



**Women's Regional
Consortium**

Consortium for the Regional Support for Women in Disadvantaged and Rural Areas

Response to: Preliminary Report on Justice Delivery around Serious Sexual Offences

Issued by: The Gillen Review

January 2019

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Enabling women into non-traditional employment

Foyle Women's
Information
Network



Women's Regional Consortium: Working to Support Women in Rural Communities and Disadvantaged Urban Areas

1. Introduction

1.1 This response has been undertaken collaboratively by the members of the Consortium for the Regional Support for Women in Disadvantaged and Rural Areas (hereafter, either the Women's Regional Consortium or simply the Consortium), which is funded by the Department for Communities and the Department of Agriculture, Environment and Rural Affairs.

1.2 The Women's Regional Consortium consists of seven established women's sector organisations that are committed to working in partnership with each other, government, statutory organisations and women's organisations, centres and groups in disadvantaged and rural areas, to ensure that organisations working for women are given the best possible support in the work they do in tackling disadvantage and social exclusion.¹ The seven groups are as follows:

- ♀ Training for Women Network (TWN) – Project lead
- ♀ Women's Resource and Development Agency (WRDA)
- ♀ Women's Support Network (WSN)
- ♀ Northern Ireland's Rural Women's Network (NIRWN)
- ♀ Women's TEC
- ♀ Women's Centre Derry
- ♀ Foyle Women's Information Network (FWIN)

1.3 The Consortium is the established link and strategic partner between government and statutory agencies and women in disadvantaged and rural areas, including all groups, centres and organisations delivering essential frontline services, advice and support. The Consortium ensures that there is a continuous two-way flow of information between government and the sector. It also ensures that organisations/centres and groups are made aware of

¹ Sections 1.2-1.3 represent the official description of the Consortium's work, as agreed and authored by its seven partner organisation

consultations, government planning and policy implementation. In turn, the Consortium ascertains the views, needs and aspirations of women in disadvantaged and rural areas and takes these views forward to influence policy development and future government planning, which ultimately results in the empowerment of local women in disadvantaged and rurally isolated communities.

1.4 This response is informed by women’s perspectives gathered through focus group discussions and engagement questionnaires in women’s centres and groups.

2. General comments

2.1 The Women’s Regional Consortium appreciates the opportunity to respond to the preliminary report from Sir John Gillen into how the law and procedures in Northern Ireland deal with serious sexual offences. We have chosen to focus our response on what we have identified as a number of the key recommendations made in Judge Gillen’s preliminary report.

2.2 The Women’s Regional Consortium provides a voice for women from disadvantaged and rural areas and supports efforts to tackle disadvantage and social exclusion. We do this by working to ensure that women’s voices are heard and central to any proposals for new legislation and policy. We share the views of our colleagues in Women’s Aid NI: *“Women’s Aid believe that survivors’ voices and experiences must be central to informing the development and delivery of legislation, policy and strategy to ensure systems and services best meet survivors’ needs.”*² We are pleased that Judge Gillen has spent time sitting and listening to complainants as this is the best way to understand the impact of rape, the turmoil and problems experienced by victims in the judicial system and the changes that need to be made to ensure that it properly works for victims.

² Violence against Women Consultation with Victims, Survivors & Service Users 2017/18, Women’s Aid Northern Ireland

2.3 *“During the Troubles, Northern Ireland was an armed patriarchy. Victims of rape and domestic violence were expected to keep quiet – and many did.”*³

More recently rates of reporting of sexual offences and rape are rising. In June 2017 – May 2018 there were 3,377 sexual offences reported to the Police Service of Northern Ireland (PSNI) including 949 reports of rape and 2,428 of other sexual offences. Sexual offences increased by just over 5% and rape offences increased by 10% on the previous year.⁴

2.4 It is widely accepted that there is under-reporting of rape and sexual offences and this has been acknowledged in The Gillen Report: *“currently approximately 83% of complainants are not reporting to the police.”*⁵

Organisations that work with victims of rape and sexual offences have also raised under-reporting as an issue: *“We know that there is still gross under reporting of sexually violent crime, so while it is good that more victims are coming forward, we know that not all victims have found their voice yet and there is more to do in that regard.”*⁶

“The person has been traumatised and this is very likely to prevent them being able to go through this horrible process.”

