Northern Ireland Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (Sexual Offences and Trafficking Victims) Bill: Women's Policy Group NI

18 November 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Mervyn Storey (Chairperson)
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Peter Weir
Miss Rachel Woods

Witnesses:

Ms Danielle Roberts	HERe NI
Ms Kendall Bousquet	Migrant Centre NI
Ms Maxine Murphy-Higgins	Northern Ireland Committee, Irish Congress of Trade Unions
Ms Elaine Crory	Women's Resource and Development Agency
Ms Rachel Powell	Women's Resource and Development Agency
Ms Karen Sweeney	Women's Support Network

The Chairperson (Mr Storey): I welcome, via StarLeaf, Rachel Powell. Hello, Rachel and Elaine, Kendall and Maxine — we are getting all the names, bit by bit — and Danielle. Our technology on the hill, as well as our politics, can sometimes be a bit slow. Thank you for your patience. Jonna Monaghan from the Northern Ireland Women's European Platform (NIWEP) is unable to attend. You are all very welcome; thank you for taking the time. Rachel, I ask you to make your comments. If any of your colleagues want to comment, they may do so, and members will then have the opportunity to ask questions.

Ms Rachel Powell (Women's Resource and Development Agency): Thank you very much, Chair. There is a bit of an echo.

The Chairperson (Mr Storey): If those who are online would mute their microphones, that might help.

Ms Powell: Great. Thank you. Yes, Jonna Monaghan *[Inaudible owing to poor sound quality.]* Sorry. There is still an echo. I will try *[Inaudible owing to poor sound quality.]* My name is Rachel Powell. I am the women's sector lobbyist with the Women's Resource and Development Agency (WRDA). I am the chair of the Women's Policy Group. Jonna Monaghan from NIWEP is unable to attend, so I will include in my overview some of her remarks on international mechanisms. Karen Sweeney should be on StarLeaf on behalf of Rape Crisis Northern Ireland.

The Women's Policy Group is a coalition of women policymakers across the women's sector and broader voluntary and community sector. We are a platform for women working in policy and advocacy roles in different organisations, and we share our work and speak on collective issues that impact women. We made a joint submission to the Committee on the Justice (Sexual Offences and

Trafficking Victims) Bill that involved WRDA, Raise Your Voice, HERe NI, Cara-Friend, Migrant Centre NI, Rape Crisis NI, the Northern Ireland Committee of the Irish Congress of Trade Unions (NIC-ICTU), NIPSA and Women's Aid. We also used evidence from our Women's Policy Group feminist recovery plan, which was developed by over 35 policy experts across 26 organisations.

We very much welcome the opportunity to make this joint presentation. We also particularly welcome the news that the Committee has agreed to arrange a separate oral evidence session for our Women's Aid colleagues. The Bill addresses sexual exploitation and trafficking — issues that disproportionately impact on women and girls — so we strongly advocate that organisations that support women and girls be given meaningful opportunities to engage and share their expertise with the Committee.

Now that I have set that out, I will give a brief overview of our submission and then I will pass over to each of my colleagues, who will give more detailed perspectives from their organisations. While we very much welcome the Bill, we still have a long way to go before women and girls in Northern Ireland are afforded the same protections as women across the rest of the UK and Ireland when it comes to addressing gender-based violence. We call on the Committee to firmly recognise the matters in the Bill as gendered issues, and in our submission, we highlighted a number of international human rights obligations that relate to the Bill. Sexual offences and trafficking are gendered crimes. Worldwide, 70% of trafficking victims are women, and girls are more likely than boys to be targeted for online exploitation and abuse. The UK has obligations in international law to recognise gender-based violence against women as a specific human rights issue.

As a state party to CEDAW, the Convention on the Elimination of All Forms of Discrimination against Women, the UK is required to take action on domestic abuse and sexual abuse, which the convention defines as a barrier to women and girls enjoying their full human rights. The overall aim of CEDAW is to strengthen gender equality, and, in its concluding observations, the committee highlighted the importance of action on all forms of gender-based violence. In particular, it highlighted its concerns about the lack of protections for women in Northern Ireland compared to the rest of the UK.

The UK is also a member of the Council of Europe, which integrates gender equality as one of its policy goals. It has adopted standards for gender equality that set out a list of measures to be taken across policy areas, including those on violence against women. The standards state that violence against women and girls is one of the most serious violations of human rights and fundamental freedoms of women and an obstacle to the enjoyment of those rights and freedoms.

In 2011, the Council of Europe adopted the Istanbul convention on preventing violence against women and girls and combating domestic violence, which sets out clear standards for states to put in place. Compliance with those requirements is essential in order to enable states to ratify the convention. The UK is yet to ratify the convention, and it is vital that the Bill contributes to ensuring that the UK is able to comply with and ratify the convention. That will also include developing a violence against women and girls strategy for Northern Ireland, which the Assembly voted on and which we hope will include reference to the Bill.

It would be helpful for us to know what evidence and good practice from other jurisdictions is being used in preparation for the Bill. I would particularly like to note and endorse the submission from Professor McGlynn. We would like to know about examples of relevant Acts and frameworks, particularly from elsewhere in Europe, and how we can build on them to make sure that, from the beginning, we have proper legislation in Northern Ireland that is as up to date and effective as possible.

Many of you will also be aware of our comprehensive Women's Policy Group feminist recovery plan. Addressing violence against women and girls is a central aspect of that plan. We gathered evidence and made recommendations about violence towards women and girls. I will highlight some of the testimonies that women gave us this year. With over 200 women, we carried out research on stalking that included questions about their life in Northern Ireland more generally and how they have been impacted by the pandemic. I will include some of those testimonies for the record. I will quote some of the anonymous submissions. One woman said:

> *"We as a country indulge too much in lad culture, which I believe is deeply entrenched in rape culture. Too often, we excuse the 'jokes' of cis men rather than calling them out for what they are."*

Another woman said:

"I am constantly looking over my shoulder and feel that I am being watched. I am scared to go anywhere not public. I am anxious, stressed and scared as I am not sure what will happen next."

