
Victims and Witnesses of Crime Bill: Committee Stage

The Bar of Northern Ireland

1. Introduction

The Bar of Northern Ireland welcomes the opportunity to respond to the Committee of Justice's consultation on the Victim and Witnesses of Crime Bill. This submission has been made in collaboration with the Criminal Bar Association.

The Bar is a profession of self-employed barristers in independent practice with a unique specialism and expertise in legal advocacy. Members of the Bar champion the rule of law, serving the administration of justice and public interest. In exercising their duties to both their clients and courts, they play a vital role in safeguarding the legal rights afforded to all citizens across NI.

Over 700 self-employed barristers operate independently from the Bar Library under the "cab rank" rule, which requires barristers to accept instructions in any field in which they are competent, regardless of their views of the client or circumstances of the case.

The Bar recognises that this Bill, the third bill sponsored by the Minister of Justice in the current mandate, aims to create a more "victim and witnesses centred" criminal justice system, which is "transparent and protective". The Bar is supportive of measures which make the system more victim friendly, and widen access to justice for all.

1.1. Evidence Based Policy Making

A strong evidence base in policy making is critical to ensuring good governance and the creation of effective, accountable, and sustainable solutions which represent the current needs of the system and its users. A report from Pivotal NI found that "policy making based on evidence" is a key feature to ensuring good delivery of policy. They noted that evidence-based policies are "more likely to result in improved outcomes" but that this is not the model readily used in NI, "where policy decisions are sometimes taken for other reasons".¹

The evidence base behind the proposals in this Bill stem from a consultation conducted by the Department in 2024. The Department's post consultation report notes that it received 30 responses with an overwhelming support for the proposals. However, we are concerned that this small sample size conflicts with the high threshold for empirical data that has been previously required for policy development. We would therefore like to emphasise the importance of ensuring that proposals which aim to alter the criminal justice system are backed up by sufficient evidence and data.

2. Commissioner for Victims and Witnesses of Crime

Part 1 of the Victims and Witnesses Bill provides for the establishment, appointment and functions of a statutory Commissioner for Victims and Witnesses of Crime for Northern Ireland. The Bar of

¹ Pivotal, "Policy delivery in Northern Ireland" (15 June 2025)

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Northern Ireland supports the premise of placing the Commissioner on statutory footing, with additional comments as detailed below.

2.1. Witnesses

It is integral that this role is designed around promoting the interests of witnesses as well as victims. In its non-statutory form, the designate role was framed around victims. We welcome that the proposed statutory model now explicitly includes witnesses, and refers to victims and witnesses together. However, it has been noted that the operational framework of the role remains more clearly developed around the Victims Charter.²

Witnesses are a crucial component of the criminal justice system, and the protection and promotion of their rights and interests are of the utmost importance.³ Particularly as they are often navigating complex social and moral conflicts.⁴ This is even more pronounced in communities where social cohesion is high and the justice system is viewed with suspicion, as witnesses may face social ostracism or stigma for cooperating with legal authorities.⁵ This is an issue that may be particularly prominent in Northern Ireland, as it has been noted as being prevalent in close-knit ethnic or religious communities.

The Bar raised the importance of ensuring witnesses are included in the remit of the Commissioner's duties during the Department's consultation on the proposals for inclusion in the Bill. At this stage, we emphasised the importance of ensuring that defence witnesses are provided with the same protection and promotion as witnesses for the prosecution.

As matters currently stand, witness support involves supporting prosecution witnesses alone. Witnesses for the defence do not receive additional support beyond that which can be provided by the legal representatives for the defence.

This places additional burden on defence representatives who are being tasked with the additional responsibility to work with these witnesses. We understand that there are practical reasons for this, as there may often be a potential for conflict between witnesses for competing sides, but we are concerned that their requirements are often overlooked when they are involved the justice system.

² Kevin J. Brown, "Improving Access to Justice for Victims of Crime in Northern Ireland: The Role of a Commissioner for Victims and Witnesses of Crime" (April 2026)

³ Dr Pawan Kr. Mishra, "Protection of Witnesses and Criminal Justice: Needs for a New Law" (2010) Indian Journal of Law and Justice

⁴ Rus Mihaela, "The role of the witnesses in criminal proceedings: Importance, vulnerabilities, and psychological implications" (2025) The Proceedings of the International Conference on Social Sciences, Humanities and Arts

⁵ Ibid.

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The statutory framework should therefore ensure that the Commissioner is able to consider the interests and needs of all witnesses, regardless of whether they are witnesses for the prosecution or the defence.