- Participant in Consultation Exercise

2.5 In 2017/18 the Public Prosecution Service (PPS) received a total of 1,587 files involving a sexual offence, an increase of 21% on 2016/17. Over this period there was a rise of 34.2% in the number of files received involving an offence of rape, from 395 to 530. There was also an increase (15.3%) in the

³ How the ‘rugby rape trial’ divided Ireland, Susan McKay, The Guardian, 4 December 2018 https://www.theguardian.com/news/2018/dec/04/rugby-rape-trial-ireland-belfast-case?CMP=share_btn_tw

⁴ <https://www.psni.police.uk/globalassets/inside-the-psni/our-statistics/police-recorded-crime-statistics/2018/may/crime-bulletin-may-18.pdf>

⁵ <https://gillenreview.org/sites/gillenreview/files/media-files/Gillen%20Report%20-%20Executive%20Summary.pdf>

⁶ Cara Cash, former Chief Executive of Nexus interviewed about the increase in rape cases in Northern Ireland, April 2018 <https://www.thedetail.tv/articles/increase-in-rapes-reported-in-northern-ireland>

number of files involving other sexual offences, which rose from 917 to 1,057.⁷

2.6 A report from the Criminal Justice Inspection into the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland⁸ highlighted that the number of reported sexual offences has almost tripled over the past 18 years.

2.7 Unfortunately while the number of rape and sexual offences complaints continues to rise it is accompanied by a very low conviction rate. While 823 alleged rapes were reported to the PSNI in 2016/17 there were only 15 convictions – a conviction rate of 1.8%⁹ This compares poorly to conviction rates in England and Wales during the same period which were 3.3% Of the 2,335 other alleged sexual crimes reported that year a total of 228 defendants were convicted – a conviction rate of 9.8% which again compares unfavourably to England and Wales with a conviction rate of 13.4%¹⁰

2.8 Discussing the findings of the report the Chief Inspector of Criminal Justice, Brendan McGuigan said that the system: *“frequently does not provide a satisfactory outcome for victims on any level.....causes delay, prolongs the trauma on victims and potentially leads to their withdrawal from the case.”*¹¹

“I feel the victims are made to feel guilty before they even get to court.”

- Participant in Consultation Exercise

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[https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Sexual%20Offences/Sexual%20Offences%20Bulletin%202017-18%20\(and%202016-17\)%20Final.pdf](https://www.ppsni.gov.uk/Branches/PPSNI/PPSNI/Files/Documents/Stats%20and%20Research/Sexual%20Offences/Sexual%20Offences%20Bulletin%202017-18%20(and%202016-17)%20Final.pdf)

⁸ Without Witness, Public Protection Inspection I: A Thematic Inspection of the Handling of Sexual Violence and Abuse Cases by the Criminal Justice System in Northern Ireland, Criminal Justice Inspection Northern Ireland, November 2018 <http://cjini.org/TheInspections/Inspection-Reports/2018/October-December/Sexual-Violence>

⁹ Ibid

¹⁰ Ibid

¹¹ <https://www.bbc.co.uk/news/uk-northern-ireland-46182742>

2.9 The recent trial of two Ulster rugby players has brought the judicial system's handling of rape and sexual assault cases into sharp focus. The nine-week trial and subsequent not-guilty verdict has forced the issue of rape, misogyny and attitudes towards women into the limelight in Northern Ireland and beyond. *"The verdicts would not lay this case to rest. Months after it ended, the "Belfast rugby rape trial", as it became known, is still disturbing public debate in Ireland, north and south."*¹²

2.10 The trial has highlighted the many problems that exist within the current judicial system in cases of rape and serious sexual assault and exposed the vulnerability and trauma experienced by victims in these cases. Kellie Turtle from the Belfast Feminist Network explained that it was not just about the verdict: *"People were just so appalled by the whole thing – the way some of the barristers used myths about rape, the aggression some directed at the woman when she gave evidence – and all this in a court of law."*¹³

"Unfortunately it's not black and white. Respect for the victim should be of the utmost importance. No victim blaming or shaming or difference between men and women, fair questioning."
- Participant in Consultation Exercise

2.11 Many organisations that work with victims of rape and sexual violence reported that they saw an increase in the volume of complaints of sexual violence since the trial began. But anecdotal evidence suggests there has been a sharp increase in women withdrawing complaints since the trial, due to a collapse in confidence in the judicial system and the fear of public attention. Chief Executive of Women's Aid Federation Northern Ireland said: *"We had*

¹² How the 'rugby rape trial' divided Ireland, Susan McKay, The Guardian, 4 December 2018
https://www.theguardian.com/news/2018/dec/04/rugby-rape-trial-ireland-belfast-case?CMP=share_btn_tw

¹³ Ibid

women calling and saying they were going to withdraw cases as a direct result of the trial and the verdict.”¹⁴

2.12 We welcome the increased focus on the problems with the law and procedures for victims of serious sexual offences in Northern Ireland and the commissioning of this important Review.