Another woman said:

"My employer geo-tracked my every move on my personal mobile for 407 days. He accessed my private social media messages, personal email accounts and photos stored in the cloud and used the information to mock, torment and threaten me about very personal and private things, one being emails he found about a mental health diagnosis and another about nude photos that I sent to previous ex-boyfriends. The thought of my boss seeing intimate photos and possibly showing them to his fellow directors is absolutely horrifying. I resigned, yet he still shows up at my door unannounced and texts me."

Another woman said:

"Saying that 'boys will be boys' and that, to stop sexual harassment, the women have to be taught"

to behave:

"differently, not the men, and experiences include catcalling, uncomfortable compliments from"

men and:

"strangers, being cornered and touched by men I didn't know."

needs to change.

Finally, another woman said:

"We have a very outdated view on progressive social issues in Northern Ireland. I have experienced harassment, catcalling, groping, unwanted attention, unsolicited"

flashing pictures.

I will very briefly touch on some of our comments and concerns on the Bill's clauses before handing over to my colleagues, who will go into more detail. The Women's Policy Group supports the Bill and a number of its provisions but is concerned about some of the gaps. For example, in clauses 1 and 2, we have suggested that proposed new clause 71A(4)(a) be amended to read:

"on summary conviction, to imprisonment for a term not exceeding 12 months".

We have made the same recommendation for proposed new clause 22G(a). That is because we want the terms of imprisonment in Northern Ireland to be in line with those in our neighbouring jurisdictions and not to be shorter.

We also fully endorse responses from the NSPCC, particularly those on removing victim-blaming terminology, as well as a response from Women's Aid saying that the victims of child exploitation need protection and reassurance.

Very briefly, some of the other parts that we included in our submission is our full support of recommendations from the Gillen review, particularly those on anonymity of victims, which is in clauses 4 and 5, and those on increased fines and penalties for the breach of anonymity, which is in clause 6.

In relation to clause 8, we stress that it is imperative that defendants continue to be named once charged. The disclosure of serial perpetrators can encourage and facilitate other potential complainants to come forward so that serious sexual offences are not treated differently to other serious offences. That is particularly important with sexual violence crimes, which, as the Committee is well aware, are some of the most under-reported crimes and most difficult to secure a conviction for. Granting anonymity to perpetrators is the last thing that would address those issues of under-reporting and low conviction rate.

We also welcome clause 15, which excludes the public from court in cases of serious sexual offences. We find that particularly important because our research from earlier this year, which involved over 150 women in Northern Ireland, found that only 4·5% of respondents believe that Northern Ireland does not have a problem with rape culture. International conventions, such as the Istanbul convention and the UN Committee against Torture, identified measures to prevent secondary victimisation for judicial and nonjudicial proceedings, to apply gender-sensitive procedures and to avoid the re-victimisation of women and girls. We also support calls from the NSPCC for those measures to be extended to all sexual offences in cases involving a child, and we suggest that the Committee considers recommending that they be applied to a whole suite of legislation relating to issues of violence against women and girls, including coercive control, non-fatal strangulation and where there is a domestic abuse offence. We also recommend that offences of that nature should be heard only in the Crown Court, due to the public nature of the Magistrate's Court.

In conclusion, we endorse recommendations from Women's Aid on increasing support for victims of trafficking and enhancing legislative provisions to support victims. We believe that it is crucial that victims of trafficking are not criminalised for crimes that they are forced to do. We welcome clause 18, which is on the inclusion of sexual offences prevention orders, and clause 19, which is on the removal of the six-month time limit to make a complaint about abuse.

My colleagues will now go into more detail about the Department of Justice's proposed amendments on rough sex, revenge porn and other areas in the Bill.

Ms Elaine Crory (Women's Resource and Development Agency): Thank you, Rachel. Good afternoon, Committee members. Thank you for the opportunity to speak about these issues. I will speak briefly about two issues that are of particular interest to my work on the Raise Your Voice project. That project is a partnership project of the Women's Resource and Development Agency, the Women's Support Network, the Northern Ireland Rural Women's Network and Reclaim the Agenda. The partnership works to tackle sexual harassment and sexual violence in communities in Northern Ireland.

One of the issues is the proposed banning of the so-called rough sex defence. Like many other people, we have watched the rise in that kind of case with horror. It needs to be addressed urgently and decisively. We have submitted arguments, in response to the call for evidence for the Bill and to the separate consultation on the issue that took place last winter, that the proposed legislation is insufficient to solve the problem that we face.

The legislation proposes to formalise what has already been case law since R v Brown. Such formalisation will not prevent cases of that kind arising. They are better understood as a claim that death resulted accidentally, rather than consensually. The defence is not really an argument that the victim consented to their own death or serious injury; rather, it is that the defendant lacked the motivation — or mens rea, the guilty mind — for the charge of murder. Very rarely in those cases is there evidence of premeditation. That would make it sufficient for a charge of murder, but if there is no evidence of premeditation, the Public Prosecution Service (PPS) is generally obliged to charge a defendant with manslaughter. That has a knock-on effect on sentencing guidelines, which often results in bereaved families feeling that justice has not been done for their loved one.

We saw that recently in the case of the death of Sophie Moss in England. Despite a change in the law in England and Wales last year, the outcome was, again, a conviction for manslaughter and a sentence of four years. The problem is far too serious to be solved by simply formalising what is already case law. For that reason, we propose a solution that involves the creation of a new offence that is similar in style or intention to the charge of causing death by dangerous driving. The idea is to capture the reckless or negligent nature of the defendant's behaviour and enable appropriate sentencing structures where murder cannot be charged or proven. That would be classified as a sexual offence, which would also result in the further benefit that the victim's sexual history would not need to be heard in the courtroom.

We also suggest that, alongside that, there is an awareness campaign as well as amendments to the relationships and sexuality education provision in schools that are very careful not to condemn certain sexual practices that are fully consensual but instead put the focus on consent, with an emphasis on safety and accurate information, including teaching young people about the use of safe words, for example.

