Sir John Gillen Review of Sexual Offences in Northern Ireland: Consultation Response of Dame Vera Baird QC, Northumbria PCC

This response to Sir John Gillen's consultation on sexual offences in Northern Ireland is submitted on behalf of:

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Executive Summary

We would like to thank Sir John and the review team for this excellent and comprehensive review. We welcome the opportunity to comment and respectfully agree with many of the proposals. We agree with all recommendations made except those under headings 2, 7, 10, below. We have some additional comments on these and on some agreed recommendations too.

Public access to trials

The Review recommends access to trials involving serious sexual offences to be confined to the press and close family members.

1. To what extent, if at all, do you agree with this recommendation?

AGREE for Northern Ireland, deferring to Sir John's assessment of the potential abuse of public access especially in rural areas. We do not feel it is necessary to bar the public from access to trials in England and Wales, but add comment below from the England and Wales experience, which we hope is useful.

- The principle of open justice is an important one, though less important than the principle that justice must be done.
- As suggested in the interim report at pgh 3.67, the ideal for many victim-survivors would be the use of remote evidence centres, away from the court building entirely, along with the opportunity to give pre-recorded evidence in chief and cross-examination. This would mean there would be no need for a complainant to attend court, essentially putting an end to the problems highlighted.
- However the problem of potential recognition remains (capable of deterring attendance) and analogous with giving evidence in court screened from all but the court actors, it is important that the TV screens through which evidence is seen by the court can also be screened.

- During our Court Observations of 30 Newcastle rape trials[1] we came across complainants who had asked to testify from an REC but decided to give evidence screened in court when they saw that they would otherwise be transmitted on a large screen to the public at large.
- The interim Gillen report refers to RECs as available in England but they are not universally so and not always used when they are available. It is essential that a specific request is made by police for a REMOTE evidence centre otherwise the courts tend to default to a live link within the building, both because it is easier to manage and because it has been the mechanism for many years longer than RECs.
- A firm recommendation for urgent, comprehensive introduction of RECs as the default position would be of assistance in driving their universal introduction in England and Wales as well.
- In the meantime the use of a live link from within the court building with screens for the TV monitors is the best, but an inadequately protective substitute.
- Special measures/judicial discretion can already allow exclusion of the public though in limited circumstances.
- Some complainants want their 'day in court'. To accomplish a truly victim-centered criminal justice system, an open court should be permitted where requested by the complainant.
- Usually few, if any, members of the public attend a sexual offence trial in England and Wales.

Anonymity for defendants

Currently those accused of a serious sexual offence can be named after they have been charged with the alleged offence. The Review recommends no change

2. To what extent, if at all, do you agree with this recommendation?

STRONGLY AGREEE

- There should be no naming until charge unless an application is made to the court with evidence to support a belief that other potential complainants/witnesses may also come forward, if the potential defendant is named prior to charge. This is in the interests of justice.
- Naming any potential defendant in any kind of case prior to charge, without court consent should be an offence/contempt.

[1] Baird et al. (2016). Seeing is Believing: The Northumbria Court Observers Panel. Report on 30 rape trials 2015-6. http://www.northumbria-pcc.gov.uk/v2/wp-content/uploads/2017/02/Seeing-Is-Believing-Court-Observers-Panel-Report.pdf

- Public reassurance and protection for defendants lie in the provisions of the Code for Crown Prosecutors, requiring a specific evidential standard before charge[2].

Myths about serious sexual offences

Evidence shows that many myths and stereotypes exist about serious sexual offences. e.g.

- Victims are partially responsible due to the way they dress / act / how much alcohol they have consumed;
- Victims will always report the alleged offence immediately and give a very consistent account of events;
- Victims will scream, fight or get injured; and
- False allegations are common.

3. The Review recommends a public campaign to raise awareness of these myths. To what extent, if at all, do you agree with this recommendation?