¹⁴ Why are there no rape crisis centres in Northern Ireland? Dawn Foster, The Guardian, 6 June 2018
<https://www.theguardian.com/society/2018/jun/06/why-no-rape-crisis-centres-northern-ireland-belfast>

3. Specific comments

Views of women who informed this response

3.1 This response is informed by discussions with women's centres/groups and the individual views of 67 women who completed questionnaires on this subject. The questionnaire focused on some of the main recommendations in Judge Gillen's interim report.

3.2 Main findings

- **91%** of women surveyed thought that **access to trials (public gallery and press) involving serious sexual offences should be limited;**
- **89%** of women surveyed thought that **cross-examination of the victim of a serious sexual offence should be pre-recorded away from the court for all complainants;**
- **96%** of women surveyed agreed that **legal aid should be available for victims in serious sexual offences cases;**
- **94%** of women surveyed thought that **work should be done with juries to combat rape myths and stereotypes such as a victim provoking a rape by the way she was dressed;**
- **94%** of women surveyed thought **there needs to be controls on social media in relation to trials of serious sexual offences;**
- **73%** of women surveyed thought **that a victim's previous sexual history should not be allowed in trials involving serious sexual offences;**
- **90%** of women surveyed thought **that the definition of consent should be amended to include that a failure to say or do anything, to protest or to resist when submitting to a sexual act, does not imply consent.**

3.3 The responses to this small-scale survey of women's attitudes showed that most of the women thought that changes needed to be made to the procedure for handling rape cases in the judicial system in Northern Ireland. There was almost unanimous support for limiting public access to trials, the availability of

legal aid for victims, work with juries to combat rape myths and stereotypes, controls on social media in relation to these types of trials and amending the definition of consent to include that not fighting back does not imply consent.

3.4 The women were less agreed, although still overwhelmingly in favour of, the pre-recording of the cross-examination of victims away from court and not allowing a victim's previous sexual history in trials.

Restricting access to trials

3.5 Northern Ireland is a small place and connections between people and places can easily be made. Despite complainants being anonymous, in reality their identities can easily become known. This was very evident in the recent rugby rape trial where the complainant's name was being widely publicised on social media. In addition, complainants are forced to give the most intimate details in front of a large group of people many of whom are strangers. This does little to encourage victims to make complaints and can make the process even more daunting and in some cases impossible for victims.

"Trials for sexual offences should be carried out in a closed court. I think that juries need to be more aware of the sensitivity of cases. Also the victim and defendant should remain anonymous during the trial and afterwards."

- Participant in Consultation Exercise

3.6 Most of the women we surveyed (91%) agreed that access to trials involving serious sexual offences should be limited (in both the press and public galleries). We therefore welcome the key recommendation: *"access of the public to trials involving serious sexual offences to be confined to close family members of the complainant and the defendant."*

"The victim should not have to get up in front of a court room full of people. They are made feel so small it's as if they are making the whole thing up."

- Participant in Consultation Exercise

“Reporting restrictions until after the trial is over, total anonymity for the victim.”

- Participant in Consultation Exercise

“Reporting and freedom of the press is central to our democracy and legal system.”

- Participant in Consultation Exercise

“Access to trials could be limited when the victim is giving evidence but transparency for the court process is very important.”

- Participant in Consultation Exercise

Pre-recorded cross-examination of victims

3.7 There is no doubt that standing up in court being cross-examined about a crime of this nature is harrowing for victims. It brings with it the very real risk of re-traumatisation and secondary victimisation. We are pleased to see that this issue has been raised by the Review and support the key recommendation: *“provision should be put in place to allow for early pre-recorded cross-examination to be conducted away from the court setting.”* However we believe that this provision should be available for all complainants as soon as possible.

“Cross-examination of the victim of a serious sexual offence should be pre-recorded if the victim wishes.”

- Participant in Consultation Exercise

3.8 Most of the women we surveyed (89%) were in favour of cross-examination being pre-recorded away from the court. However a small number who disagreed suggested that it should be up to the victim to decide if this is what they wanted. Others suggested that the victim should be allowed to be cross-examined away from the court but that this should be done by live video-link. We believe that, at the very least, the facility should be available for pre-recorded cross-examination away from the court.

“Everything should be person-centred around the victim. Listen to what they say and ask what they want in relation to press and being cross-examined in court.”

- Participant in Consultation Exercise

“It is up to the victim if they want to be cross-examined away from the court.”

- Participant in Consultation Exercise

“I think that cross-examination of the victim should not be pre-recorded but should be recorded live away from the court.”