The second issue that I will talk about briefly is image-based sexual abuse, which is sometimes referred to as "revenge porn". I want to add our support for Professor McGlynn's recommendations on

deepfakes and cyber-flashing. Like Professor McGlynn, we propose extending the provisions to include the threat to publish such material. Not only does that threat cause distress, whether or not is acted upon, but it can be used to exact coercive control and as a tool of sexual manipulation.

Finally, we also welcome the move to include some of the provisions of the Gillen review in the Bill; for example, the extension of anonymity to complainants after their death and the exclusion of the public from courtrooms. We look forward to further recommendations of the Gillen review being acted upon in the coming mandate.

That is all from me. Thank you. I will pass over to Maxine Murphy-Higgins.

The Chairperson (Mr Storey): Thank you.

Ms Maxine Murphy-Higgins (Northern Ireland Committee, Irish Congress of Trade Unions): Thank you, Elaine, and thanks to the Committee for the opportunity to speak to you. First of all, I should say that Professor Clare McGlynn dealt eloquently with all the issues on upskirting and downblousing. We want to add our support to what she said. However, I will carry on and add to that a little further. I am from the education trade union group, which is part of the Irish Congress of Trade Unions. I represented the two members in Enniskillen Royal Grammar School in my role as the NASUWT representative. One key issue that was delved into in the questions with Clare McGlynn was motivation. There are difficulties with motivation. The case in Enniskillen would never have been seen or heard because, at one point, the PPS wrote to the victims of the upskirting and again said that there was insufficient evidence to establish a sexual motive. The only person whom it asked about the motive was the perpetrator, who simply said that it was not done for sexual gratification. Therefore, that has to be an issue.

The law needs to ensure that everyone is entitled to a reasonable expectation of privacy for their own bodies. It must cover all circumstances where the taking of images is non-consensual. Although we welcome the Bill very much, it is flawed in its current draft, because it would still be the case that intentional upskirting without consent would not be a crime in itself but would be dependent on proving that the individual who carried out the act was acting for the purposes of "obtaining sexual gratification" or "humiliating, alarming or distressing" the individual.

The proposed legislation still sends out the message that it is OK to use a woman's body to do with what you want and that you can do that without consent. We must not limit the legislation. The Bill needs to be amended to remove the clause that requires that the person acted for the purposes of "obtaining sexual gratification" or "humiliating, alarming or distressing" the individual. That clause should be replaced with a form of words that requires conviction to rest on the intent to record or distribute and on whether consent was given for the image or video to be taken. As I said, we need to focus on the intention, not the motivation. That is all that I have to say for now. Thank you.

Ms Powell: Next up we have Danielle Roberts.

Ms Danielle Roberts (HERe NI): Thanks, Rachel, and thanks to the Committee for the invitation. I am Danielle Roberts, senior policy and development officer at HERe NI, which is a charity based in Belfast that aims to advocate for and support lesbian and bisexual women and their families and to improve the lives of lesbian and bisexual women across Northern Ireland. Jointly with Cara-Friend, we run the gender violence project, which is aimed at LGBTQ+ women and girls who are at risk of or have experienced domestic and sexual violence or abuse. We also deliver training to professionals who work with women and girls.

Often, the LGBTQ+ community is a hidden population in domestic abuse and sexual violence data. We recommend that all section 75 groups be monitored, inclusive of sexual orientation and gender identity, when reports are made and support services are accessed. If monitoring sexual orientation and gender identity is standard procedure, it will remove the onus on the individual to come out in an environment that they are not sure will be welcoming. We also recommend mandatory training on best practice for all levels of the criminal justice system. Such training would include the use of gender neutral pronouns and sexual orientation awareness.

We welcome the provisions to create the new offences of upskirting and downblousing. However, summary conviction is not appropriate, as it falls behind sentencing guidelines for the same crimes in Great Britain. We share the concerns of *[Inaudible owing to poor sound quality]* around stipulating that perpetrators *[Inaudible owing to poor sound quality.]* There is an echo, but, hopefully, you can still hear

me. The language stipulating the intent of perpetrators has proven problematic elsewhere, as discussed previously.

We also highlight that forcing an individual to expose scars or taking pictures of those scars and targeting sexual or emotional abuse towards parts of the body that a person may be ashamed of or detached from are methods of domestic abuse that are often used towards people from the trans community with the implicit or explicit threat to disclose their gender identities. That is not just an issue for the trans community; it could affect people who have had a mastectomy or who are intersex, so we caution against the wording of the Bill being too restrictive.

We support the extension to existing revenge porn provisions to include the threat of publication. However, as Elaine said, we ask that the term "revenge porn" not be used. Research in America has demonstrated that LGBTQ+ people are more than four times more likely to be victims of image-based sexual abuse than heterosexual people, with 17% of those surveyed reporting that they had either had an image shared without their consent or had been threatened with the sharing of an image. It is well-documented that women are the most vulnerable of any demographic to rape, sexual assault, domestic violence and stalking, so it is likely that there is a high incidence of related crimes experienced by bisexual women. Therefore, the Bill is very much an LGBTQ+ issue.

On the proposed legislative fix to reinstate four offences that were incorrectly removed, it is disappointing that the wording of the amendments was not set out clearly, because, as a result, we have not really been able to scrutinise them. As a general comment, any summary prosecutions of those offences must at least match those in neighbouring jurisdictions in order to ensure that the crimes are taken as seriously in Northern Ireland as they are elsewhere.

I have come to the end of my remarks, so I will pass on to Kendall. Thank you for listening.

Ms Kendall Bousquet (Migrant Centre NI): Thank you so much, Danielle. Hopefully, you can all hear me. I thank the Committee for its invitation to the Women's Policy Group. I am the advocacy officer at Migrant Centre NI, which is an organisation that provides support, advice and advocacy services to migrant and ethnic minority communities in Northern Ireland.

