



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Justice (Sexual Offences and Trafficking
Victims) Bill: Victim Support NI

25 November 2021

We are realistic enough to recognise that doing that may not be possible within the time frame of the existing Assembly, nor do we want to see the progress of the Bill as drafted further impeded by that request. Nevertheless, we strongly request that all parties commit to the areas' inclusion in a miscellaneous provisions Bill at the earliest opportunity in the next mandate.

Legislation such as that proposed play a significant part in raising the confidence of victims in reporting crimes and engaging in the criminal justice process. For too long, victims in Northern Ireland have felt that many of those behaviours have been trivialised and minimised and have not been regarded as those which leave victims feeling humiliated, degraded and embarrassed. Some tell us that they are left with continuing anxieties, trust issues and depression, to name just a few of the impacts that victims feel.

We hope that the Bill sends out a strong message that such behaviours are unacceptable and will no longer be tolerated. If, however, we are truly intent on the intended outcomes of the Bill being successful and preventing future victims, it is imperative that we educate and inform people. That could be achieved through appropriately resourced awareness-raising campaigns with the general public and targeted campaigns that are undertaken in specific settings, such as universities, pubs and clubs: something akin to the No Grey Zone campaign, which the PSNI undertook around consent.

We believe that educating our citizens about what consent and healthy relationships look like is a key component of making laws such as this effective. We therefore urge that standardised and mandatory relationships and sexuality education be introduced in our schools in an age-appropriate way.

Appropriate training is also essential for those who are involved in the victim's criminal justice journey, including the PSNI and the Public Prosecution Service (PPS). Victim recovery research undertaken by Victim Support into victims' recovery journeys highlighted the fact that the response received when victims first disclose what happened to them is a potent influencer on the victim's recovery journey. That research, 'The Victim Recovery Journey', which was published only a few weeks ago, is available on our website.

As I have already stated, we welcome the Bill, but we recognise that the key to its success lies in how it is operationalised. In that respect, there are a few points concerning some clauses that I wish to highlight.

We would like clarity on the terminology "operates equipment" in clause 1, which amends article 71 of the Sexual Offences (Northern Ireland) Order 2008. The language around that needs to be examined in order to ensure that it covers all possibilities and is clear and unambiguous. For example, in its current form, will it cover the use of a mirror or a reflective surface, which would be used covertly to capture images? It is important that the wording of clause 1 cover all potential means of upskirting and downblousing.

We have given further consideration to the comments in our original submission on proposed new articles 71A(3) and 71B(3) being inserted into the 2008 Order. We have listened to evidence presented by other experts during the Committee's evidence sessions. We believe that the most efficient way in which to ensure that that law can be effectively operationalised is to remove the need for an offender's motivation to cause harm to be proven. We are satisfied that it should be sufficient to demonstrate that the images were taken covertly, without the consent of the victim, and in a way in which the images captured parts of the body that the victim had not intended to be exposed, violating their bodily privacy, dignity and autonomy. Those elements capture the essence of the offence, and they will need to be proved beyond a reasonable doubt. We believe that to add a requirement for the motivation of the perpetrator to humiliate and degrade also to be proven beyond reasonable doubt may make the offence extremely difficult to prove and effectively administer.

We endorse the comments made by the NSPCC, which referred to the Law Commission's consultation on clause 1, and encourage the Committee to benefit from that consultation's findings.

We welcome the following recommendations, which were highlighted in the Gillen report: clause 4, "Extended anonymity of victims"; clause 6, "Increase in penalty for breach of anonymity", clause 8, "Restriction on reports as to suspects of sexual offences"; and clause 15, "Serious sexual offences: exclusion of public from court". In our opinion, they strike the correct balance between open justice and protection for victims. Their introduction will give greater confidence to victims in helping them stay the course of the criminal justice system. In our work supporting victims in court, our witness service staff and volunteers often see the impact on victims from being scrutinised publicly. It is already difficult for them to share the most intimate details of the worst day of their life with police, prosecutors

and the court. Knowing that any member of the public can also sit in and hear those intimate details may be more than some can bear. We at Victim Support believe in open justice, but we do not think that public access to courts should be at the expense of victims withdrawing from proceedings because they cannot face the possibility of strangers witnessing them at their most vulnerable.

