

# **Women's Policy Group NI**

**WPG NI Response to Justice  
Committee Call for Evidence:  
Justice (Sexual Exploitation and  
Trafficking Victims) Bill  
September 2021**

Contact:  
Rachel Powell  
Women's Sector Lobbyist  
[rachel.powell@wrda.net](mailto:rachel.powell@wrda.net)

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# 1. Introduction:

The WPG is a platform for women working in policy and advocacy roles in different organisations to share their work and speak with a collective voice on key issues. It is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, LGBT+ organisations, migrant groups, support service providers, NGOs, human rights and equality organisations and individuals. Over the years this important network has ensured there is good communication between politicians, policy makers and women's organisations on the ground. The WPG represents all women of Northern Ireland, and we use our group expertise to lobby to influence the development and implementation of policies affecting women.

The WPG is endorsed as a voice that represents all women of Northern Ireland on a policy level. This group has collective expertise on protected characteristics and focus on identifying the intersectional needs of all women. The WPG membership is broad and has a deep understanding of how best to approach the impact gender-based violence is having on women in Northern Ireland; including several areas incorporated into the Justice (Sexual Exploitation and Trafficking Victims) Bill (hereafter 'The Justice Bill'/'The Bill').

Within the Feminist Recovery Plan (FRP) launched in 2020, the WPG provided a comprehensive overview of the severe impact of the gender-based violence on women and used this evidence to make various recommendations to policymakers. The issues, evidence and recommendations made by the WPG within the Feminist Recovery Plan and the other work of the WPG, and its members is crucial to fully addressing issues relating to gender-based violence; such as sexual exploitation.

This evidence submission will highlight the evidence compiled by the WPG in recent years, as well as make several recommendations in relation to specific aspects of the Justice Bill.

The Women's Resource and Development Agency was invited to present evidence to the Justice Committee. As WRDA is the secretariat of the Women's Policy Group, alongside being lead partner organisation Raise Your Voice, we decided it would be best to do a joint evidence submission alongside a number of other women's sector and LGBTQI+ sector organisations in the WPG membership that are experts in this field.

This evidence is a joint submission from several WPG members including:

**Women’s Resource and Development Agency (WRDA):**

WRDA is a feminist membership organisation that was established in 1983. WRDA’s work covers lobbying, policy, Good Relations, health promotion and training. WRDA’s vision is of a fair and equal society where women are empowered and are a visible force for change and influence in all areas of life. We take a participative, grassroots approach to this work – all women have the right to be involved in policy decision-making and we aim to amplify the voices of the women who engage with the women’s sector.

**Raise Your Voice:**

Raise Your Voice is a project that seeks to tackle sexual harassment and violence in communities across Northern Ireland. Our goal is to create true cultural change in order to tackle the root causes of these behaviours and empower people to act to change this in their own lives.

**HERE NI:**

HERE NI (previously LASI), established in 2000, is a regional organisation that works across all areas of Northern Ireland (NI) and the border counties to support lesbian and bisexual (LB) women and their families. We advocate for and support LB women and their families and improve the lives of LB women across Northern Ireland. We do this in lots of different ways; through providing information; peer support; facilitating training; lobbying government and agencies on LB women’s issues; offering a community space for meeting and much more. HERE NI is the only women focused organisation within the NI LGBTQ+ sector.

**Cara-Friend:**

Cara-Friend has been serving the LGBTQ+ community in Northern Ireland for over 40 years, founded in 1974, we work with young LGBTQ+ people aged 12–25. We provide regional LGBTQ+ youth groups across Northern Ireland, one-to-one support for individuals, LGBTQ+ awareness training for professionals and volunteers working in a variety of different areas, community development, the LGBT Switchboard, the LGBTQ+ Inclusive Schools Programme and the Domestic and Sexual Violence project, supporting LGBTI women and girls across the region.

### **Women's Aid Federation NI:**

Women's Aid is the lead voluntary organisation in Northern Ireland addressing domestic abuse and provides support services for women, children and young people. Women's Aid NI is made up of eight local Women's Aid groups and Women's Aid Federation Northern Ireland. Each Women's Aid group offers a range of specialist services to women, children and young people who have experienced domestic abuse. They are all members of Women's Aid Federation Northern Ireland.