STRONGLY AGREE

- There is abundant research with mock jurors, court observers, lawyers, survivors, members of the public and others, evidencing that the public hold a range of myths and stereotypes.
- The Judicial College has accepted that and established an array of judicial directions intended for use to dispel them[3], in jury trials. Whilst such directions, given with the authority of the judge in that specific context may have effect, clearly it is better if the public does not believe damaging myths in the first place.
- Governments have shown that effective and consistent public information campaigns can change public attitudes, evidence by the now near-zero tolerance of drink driving in England. Albeit ousting long held entrenched sexual myths may be more challenging.
- For examples of the impact of myths please see the recent survey conducted by the End Violence Against Women coalition, which found that:
    - 33% of people in Britain think it isn't usually rape if a woman is pressured into having sex but there is no physical violence;
    - A third of men think if a woman has flirted on a date it generally wouldn't count as rape, even if she hasn't explicitly consented to sex (compared with 21% of women)

[2] The Code for Crown Prosecutors. (2018). https://www.cps.gov.uk/sites/default/files/documents/publications/Code-for-Crown-Prosecutors-October-2018.pdf

[3] Crown Court Compendium Part 1: Jury and Trial Management and Summing Up. (2018). https://www.judiciary.uk/wp-content/uploads/2016/06/crown-court-compendium-part1-jury-and-trial-management-and-summing-up-dec2018.pdf

  - A third of men also believe a woman can't change her mind after sex has started
  - 24% think that sex without consent in long-term relationships is usually not rape[4]

  (These are not mistakes of law; they reflect social attitudes)
- The key is to change social norms and attitudes through education.
- In particular, PSHE/Sex and Relationships Education should be mandatory in schools, with content fixed via the national curriculum, to ensure the next generation is better informed.
- The E&W government has promised statutory Relationships and Sex Education from 2020[5], following s34 Children and Social Work Act 2017. However, it is not known what the content will look like yet, and the social and justice imperatives are such that its proposal to allow opt-outs should be reconsidered.

4. The Review also recommends a number of ways of helping jurors in their understanding of serious sexual offences and the myths around them. To what extent, if at all, do you agree with this recommendation for each of the following?

Video – STRONGLY AGREE

- Juries are shown other videos about the work of the courts which would give authority to the kind of video about myths proposed in the interim report.
- Consistent messages can be delivered across regions and nations in a cost-effective, time-efficient way.
- Any such video would require input from experts. Psychologists could advise on the most impactful approach; specialist groups such as Rape Crisis could advise on content; members of the non-legal public should be consulted with regard to accessibility.

Directions from the judge – STRONGLY AGREE

- The model directions in the Compendium are supported/validated by the judgment in *R v D (2008) EWCA Crim 2557.*
- Their use could be improved if there was guidance to use them at the start of the trial in order to exclude the use of myths entirely, rather than only in summing up, when myths may have been deployed in impactful cross-examination days earlier.
- Judicial directions should be used in addition to the proposed general video and would highlight specific myths relevant to the facts of the case.

[4] EVAW Coalition https://www.endviolenceagainstwomen.org.uk/major-new-survey-many-still-unclear-what-rape-is/

[5] Relationships and Sex Education in Schools (England). (2018). https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06103

- Northumbria Court Observers found that judicial directions were not given consistently in the 30 trials observed in 2015/6[6]:
  - In 26 of the 30 trials rape stereotypes, as recognised in the model directions, were deployed in the trial by defence counsel.
  - In 19 of the 26 trials in which the observers noted stereotypes and assumptions, were directions were used by the judge in summing up.
  - In only 15 of 30 trials, the judge used model directions to dispel stereotypes at the start of the trial.
- A recommendation to review model directions to ensure that they are comprehensive might be helpful. For instance, there is no direction to tell a jury that the admission of previous sexual history is irrelevant to consent when it is admitted for a different evidential purpose. It is widely believed that if PSH is admitted for any reason it can have an impact on a jury's approach to consent.
- These directions should be in lay language and supplied to jurors in writing, as is the case now with many directions.

Evidence from an expert – NEUTRAL

- The concern here is about a resulting battle of experts making trials longer and more complex, removing the focus from the parties and putting more pressure on an already under resourced CJS.
- There are already difficulties in finding professionals such as intermediaries for sexual violence trials and keeping them through adjournments and delays.
- The directions to dispel myths rely on the courts' experience. By analogy, directions such as not relying on fleeting glimpse identifications may not be seen jurisprudentially as a matter for experts.

Social media

Social media can have a negative impact in trials of serious sexual offences e.g.