I hope to reiterate and supplement some of the information on ethnic minority communities that is in the Gillen review. In that review, Sir John Gillen said that if the law and procedures on serious sexual offences in Northern Ireland are to be "fairly applied" to all victims, particular consideration must be given to people in marginalised communities, including those from migrant and ethnic minority backgrounds. That is of particular importance, especially when considering the barriers to reporting for victims from those backgrounds. Those barriers are numerous and include a lack of knowledge of the criminal justice system's support services; English-language barriers; a lack of local support networks; a mistrust of the police; and fear of penalties because of their immigration status if they come forward. That is just to name a few.

The PSNI, NHS and a number of other statutory agencies are engaged in immigration reporting to the Home Office. For example, if somebody receiving care from the NHS reports abuse or someone reports a crime to the PSNI, their immigration status may be shared. That is a big barrier to reporting for victims.

Touching again on what is outlined in the Gillen review, adequate resourcing to address specialist needs will make the difference between the legislation being a workable help to victims and just existing on paper. Necessary resourcing includes the resourcing of specialist services for migrant and ethnic minority victims of sexual violence or any forms of gender-based violence. None of those services exists, and the Gillen review acknowledges the importance of adequate resourcing if legislation is to be successful. The need for resourcing is also underscored in the Istanbul convention. We have a very successful model of victim advocacy and support services for victims of hate crime, and something could be duplicated for victims of gender-based violence to provide specialist for marginalised communities. The Gillen review also recommends training for statutory organisations and any publicly funded advocates on the particular issues faced by marginalised communities, best practice for serving those communities, and the particularities of the types of abuse that they may face.

There is a gross underestimation of the levels of serious sexual offences against migrant and ethnic minority victims because of under-reporting. There is no collection of disaggregated data or equality monitoring for victims of sexual violence, domestic violence or any other forms of gender-based violence. That is something that should be happening, and it does happen for crimes, such as hate

crime. The collection of disaggregated data in those instances would allow us to get a clearer scope of the problem but also see to where outreach is needed and with which communities.

Furthermore, the Gillen review recommends that the DOJ commission individual research on the prevalence of sexual offences in particular communities, including BME communities.

None of that is to say that migrant and ethnic minority communities are a monolith. In fact, we are talking about people from Roma and Traveller backgrounds, agri-food workers, hospitality workers, refugees, asylum seekers, people with different immigration statuses, including those without recourse to public funds, and people from any number of ethnic or national backgrounds that each have their own specific considerations.

Sir John Gillen said that he is:

"satisfied that the level of recognition of the degree of serious sexual offences against"

— minority ethnic communities —

"is disturbingly low."

Hopefully, with adequate resourcing of specialist services, equality monitoring and training and research on those groups, there will be enough support to make the legislation actionable in supporting victims from marginalised communities. Thank you all for your time.

The Chairperson (Mr Storey): Thank you, Kendall.

Ms Powell: Karen will make our closing remarks.

Ms Karen Sweeney (Women's Support Network): Good afternoon, Committee members, and thank you for this opportunity. As the last contributor, I do not want to repeat what others have said, but I may touch on few things. As Rachel said, I thank the Committee for the decision to hear oral evidence from Women's Aid. We fully endorse and support all the submissions from our stakeholders and colleagues in the women's sector.

I am representing the Women's Support Network, which is a Northern Ireland organisation that supported the establishment of Rape Crisis Northern Ireland. That is a service that provides emotional and trauma-informed support for those impacted by serious sexual assault and rape in adulthood. For the past 20 months, Rape Crisis Northern Ireland has provided one-to-one support for survivors of rape and sexual assault, as well as information, signposting and support for other individuals and the families of those affected.

In the Bill, we welcome the measures to include upskirting and downblousing. However, we would question a number of things. The legislation is limited and does not include things such as pranks and dares, those who are just having a laugh or boys being boys, when we know that that does a disservice to victims. We have also questioned why victims are thought less of in Northern Ireland. Why is there a six-month sentence in the Bill and not the 12-month sentence that there is in other jurisdictions? Why are we different?

As has been touched on, following the Gillen review and in light of the publicity around a number of high-profile or explicitly reported rape cases, including on social media, we welcome the inclusion of the clauses on anonymity. It is hoped that that will substantially increase the number of those prepared to report and pursue their cases through the courts. Unfortunately, only in the last week, we have seen the abysmal statistics from the PPS for those who have been convicted of sexual offences and rape offences in particular. Anonymity and the exclusion of the public should definitely increase the number of cases that go forward. However, we reiterate the oral and written evidence given by Professor Clare McGlynn and my other colleagues: we do not want to see an increase in reporting or more cases going through the courts; what we want and need is education on rape myths and, in particular, consent, for everyone in society. That can start specifically with the inclusion of compulsory standardised age-appropriate relationships and sexuality education for all.

We support the evidence given by my colleague Elaine that the proposed legislation is insufficient and needs to be strengthened to ensure that charges of murder, as opposed to manslaughter, can be brought for cases of so-called rough sex. We also support the provision of that new sexual offence. As

previously mentioned in great detail by other contributors, we also support including the threat of publishing images in the Bill. We also support the recommendations of Danielle, on behalf of HERe NI and Cara-Friend, for lesbian and bi women and, as eloquently expressed by Kendall, the support that is needed for minority, migrant and ethnic women.

To sum up, we welcome the progress on issues such as domestic abuse legislation, protection orders and notices, tackling so-called rough sex, recognising misogyny as a hate crime, standardised relationships and sexuality education in the curriculum and the violence against women and girls strategy. We have come some way, but there is a long way to go yet. Thank you very much, Committee.

The Chairperson (Mr Storey): Thank you very much to all the contributors to the session.

Rachel, I have one question before I go to members. Given some of the comments that have been made, I take it that the answer to my question will be in the affirmative, but I will ask it for clarity. You will have heard the previous submission from the South Eastern Domestic and Sexual Violence Partnership. In that, it was referenced that there are gaps in child abduction warning notices. Would you concur that there are gaps that need to be addressed?