Under clause 15, in proposed new article 27A(2), we request that it be explicitly stated in the legislation or guidance that support staff and volunteers, such as those from Victim Support NI's witness service, NSPCC's young witness service and Victim Support's sexual offences legal advisers (SOLAs) are specified as exempted persons. Although it may be argued that those roles may be considered to fall under "officers of the court", it would remove any ambiguity if their roles were to be explicitly acknowledged.

We have made further comments in our written submission, particularly on the so-called rough sex defence. Unfortunately, we have not seen the full detail of how the final clause on rough sex will be written. Without that, it makes it difficult for us to comment definitively. What is clear is that the so-called rough sex defence continues to be used in Northern Ireland and courts across the UK, particularly in cases in which victims are killed. We know that it is not legally possible for someone to consent to their own death or serious harm. That has always been the case. The crux of the issue is that the rough sex defence has been used by defendants to downgrade a charge from murder to manslaughter through their arguing that a death has been caused by consensual rough sex gone wrong. We appreciate that that is a tricky legal problem to overcome, but we want to ensure that full consideration of the issue informs the Bill. Although we would not wish for the Bill to fall because a solution to the problem could not be found in time, we encourage the Committee to look at the outcomes of cases in England, after similar legal challenges were implemented, and take account of suggestions on how issues related to the rough sex defence could be addressed: for example, in the points raised by the Criminal Law Reform Now Network (CLRNN). We wish to ensure that we take on board all the relevant learning and ensure that Northern Ireland has a law that can be operationalised, is fit for purpose and gives victims and their families confidence.

Finally, it is also important to highlight how the issues raised in the Bill will help address criminality that occurs primarily, although not exclusively, against women and girls. As such, there is a real imperative to prevent such crimes from happening in the first place. A violence against women and girls strategy, led by the Executive Office and supported by all Departments, is key to tackling the root causes of gender-based violence.

I thank the Committee for its time in allowing me to present that oral evidence. I am happy to take questions.

The Chairperson (Mr Storey): Thank you, Janice, and thank you for the oral evidence and that which you previously submitted. I have just one question before I open up the meeting to members' questions. Can you outline further the reasons for your recommendation that other support workers be specifically included as exempted persons? Is there a risk that some support workers may be excluded if the approach is taken to include a list in the explanatory and financial memorandum (EFM)?

Ms Bunting: The reason that we ask for them to be specified is that they are not currently specified. That is why we say that they may tacitly be regarded as officers of the court. It is not explicitly stated in the legislation that, for example, Victim Support or NSPCC support staff can support a victim going to court. Indeed, the sexual offences legal advisers, whose role we have introduced, are also not explicitly listed in the legislation. It does not necessarily cause a problem at the moment, but, if a list were to be included in the legislation, it might prevent a problem from occurring in the first instance. Would the provision of a list prevent others from being considered? Depending on the role that they were playing at the time, it would not necessarily.

The Chairperson (Mr Storey): Thank you for that. Towards the end of your presentation, you mentioned the issue of rough sex. You suggested that the proposed amendment to abolish the rough sex defence may not resolve, in a murder case, the defence of rough sex gone wrong. How do you suggest that the amendment could be strengthened?

Ms Bunting: It is not for us to suggest how it might be improved. That is down to the lawmakers and how they might consider it. The issue has been looked at in the light of the English model, and that model has thrown up problems. It is a tricky legal problem to overcome. We are asking that, in looking at how to overcome it, full consideration be given to the problems that have been presented. That is

why we have directed the Committee to look at what the Criminal Law Reform Now Network says about how rough sex could be addressed; at the fact that, as the law currently stands, if the charge is not murder, it is manslaughter; and at how that could be addressed through what a judge can consider when sentencing. We are asking you to have a look at all those parameters so that, when it is introduced in Northern Ireland, the law is as robust as it can be.