- Removing the defendant's right to a fair trial;
- Making trials unfair; and
- Removing the complainant's right to not be named.

5. The Review recommends helping jurors understand the risks associated with social media. To what extent, if at all, do you agree with this recommendation?

[6] Baird et al. (2016). Seeing is Believing: The Northumbria Court Observers Panel. Report on 30 rape trials 2015-6. http://www.northumbria-pcc.gov.uk/v2/wp-content/uploads/2017/02/Seeing-Is-Believing-Court-Observers-Panel-Report.pdf

STRONGLY AGREE

- It is hard to ensure that jurors try cases only on the evidence, when they are likely ordinarily to spend time online seeking information about issues they are interested in. People also send each other information they know the recipient will like, a key risk whilst someone is known to be on a jury.
- Issues wider than protecting the trial are being considered by other bodies such as the Law Commission in the longer term.
- Forced or compulsory removal of IT equipment cannot possibly guarantee no access to the internet and is not a good way to treat those performing a public service as jurors.
- Trust that jurors will keep their oath has to be the foundation, buttressed by receiving the very good leaflet appended to the interim report and being required to sign for it, a strong way of ensuring commitment to its content, together with a strong reference in a preparatory video, providing information of the personal, legal and cost implications of breach.
- Clear directions at the start and end of each day should reiterate to jurors that:
    - The problem is that internet material is often inaccurate.
    - Jurors must not conduct research about those in the trial or communicate with each other via social media.
    - Jurors should not publish information about the trial.
    - Decisions must be made based on the evidence they hear during the trial.

6. The Review also recommends making new criminal offences for jurors who do not follow Judges' orders on this issue. To what extent, if at all, do you agree with this recommendation?

STRONGLY AGREE

- Separately, we agree with the Review's suggestion of an online public list of orders attached to trials, so that journalists and others are able to easily identify if there are any reporting restrictions on a certain trial. We disagree with the idea of a paid subscription.

Separate legal representation

At present complainants in serious sexual offence cases do not have their own lawyer representing them: the prosecution lawyers represent the state and public interest. The Review recommends that complainants receive legal advice and representation. This would include:

- To explain the criminal justice process; and
- To represent their interests where their medical records or previous sexual history experience may be brought up.

7. To what extent, if at all, do you agree with this recommendation?

STRONGLY AGREE

- It seems sometimes to be forgotten that complainants in sexual violence cases give evidence as a public duty in the interests of the community, exactly like complainants in every other kind of case.
- Sexual violence cases are often treated as if they are trials between the complainant and defendant personally, and that as a consequence the state must make exhaustive examination of the complainant's character to ensure that she is fit to be supported.
- This is far more so than if the same person brought an uncorroborated allegation of physical assault:
    - Firstly, there is current debate over whether it is right to 'believe' a complainant, which must set every case within a context of ambivalence.
    - Secondly, extensive disclosure of the complainant's personal material will be required. When scrutinized, if this material shows something that casts a shadow on a complainant's character, however irrelevant to the issues in the case, since it has been seen cannot be left out of disclosure to the defence. This level of scrutiny is unknown in other cases.
- It is salutary to consider how many people would complain to police of burglary, assault or any other crime if they were required to undergo a detailed search of their personal history with a view to allowing the defence to use anything found to publicly discredit them.
- Although, in every case, the prosecution represents the state and not the complainant, complainants are entitled to have their interests protected. These examples of ambivalence mean that it will be rare that a sex offence complainant will be able to place trust in the crown for protection. There is anyway little meaningful contact between prosecution counsel, CPS and a complainant, even though 2016 CPS guidance in England and Wales (updated in 2018) has brought some improvement[7].
- Now that these concerns are raised and beginning to be understood, they add persuasively to the reasons why separate legal representation ought to be available, at the state's expense.
- It is frequently made clear to complainants that a failure to consent to access to a generic list of intimate documents will mean an end to the prosecution, however strong the case. This broadens the argument to one of the public interest in seeing guilty people convicted.
- That there is independent representation for specific purposes in Ireland and Canada suggests that it is no threat to the adversarial system. The case for independent legal representation for

[7] CPS guidance: Speaking to Witnesses at Court. (2018). [https://www.cps.gov.uk/legal-guidance/speaking-witnesses-court]

complainants is also being built in Scotland[8]; the former Labour Government in 2005 put ILR into its manifesto; and the Stern Review in England in 2010[9] advocated its importance.