Ms Powell: Yes. In our response, we firmly endorsed the submissions by our children's sector colleagues. They called out the different gaps and loopholes, particularly the NSPCC in its Close the Loophole campaign. The specifics of abduction is not an area that we work in, but we do look the expertise of the children's sector and support its recommendations.

The Chairperson (Mr Storey): Thank you.

Mr Weir: I thank all those who made submissions. I want to pick up on two points. There is a range of issues on which, broadly speaking, there is common ground. I am not suggesting that there is not common ground on the couple of points that I will raise, but there is no point reiterating the range of things that we agree on.

Rachel, you mentioned in your submission the importance of getting rid of the rough sex defence so that we have convictions for murder rather than prosecutors trying to fall back on manslaughter, and you mentioned the potential creation of a new offence in that regard. Is there any other jurisdiction where something of that nature has been brought in and so could be a potential model? Secondly, if a further offence were brought in, would that risk a situation in which prosecutors seek to use that as the route rather than pushing directly for a murder conviction?

That is the first area that I want to touch on. I have a question for Elaine after that.

Ms Powell: I will defer to Elaine, who is the expert on that. She was the major voice in that content in our submission. Over to you, Elaine.

Ms Crory: Thank you. No other jurisdiction has something as explicit as that, but a lot of other jurisdictions internationally — the United States, for example — have in their powers different degrees of murder; they have first, second and third degree murder. Those degrees are intended to capture the culpability of the defendant in each case. Third degree murder comes out as something similar to our manslaughter, and first degree murder comes out as something similar to our charge of murder. We do not have anything that is parallel to second degree murder, where the defendant will be able to argue, "I did not intend to kill this person. Yes, I intended to put my hands around her throat, but I did not intend to kill her". That is a defence of accidental death.

At the moment, unless prosecutors have extra evidence that proves that there was some intention to kill, they cannot charge the person with murder, which is the only thing that is available to them, so they routinely end up going for manslaughter. The overwhelming majority of those cases are prosecuted as manslaughter cases. Where they are prosecuted as murder cases, it is usually because there is extra evidence, which can include searches online beforehand or taking extraordinary steps to hide what happened. In most of those cases, that is not what happens; the person reports immediately that somebody has died and says, "I didn't mean to do it". Unless there is something special, that immediately results in a charge of manslaughter.

We do not have degrees of murder, so, if we intend to bridge that gap, the only option available is something similar to what I have proposed. We have done it previously with regards to dangerous

driving. That is the difference between killing somebody accidentally in a car accident and intentionally murdering somebody with a car. Death by dangerous driving occupies that middle space where the person should have foreseen, by virtue of their lack of care or attention, or their negligence to their duties on the road, that death would be a possible outcome. That occupies the same space: by virtue of their not being careful enough, they should have known that death was a possible outcome of their actions during, in that case, sex.

Mr Weir: There is a second area that I want to probe in order to get your thinking on it. There is a fairly compelling case from you and others about upskirting and the motivation behind it. There is a strong argument for the shift towards the combination of consent and intention to take away the motivation element. I see a potential complication on the consent side. I saw it many years ago when I was working as a barrister and there were domestic abuse cases; there is a potential abuse of consent. There is a scenario in which there is some level of coercion or pressure on the woman to say that she did consent and gives false information, or there is a spousal situation where, whatever has happened in the initial actions, they feel compelled to cover it up. On the issue of consent, do you have any thoughts around ensuring that we protect people so that there is not a situation where false consent is used as a defence?

I very much agree with what has been said. There is a barrier if we look at the motivational side of things. I can see, in practice, a DPP or whoever saying that proving that particular thing is a bit of a grey area and that they would not proceed on that basis. Can you address the coercive or false consent issue?

Ms Crory: Maxine may have more to say about that in a moment. The flimsy understanding of consent — flimsy is not how laws ought to be — is built into so many of our laws, including on rape and where consent is central to those cases. That is a problem, broadly speaking. We need to have a more robust understanding of consent to begin with. It needs to begin with education, obviously, but it needs to be built into law so that simply saying the word "yes", even under duress, is not misinterpreted as consent when, as you say, often there is coercion, manipulation, threats and all sorts of things that preceded that "yes" or influenced a "yes" unduly, so that it is not real consent. It is consent, if you will, at the barrel of a gun. We need to do better to codify what we mean by consent. Genuinely uninfluenced consent needs to be the standard.

Mr Weir: I know that Maxine may come in on this. Is that something that could, potentially, be dealt with by way of direct guidelines to the court? I appreciate what you are saying about codifying consent. I suspect that were we to attempt to put something directly into legislation, it might be very difficult to get the wording correct to cover that type of situation. I can see where guidance could be given to judges and others in the system in relation to that.

Ms Crory: If something went to judges, they could communicate it to juries prior to their deliberations, in the same way as they do during a summing-up. That would be extremely helpful. I know that we are expecting to see further Gillen recommendations, in the next mandate, hopefully, that refer to the guidance that judges can give to juries before they begin their deliberations, about understanding rape myths and busting those myths. Such guidance could be a part of the process, but it could also apply to other kinds of trials.

Ms Murphy-Higgins: There is one thing that I would add to that. This is where we can see clear links to the legislation. Although there may be, as you say, questions about whether consent was given, it is about what that person will do with those images. If those images were kept, I imagine that, in that scenario, they will be used for image-based sexual abuse and shared without consent. As you say, what does consent even mean in that scenario? It is about whether the person has given consent because they feel threatened in a coercive relationship. That is the connection with this legislation, and the different acts that someone will do once they have those photographs in their possession. What will happen to those?

That is where the connection is, and it would be useful to have a definition of when consent has been given and what has it been given for. What are those images going to be used for and what type of relationship is the person in? It is very complex, and we understand that. Ultimately, however, we are looking for some stepping stones in this legislation to send out the message that these things are wrong. We need the legislation in place so that people do not continue to be abused in the way that they are and, ultimately, without any recourse to the legislation as we know it at the moment.

