



**Chairperson Committee for Justice  
By E-mail**

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Annex 1:  
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Dear Chair and Committee Members,

**Re: Scrutiny of Third Party Material Disclosure Provisions within the Victims & Witnesses of Crime Bill**

I am writing in my capacity as Northern Ireland's Mental Health Champion to ask the Committee to give detailed scrutiny to the provisions concerning Third Party Material (TPM) disclosure within the Victims & Witnesses of Crime Bill (the Bill). Members will be aware that it falls under Clause 26 of the Bill: protection of complainants in proceedings for sexual offences.

While I note that the Bill seeks to introduce measures intended to improve the regulation of access to a complainant's private information in serious sexual offence case, the Bill falls far short of offering real protections for those who have already suffered so much both physically and mentally.

As the Committee will be aware, victims of sexual abuse and assault frequently experience profound psychological harm, including post-traumatic stress disorder (PTSD), anxiety, depression, dissociation, self-harm and suicidality. Access to timely counselling and therapeutic support is often central to recovery.

However, evidence gathered by the Commissioner Designate for Victims of Crime demonstrates that many victims fear accessing therapy because counselling records may later be disclosed during criminal proceedings. Others report moderating what they say in therapeutic settings because they fear their words may ultimately be scrutinised in court. Some choose to delay treatment altogether until criminal proceedings have concluded, or to forego it completely. From a mental health perspective, this is deeply troubling.

Therapy is intended to be a safe and confidential environment in which individuals can process trauma, explore emotions and begin recovery. It is not an investigative process, nor is it designed to produce evidence for legal proceedings.

Counselling notes are often written during or immediately after emotionally demanding sessions. They may contain shorthand observations, summaries or clinical interpretations rather than comprehensive accounts of discussions. They are not usually reviewed or signed

by clients as a verified factual record. Yet these records can become the focus of detailed legal examination many years later.

The recent Jeffrey Donaldson trial has demonstrated to the public how alleged victims may be extensively challenged on perceived inconsistencies or differences in recollection. While this is a feature of adversarial proceedings, it also underscores a fundamental issue: trauma does not operate according to the expectations of a courtroom. Victims may remember events in fragments, disclose information incrementally, and recount memories in varying sequences over time. These are recognised trauma responses. They should not automatically be interpreted as evidence that an individual's account lacks credibility.

The Committee should consider whether sufficient safeguards exist to prevent therapeutic notes, created for treatment purposes, being used in ways that risk misunderstanding the nature of trauma and mental illness.

I am particularly concerned that the proposed legislative provisions do not go far enough in recognising:

- the purpose and limitations of counselling records;
- the impact of disclosure on victims' willingness to seek treatment;
- the chilling effect the knowledge of disclosure has on therapeutic engagement;
- the importance of privacy in recovery from sexual violence; and
- the potential consequences for individuals experiencing severe psychological distress or suicidal thoughts.

The Commissioner Designate's report identifies compelling examples of victims postponing therapy, restricting disclosures and withdrawing from prosecutions because of fears surrounding disclosure.

I would encourage the Committee to consider the legislative frameworks adopted in Canada and Australia, both of which provide significantly stronger protections for records attracting a reasonable expectation of privacy. These models require a clearer evidential basis for disclosure and place greater emphasis on victims' privacy, participation and wellbeing.

Specifically, I would encourage consideration of amendments that:

1. Raise the threshold for disclosure applications.
2. Require courts to take account of the likely mental health impact of disclosure.
3. Prevent disclosure applications based solely on assumptions about credibility.
4. Strengthen victims' rights to be informed of, and participate in, disclosure proceedings.
5. Better protect records created for therapeutic purposes.
6. Incorporate elements of the Canadian model that explicitly reject speculative requests for counselling and medical records.
7. Consider Australian-style protections where disclosure would cause serious harm to a victim's mental health.

Northern Ireland has appropriately invested considerable effort in developing trauma-informed responses across health, policing and victim support services. I believe that our legislation should reflect those same principles.

Victims should never feel that they must sacrifice access to counselling, mental health treatment or emotional support in order to pursue justice. The law should provide confidence that seeking help will not expose victims to unnecessary intrusion into some of the most private

aspects of their recovery. Failure to provide robust safeguards risks undermining both the wellbeing of victims and the wider confidence required for victims of sexual violence to engage with the criminal justice system.

I would welcome the opportunity to provide further evidence to the Committee as it considers these important provisions.

Sincerely,

A solid black rectangular box used to redact the signature of Siobhan O'Neill.

**Siobhan O'Neill**  
**Mental Health Champion**