2.2. Independence of the Role

It is of paramount importance that the Commissioner's role is genuinely independent. Whilst we understand that some connection to, and engagement with, the justice system is unavoidable and necessary, the Commissioner must be able to scrutinise the system effectively and uphold the rights of victims and witnesses within it.⁶ This was recognised by the Minister who noted that the role was deliberately designed to be one of "independent scrutiny, transparency and influence".⁷

The Commissioner will be expected to comment on agencies within the Department's remit, and at times on departmental policy itself. This requires a meaningful degree of independence from the institutions and bodies being scrutinised.

As noted by Kevin Brown, a "Commissioner that is too closely aligned with the system risks becoming part of it", and a Commissioner that maintains a clearer distance is "better placed to scrutinise policy, challenge performance, and command confidence".⁸ This is particularly relevant in Northern Ireland, where maintaining the distinction between engagement with the system and scrutiny of performance will be more difficult in a small and closely connected jurisdiction.⁹

This concern is reinforced by academic literature which has recognised that Commissioner appointments "may be highly susceptible... and open to accusations of government influence" and this serves to "undermine perceptions that the commissioner is capable of effecting change...".¹⁰ The Bar of Northern Ireland is therefore concerned that the current statutory framing has been described as a "light-touch model of independence" as the role will remain institutionally connected to the Department.¹¹

The Bar considers that the arrangements for the Commissioner should provide sufficient independence from the Department and the bodies within its remit to support both effective scrutiny and public confidence in the Commissioner. It is inevitable that there will be instances when the position of the Commission aligns with that of the Department of Justice, as the sponsoring department. The alternative may also arise – when the position of the Commissioner on a policy area

⁶ Brown (n 2)

⁷ Victims and Witnesses of Crime Bill, Official Report of the Second Stage (30 June 2026)

⁸ Brown (n 2)

⁹ Ibid.

¹⁰ Pamela Cox, Ruth Lamont and Maurice Sunkin, "Conceptionalising regulatory governance: the case of the Victims Commissioner"

¹¹ Ibid.

is at a variance with that of the Department. There should be no hesitation in the Commissioner to critique the sponsoring Department, where doing so would represent the best interests of victims and witnesses.

3. Prohibition on in person cross-examination for cases involving aggravation by hostility

Part 2 of the Bill adds offences which involve aggravation by hostility to the list for which witnesses are eligible for assistance in giving evidence. The fairness of the justice system in part depends upon the quality of evidence being collected and brought before the court.¹² The Bar is aware that frequently witnesses face a range of vulnerabilities that can profoundly impact the quality, reliability, and consistency of their testimony. This in turn can have implications for the fairness of criminal proceedings.¹³

The Bar recognises the importance of ensuring the availability of measures which strive to improve the accuracy and clarity of evidence. The increase in the use of special measures is indicative of the increasing complexity of criminal legal work, which necessitates greater skill and greater preparation time on behalf of practitioners.

Part 2 also makes provisions so that no person charged with an offence involving aggravation by hostility may, in any criminal proceedings, cross-examine in person a witnesses who is the complainant, including child complainants and other child witnesses, in connection with the offence or any other offence with which that person is charged. We understand that this stems from the Hate Crime Review in 2020, in which Judge Marrinan noted “serious concerns” that victims are being discouraged from giving evidence in cases where perpetrators choose to exercise their right to cross-examine their victims in person.

It is important to note that the cross-examination of vulnerable individuals necessitates a careful and skilful approach. Cross-examination is a specialist advocacy function, which requires professional judgement and an understanding of the evidential and procedural framework governing criminal proceedings. This is particularly important in cases where the nature of proceedings creates a heightened risk of distress or intimidation.

This provision also highlights the important role of legal representation in ensuring that defendants are able to participate effectively in proceedings while maintaining appropriate protections for complainants and witnesses. The Department should have regard to the availability of suitably qualified and regulated legal professionals to undertake such work, ensuring that the remuneration

¹² Mishra (n 3)

¹³ Mihaela (n 4)

for such work is reviewed in line with statutory requirements and is commensurate with the skill and time applied by practitioners.

4. Protection of complainants in proceedings for sexual offences

Part 2 of the Bill purports to allow for complainants in sexual offence cases, where applications are made to the Crown Court for evidence/documents which the complainant could have a reasonable expectation of privacy in relation to, or relating to complainant's sexual history, to make oral or written representations to the court, to be present, and to be legally represented at any hearing of the application.