Mr Weir: What we are talking about, Elaine, seems to be a very sensible approach. There are two particular issues with consent. First, it is about whether consent is genuinely given; and, secondly, the need for consent to occur on at least two points. When it comes to the use of imagery that was mentioned earlier and, broadly speaking, what was called "revenge porn", I can envisage, as I think all of us can, and I have come across various situations, where consent to taking a photograph was initially given but where there certainly was not consent to it being used. The other issue that has been raised is criminalising the threat of using a photograph as a device, for whatever reason, to gain from the victim in that regard.

Ms Crory: Yes, absolutely. That is a key part. We do educational workshops with the community, and people tell us that they understand the first part. They understand consent to taking a photo and sending it to somebody compared to what happens next. There is very little understanding on that, and that is where the law currently exists, but there is confusion about sharing that image, particularly when the original image is of a person who is under the age of 18.

That also goes into properly explaining consent, the current law and the proposed changes to the law, and then communicating that to the public, because, very often, people are not aware of that. If they are not aware of it, it comes back to the conversation about people misunderstanding serious crimes as banter, a laugh, a dare or something like that. There is a need for joined-up thinking when it comes to bringing in new laws to keep up with constantly evolving technology. How do we communicate that to the people most likely to be using technology, who are overwhelmingly young people? How do we—

Mr Weir: The question of how we-future-proof the law with regard to technology is allied to that. That is very difficult in any circumstances. We are in a very different position today compared with where we were 10 years ago. I suspect that, five years down the line, we may be in a different situation again in relation to that. Thank you for that.

Ms S Bradley: Thank you for all the submissions and contributions. I have found the fact that you delivered your submissions in a group very helpful, because you have reinforced one another's submissions, and, in that sense, it has been easier to find what is considered common ground when it comes to where we can move, and that is very much in support of women.

I found Peter's question and the answers very helpful. It was an area that I was going to go into, because the proposal is significant in relation to an amendment that moves from motivation to looking at consent. That is pivotal in a lot of your submissions. It was, as I said, reinforcing to hear that you are in agreement with that. I have heard so many things. I will not go over them all, because that common ground is there, and we have been ticking them off as we have gone through them. It is worth the Committee visiting those things again.

There was a reference in the submission that showed the importance of wording in legislation. Apologies, because my link did not let me click to follow it up further. It referenced a case that was dismissed because it used the word "underwear", and the case was about a bikini. Can an amendment be introduced to deal with minor things like that, if required? Can anyone give me a follow-up on that case or a way around it so that we do not trip ourselves up on something that is technically quite minor but which we can overcome? I am not sure who I should throw that question to.

Ms Powell: No problem. I will summarise what we said in our submission about that. Danielle may also want to cover some parts that may relate to the LGBT community. We said in our submission that it is important that the legislation not be restrictive. For example, "breast", where there may be no breast tissue remaining, should be interpreted as including a mastectomy scar. Previous strict interpretation of terms in legislation has meant, for example, that a charge of voyeurism was initially rejected because the victim was wearing bikini bottoms rather than underwear. Examples such as that, of strict interpretation of wording, can mean that cases are thrown out on technicalities.

Danielle, I do not know whether you want to comment on how we related that to the LGBT community.

Ms Roberts: The case that we referred to was a Northern Ireland case. The incident happened in 2009 in the Belfast City Council-run Falls leisure centre. The case was thrown out because bikini bottoms are supposed to be seen in public, whereas underwear is not. That distinction meant that the voyeurism charge did not stand. It is about learning from that. Similarly, there is a risk of getting into technicalities about what counts as a breast. Is a mastectomy scar a breast? If somebody has taken a

picture down somebody else's top to show a scar, with the intention of distressing or humiliating the person, that should still be an offence.

We have talked about how the intention set out in the Bill is not the best way of doing it, but it is about ensuring that the threshold for an offence does not get bound up in technicalities. A trans woman who is taking hormones is going to develop breasts. At what stage is there a technicality over whether it is chest tissue rather than breast tissue? It is therefore about avoiding that.

We know that, for people who have undergone other surgeries, the pictures are sometimes used in domestic abuse situations as a way of impacting on people's self-esteem. Threats to publish are very important, because of the distressing effect that they can have: knowing that somebody has pictures that they may share and their holding that threat over you. It is about having a broad interpretation rather than a stringent one so that it is not a technicality.

Ms S Bradley: Danielle, do you think that, if the consent piece is well grounded and it is worked into the Bill that it is about a covert intention, that covers it? Will it be obvious that there was not consent and that it was a covert way of going about getting or creating an image?

Ms Roberts: There are two different things to consider. There will be instances of its being covert, where perhaps a picture was taken by somebody who is not known to the person whose picture is being taken, or who is known to them but there is no relationship, whereas a picture could be taken with consent, as previously discussed, as part of a relationship but could then be the subject of threats to publish.

For LGBT people, that can come with the additional threat of outing somebody. We know that there are many instances of LGBT people not being welcome, and they are therefore not open about their sexual orientation and gender identity, so it is just an additional form of coercive control. There are therefore two different issues. Consensual pictures could still be used in a controlling way.

Ms S Bradley: I appreciate that. Thank you, Rachel and Danielle.

Ms Dolan: Thank you, everyone, for your presentations. I will keep my camera off, because my internet connection was not stable earlier. My first question is, I think, for Rachel, but you can correct me if I am wrong. What consideration has previously been given to banning the public from court in domestic abuse proceedings, and are you aware of its happening in any other jurisdiction?

Ms Powell: When we responded to that issue in our clause-by-clause comments, we looked at the Gillen review recommendations and at how they were founded on the basis of trying to overcome issues of under-reporting and low conviction rates. The whole of chapter 2 of Gillen is about anonymity and privacy. It relates to victims' anonymity. Crucially, we have been trying to highlight the difference for clause 8. It does not mean that serial perpetrators, for example, should be granted anonymity. Once they have been charged, their names should be made public. We say that for a number of reasons, including that it will encourage other victims to come forward and that it will highlight the severity of the issue.