- Participant in Consultation Exercise

Legal Aid

3.9 We believe that providing legal aid for victims in serious sexual offences cases would go some way to encouraging them to access justice for what has happened to them. The vast majority (96%) of the women we surveyed agreed that legal aid should be available for victims in serious sexual offences cases. Providing legal aid would remove one of the many barriers that may deter victims from pursuing their case through the legal system. We therefore agree with the key recommendation made by the Review: *“a measure of publicly funded legal representation should be offered to complainants from the outset.”*

“Legal aid should be available for victims in serious sexual offences cases depending on their means.”

- Participant in Consultation Exercise

Rape Myths

3.10 There are many myths around the issue of rape and we are pleased that the review has acknowledged these and made recommendations on how to challenge them. The rugby rape trial, previously referred to, revealed some of these deeply embedded myths, stereotypes and misinformation around sexual

relationships that are not being discussed in schools.¹⁵ Rape myths in the context of this trial were also raised at a Conference organised by Queen's University Belfast: *"the use of rape myths within the recent high-profile Jackson and others rape trial was highlighted, using examples of language used such as 'she went to pull', 'went upstairs on her own', 'she didn't cry out', 'she didn't fight back' and 'she regretted it, fearing she would be exposed on social media'."*¹⁶

"There should be a public campaign to alter perceptions of rape myths."
- Participant in Consultation Exercise

3.11 There is a clear need for education around these myths and stereotypes and we welcome the proposal to introduce educational material and expert evidence if necessary for jurors in these types of cases. Most of the women we surveyed (94%) agreed that work should be done with juries to combat rape myths and stereotypes.

"The victim should not be criticised for what clothing they had on."
- Participant in Consultation Exercise

3.12 We believe that it is not only important to educate jurors on this issue but it is vital that education happens on a much broader scale. We very much welcome the proposal for well-funded public and school campaigns to debunk these myths and address the consequences of serious sexual offences.

"I am angry that how a woman dresses has anything to do with justifying crime."
- Participant in Consultation Exercise

¹⁵ Why are there no rape crisis centres in Northern Ireland? Dawn Foster, The Guardian, 6 June 2018 <https://www.theguardian.com/society/2018/jun/06/why-no-rape-crisis-centres-northern-ireland-belfast>

¹⁶ From discussions at a Conference entitled "Sexual Violence on Trial: Local and Comparative Perspectives, Queen's University Belfast Human Rights Centre and Gender Network, 11 – 12 September 2018

3.13 It must never be the case that a victim of rape is seen to be to blame for what has happened to them and we are pleased to see that Judge Gillen has acknowledged this so strongly: *“The refusal to accept that the victim is never ever to blame in any way, any shape or form, is something that not only does the public not seem to fully understand, in some instances, but even the victims, even the complainants.”*¹⁷

Social Media

3.14 As previously stated Northern Ireland is a small place and this makes it even more difficult to protect the anonymity of complainants in these cases. This issue was widely discussed during the recent rugby rape trial where the victim’s name was made public through social media.

“Social media should be controlled in this small province.”
- Participant in Consultation Exercise

3.15 A man pleaded guilty and was fined after being convicted of publishing the name of the woman at the centre of the rugby rape trial.¹⁸ He was charged with publishing the complainant’s name in contravention of the Sexual Offences (Amendment) Act 1992. Those who use social media need to be aware of the dangers of public commentary on live court proceedings. We believe that many members of the public are ignorant of the law around this.

“The case should be private from the press and social media to protect the victim.”
- Participant in Consultation Exercise

3.16 Most of the women we surveyed (94%) thought that there need to be controls on social media in relation to trials of serious sexual offences. We

¹⁷ Meeting the victims ‘most harrowing part’ of compiling sex crime report, Ivan Little, Belfast Telegraph, 20 November 2018 <https://www.belfasttelegraph.co.uk/news/northern-ireland/meeting-the-victims-most-harrowing-part-of-compiling-sex-crime-report-37545463.html>

¹⁸ <https://www.bbc.co.uk/news/uk-northern-ireland-46376318>

agree that social media is having an adverse impact removing the right to anonymity and destroying reputations. We are therefore in favour of strong measures to control the impact that social media is having in these trials. We particularly agree with measures to provide a publicly funded public/school education campaign to promote appreciation of the problems social media throws up for the rule of law.

“I think all names should be kept out of social media, news, etc.”

- Participant in Consultation Exercise

Previous Sexual History

3.17 There are rules about questioning a victim of rape about their previous sexual behaviour. However despite attempts to restrict the use of sexual history evidence it continues to be admitted in many cases. This has led to many victims feeling subjected to a second or ‘judicial rape’ following their treatment in court.