The disclosure of material by police and prosecution is one of the most complex, yet essential, aspects of criminal proceedings. Disclosure must operate fairly and transparently, while taking account of the competing interests engaged, including the defendants right to a fair trial and the privacy rights of complainants and other witnesses. It requires the police and prosecution to make available to the defence any relevant material that may weaken the prosecution case or support that of the defence, after following any reasonable lines of enquiry identified by the defence. However, we do recognise the distressing effect this can have on victims and witnesses.

The Bar supports the principle that complainants in serious sexual offence cases should have access to free, independent and expert legal advice concerning their rights and interests. The existing Sexual Offences Legal Advisers (SOLA) scheme provides an important source of independent legal advice and support, including in relation to the disclosure of personal information and previous sexual history

However, the Bar questions whether it is necessary to provide for separate legal representation for complainants at pre-trial applications as outlined in the Bill. A fair trial in an adversarial system is focused on upholding the due process rights of the accused, against the right of the state, to prosecute in the public interest. The rationale underpinning adversarial justice, which sees the crime as an offence against the state, means that the victim is not considered a party to proceedings.¹⁴ Furthermore, introducing a third party into the criminal justice process who is unknown to adversarial practice and procedure has the potential to cause unforeseen delays and may impact on the defendants right to a fair trial.¹⁵

The Bar recognises that the privacy interests of complainants require meaningful protection. However, these matters can be dealt with between the parties under existing provisions and that robust judicial

¹⁴ Tyrone Kirchengast, Mary Iliadis and Michael O'Connell, 'Development of the Office of Commissioner of Victims' Rights as an Appropriate Response to Improving the Experiences of Victims in the Criminal Justice System: Integrity, Access and Justice for Victims of Crime' (2019) 45(1) *Monash University Law Review* 1.

¹⁵ Ibid.

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protections exist to allow for appropriate determinations to be made with defined processes for engagement with the complainant.

At present, in all cases involving serious sexual offences, the defendant has the benefit of experienced counsel, often both senior and junior in serious cases. Meanwhile, the prosecution will have direct engagement with the victim as a witness and a person to whom the prosecutor owes certain duties as set out in the Public Prosecution Service's Victim and Witness Charter.

These bring contact at first instance with the investigating police officer and often a family liaison officer. This will be followed by contact with prosecuting counsel. The complainant also has legal support and advice from a SOLA. The Bar contends that the PPS can receive and make representations on behalf of complainants, and that adding a further layer of legal representation is unlikely to assist a judge dealing with pre-trial matters to determine appropriate steps.

The breadth of the proposed provision should also be considered against the approach taken in other jurisdictions. In the Republic of Ireland, the statutory regime for third-party is confined to defined categories of child protection, counselling, medical and social work records in respect of which there is a reasonable expectation of privacy.¹⁶ The proposed framework in Northern Ireland is framed more broadly, applying to any "evidence, document or thing" containing information relating to the complainant in respect of which they could reasonably expect privacy.¹⁷ The Bar considers that careful consideration should be given to whether such a broad provision is necessary and proportionate.

There is also a question of who would provide the legal representation for victims in pre-trial applications. We recognise the role that SOLAs has played in providing invaluable advice and support to victims during a daunting experience, with over 2,000 people reportedly receiving assistance through the scheme since the launch in 2021. We believe that SOLAs should continue to provide this important support to victims up to the start of the trial.

However, we are concerned that the proposed extension of SOLAs from providing advice and assistance to providing representation before the court may give rise to differences in the standards of representation and professional obligations applicable to SOLAs and senior counsel.

As per the Bar of NI Code of Conduct, barristers must always adhere to the highest standards in all aspects of their professional conduct. It is a fundamental obligation of a barrister to ensure that every aspect of the client's interests is properly represented and protected without fear and favour. In

¹⁶ Dáil Éireann Debates, vol 1087, no 2 (10 June 2026) 230.

¹⁷ Northern Ireland Assembly, *Victims and Witnesses of Crime Bill* (Bill 39/22-27, as introduced, 22 June 2026) cl 26 inserting art 27G into the *Criminal Evidence (Northern Ireland) Order 1999*.

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addition to this, barristers are obligated to complete CPD training, including mandatory advocacy training and training on vulnerable witnesses in court proceedings.

We are aware that an interim review was carried out at the end of the first year of the scheme, which concluded that the scheme had delivered significant benefits and achieved key goals. However, the adult SOLAs service remains a pilot, which has been extended until March 2027 without a full evaluation and review on its usefulness. We, therefore, consider that caution should be exercised before significantly expanding the role of SOLAs within criminal proceedings until a full evaluation of the pilot has taken place.