I am not sure what is happening in other jurisdictions. I am not sure whether any of my colleagues here, who worked more closely on the Gillen review, are able to say.

Ms Crory: There is quite a bit of detail in the Gillen review about where it mirrors other jurisdictions and where it departs from them. Sir John Gillen made a huge effort to look at jurisdictions around the world and to talk to legal experts practising in those jurisdictions about multiple parts of the review. There is therefore detail in the review, but there is nothing specific in it about that clause, primarily because there is a relatively new — I say "new" knowing that the Gillen review is itself relatively new — and constantly evolving situation around these issues. I cannot recall off the top of my head precisely what other jurisdictions he looked at on the issue of banning the public from court, but if he did and found something new, it will be in the Gillen review. That having been said, most of the legislation on this anywhere in the world has been passed between the time of the Gillen review and now. Karen may have something to add.

Ms Sweeney: In the Republic of Ireland, the public are already banned from rape trials. That is one jurisdiction on which I can comment. I think that there are also calls in other jurisdictions to bring in that measure.

Ms Crory: I have not double-checked this, but my recollection of the Gillen review is that, in some jurisdictions, there may be not bans but strict restrictions, whereby the legal teams on both sides of cases — the defence and the prosecution — have to pre-approve the people on the list to attend for a given day. Strictly speaking, it is not a ban, but it is a very serious restriction. I think that Judge Gillen's thinking was that we want not to hide the issue from the public gaze, so that we ensure that justice is seen to be done, but to avoid rubbernecking, for want of a better way of putting it. We want to avoid people who have no connection to the case attending court. If you want to attend a trial, you have to show that you have some connection to the trial or the personnel involved or that you have some expertise or some special interest in a particular case.

Ms Powell: We very much welcome the public's exclusion from court. We were looking at the recent history in Northern Ireland of very public cases relating to rape and serious sexual offences. Even our own research shows that just 4·5% of people said that Northern Ireland does not have a problem with rape culture, but that is backed up in international conventions such as the Istanbul convention, as well as by the UN Committee Against Torture. They specifically identify measures to prevent the secondary re-victimisation of those who have been victims of serious sexual offences. According to those international mechanisms, it is one of the gender-sensitive procedures that has been used elsewhere. The NSPCC has also called for the measure to be extended to all sexual offence cases relating to a child, and we support that. We believe that it should be applied to a whole suite of legislation relating to gender-based violence, particularly given some of the issues that we have raised with the Committee previously on challenges with family courts and the very public nature of the Magistrates' Court.

I hope that that answers your question in a bit more detail, Jemma. Off the top of my head, I do not know which jurisdictions have a ban in place on the public attending court, but I know that it definitely has a basis in international human rights mechanisms.

Ms Dolan: It was more about the public being banned from domestic abuse proceedings. Thank you for that.

Have there been any discussions previously or recently with the Department about the new sexual homicide offence?

Ms Crory: The first interaction that we had on that was the public consultation last December on consent to serious harm for sexual gratification not being a defence. It ran over the Christmas period and into January. We responded to that consultation as an individual organisation and also collectively as part of the Women's Policy Group, along with a number of the organisations that are on this call and some that are not. That was the first explicit interaction we had. We got a response in the form of a public document, in which the DOJ responded to the various responses that it was sent, if that makes sense. Sorry. I am using the word "response" too many times. That document outlined the Department's intention for the way forward, which involved including that provision as part of the greater Justice Bill that we are discussing today. The Department acknowledged that the suggestion had been made by a number of different organisations but that it did not think that that was the right route to follow. That is all that we have. There has not been a listing of the justifications given for why it is not the right way in which to do it or why the current approach is better. I have not seen a justification for it, except for the fact that there is certainly a public movement behind taking the approach that the Department of Justice is taking. There is also precedent in England and Wales, which did exactly that just last year. I can see the direction of travel in which the Department of Justice is going, but it was a mistake for it not to engage more carefully on that issue, because it might be a genuine answer to a really serious and potentially growing problem.

Ms Dolan: Yes, definitely, Elaine. I agree that, unfortunately, it is a growing problem. Those are all my questions. I place on record the point that we have a unique opportunity to tackle the interrelated offences of image-based sexual abuse, upskirting and downblousing. It is important that we make those offences as strong as possible. I thank you again for your presentations and your briefing papers.

Miss Woods: Thank you all for your presentations and your very detailed submissions. A lot of my questions have already been asked, so I will not go over them again.

I want to pick apart a wee bit more the issue of data collection, monitoring and section 75. I have had conversations with most of you about that, especially Kendall. We talked about it a lot last year when we dealt with the Domestic Abuse and Civil Proceedings Bill. I want to tease out, from your

experiences at the Migrant Centre, your position on it. Do we need to look at it in this Bill? I know that we talked about it when we looked at stalking. Is there anywhere else in the Bill in which we could strengthen the law to offer support and protection to migrant and ethnic minority women? I know that we have discussed data collection and resourcing. Is there anything else that we need to look at?

Ms Bousquet: Thank you so much for that question. To reiterate, there is room for increased specialist service provision. There is a real lack of that currently in Northern Ireland, whereas, in England, Scotland and Wales, mainstream organisations, let us say, do really great work, in the same way in which the likes of Women's Aid and Nexus do here. There are also organisations that specifically support migrant and ethnic minority victims of gender-based violence. Nothing comparable to that really exists in Northern Ireland at the minute. I know that, luckily, there is some trial programming in Women's Aid to support women with no recourse to public funds. It could probably speak a bit better to that. That is why I brought up the example of the current model for hate crime victim advocacy and support, through which, in the absence of specialist gender-based-violence-specific organisations, there could at least be specialist advocacy services that support victims from marginalised and minority backgrounds. That is crucial. Through the victims that we support through our hate crime advocacy, we see that there are tremendous barriers to reporting and to accessing the services that people need when they are victims of a crime. Those include the obvious barrier of not having the English language skills needed to do that. In some communities, there are also significant levels of fear and mistrust around reporting and a sense that there will be consequences from reporting, even for the victims. Advocates and liaisons are really helpful in giving people the confidence to report.