“No one should be ashamed or afraid to be judged on their lifestyle.”

- Participant in Consultation Exercise

3.18 Sexual history evidence is most controversially introduced to support inferences of consent and/or to challenge credibility.¹⁹

3.19 Speaking about consent Lady Hale said: *“It is difficult to think of an activity which is more person and situation specific than sexual relations. One does not consent to sex in general. One consents to this act of sex with this person at this time and in this place.”*²⁰ Applying this reasoning clarifies that consent to sexual activity with a third party is never relevant to the issue of

¹⁹ Rape Trials and Sexual History Evidence: Reforming the Law on Third-Party Evidence, Clare McGlynn, *The Journal of Criminal Law* 2017, Vol. 81(5) 367–392

²⁰ *R v C* [2009] UKHL 42, para. 27

consent with the accused.²¹ However this has been tested numerous times in the courts, most recently in the Ched Evans case, which held that sexual history evidence relating to persons other than the accused was admissible and potentially relevant.²²

3.20 The other problematic use of sexual history evidence is its use to challenge credibility. It seems that knowledge of a woman's sexual activities contributes to shifting the focus of the trial from the defendant's actions to those of the complainant, thereby also shifting legal and moral blame from the defendant to the complainant.²³ Sexual history evidence risks introducing irrelevant or prejudicial material which may distort rather than promote the truth-finding role of the trial and rectitude in its decision-making.²⁴

3.21 The majority (74%) of the women we surveyed thought that a victim's previous sexual history should not be allowed in trials involving serious sexual offences. A number of women commented that "*every case is different*" and their answer would depend on the circumstances of the case.

3.22 We do not believe that a woman's previous sexual history should have any bearing in a rape or serious sexual offence case and support measures to enforce the law prohibiting cross-examination about previous sexual history

"A victim's previous sexual history should not be allowed unless a history of allegations can be provided – if the complainant has claimed assault numerous times."

- Participant in Consultation Exercise

²¹ Rape Trials and Sexual History Evidence: Reforming the Law on Third-Party Evidence, Clare McGlynn, *The Journal of Criminal Law* 2017, Vol. 81(5) 367–392

²² *R v Ched Evans* [2016] EWCA Crim 452.

²³ Rape Trials and Sexual History Evidence: Reforming the Law on Third-Party Evidence, Clare McGlynn, *The Journal of Criminal Law* 2017, Vol. 81(5) 367–392

²⁴ *Ibid*

Definition of Consent

3.23 The issue of consent is often central in cases of rape and serious sexual offences. It is defined under The Sexual Offences (Northern Ireland) Order 2008 as follows: “A person consents if he agrees by choice, and has the freedom and capacity to make that choice.” We are pleased that Judge Gillen has acknowledged that the definition is vague and has proposed a shift from the focus on resistance towards a requirement for some measure of expression of consent as a means to prove consent.

“There must always be consent.”
- Participant in Consultation Exercise

3.24 The issue of consent was widely debated following the rugby rape trial and the case ultimately came down to the question of consent. The judge explained that the jury had to reach a verdict based on an understanding of consent in terms of “enthusiastic consent”, “reluctant consent” and “submission”, which does not imply consent.²⁵ As recently as December 2018 the issue of consent was raised in a court case and once again the women’s sector in Northern Ireland were prompted to publicly protest about a court decision around this issue.

3.25 A man was cleared of raping a woman four times having already admitted severe and horrific physical assaults to her.²⁶ The man had cut the woman’s hair before shaving her head and punched her so brutally he caused a deep facial wound that he later superglued. He denied raping her during this ordeal claiming that the sexual activity between them had been consensual.

²⁵ How the ‘rugby rape trial’ divided Ireland, Susan McKay, The Guardian, 4 December 2018
https://www.theguardian.com/news/2018/dec/04/rugby-rape-trial-ireland-belfast-case?CMP=share_btn_tw

²⁶ <http://www.irishnews.com/news/2018/12/06/news/man-who-admitted-cutting-a-woman-s-hair-before-shaving-it-off-is-cleared-of-raping-her-during-her-ordeal-1501910/>

3.26 At the protest around this case the women's sector in Northern Ireland raised the point that it is effectively impossible to get a guilty verdict in a rape trial where consent is disputed. No person who has been imprisoned, brutalised and tortured in this way can consent to sex, it is by nature coercive. Freedom and capacity are central to the issue of consent and without consent being freely given it is not consent. We believe that the current legal system has failed this victim by maintaining that it is possible that somehow she did consent in spite of the circumstances. The law allows defence counsel to introduce even the slimmest of possibilities that the woman consented and the jury must therefore acquit the perpetrator. If the jury must acquit in cases as horrific as this it is inevitable that in cases where the victim is not physically assaulted that slim possibility of consent is even easier to introduce.