The Chairperson (Mr Storey): Thank you, Janice, for that.

Mr Weir: Thank you for your presentation. I will pick up on two points. I will take your last point, on the rough sex defence, first. It is in a slightly unusual position compared with other elements of the Bill, in that an amendment is anticipated from the Department, but we do not know its precise wording. With other aspects of the legislation, we are in a position to say, "Yes, that is an important step forward. We welcome that", or, as you have highlighted, and I suspect that we will share similar views on a few things, "Such-and-such will need a further change or clear-cut amendment". We are in a grey area, however, with the wording about the rough sex defence.

I appreciate that you have indicated that it not be your position to draft that amendment. Is there, however, an ongoing interaction with the Department to ensure not simply that you have put your views forward but that, in a much more holistic way, the Department is taking on board what might be fit for purpose on the rough sex defence? Is there any ongoing departmental discussion with Victim Support, or is the amendment simply within the Department's remit, and it will come forward with whatever it comes forward with at some point?

Ms Bunting: You are correct that, without seeing the wording, it is very difficult to comment. In essence, I am commenting on what we believe may come forward but without seeing it. We contribute to as many consultations as we can, and we will contribute our views to the Department at things such as the stakeholder assurance group (SAG) committees or the independent assurance groups (IAGs), on which the Department sits and where those things are discussed. We have avenues by which we can contribute. With something such as this, we send our view to the Department and ask it to consider it. There are, however, avenues by which we can make our thoughts and feelings known.

Mr Weir: I want to probe a second issue with you, which you covered to a large extent particularly in your oral evidence, in case you want to expand on anything. It seems to me that a lot of victims of sexual offences and sexual violence feel that there is a chill factor in the justice system. That seems to be because of a combination of factors: the intimidating circumstances in which they have to bring their evidence to court; the pressure of being cross-examined, which ultimately cannot be avoided; and the fact that they have to, if you like, put their head above the parapet. There is not a great way in which to get around that directly. It is also the case that victims lack confidence about seeing a productive end result, because they do not see a lot of such cases coming to court, because of the low level of conviction in those that do and because there is a high hurdle to overcome.

I share your views on circumscribing the motivation. Proving the motivation to cause harm is perhaps seen as another hurdle that needs to be overcome, and I question whether that is particularly necessary.

Is there anything further that you want to say on the chill factor, as I perceive it, for many victims of sexual offences when it comes to their taking a final prosecution through the courts? I appreciate that you highlighted in your submission additional things that could be brought in. To be fair, you have acknowledged, and we acknowledge as well, that there are a number of actions in the legislation that will move things forward and improve the situation, but are there any gaps that could be filled to remove or reduce that chill factor for victims? Is there anything that you would like to see in the Bill to address that particular point?

Ms Bunting: On the question of motivation, what victims have certainly told us is that, if it were going to be difficult to prove, there would be that chill factor, and they would be concerned about going forward. That is why we are urging the Committee to have a look at the work that the Law Commission has done in that regard. The NSPCC raised with the Committee the Law Commission's consultation in England and Wales. It also raised the possibility of four new offences. It raised, for example, the possibility of a [*Inaudible owing to poor sound quality*], which was the offence of a person intentionally taking or sharing an intimate image where there is no consent or reasonable belief of consent. It deepened that by adding two more serious offences: one on sexual gratification, as well as others on humiliation; and one on using those images to threaten the victim by the person saying that they would share them, which is the coercive control aspect.

That is why we are urging the Committee to look at that consultation to see whether there is anything in it that would fold into our legislation to make it better and make it easier for victims to go to court and give them more confidence about doing so. With the services that we have *[Inaudible owing to poor sound quality.]*

The Chairperson (Mr Storey): Can you hear us, Janice? *[Long pause.]* No. Can members still hear us?

