally, PPS notes the important functions of Criminal Justice Inspection NI in this regard.

Care will be required to ensure that there is no duplication of effort, potentially placing unnecessary additional resource and other demands on the various CJSNI agencies. For example, it is suggested that there should be engagement between the Commissioner and the Chief Inspector for Criminal Justice before each publishes an Annual Business Plan or Inspection/Review programme. This relationship may be consolidated through a Memorandum of Understanding.

PPS welcomes the inclusion of a duty for the Commissioner's to consult before issuing guidance. Any guidance issued by the Commissioner should be realistic and achievable, taking into account (for example) any resourcing or financial constraints or new funding requirements.

Clause 7 grants the Commissioner the power to establish advisory groups to provide support and information to the Commissioner on matters related to the Commissioners 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.

Please provide information to support your answer here:

The role and functions of any new Advisory Groups would also need to be clearly set out, and terms of reference agreed that do not duplicate existing arrangements.

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

Yes, but in consultation with organisations such as the PPS, where the subject of the matter being advised upon directly impacts on our work. This is not to constrain the membership of the group, but to ensure that is it fully representative.

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.

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

No.

Clauses 9 to 15 - Charter service providers
Clause 9 - Meaning of "charter service provider"
Clause 10 - Compliance with the Victim Charter
Clause 11 - Statistics relating to the Victim Charter
Clause 12 - Power to extend sections 10 and 11 to the Witness Charter
Clause 13 - Co-operation with Commissioner
Clause 14 - Complaints
Clause 15 - Disclosure of information

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?

Yes.

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

Yes.

Please provide information to support your answer here:

Whilst they are not core criminal justice agencies, HMRC,HSE(NI), Harbour Police and the Office of the Police Ombudsman, for example, investigate significant criminal offences and therefore will regularly come into contact with victims of crime. They are not referred to in the Victim Charter but given their interaction with victims of crime, we wonder whether Clause 9 might be amended to include 'and any other investigating agency in Northern Ireland'.

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

No.

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.

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.

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.

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.

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?

No.

Please provide information to support your answer here:

In response to the consultation on this clause, PPS had noted that it places a duty on each charter service provider to record all complaints received in each financial year relating to alleged breaches of Victim or Witness Charter entitlements and the outcome of each complaint. Each charter service provider must also send a report containing a summary of any such complaints to the Commissioner as soon as reasonably practicable after the end of the financial year. Subsection (3)(a) to (c) sets out the detail that the summary should contain within the report.

PPS had noted the increasing interface involving (i) complaints made by victims to the PPS (which may on occasion reach Tier 3 and are determined by PPS's Independent Assessor of Complaints); (ii) complaints made directly to the Commissioner and (iii) complaints made to other parties, for example the Minister of Justice. PPS had recommended that there be a non-statutory agreement, set out by way of a Memorandum of Understanding as to how such linked complaints should be handled, and to assist in defining what forms of complaint arising from an individual case may fall within the Commissioner's remit.

The Independent Assessor already provides a detailed annual report on the outcomes of complaints and the PPS is willing to provide a copy of this report to the Commissioner, but conscious of the very constrained resources of the team working in this area, we do not wish to commit to further reporting commitments at this time.

While at present there are excellent working relationships with the current Commissioner, and any issues arising are readily agreed, PPS is conscious that a different Commissioner may be in post in the future, Therefore clarification of these matters at this point would be of benefit.

PPS would also welcome extension of the Commissioner's remit in this regard to allow PPS to call in assistance from the Commissioner in the most contentious cases, where acting as an intermediary could benefit the victim. The Commissioner has previously offered very valuable assistance to PPS in this regard.

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.

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.

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 - Strategic plan
Clause 17 - Business plans
Clause 18 - Annual reports
Clause 19 - Duty to respond to annual reports

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.

Clause 18 requires the Commissioner to produce and annual report and sets out what it must include. Do you agree with Clause 18?

Yes.

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?

No.

Please provide information to support your answer here:

In general, PPS has no issue with the proposal as outlined above, however, we would not agree with a statutory requirement to respond to any report making recommendations by the Commissioner within 56 days.

Placing a statutory response period is unwelcome in this context, particularly at a time when there are many competing demands for limited policy and other resources across operational agencies such as the PPS. In practice, a response would generally issue within this timeframe, but there will be occasions (e.g. in more complex matters) when further time will be required to consult on the recommendations, decide how to respond, develop an action plan etc, in a way which will best serve the needs of the individual victim, or wider policy development.