3.27 One of the proposed amendments to the definition of consent is to provide that a failure to say or do anything when submitting to a sexual act, or to protest or offer resistance to it, does not of itself constitute consent. Of the women we surveyed (90%) agreed that the definition of consent should be amended in this way.

“More needs to be done to raise awareness of the damage rape causes and the different types of responses victims may have, eg, fight, flight or freeze to showcase how not fighting back does not mean consent.”

- Participant in Consultation Exercise

3.28 We also believe that the issue of consent goes beyond changing its definition and must be accompanied by a wider education campaign including both a public and schools campaign. Education around the issue of consent is essential and the earlier in life there is an understanding about consent the better. It is important that young people understand healthy relationships so that they can make informed decisions and understand what to do when something is not right.

3.29 *“Education is a huge issue. There’s little knowledge of how consent works and what it entails. We need a very direct discussion with young people about what a good relationship is, and what coercion is.”* Jan Melia, Women’s Aid Federation Northern Ireland.²⁷

3.30 We also welcome the fact that Women’s Aid Northern Ireland have been working with Ulster Rugby since the highly publicised rape trial and are providing behavioural classes which include discussions on sexual consent.²⁸

Delays

3.31 The issue of delays is a significant one in Northern Ireland and the statistics show just how serious the problem is. The review outlines that the criminal justice system in Northern Ireland, from the beginning of the process to the end, takes twice as long as the system in England and Wales. The greatest delay is found in rape cases with the average time in the Crown Court taking 943 days (69% longer than the overall Crown Court average).

3.32 Paula Hilman, Head of the PSNI Public Protection Branch said: *“It takes ‘significantly longer’ for a case to go to court in Northern Ireland compared to England. It means victims then withdraw from the criminal justice process... We need to reduce that delay.”*²⁹

3.33 Research by the Criminal Justice Inspection Northern Ireland³⁰ also highlighted the issue of delays in this system. Brendan McGuigan, Chief Inspector of Criminal Justice said: *“Inspectors found that while there were many dedicated and professional individuals involved in dealing with incidents of sexual violence and abuse, delay was a substantial problem. It occurred from when the initial police investigation and file preparation was undertaken,*

²⁷ Why are there no rape crisis centres in Northern Ireland? Dawn Foster, The Guardian, 6 June 2018 <https://www.theguardian.com/society/2018/jun/06/why-no-rape-crisis-centres-northern-ireland-belfast>

²⁸ <https://www.bbc.co.uk/news/uk-northern-ireland-46224157>

²⁹ <https://www.bbc.co.uk/news/uk-northern-ireland-foyle-west-46597685>

³⁰ Without Witness, Public Protection Inspection I: A Thematic Inspection of the Handling of Sexual Violence and Abuse Cases by the Criminal Justice System in Northern Ireland, Criminal Justice Inspection Northern Ireland, November 2018 <http://cjini.org/TheInspections/Inspection-Reports/2018/October-December/Sexual-Violence>

through the time taken by prosecutors to review the case and make a decision to prosecute or not, and afterwards in the number of adjournments at Court before a trial commenced.” ³¹

3.34 The case previously referred to³² also highlighted the problem of delays. The incident referred to occurred in November 2016 but only came to court in December 2018. This means that this victim’s ordeal had been dragged out for over two years. Survivors of this type of crime need to be able to be free to move on with their lives and focus on their own recovery. It is also concerning to note that the PSNI did not interview the perpetrator until January 2017, two months after the incident took place.

3.35 Given the length of the process and the distress experienced by victims it is hardly surprising that many are deterred from pursuing a case or drop out of the process. The nature of these cases often means there is limited time to collect evidence and the issue of recall is also vital. Any delay in the process, at any stage, can have a significant impact.