There are myriad needs that accompany people who have been a victim of serious crimes. Those needs include accessing secure and safe housing and other accommodation, especially in instances of gender-based violence in which financial independence is such an indicator of whether people are able to escape abusive situations, as well as making sure that people's benefits and financial health and well-being are in order and that they have access to both physical and mental health services: the list just goes on. Rather than referring people to a bunch of different services where they will get bounced around and where there might not be adequate interpreter provision, resulting in their being told to bring a friend to interpret for them, having a multilingual victim advocate or an organisation with built-in, budgeted-for and accounted-for interpreter provision means that victims are supported in their journey. That journey does not stop at reporting to the police, if they even choose to do that.

Miss Woods: Thank you, Kendall. Thank you for outlining the importance of that. As a Committee, we are looking at this as it relates to sexual offences and trafficking. Last week, we heard a lot from various witnesses about support. We need to pick that apart. We tried to do that last year, and we can certainly try again.

Elaine, I want to ask you about the rough sex defence. At Second Stage, we raised the proposal, and I know that you have worked on that for a while. The Committee has not seen the Department's proposed amendment. Have you been involved in any discussions with the Department about the rough sex defence?

Ms Crory: No. There have not really been any discussions. The matter has been raised at broader meetings of the Women's Policy Group, but has not been commented on in any meaningful way. We have not seen the wording of the proposed amendment. Similarly to you, we simply know that there is the intention to table an amendment.

Regrettably, the only thing that we know for certain is that there is no intention to bring in a proposal such as the one that we suggested. There has been no in-depth consultation with us and no justification for why that is. I understand that there is an element of taking the path of least resistance and — this goes back to what we were talking about earlier — a feeling of the need to do something, even if that something does not correctly and adequately address the problem that it is trying to address.

Although making an amendment that will simply formalise R v Brown will not necessarily do any harm, it has the potential to do harm by attempting to criminalise consensual sexual acts, depending on what phrasing is used. It certainly will not do any good in bridging that gap between manslaughter and murder.

Miss Woods: Thank you. I would love to see the departmental amendment before Consideration Stage.

The Chairperson (Mr Storey): We have asked.

Miss Woods: We have asked. I am happy to see whether we can ask for the rationale behind the Department's going down that route, especially when you have very clearly said it may not be the best route. We heard during the previous session as well that doing it just for the sake of doing it is perhaps not the best thing, and that we might be missing a trick here.

Finally, I want to touch upon cyber-flashing. Has that been raised with you in the scope of your work? Would you encourage the Committee to look at having something to do with cyber-flashing in the Bill?

Ms Powell: Absolutely. On two occasions in the past year, we opened a call for anonymous submissions from women in Northern Ireland, along with one for the Protection from Stalking Bill. In their responses, a high number of women said that, when they were cyberstalked, or stalked online, normally it was happening both in person and online, and it then escalated to cyberstalking. A very high proportion of women disclosed to us that that had happened to them. The men doing that are emboldened by the fact that nothing is done about it, and it is then seen as being normalised.

Some of the issues around how telecommunications legislation is reserved legislation were touched on in the previous presentation. We made recommendations, including in our hate crime legislation review response, on how we should be able, domestically, to incorporate some form of legislation to deal with online harm against women that does not require changes to primary legislation at Westminster.

It is an issue that more and more women are telling us about. We have had so many testimonies of it happening to them.

Miss Woods: Thank you, Rachel.

Ms Crory: We deliver training in the community, and people do not even recognise that behaviour as being unusual. It seems to happen universally. It happens to people on, for example, dating websites, but, increasingly, we are hearing about it happening in schools and workplaces, and people are even using the facility to airdrop, meaning that, if you have Bluetooth activated on your phone and are on a bus or train etc, someone can use that facility to send intimate pictures potentially to every person on the train but also potentially to you.

There is a never-ending array of approaches that people can take to doing that. Admittedly, the people doing it may not want to tell their grandmother about it, but, as Rachel said, they are emboldened by the fact that they know that there are going to be no legal consequences. They know that they can get away with it, so they do it. Their getting away with it is almost part of the thrill, unless something is done.

I am cognisant of Mr Weir's comment, which is definitely relevant. He said that we cannot future-proof those things in any certain way by being excessively specific, because technology keeps evolving. Even a commitment to attempting to legislate on people using the internet for the purposes of exposing themselves would be welcome, however. Whatever their intention — whether it is to stalk a person, to humiliate a person or to get a date — and whatever their justification, it is almost irrelevant to the means of communication. Any useful legislation would lie in targeting the fact that they are using the internet to send intimate images against other people's will. "Cyber-flashing" is exactly the right word for it.

Ms Powell: We included evidence in other submissions on trying to future-proof those sorts of problems. With technological advancements, a lot of women talked to us, particularly in the evidence submission to the Protection from Stalking Bill, about how they thought that, once we were in lockdown, perhaps the level of stalking that they experienced would be reduced. In fact, the men who were stalking them were finding more and more creative ways in which to do so, even when they were locked up in their home.

That went from cyber-flashing to threatening to publish images of them, and even financial abuse, as they were finding ways in which to get into their online banking. Moreover, they were doing basic things such as finding out which apps the women were using, and then using those to communicate with them. The fact that there is reserved legislation on malicious communications in the Communications Act 2003 should not prevent us from doing something in Northern Ireland about this.

Miss Woods: Thank you.

The Chairperson (Mr Storey): Rachel, I thank you and your colleagues for your written submission and for the time that you have taken today. I thank Kendall, Elaine, Danielle, Karen and Maxine. This evidence session has been very useful for members, and I trust that you also found it helpful to be able to appear before the Committee, so thank you. We look forward to continuing to work with you on the legislation, and we have also cross-referenced it with other legislation that you have worked on. Thank you very much.

Ms Powell: Thank you.