### **Northern Ireland Women's European Platform (NIWEP):**

NIWEP is a membership organisation of women's NGOs in Northern Ireland. Established as the Northern Ireland link to the European Women's Lobby, the EU's expert body on women's rights and gender equality, NIWEP also has special consultative status with the UN. NIWEP's core objectives involve raising awareness and promoting implementation of key international human rights treaties and initiatives, including the Convention on the Elimination of All Discrimination against Women (CEDAW).

### **Transgender NI:**

Transgender NI is a human rights organisation which exists to support and advocate for trans communities across Northern Ireland through community building, leading campaigns for social and administrative change, working with government and the community sector to improve policy and inclusion, and by giving trans people in Northern Ireland a platform, resources and the skills needed to self-advocate and bring about change.

### **Migrant Centre NI:**

Migrant Centre NI (MCNI) was established in 2010 and constituted as a registered charity in 2012 to protect the rights of migrant workers in Northern Ireland, eliminate barriers against migrant workers, tackle racism, advance education, and raise public awareness. MCNI has three offices across NI, in Belfast, Lurgan, and Derry-Londonderry. MCNI services and programmes include EU Settlement Scheme immigration advice, hate crime victim support and advocacy, financial health and wellbeing advice services including benefits advice, and the administration of the Comic Relief "BAME COVID-19 Recovery and Relief" grant scheme for all of NI. Migrant Centre NI advocates for a more just immigration system and for the rights of migrants and ethnic minorities in NI through policy, lobbying, and advocacy work informed by our service provision.

## **Rape Crisis Northern Ireland:**

Rape Crisis Northern Ireland is a non-governmental organisation and support service for anyone aged 18 and over who has experienced rape or serious sexual assault in adulthood. Within a framework of equality and human rights, our purpose is to provide support to victims and survivors; their families, friends, and the wider community. We do this to ensure everyone can live free from the causes and consequences of sexual abuse. We work ethically to challenge and prevent rape, sexual violence and associated myths. We empower by providing support, education, information and advocacy. Our service is based on equality, empowerment, respect, trust and commitment to good practice for survivors.

## **Irish Congress of Trade Unions**

The Irish Congress of Trade Unions (ICTU) is the single umbrella organisation for trade unions on the island of Ireland. Congress is the largest civil society organisation on the island. It is the apex body representing 832,000 workers affiliated through 64 trade unions in Northern Ireland and the Republic of Ireland. The organisation is required, through its mission statement, to strive to achieve economic development, social cohesion and justice by upholding the values of solidarity, fairness and equality.

The Northern Ireland Committee (NIC) of the ICTU is the representative body for 34 trade unions with over 215,000 members across Northern Ireland. In membership terms, it is the largest civil society organisation in Northern Ireland.

## **NIPSA**

NIPSA is the largest trade union in Northern Ireland representing over 41,500 workers employed across the whole of the public services in organisations such as the Northern Ireland Civil Service and its Agencies, Local Government, Education Authority, the Health Trusts, the NI Housing Executive as well as a host of Non-Departmental Public Bodies (NDPBs). NIPSA also represents a significant number of members in the Voluntary Sector.

This response was prepared by the following WPG members:

Rachel Powell - Women's Resource and Development Agency  
Elaine Crory - Women's Resource and Development Agency / Raise Your Voice  
Aoife Mallon - Independent Contractor for WRDA  
Danielle Roberts - HERe NI  
Karen Devlin - Women's Aid Federation Northern Ireland  
Sonya McMullan - Women's Aid Federation Northern Ireland  
Amanda McGurk - Cara Friend/HERe NI  
Clare Moore - ICTU  
Kendall Bousquet - Migrant Centre NI  
Jonna Monaghan - Northern Ireland Women's European Platform  
Karen Sweeney - Rape Crisis NI/Women's Support Network  
Geraldine Alexander - Northern Ireland Public Service Alliance

If you have any questions or queries about this evidence submission, or would like the WPG and the relevant membership organisations involved in this joint submission to discuss this evidence with the committee further, please contact Rachel Powell, Women's Sector Lobbyist, [rachel.powell@wrda.net](mailto:rachel.powell@wrda.net) or Elaine Crory, Good Relations Coordinator [elaine.crory@wrda.net](mailto:elaine.crory@wrda.net).