3.36 Being subjected to rape or serious sexual assault represents a significant trauma for the victim. Delays add to that trauma by lengthening the process of accessing justice and limiting the victim’s ability to move on with their lives. It is therefore vital that work is done to address delay within the system. We are very pleased that *“tackling the inordinate delay in the system is one of the cornerstones of this Review.”* We support the key recommendation in the Review: *“Steps need to be taken to combat excessive delay in the justice system. A wholly new mind-set is required, which will involve front-loading the legal system with an early-time-limited and case managed system that has at its core early joint engagement by both prosecution and defence representatives.”*

³¹ <https://www.bbc.co.uk/news/uk-northern-ireland-46182742>

³² <http://www.irishnews.com/news/2018/12/06/news/man-who-admitted-cutting-a-woman-s-hair-before-shaving-it-off-is-cleared-of-raping-her-during-her-ordeal-1501910/>

Anonymity for the accused

3.37 While the complainant is anonymised in serious sexual offence cases the accused is not (unless there is a risk to their life). Judge Gillen does not favour a change in the law to anonymise the identity of the accused after they have been charged in court. This is partly because it can help to bring forward other potential victims of the accused: *“Such additional witnesses can be vital in a genre of crime where it is often a case of one person’s word against another with little further evidence.”*

“The accused in a trial should not be named until proven guilty.”

- Participant in Consultation Exercise

3.38 We do not favour a change in the law to anonymise the identity of the accused after they have been charged for the very reasons cited in the Review.

“The accused names should not be made public until after conviction.”

- Participant in Consultation Exercise

Measures complementing the criminal justice system

3.39 There is no doubt that reform of the criminal justice is necessary and that the existing system is not meeting the needs of victims. The Review recommends that the Department of Justice considers the concept of restorative practice and alternative provision of facilitator services. It states that this is in an attempt to increase the sense of autonomy and free choice for complainants.

3.40 While we welcome proposals to provide choice to victims to ensure their needs are met in a way that works for them and allows them to move on with their lives, we have concerns about how this may be done. The Review stresses that any such approach must be completely victim-led and outlines a number of circumstances where it cannot be permitted. We acknowledge

both these statements but we believe that the possibilities of restorative justice practices need to be further researched and debated before they can or should be introduced.

3.41 It may be the case that victims feel they want to use such practices because the existing legal system does not work. These restorative practices are not an alternative to a criminal justice system that is fit for purpose and provides victims with access to justice in a way that properly supports them and meets their needs.

3.42 Restorative justice in cases of sexual violence does demand greater scrutiny and expertise, greater preparation and risk assessment and greater resources.³³ Common concerns about restorative justice were discussed at a Conference organised by Queen’s University Belfast with one of the concerns being that victims might be pushed in that direction when they wished for a criminal justice response. In order to avoid restorative justice being harmful for victims, it was important to focus on voluntary participation, preparation and risk-assessment, putting physical and emotional safeguards in place, building in time-outs for the participants, adequately training facilitators, and considering indirect rather than direct meetings.³⁴ Without these key requirements and further research around this issue we would be unable to support restorative justice in these cases.

Services for Victims

3.43 The impact of rape and serious sexual violence cannot be underestimated. It is devastating for victims and their families and can have serious long-term impacts. As previously outlined there has been a significant increase in the number of rapes reported in Northern Ireland in the last year and yet there is no longer a single dedicated rape crisis centre in Northern

³³ From a presentation entitled “I just wanted him to hear me”, Sexual Violence and the Possibilities of Restorative Justice, Professor Clare McGlynn, Dr Nicole Westmarland and Ms Nikki Godden, Durham University

³⁴ From discussions at a Conference entitled “Sexual Violence on Trial: Local and Comparative Perspectives, Queen’s University Belfast Human Rights Centre and Gender Network, 11 – 12 September 2018

Ireland. Northern Ireland is the only region in the United Kingdom and Ireland without a single rape crisis centre. Although some organisations offer help as an additional service to their main work, there is no obligation to provide dedicated independent sexual assault services. This is quite simply unacceptable.

“There should be referrals to specialist services led by organisations such as Women’s Aid, specialist counselling services, trained specialists within the PSNI, etc.”

- Participant in Consultation Exercise

“People who are experts should offer ongoing support and counselling to victims (long-term if required).”

- Participant in Consultation Exercise

3.44 *“When a 19-year-old student was injured in 2016, she walked up and down a road in Belfast desperately trying to find the Rape Crisis centre she had looked up online. But she never found it: the centre, on Donegall Street, had closed a decade previously due to lack of funding.”*³⁵ This was the situation faced by the complainant in the rugby rape trial. The trial exposed this situation and that more needed to be done to ensure that services exist for victims.

“Need more rape centres, counselling for victims, education of lawyers and barristers and quick access to mental health services.”