- As the interim report states, the Office of the Police and Crime Commissioner for Northumbria (OPCC) is piloting the use qualified solicitors as 'Sexual Violence Complainants' Advocates' (SVCAs), funded by the Home Office. Although at the outset this was a cause of concern, in particular to some members of the judiciary, there has been high-level judicial input into drafting the working documents and an oversight group is fortunate to have as an observer Newcastle's most senior judge.
- SVCAs do not provide representation throughout the whole CJS and trial, but essentially in preparatory stages as and when required. A copy of the working documents, detailing the scope of the scheme and an update of progress so far can be found at Appendices 1 and 2. However, please note that work in relation to s41 applications is still being discussed and has not been taken on by the SVCAs as of yet.

- Here we briefly rehearse to refute common arguments against complainant representation of this nature in the adversarial system:

1. **It intrudes on the defendant's Article 6 rights to a fair trial.**
   In *Brown v Stott [2001] 2 WLR 817* it was held that a limited qualification of Article 6 rights is permitted it is reasonably directed by national authorities toward a clear and proper public objective and if representing no greater qualification that the situation calls for. Ensuring a complainant's Article 8 rights and their proper treatment in the legal system would be a reason to qualify Article 6 rights, particularly if directed only towards key stages of the CJS.

2. **ILR is unnecessary as the Crown has responsibility for the complainant's interests.**
   The Crown has 'reached its limit as guardian of the public interest'[10]and often faces an irreconcilable conflict between the public interest and complainant's interests, particularly where disclosure is concerned. There is an underlying assumption that all complainants A8 rights must at all times give way to the defendants A6 rights and there is no criminal justice agency in the trial whose responsibility it is nor whose interests coincide with an argument to the contrary

3. **ILR is unnecessary as the judiciary can intervene to protect the complainant's interests.**

[8] Raitt, F. (2010). Independent Legal Representation for Complainers in Sexual Offence Trials: Research Report for Rape Crisis Scotland; Raitt, F. (2013). Independent Legal Representation in rape cases: meeting the justice deficit in adversarial proceedings. *Criminal Law Review*, *9*, 729.
[9] Government Equalities Office & Home Office (2010). The Stern Review. [https://webarchive.nationalarchives.gov.uk/20110608162919/http:/www.equalities.gov.uk/pdf/Stern_Review_acc_FINAL.pdf], p97-99.
[10] Temkin, J. (2000). Prosecuting and Defending Rape: Perspectives from the Bar. 27(2) Journal of Law and Society 219

This is not necessarily the case, particularly where s41 applications are concerned, and it is not the role of the judiciary to protect the complainant's interests.

4. **The cost to the public purse, in providing legal aid.**
   The costs of provision in Ireland, set out in the Review, show that it is not expensive

Jury trials

In general, all serious sexual offence cases that are tried in the Crown Court are in front of a jury. The Review recommends no change to this, that serious sexual offence trials should still be held in front of a jury, save in exceptional circumstances where a defendant persuades a judge it is in the interest of justice for a judge alone trial.

8. To what extent, if at all, do you agree with this recommendation?

AGREE

Please see arguments against defendant choice of jury/judge trial from Hansard at Appendix 3. Dame Vera participated in this debate in the context of the Criminal Justice Bill 2003.

Pre-recorded cross examination

The Review recommends allowing children and vulnerable complainants in serious sexual offence cases to have their questioning by defence lawyers recorded on video before the trial. This could happen away from the court and could later be offered to all complainants in serious sexual offence cases.

9. To what extent, if at all, do you agree with this recommendation?

STRONGLY AGREE – where the complainant wishes to be cross-examined in this way.

- Pilots in the UK limited to children have shown no increase in conviction rates to justify any concerns about defendant's fair trial rights. They have however increased the number of early guilty pleas[11].