## 2. Past Consultations Responses, Evidence Submissions and Briefings:

As stated above, the WPG has published a wide range of evidence through various evidence submissions, public consultation responses and specific briefings on issues relating to this Bill. We would like to highlight these responses made by the WPG, and some of our members, below:

The WPG welcomes the opportunity to submit evidence to the Justice Committee on the Justice Bill. The WPG membership is broad and has a deep understanding of how best to approach gender-based violence, including stalking given the inseparable connections to domestic abuse and misogyny. The WPG has engaged with the Justice Committee and all political parties in past calls for evidence on matters relating to gender-based violence, for example through our:

- Written evidence submission and oral evidence presentation to the Justice Committee on the Protection from Stalking Bill<sup>1</sup>.
- WPG public consultation response to the Department of Justice Non-Fatal Strangulation Public Consultation
- Evidence submission to the committee on the Domestic Abuse and Civil Proceedings Bill in 2020<sup>2</sup>.
- Briefings to MLAs on the rise in domestic abuse in the beginning of the COVID-19 pandemic<sup>3</sup>,
- Calls for increased funding for support providers<sup>4</sup>,
- Calls for the urgent implementation of a Violence Against Women and Girls Strategy and broader measures to tackle gender-based violence in the WPG COVID-19 Feminist Recovery Plan<sup>5</sup>,

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<sup>1</sup> WPG Evidence Submission to Justice Committee (2021) Protection from Stalking Bill: <https://wrda.net/wp-content/uploads/2021/04/WPG-Joint-Submission-Protection-from-Stalking-Bill-16-04-2021.pdf> / WPG Oral Evidence Presentation to the Justice Committee (2021) on the Protection from Stalking Bill: <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/justice/primary-legislation/protection-from-stalking-bill/call-for-evidence/>

<sup>2</sup> WPG Evidence Submission to Justice Committee (2020) Domestic Abuse and Family Proceedings Bill: <https://wrda.net/wp-content/uploads/2020/06/WPG-NI-Evidence-Submission-to-Justice-Committee-05.06.20.pdf>

<sup>3</sup> WPG Statement on the Gendered Impact of COVID-19 and Domestic Abuse (April 2020): <https://wrda.net/2020/03/26/statement-by-the-womens-policy-group-on-the-gendered-impact-of-covid-19/>

<sup>4</sup> WPG Call for Emergency Funding for Domestic Violence and Sexual Health (May 2020): <https://wrda.net/wp-content/uploads/2020/06/WPG-Letter-Emergency-Domestic-Violence-Funding-.pdf>

<sup>5</sup> WPG COVID-19 Feminist Recovery Plan (July 2020): <https://wrda.net/wp-content/uploads/2020/07/WPG-NI-Feminist-Recovery-Plan-2020-.pdf>

- Broader events such as our Feminist Recovery Plan Webinar Series analysing the rising levels of violence against women throughout COVID-19<sup>6</sup>,
- Response to the Independent Hate Crime Legislation Review Consultation<sup>7</sup>,
- WPG Feminist Recovery Plan Key Briefing on Gender Based Violence<sup>8</sup>,
- WPG Response to the Department of Justice Public Consultation on Enhancing Legal Protections for Victims of Domestic Abuse<sup>9</sup>,
- WPG Response to Private Members' Bill Consultation on Paid Domestic Abuse Leave<sup>10</sup>,
- WPG Response to Department of Justice Public Consultation on Consent to Harm for Sexual Gratification: Not a Defence<sup>11</sup>

The WPG member organisations included in this joint submission also have a long history of campaigning on issues relating to gender-based violence. This has included:

- WRDA article on the Impact of COVID-19 on women and rising levels of domestic abuse<sup>12</sup>,
- WRDA briefing on Domestic Violence and Abuse - COVID-19 and Legislative Reforms<sup>13</sup>,
- WRDA Response to the Department of Justice Consultation on Domestic Abuse Offence and Domestic Abuse Violence Disclosure Scheme,