Mr Weir: Yes.

The Committee Clerk: She has lost her connection.

The Chairperson (Mr Storey): I think that Janice is logging back in again. Just bear with us for a minute or two, please, members. It was all going too well. That is what happens with technology. *[Long pause.]* It is the first time that I have heard the Committee this silent. We should do this more often.

Mr Newton: Silence does not mean consent.

The Chairperson (Mr Storey): No, it does not.

Mr Weir: Chair, when you asked, "Can we still hear you?", I was going to say at that point, "Can we swap places with Janice?". *[Laughter.]*

The Committee Clerk: Janice is not back in yet. As soon as she comes back into the audience, we can bring her into the spotlight on StarLeaf.

The Chairperson (Mr Storey): OK. *[Pause.]*

Ms Bunting: Can you hear me?

The Chairperson (Mr Storey): You are very welcome back, Janice. We patiently waited. You are OK. *[Laughter.]*

Ms Bunting: I apologise. My connection completely dropped off. I have no idea why. Such is the curse of doing this via StarLeaf.

In answer to Mr Weir's question, I was saying that a law that is operationalised and that works gives victims more confidence in reporting their crimes. If the law cannot be operationalised effectively, that is what creates a lack of confidence for victims and stops them going forward. In our work with victims, we always try to encourage them and to meet their expectations by taking them through what the criminal justice process is about and explaining to them exactly how the laws are perceived.

One of the benefits that we have experienced this year is that, for the first time in Northern Ireland, we have sexual offences legal advisers, who can be involved with victims right from the point of their making a report until they go to court. The advisers are qualified lawyers who can take victims through the process and their expectations, explain points of law to them and give them more confidence to stay the course. Victims are given greater confidence, however, by the ability to know that, in staying the course, they may see a conviction for the offence at the end of it.

Mr Weir: I will close with this comment. It is about getting the wording and terminology right, but the first batch of cases that will ultimately be taken through under the legislation will probably also be critical. If victims see a particular law working in practice and leading to convictions, that will help build that confidence. Some people might hold back until they see that happening, which is why the first number of prosecutions that happen under the legislation will be critical in those early stages.

I appreciate that others will want to ask questions, Chair, and that was more of a comment than a question.

Ms Bunting: Thank you.

Ms S Bradley: I want to follow on from that piece to which Peter referred. Janice, you referenced looking at consent as being perhaps the first read and then going deeper into the motivations as a second or third read. Do you feel that it is best that the final version of the legislation be silent on the descriptors and lean entirely on consent? That seems to be a reoccurring theme. What are your thoughts on that? What are the problems with consent and with what consent was at one specific time or in one set of circumstances but that cannot be read as being consent at a later time?

Ms Bunting: I want to be clear, Sinéad. Are you talking about things such as upskirting and downblousing or the rough sex defence?

Ms S Bradley: I am talking about upskirting and downblousing. I am taking it from the top. I suppose that it is a similar debacle with the rough sex defence at a later time, but it is still about that element of consent and about when it is and is not consent.

Ms Bunting: Again, that goes back to my earlier answer. The lawmakers will be able to write it much better than Victim Support can.

On what victims are looking for, they are looking for, "This has happened to me and I want to report that. Is it easy for me to do? Am I going to go through a lot of hurdles in relation to that?" Eventually they have the courage to take that up and report it, but then it falls because there are all these other hurdles that we have to get over. What we are saying is that, when considering the offences of upskirting and downblousing, the way forward might be to ignore the motivations but take on board the fact that images have been taken without the consent of the individual. They have been taken covertly, and in a way that an individual may not want to display those issues. However, if we are considering the motivations behind that, it is worth thinking about how the Law Commission has framed that and how it would work for Northern Ireland.