- Participant in Consultation Exercise

3.45 The existence of the state of the art resource in the Rowan Sexual Assault Referral Centre is to be welcomed but more face-to-face support is urgently required. There is no doubt that there is a need for adequately resourced, sustainable rape crisis support services for victims of rape and sexual abuse. These face-to-face services should be in place to help victims

³⁵ Why are there no rape crisis centres in Northern Ireland? Dawn Foster, The Guardian, 6 June 2018 <https://www.theguardian.com/society/2018/jun/06/why-no-rape-crisis-centres-northern-ireland-belfast>

through all the systems and processes they go through including health, justice and legal systems as well as providing emotional support and clear information about where victims can get the help they need. The existing situation lets victims down and they deserve better.

“The victim’s emotional needs must be supported, they must be given counselling for mental and emotional support.”

- Participant in Consultation Exercise

“More emotional and practical support should be available for victims and their families.”

- Participant in Consultation Exercise

3.46 Victims of rape and sexual violence should know right from the start that they are not alone, they should know that it is never their fault, they should know that help is available and that they should not be afraid to come forward and seek it.

“Free mental health support and counselling services should be provided to victims.”

- Participant in Consultation Exercise

“More awareness about rape and offer the victim more help for the after effects of court dates – to help them with the stress.”

- Participant in Consultation Exercise

3.47 We welcome recent moves to have a rape crisis service established in Northern Ireland during 2019 which will give victims the support they so badly need. This work must be carried out as a priority and must be given the funding and support necessary to ensure its effectiveness and sustainability. Many of the women we surveyed raised the issue of support for victims and that this support needed to be provided throughout the entire process from beginning to end. The establishment of a rape crisis service for Northern

Ireland should ensure that this support will be available to victims of sexual crime in the future.

“Victims should be offered free mental health support/counselling for as long as they need it.”
- Participant in Consultation Exercise

“Extra support could be given for the events around a rape case, after trials, etc. This can be very traumatising and extra help is needed.”
- Participant in Consultation Exercise

Rural Women

3.48 Northern Ireland has a large rural population. Around 670,000 people live in rural areas amounting to 37% of the population.³⁶ There are many factors at play in small, local communities which make it harder for women to complain and/or to take legal action in cases of serious sexual offences. Some of these come from the fact that the individuals (both the victim and the perpetrator) are often well known in rural communities. Women may be reluctant to be open about serious sexual assault because of shame, the desire to keep personal business private and standing in the local community.

3.49 There are also issues around the lack of support services in rural communities meaning that it is much more difficult for rural women to report issues, take action and get the necessary support they need.

³⁶ <http://www.rdc.org.uk/statistics>

4. Conclusion

4.1 Unfortunately the current criminal justice system for dealing with rape and serious sexual offences in Northern Ireland is not fit for purpose as is evidenced in this statement from Brendan McGuigan, Chief Inspector of Criminal Justice: *“And for some, the prospect of an adversarial, highly intrusive trial where their intimate behaviours will be scrutinised and challenged, with only a very limited prospect of securing a conviction, may cause them to reconsider.”*³⁷

4.2 It is unthinkable that a victim of rape or a serious sexual offence who is already traumatised should be forced into such an adversarial process just to access justice. There is no doubt that there are significant challenges in prosecuting these types of cases but there is a need to make the process much less adversarial and much more focused on finding out the facts of the case. It is abundantly clear that much more needs to be done to help victims access justice through the legal process and to support them through their trauma.

4.3 We are very pleased that at long last this system is being reviewed and that Judge Gillen has carried out this Review so thoroughly. While we welcome the Review and the consultation around the recommendations we are concerned about how it will be progressed given the collapse of the Northern Ireland Assembly. The collapse of the Assembly has stalled much-needed progress on women’s rights in Northern Ireland and we do not wish to see this important issue being added to this list. It is too important an issue and victims have suffered for too long.

4.4 We welcome progress which is being made on the establishment of a new rape crisis service for Northern Ireland. We believe this is vital in ensuring that victims receive the practical support they need to access justice

³⁷ <https://www.bbc.co.uk/news/uk-northern-ireland-46182742>

and to provide much needed emotional support. We believe that government should support this vital work and ensure that adequate resources are provided to ensure these services are established, supported and sustainable in the future.

4.5 It must never be forgotten that behind every statistic on rape and sexual assault lies a real person who has suffered a significant trauma. It is likely that the impact of this will be felt not only by the victim themselves but by their wider family and friends. The trauma of their experience could last throughout their life and have devastating impacts on their families and relationships if it is not acknowledged and properly dealt with.

4.6 It is therefore vital that we have adequate and properly resourced support services for victims as well as a robust and efficient judicial process which meets the needs of victims. There cannot be a situation where victims of rape and sexual assault are left to their own devices or are put off accessing the justice to which they are rightfully entitled by a system which is not fit for purpose.