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<sup>6</sup> WPG Feminist Recovery Plan Webinar Series - COVID-19 and Violence Against Women (in collaboration with Women's Aid and Raise Your Voice) summary briefing available here: <https://wrda.net/wp-content/uploads/2020/11/VAWwebinarsummary.pdf>; and recording available here: <https://wrda.net/wp-content/uploads/2020/11/VAWwebinar.mp4>

<sup>7</sup> WPG (April 2020) Hate Crime Legislation Independent Review Consultation Response: <https://wrda.net/wp-content/uploads/2020/12/WPG-Hate-Crime-Consultation-Review-Response-30.04.20-Updated.pdf>

<sup>8</sup> WPG (April 2021) Feminist Recovery Plan Key Briefing on Gender Based Violence: <https://wrda.net/wp-content/uploads/2021/04/WPG-FRP-Gender-Based-Violence-Key-Briefing.pdf>

<sup>9</sup> WPG (February 2021) Response to DOJ Consultation on Enhancing Legal Protections for Victims of Domestic Abuse: <https://wrda.net/wp-content/uploads/2021/02/WPG-Response-on-Enhancing-Legal-Protections-for-Victims-of-Domestic-Abuse-Public-Consultation.pdf>

<sup>10</sup> WPG (January 2021) Response to Private Members' Bill on Paid Leave for Victims of Domestic Abuse: <https://wrda.net/wp-content/uploads/2021/01/WPG-Response-to-PMB-Consultation-Paid-Domestic-Abuse-Leave-Jan-21.pdf>

<sup>11</sup> WPG (January 2021) Response to DOJ Consultation on Consent to Serious Harm for Sexual Gratification - Not a Defence: <https://wrda.net/wp-content/uploads/2021/01/Consent-to-harm-for-sexual-gratification-not-a-defence-by-WPG.pdf>

<sup>12</sup> WRDA (April 2020), the Impact of COVID-19 on Women: <https://wrda.net/2020/04/03/the-impact-of-covid-19-on-women/>

<sup>13</sup> WRDA (April 2020), 'Briefing on Domestic Violence and Abuse - COVID-19 and Legislative Reforms: <https://wrda.net/2020/04/27/briefing-on-domestic-violence-and-abuse-covid-19-and-legislative-reforms/>

- Raise Your Voice Response to the Independent Hate Crime Legislation Review<sup>14</sup>,
- Raise Your Voice Response to the DOJ “Rough Sex Defence” Consultation<sup>15</sup>,
- Raise Your Voice Misogyny Motion for NI Councils (currently passed in 8 out of 11 councils across Northern Ireland)<sup>16</sup>,
- Raise Your Voice IPSO Guidelines Regarding Reporting of Sexual Offences<sup>17</sup>,
- Multiple members of the Women’s Policy Group were also involved in developing the Gender Equality Strategy Expert Advisory Panel Report, which includes a wide range of data and recommendations relating to all forms of gender-based violence, including tackling sexual exploitation<sup>18</sup>.

## 3. Feminist Recovery Plan:

### 3.1. Overview of Feminist Recovery Plan:

The WPG NI COVID-19 Feminist Recovery Plan highlights the disproportionate impact of the pandemic on women and makes several recommendations for addressing this impact. The Plan also provides detailed evidence of pre-existing gender inequalities in our society, which have become exacerbated as a result of the pandemic. The Plan covers a wide range of topics, including violence against women, health inequalities and women’s poverty, within six main Pillars: Economic Justice, Health, Social Justice, Culture, Brexit, Human Rights and a Bill of Rights, and International Best Practice.