Ms S Bradley: Thank you, Janice. It is an approach similar to that taken by others, and I see the logic in it. You question the use of the phrase "operates equipment" and ask whether it covers mirrors. I would have taken that, but I think, Chair, it would be worth us getting a commitment from the Department as to whether that is covered. We could then find out whether it is sufficiently scripted in a way that will ensure that it is covered when this is enacted.

Thank you for your presentation, Janice.

Ms Bunting: Not at all. Thank you, Sinéad.

The Chairperson (Mr Storey): Thank you, Sinéad. Rachel?

Miss Woods: Thank you, Janice, and happy birthday to Victim Support. I know that you were celebrating relatively recently.

Ms Bunting: We were. It was our fortieth anniversary, Rachel. It was great. I should be sitting here with a little bit of cake that says, "Happy fortieth".

Miss Woods: You are 40 years young.

I had a number of comments on clause 1, but you have already covered that substantially. I certainly agree on the consent issue, which has been brought up to us a number of times. We need to look at purposes and motivation.

Under new article 27A(2), we need to consider the inclusion of SOLAs, support services, young witness volunteers and so on as exempted persons. Maybe we can get you some clarification from the Department as to whether it is already covered. If it needs to be included, do you support something in the EFM or do you want something in the Bill, perhaps in 27A(2) under the exempted persons list, or in 27(7), which is specifically about:

"persons directly involved in the proceedings."

We could have an amendment there. I would certainly be happy to look at it.

Ms Bunting: Going down the persons who are involved, our witness service staff or volunteers, for example, will sometimes be asked to sit in to support the victim. Where would they more readily fit in? I am thinking specifically of the SOLAs who, we hope, will eventually be able to assist a victim in court. They might more readily fit into a different part of the Bill. It would be worth examining where the different roles most readily sit and where the appropriate place is for them to be.

Miss Woods: Yes. No problem at all. I am certainly happy to look at that. The next bit of the Bill goes on about:

"Nomination etc of persons to be excepted from exclusion"

and

"Only one person may be nominated by the complainant under Article 27A(2)(c)".

If there were legal representation, a SOLA and maybe support as well, how would it balance out? Certainly, I would be happy to look at that.

You suggested expanding the exclusion of the public from court in clause 15, and you suggested that the Committee consider all sexual offences. Do you see that that would, in any way, interfere with public interest?

Ms Bunting: No, not necessarily. In fact, in many ways, it might be in the better public interest, in the sense that victims would maybe have more confidence in coming forward, reporting crimes and staying the course. We know that that is very difficult. Northern Ireland is a very small place, and one of the things that victims tell us is that they are nervous about going into court and maybe seeing someone that they know. Knowing that there are exclusions in place could help. Obviously, the Gillen recommendations are very clear about how those exclusions can work; there is capacity around that. That would give them greater confidence to come forward and report sexual offences.

Miss Woods: Thank you. Finally, on clauses 4 and 6, from your experience in Victim Support, does anonymity and disclosure of information or publication of information form a lot of concerns for the people whom you deal with as a barrier to their participating in the justice process? I suppose that that question also applies to clause 15, which we have just discussed.

Ms Bunting: I do not have figures to hand that would easily answer that question in the sense that people are saying that anonymity is important to them. What I say to you again is that it goes to the heart of the confidence measures for victims. These are confidence-building measures, and anything that builds the confidence of a victim is to be welcomed.

Miss Woods: OK. Thank you, Janice.

The Chairperson (Mr Storey): No other members wish to ask questions. Janice, thank you for your time.

Ms Bunting: Not at all.

The Chairperson (Mr Storey): To endorse Rachel's comments, I wish you a happy birthday.

Ms Bunting: Thank you very much, indeed.

The Chairperson (Mr Storey): Thank you for all the work that you do. We look forward to continuing to work with you and Victim Support as we work our way through this piece of legislation. Thank you for your time today.

Ms Bunting: Not at all. Chair and Committee members, thank you. I appreciate that.