[11] Ministry of Justice. (2016). Process evaluation of pre-recorded cross-examination pilot (Section 28). [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553335/process-evaluation-doc.pdf]

- The practicalities for the bar in meeting tight deadlines for cross-examination and disclosure and attending pre-recorded cross examinations at courts other than those where they are engaged in trials are at their height in London and need to be addressed.

Duty to report

Currently section 5 of the Criminal Law Act (Northern Ireland) 1967 requires a person with knowledge of an offence to report it to the police. The Review recommends removing this duty to report an offence, except in cases concerning a child or vulnerable adult where the obligation would still exist to report to the police.

10. To what extent, if at all, do you agree with this recommendation?

STRONGLY AGREE

- If a victim of a sexual offence thinks that anybody they speak about their experience with has to report to the police:
    - Victims will not speak out – thereby not receiving and practical, emotional or psychological help that they need to recover.
    - The true extent of sexual abuse will never be known.
    - The threat of prosecution for those who do not report sexual offences can be used by perpetrators to silence victims.
    - It removes agency from the complainant.
    - Mandatory reporting risks the identification of the victim.

Measures complementing the criminal justice system

Only a small number of victims report alleged offences to police. Many later drop out of the criminal justice process. The Review recommends that the Department of Justice consider the idea of victim-led restorative practice. This would take place only when the victim wishes to meet the perpetrator (who must have admitted the offence) with highly skilled facilitators. It would not be available in certain circumstances e.g. child abuse cases, where extreme violence has been used or where there were multiple perpetrators. Depending on the wishes of the victim, this process could be operated within the criminal justice system or outside it.

11. To what extent, if at all, do you agree with restorative practice within the criminal justice system e.g. following sentencing?

AGREE - But only if:

a. The complainant agrees
b. The defendant has been found guilty AND admitted guilt
c. The defendant wants to participate for a genuine reason, not simply to be able to face the complainant again to exercise control/abuse.
d. A practitioner with advanced knowledge of issues such as sexual violence, domestic abuse, coercive control etc. is facilitating.
e. It is not part of a court order – it should be completely voluntary at all times.

- Providing these conditions are met, we believe a form of RJ could be extremely beneficial for some victims who want answers/explanations/acknowledgment from their perpetrators, particularly if (as is usually the case), the perpetrator is known to them.
- RJ should be used post-conviction, when a defendant is ready to admit their wrong and explain and when/if a complainant is ready to hear it.
- A high risk situation would be where RJ is facilitated with perpetrators who are now out of prison and who committed a sexual offence against their partner in the context of a controlling and coercive relationship.
- There are many considerations to be explored and potentially only a small number of cases where RJ would be appropriate and safe.

12. To what extent, if at all, do you agree with restorative practice outside the criminal justice system as an alternative for those who do not wish to report the alleged offence to the police?

DISAGREE, but greater clarification may help since the principle looks positive

- Reiterating that RJ should only take place where there is an admission of guilt, can the complainant decide, after that is done, that she would like to pursue criminal justice and bring into evidence the RJ admission?

Further comments

13. If there are any other areas of the consultation that you would like to comment on that have not been addressed in this survey please use the box below

Disclosure

- It has become common practice in sexual offence cases for the crown to obtain a large quantity of personal information, often relating to intimate parts of a complainant's life, and often

irrelevant to the facts of the case. These can range from medical and psychiatric notes, to school and local authority records and there will be, potentially in every case, content on social media and digital data.