Violence against women is a central aspect of the Cultural pillar of the Feminist Recovery Plan, and within this pillar, topics covered include **women and girls in the media, rape culture, stalking, honour-based abuse, hate crime, online abuse and misogyny**. In addition to producing bespoke reports and key briefings on the violence against women section of the Feminist Recovery Plan, an online webinar was held

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<sup>14</sup> RYV (April 2020), Response to the Independent Hate Crime Legislation Review: <https://wrda.net/wp-content/uploads/2020/05/Hate-Crime-Legislation-Review-Consultation-Response-on-behalf-of-Raise-Your-Voice.pdf>

<sup>15</sup> RYV (January 2021), Response to DOJ Consultation on Consent to Serious Harm for Sexual Gratification - Not a Defence: <https://www.raiseyourvoice.community/news-resources/ryv-response-to-rough-sex-defence-consultation>

<sup>16</sup> RYV (February 2021) Council Motion: <https://www.raiseyourvoice.community/news-resources/our-update-misogyny-motion-for-ni-councils>

<sup>17</sup> RYV (May 2020), IPSO Guidelines Regarding Reporting of Sexual Offences: <https://www.raiseyourvoice.community/news-resources>

<sup>18</sup> Ann Marie Gray, Louise Coyle, Rachel Powell and Siobhán Harding (Dec 2020), ‘Gender Equality Strategy Expert Advisory Panel Report’, <https://www.communities-ni.gov.uk/system/files/publications/communities/dfc-social-inclusion-strategy-gender-expert-advisory-panel-report.pdf>

featuring various speakers discussing this topic in depth. These bespoke reports, briefings and a summary of the webinar can be found at the links below:

- FRP Bespoke Report for [Department of Justice](#)
- FRP Bespoke Report for [Committee on the Elimination of Discrimination Against Women \(CEDAW\)](#)
- FRP Key Briefing on [Gender-Based Violence](#)
- FRP Webinar Summary: [COVID-19 and Violence Against Women](#)

The original and relaunched versions of the Feminist Recovery Plan are available at the following links:

- [WPG COVID-19 Feminist Recovery Plan](#) 2020 (Original)
- [WPG COVID-19 Feminist Recovery Plan](#) 2021 (Relaunched)
- [WPG COVID-19 Feminist Recovery Plan Supplementary Report: Women's Voices at the Core](#) 2021

## 3.2 Testimonies from Women in Feminist Recovery Plan Primary Research:

Whilst some of the recommendations of the Feminist Recovery Plan will be expanded upon throughout this response, the WPG would also like to highlight some of the testimonies from women from our Feminist Recovery Plan primary research on issues relating to gender-based violence:

*"I was physically assaulted more than once at home during lockdown. It felt like I had nowhere to go and was making too big of a deal over these incidents. Being isolated has made getting out of bad situations worse."*

***"Understanding of consent is low, permissiveness and 'boys will be boys' attitude remains, people don't even realise they are victim blaming when they do it and we have no RSE to undo the myths that our parents and peers pass on to us. I have personally been sexually assaulted as a younger woman and not reported because i didn't even recognise that it was sexual assault. I just passed it off as what happens in a club /bar / night out. It shocks me now that I and my friends all felt that way."***

*"There's an expectation that the way a woman dresses or behaves (especially when alcohol is involved) is an open invitation to sexual activity. Consent is a huge issue that needs more targeted interventions and awareness."*

***"There is a problem of rape culture anywhere patriarchy is normalized as the status quo such as street harassment, being molested by a friend who acted***

***like it was no big deal, and several instances of being subtly blaming people like myself who are assaulted."***

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

***"Just looking at the comments section on facebook when rape/abuse cases are reported."***

*"Because I honestly do not know any woman who has not been harassed, assaulted or raped."*

***"Toxic masculinity is rife in our community. Men/boys feel entitled to speak to women however they like or touch them without consent. I have personally received vile comments and been touched inappropriately by men in public."***

*"I believe we still very much blame women as a society, what was she doing / wearing/ what did she say / she wanted it."*

***"Saying that "boys will be boys" and that to stop sexual harassment, the women have to be taught differently, not the men, and experiences include cat calling, uncomfortable compliments from strangers, being cornered and touched by men I didn't know."***

*"Men putting their hands on my waist to pass me at work (aged 16) catcalling (which disturbingly I have received less as my body matured)."*

***"We have a very outdated view on progressive social issues in Northern Ireland. I have experienced harassment, cat calling, groping, unwanted attention, unsolicited dick pics etc."***

*"Women are still judged for their appearance and the blame culture is still there."*