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 21 - Meaning of Victim
Clause 22 - Interpretation of this Part
Clause 23 - Minor and consequential amendments
Schedule 2

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.

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 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.

Clauses 24 to 27 - Criminal evidence and procedure
Clause 24 - Special measures in cases involving hostility
Clause 25 - Protection from cross examination in cases involving aggravation by hostility
Clause 26 - Protection of complainants in proceedings for sexual offences
Clause 27 - Limitation of power to dismiss charges involving death or serious physical harm of a vulnerable person

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.

Please provide information to support your answer here:

PPS had responded to the 2022 consultation on proposals to improve the effectiveness of hate crime legislation in Northern Ireland, which included consideration of extending special measures and prohibiting cross-examination by defendants. This clause has the effect of extending the eligibility of witnesses to special measures 'on the grounds of fear and distress about testifying' where the offence is one that is aggravated by hostility. This will mean that the relevant list of offences would then be: sexual offences, slavery or human trafficking, domestic abuse, stalking and offences aggravated by hostility.

We note that this provision is dependent on enactment of the provision creating a statutory aggravator for hostility in the Criminal Justice (Sentencing etc) Bill.

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.

Please provide information to support your answer here:

This clause has the effect of protection from cross-examination by the person charged with an offence that is aggravated by hostility. As above, this provision is dependent on enactment of the provision creating a statutory aggravator for hostility in the Criminal Justice (Sentencing etc) Bill.

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.

Please provide information to support your answer here:

This provision will provide a statutory basis for the procedure already set out in LCJO Practice Direction No.2 of 2019 (as amended).

The PPS welcomes proposals to improve the current practices regarding third party material (TPM) and evidence of previous sexual history (PSH) to ensure that appropriate regard is consistently given to a complainant's right to respect for their private and family life under Article 8 of the ECHR.

In relation to the particular proposal that legislative effect is given to allow qualified legal professionals to represent complainants in pre-trial hearings concerning TPM and evidence of PSH, the PPS would make the following observations:

- *We agree that if a complainant has a right to be heard to ensure that their engaged rights are advanced, then it should include the right to be legally represented in order for the right to be heard to be meaningful. We refer to Chapter 8 of the Law Commission Consultation Paper on Evidence in Sexual Offences Prosecutions*

(see, for example paragraph 8.106 and the case of WF v Scottish Ministers referred to therein).

- *It should be noted that SOLAs are already assisting complainants in making written submissions to the court regarding the disclosure of TPM. We understand that they have also provided oral submissions on a number of occasions at the invitation of the Judge.*

- *The Law Commission paper sets out a number of arguments in favour of legal representation at pre-trial hearings concerning TPM and PSH:*

  - *The complainant's right to privacy is most effectively protected by independent legal advice and representation (8.29-8.38);*
  - *It provides an appropriate level of scrutiny for sensitive and difficult areas of evidence (8.39-8.42);*
  - *It enables best evidence and provision of information for the trial (as the complainant is best placed to provide the court with the relevant information to help them determine the issues) (8.43-8.47). The paper further expands on this point at paragraph 8.75: "However, the value of individual complainants' input on applications regarding their personal information is not limited to emotion. The complainant will usually be the only person who has full knowledge of, and context for, the evidence sought to be admitted. As we explain above, complainants and their legal representatives will therefore be able to draw information to the attention of the court which may not otherwise be before it. This will help ensure that decisions regarding such evidence are as fully informed as possible. Further, the ability to put forward the same position but for different reasons is justified where the interests or rationale of the prosecution and the complainant do not align"; and*
  - *It improves complainants' confidence and engagement in the trial process and may also bring about cultural change in respect of the use and requests for both TPM and PSH (according to the Sexual Violence Complainants' Advocate Scheme Evaluation Report – which was a pilot scheme conducted in Northumbria). This is discussed at paragraphs 8.48-8.53 of the paper.*

- *We consider that there is weight in the arguments advanced in the Law Commission paper in favour of legal representation at such pre-trial hearings.*

- *Potential difficulties regarding the provision of independent legal advice and representation were also addressed in the Law Commission paper, where concerns regarding delay, cost, difficulties with legal professional privilege, the risk of witness coaching and interference with the established binary adversarial system and the defendant's right to a fair trial, were explored in some detail (at paragraphs 8.54-8.87 of the paper).*

- *We agree with the conclusion of the Law Commission that potential difficulties or negative consequences can, however, be managed with appropriate guidance and/or a Code of Practice to clearly delineate the role of the independent legal representative.*