- It is crucial that only the reasonable lines of inquiry required by the Criminal Procedure and Investigations Act 1996 are pursued and that only material which may undermine the prosecution or assist the defence is disclosed. As referred to above there is far more intrusion into a complainants' personal life in sex cases than in any other kind, with no rationale to justify it, but presumably fuelled by 'twin rape myths' (as to propensity to engage in consensual sexual activity and credibility) around women who allege rape[12].
- The same is happening in connection with digital data, with professionals spending huge amounts of time reviewing, given the explosion in digital data that we all hold. The risks to the complainant are clear.
- There is a concomitant risk that complainants will lose faith in health, social care and education services, if their confidentiality cannot be relied upon.
- To demonstrate the point, following the trials of perpetrators of sexual exploitation in Newcastle recently, one Complainants said the following: *"You should not be questioned about stuff outside the time zone for the case. For me, some of it was years ago. For some it's new and fresh... I was questioned about a note for school asking for absence when I forged my mother's signature years before. Afterwards I cried. I was in a catatonic state for a day. I felt that I was on trial"*[13].
- The over-disclosure of personal records is a potential breach of complainants' rights under Article 8 of the European Convention on Human Rights (ECHR).
- The case of *R (TB) v Stafford Crown Court [2006] EWHC 1645* confirms this, as well as clearly stating the right of complainants to make submissions regarding the disclosure of their personal records.
- We agree with all of the recommendations made by Sir John in Chapter 10 of the preliminary review, regarding disclosure – more training, early communication between parties, early investigative advice from lawyers, the use of a disclosure management document to set out rationales for seeking material, investment in technology.
- However there needs to be a shift in culture and mind set amongst police officers, lawyers and judiciary alike.
- In the very first instance complainants should only be asked to give *true, informed* consent to revelation and discovery of material which represents a reasonable line of inquiry. Though the legislation allows for this, practice is much different, which has led to the development of SVCAs by my office (see above).

[12] *R v Seaboyer* [1991] 83 DLR, at 193, 258, 278C; *R v A* [2001] UKHL 25, at 3-4, 27, 147.
[13] Spicer, D., Newcastle Safeguarding Children Board, and Newcastle Safeguarding Adults Board. (2018). Joint Serious Case Review Concerning Sexual Exploitation of Children and Adults with Needs for Care and Support in Newcastle-upon-Tyne, p138.
https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/final_jscr_report_160218_pw.pdf

Previous sexual history evidence

- As set out in the review, there are many concerns around the use of previous sexual history evidence (PSHE) in sexual offence trials.
- There is no monitoring framework around the frequency of questioning on PSHE and the applications made to introduce them, which causes concern about the intention that PSHE should rarely be admitted into cases which sits behind the legislation.
- Following the 'Seeing is Believing' report from the Northumbria court observers panel, a CPS review into the use of s41 YJCEA in England and Wales found that in 92% of the cases analysed, no PSHE was permitted. However, the report is controversial and not be based on a firm foundation of data. The CPS do not record data related to s41 applications and Parliamentary questions have disclosed that included in the sample were not guilty cases.
- More recently, the Criminal Bar Association (CBA) commissioned some 'independent' research into the use of s41 applications, conducted by criminal barrister and CBA member, Laura Hoyano[14]. The research states that its finding that 18.6% of reported cases involved a s41 application debunks the claim that 1 in 3 rape cases involve an application (made by the Northumbria Court Observers report) and that the s41 legislation, if it were to change, needs to be *loosened,* to include greater judicial discretion.
- However, the report is seriously flawed. Notably, looking at the report's findings more closely, 1 in 3 (31.5%) adult female complainants were the subject of a s41 application compared to just 1 in 20 (5.3%) of adult male complainants – supporting the Northumbria findings.
- In addition, the author claims that her findings are 'empirically rigorous', however, this does not appear to be the case upon reading the methodology.
- There is an apparently accepted, though not yet actioned by the England and Wales authorities, need to monitor of the use of S41. We have had recent informal assurances from the Ministry of Justice that the HMCTS digital reform programme will facilitate this monitoring. We support that and suggest that this should similarly be monitored in Northern Ireland.
- We agree with all of the recommendations made in Chapter 8 of the interim review – research into the use and effectiveness of the current procedure is required; there must be better judicial case management where there are late/no applications; all applications should be in writing and responded to in writing, in detail; there should always be a hearing of an application, with the complainant and their chosen legal representative (funded by the state) invited; more training is needed for lawyers and the judiciary.
- The Canadian approach should also be adopted – with judges needing to consider certain factors before allowing an application. Specifically consideration should be given to society's interest in encouraging reporting, whether the evidence is seeking to elicit prejudice, sympathy or hostility from the jury and the complainant's dignity and privacy. The introduction of PSHE if not always introduced to attack a complainant's credibility in the eyes of a jury, by relying on

[14] Hoyano, L. (2018). The operation of YCJEA 1999 section 41 in the Courts of England and Wales: views from the barristers' row. An independent empirical study commissioned by the Criminal Bar Association. [https://www.criminalbar.com/wp-content/uploads/2018/11/REPORT-PROVIDED-FOR-CBA-WEBSITE-.pdf]

archaic but still commonly held perceptions about women and sexuality, is still capable of having that effect and so its use must be carefully scrutinised.