***"The blaisé attitude towards sexual assault (eg groping) and the fact that women in this country have clearly been denied justice following sexual assault or rape."***

*"It is not being spoken up enough. It has to be a constant thing, a normal thing and information needs to be shown and accessible in every school, doctors and situation. I as a person who is a woman feel unprotected, uncared for and that my rights and fights are only a thing to be talked about when something bad happens and I am very tired of it."*

***"The Rugby Trial was frankly terrible as was the hell that young woman had to endure yet again after she so bravely brought the case. All that to let the rapists***

***off Still sad that it turned out so badly. My child is old enough to understand the news and I tried to prevent her from hearing the details but it was a difficult responsibility. It's all too common and won't be the last case of abuse/violence/coercion to give no help or solace to the survivors of the abuse."***

*"I'm terrified of going to clubs and pubs when they reopen without social distancing measures as I find the behaviour in NI society from men is appalling. There is no sense of consent and many feel they can just grab or harass you as they please."*

***The case of attacks in South Belfast was met with glee by groups of young men who took advantage of the heightened anxiety by further threatening women for their own amusement. Rather than stand in solidarity with women and girls they used this as an opportunity to harass."***

*The conflict here has also meant women and girls and their issues are not represented or championed by this country."*

***"The stereotypical idea of the rapist as a sinister stranger down an alleyway is perpetuated here with men choosing to favour exceptionalism rather than accept any responsibility for their behaviour and how it, in fact, can often be construed as damaging to women. Too many experiences to detail (street harassment, issues of consent, online etc.)."***

*"My father was very cruel to my mother and us. He used Power and Control at every stage of his living with us. A man who I accepted a lift with tried to murder me. I was in my twenties and still bear the scars mentally He was never caught."*

***"In my early 30's I had a breakdown and lived in a women's aid refuge for over 1 year."***

*"The domestic abuse continued harassment through court regarding child and online abuse orchestrated by my ex and his new partner have had the single most negative impact on my mental and physical wellbeing in my whole life. In my experience the PSNI, women's aid etc are excellent, courts are archaic and about 100 years behind in dealing with these things."*

- **Testimonies from WPG Primary Research**

## 4. General Comments on the Justice (Sexual Exploitation and Trafficking Victims) Bill:

### 4.1: Sexual Exploitation as a Gendered Issue

#### 4.1.1 Gender Based Violence and Violence Against Women and Girls

The issues covered in the bill at hand are extremely prevalent issue in our society, and we<sup>19</sup> welcome the introduction of the Justice (Sexual Exploitation and Trafficking Victims) Bill 2021 (hereafter, the Bill) and the opportunity to submit evidence to the Justice Committee on this Bill. For too long, protections in Northern Ireland in relation to crimes that disproportionately impact women have been lesser than other jurisdictions across the UK and Ireland. We welcome the progress being made in relation to issues including domestic abuse legislation, protection orders and notices, tackling the “rough sex defence” and most recently, the motion passed in the NI Assembly to recognise misogyny as a hate crime, implement a standardised Sex and Relationships Education (RSE) curriculum and create a violence against women and girls strategy in Northern Ireland.<sup>20</sup>

However, we still have a long way to go before women and girls are afforded *at least* the same protections as women across the UK and Ireland and for the full scale of gender-based violence to be tackled. This includes the full implementation of Gillen Review Recommendations, Hate Crime Legislation Review Recommendations (including recognising gender as a protected characteristic), implementation of the Protection from Stalking Bill, co-designing any VAWG strategy with the women’s sector and ensuring that legislation relating to violence that disproportionately impacts women is in line with international mechanisms such as the Council of

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<sup>19</sup> ‘We’ throughout refers to all organisations involved in this joint response.

<sup>20</sup> NI Assembly (March 2021) Marshalled List of Amendments (Private Members Business) Motion: ‘Violence Against Women and Girls Strategy’ [Order Paper 86/17-22]. Available at: <http://www.niassembly.gov.uk/assembly-business/marshalled-list-of-amendments/23-march-2021/>

Europe Convention (Istanbul Convention)<sup>21</sup> and Committee for the Elimination of Discrimination Against Women (CEDAW)<sup>22</sup>. The overall aim of CEDAW is to strengthen gender equality, and the CEDAW Committee has highlighted the importance of action on all forms of gender-based violence in their Concluding Observations to all recent periodic reports submitted by the UK.<sup>23</sup>

The WPG and broader women's sector, LGBTQ+ sector, migrant sector and service support organisations have long campaigned for improvements to our legislation to address the wide-spread levels of gender-based violence in our society, and this includes introducing measures to ensure protection from stalking.