- *Whilst the Law Commission paper provisionally recommends that the independent legal representative should be provided with "the material and information necessary" to enable them to exercise their clients' right to be heard, they do not further consider what material and information may be necessary, or indeed appropriate, in this regard. We suggest that this is an area which may require further consideration.*

- *SOLAs do not currently have access to the evidence in cases in which they are retained. (This would be the same for privately instructed legal representatives). They receive only very limited information from the PSNI at the point of referral. They may of course receive information directly from their clients but there are no arrangements in place governing what information can or should be shared in these circumstances. They may not, therefore, have sufficient information about the complainant's account or the individual charges to be in a position to comment upon the relevance or probative value of the TPM in issue. Guidance, perhaps by way of a Code of Practice, in relation to what information should be provided to the SOLA/legal representative, and the limits of their role, would bring greater clarity and transparency as regards the correct approach. We note that a similar recommendation was made by the House of Commons Home Affairs Committee (see para 8.55-8.66 of the Law Commission paper).*

- *SOLAs are not currently assisting complainants with regard to the introduction of PSH.*

- *A particular issue may arise in relation to PSH where the application is not made at a pre-trial hearing but during the course of the trial. We recognise that issues relating to potential PSH applications are fact-specific and can develop over the course of the trial in response to the evidence. This is discussed at paragraphs 8.120, 8.142 and 8.143 of the Law Commission paper and a hybrid model, involving representations during the trial in the absence of the jury, is proposed. We note that the recommendation in the Gillen Report did <u>not</u> extend beyond pre-trial hearings and we are inclined to agree with that approach. We would be concerned about the disruption to the trial process if representation during the trial were permitted.*

- *It is also noted that there will be a potentially significant resourcing impact on PPS and on the SOLAs themselves in expanding the current remit of their role. PPS submits that the expansion of the SOLA role and its impact on PPS would have to*

be properly modelled and resourced before implementation. In this context it is relevant to note that the caseload in the Crown Court is now threefold pre-pandemic levels, and double that before the Criminal Bar Association withdrawal of services in January 2026. The majority of trials which proceed to full hearing are serious sexual offence cases, in which this issue will be prevalent. PPS urges caution in the implementation of this recommendation and a full resource impact assessment in advance.

- *New Article 27G(3) is a rule making power. Rules of court may be made in specifying when service of the notice of application on the complainant is required, the manner in which it must be served and how any sensitive or confidential information is to be treated. PPS had expected that such requirements would be provided for in the legislation itself and that the legislation would also set out the detail required to be provided by defence practitioners in making applications for TPM.*

- *There is a strong case for replacing the separate, inconsistent processes in this area with a unified and bespoke regime. The heavy reliance upon guidance including Crown Court Rules and Practice Direction No. 2/2019, rather than primary legislation, is inappropriate where significant public interests and individual rights are in issue. Furthermore, there are aspects of the process that the Practice Direction does not comprehensively address (e.g. no time limits for complainant to notify any objection or make representations) and the tests that are provided for under the Judicature (Northern Ireland) Act 1978 Act apply to witness summonses generally and do not address the specific issues relating to TPM.*

- *We are aware that complainants often find the news that defence are seeking access to their personal information deeply upsetting and potentially re-traumatising.*

- *Some of the main arguments for reform regarding access to and disclosure of TPM are discussed in detail in the Law Commission's Consultation Paper, "Evidence in Sexual Offence Prosecutions", at Chapter 3. These arguments include: evidence of intrusive and broad enquiries for TPM; concerns about reliance upon consent alone; concern that complainants delay access to counselling services while proceedings remain live; the difficulty for third parties in responding to police requests; difficulties arising from redactions applied by third parties; concerns about myths and stereotypes leading to undue weight being placed upon the records and the inconsistencies between the different processes that may apply in different circumstances (i.e. where the application is made by police or by defence/ where consent provided or withheld by complainant or third party).*

We consider that this legislation should address all of these matters and set the threshold which should apply to requests by the defence for disclosure of TPM.

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.

Please provide information to support your answer here:

On the introduction of direct committal provisions, the 'No Bill' procedure will be replaced by an application to dismiss under section 14(2) of the Justice Act (Northern Ireland) 2015.

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

No.

Clauses 28 to 30 - General
Clause 28 - Regulations and Orders
Clause 29 - Commencement
Clause 30 - 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.

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

No.

Public Prosecution Service
6 October 2026