Court facilities

- We agree with the review in Chapter 2 that separate court facilities – entrances/exits, waiting rooms, toilets – should be available for complainants and defendants, no matter how old the court building.
- The NI Victim Charter, like the Victims Code of Practice in England and Wales, highlights this as important.
- HMCTS conducted a review of the court facilities for victims and witnesses in the six Magistrates Courts in Northumbria in 2017 showing that it is somewhere on a spectrum between likely and inevitable that victims/witnesses will meet up with defendants/their family or associates in most courts, which, at a stroke, can undermine much of the point of special measures for the vulnerable.
- In Northumbria we have recently published the results of observations of the Special Domestic Violence Court[15]. They found the same absence of separate facilities and often no presence of the court based witness service to offer assistance. Victims in contested domestic abuse cases were likely to have to wait unchaperoned in the group waiting area outside the courtrooms
- The proposal in the preliminary review to contact Complainants when the time comes for them to give evidence at trial is an interesting one.
- Remote evidence centres are also a key resource in ensuring the safe separation of victims from any risky contact at court.

Criminal Injuries Compensation

- It is a commonplace that defence barristers accuse complainants of fabricating an allegation of rape in order to make a compensation claim. This could be banned, unless a judge accepts that there is some evidence to support it.
- The problem arises because there is a two year time limit on applications from the date of the incident and cases often take longer than that to get to court, requiring applications to be made on which those accusations can be grounded. Lengthening the application time to reflect the realities of delay would be an alternative.

[15] Baird et al. (2018). Specialist Domestic Violence Courts: How Special Are They? http://www.northumbria-pcc.gov.uk/v2/wp-content/uploads/2018/07/OPCC_037_Specialist-domestic-violence-courts-Court-Observers-Panel-A4-booklet-2018-V2.pdf

- Barrister David Spicer highlighted this issue in his Serious Case Review of Operation Sanctuary[16] – a large scale operation to uncover sexual exploitation in the West End of Newcastle - quoting one complainant in the trials:

  "I received compensation. I was cross examined about it. In the last trial, I was asked about the compensation – I was startled. I applied after the first trial – I didn't know anything about it until I was told then. They accused me of knowing and doing it all for the money and lying – including in the case already decided."

  "The second time in court the defence lawyer hated me. It was suggested that the previous case was all lies. That I had planned everything – the self-harming was done because I enjoyed self-harming. He said I made it up to get compensation."

- There are other issues with the process of applying for compensation through CICS:
  - Unspent convictions – the scheme automatically excludes an award if the applicant has an unspent conviction which resulted in a specified sentence (custodial sentence, community order or youth rehabilitation order). This rule disproportionately impacts on vulnerable victims of child sex abuse who may have offended in response to being abused/exploited/groomed.
  - Not all staff dealing with claims are trained in sexual violence.
  - The definition of a crime of violence for the purposes of assessing entitlement excludes sexually exploitative behaviour, such as grooming.
  - The scheme should accept evidence from specialist SV services, as not all victims disclose to professionals such as GPs.
  - There is currently no Legal Aid available for CICA appeals.

Aggressive advocacy

- Work is ongoing in England and Wales to curb aggressive advocacy styles. More work of this ilk should be promoted, in all jurisdictions.
- Specifically, a toolkit has been created by the Advocates Gateway, to steer advocates in appropriate questioning styles[17].

[16] David Spicer. (2018). Joint Serious Case Review concerning sexual exploitation of children and adults with needs for care and support in Newcastle-upon-Tyne, page 138 and 142-144. https://www.newcastle.gov.uk/sites/default/files/wwwfileroot/final_jscr_report_160218_pw.pdf

[17] The Advocates Gateway. (2015). General principles from research, policy and guidance: planning to question a vulnerable person or someone with communication needs. [https://www.theadvocatesgateway.org/images/toolkits/2-general-principles-from-research-policy-and-guidance-planning-to-question-a-vulnerable-person-or-someone-with-communication-needs-141215.pdf]