We have made a number of recommendations across various public consultations and evidence submissions that need to also be addressed in order to support the implementation and operationalisation of a Justice Bill that is fit to address the gendered nature of such abuse. Some of these include:

- Ensuring legislation that relates to areas of violence that disproportionately impacts women recognises the gendered nature of that crime and underlying, deep-rooted attitudes of misogyny in our society,
- Ensuring that any new legislation is victim-led, with recognition of the intersectional needs of different groups and societal factors that put some victims at greater risk or create barriers to accessing justice. For instance:
  - Recognising and addressing the barriers for disabled women seeking support and unique forms of coercive abuse they face,
  - Addressing harmful heteronormative stereotypes that prevent LGBTQI+ people seeking help or recognising abuse,
  - Inhumane policies such as No Recourse to Public Funds which create further barriers and fear for women with uncertain immigration status from reporting abuse due to fears of being reported to the Home Office and more,
  - Recognising and addressing the unique barriers faced by victims of honour-based abuse when accessing the justice system, including victims of spiritual abuse and coercive control.
- In line with the commitment set out in the recently passed motion in the NI Assembly<sup>24</sup>, go further that the Independent Hate Crime Review

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<sup>21</sup> Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, November 2014, ISBN 978-92-871-7990-6.

<sup>22</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, A/RES/34/180.

<sup>23</sup> [Concluding Observations](#) 2019, 2013, 2008 on examinations of the UK under CEDAW

<sup>24</sup> <http://www.niassembly.gov.uk/assembly-business/marshalled-list-of-amendments/23-march-2021/>

recommendation no.9 to recognise gender as a protected characteristic, and specifically recognise misogyny and trans misogyny as a form of hate crime,

- Implement all of the outstanding Gillen Review Recommendations,
- Ensuring that any new strategies or public awareness campaigns are developed in co-design with experts from both the women's and LGBTQ+ sectors and adequately resourced and funded to ensure they are operational. This includes any VAWG strategy, Hate Crime Awareness, Stalking Awareness, Domestic Abuse Awareness, implementing a standardised Sex and Relationship Education curriculum and so on.
- Adequately funding and implementing robust training for those working across the entire justice system on all legislative changes relating to gender-based crimes, including cultural competency training with a focus on the intersectional impact of these crimes.

We have previously provided comprehensive and detailed information and evidence on the link with stalking and domestic abuse, as well as information on image based sexual abuse or IBSA (also known as “revenge porn”) and increasing challenges of protecting people from cyber stalking and sexual abuse. We will also be providing more information on international mechanisms relating to stalking as a form of violence against women, the need to create awareness raising programmes and preventative measures which relate to the offences within the Justice Bill.

We wanted to provide some context on the changing and increasingly gendered nature of sexual exploitation and other matters covered within this Bill in the UK in recent years.

#### 4.1.2 CEDAW

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) places an obligation on the UK as a State Party to ensure that discrimination against women is prohibited in law and that action to prevent and address discrimination is taken at the policy level<sup>25</sup>. This includes violence against women and girls, and the CEDAW Committee has raised issues in relation to Northern Ireland, as outlined above.

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<sup>25</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW, 1979), articles 1 and 2. The UK signed the Convention in 1981 and ratified in 1986

CEDAW General Recommendation 35<sup>26</sup> specifically focuses on gender-based violence and provides guidance on interpretation and implementation of CEDAW in this regard. The CEDAW Committee holds that 'Women's right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association'.<sup>27</sup> The Recommendation explicitly includes psychological, sexual, economic and physical harm as well as threats of such acts, harassment, coercion and arbitrary deprivation of liberty in its scope of gender based violence.

The Recommendation clarifies the CEDAW provisions and states that laws prohibiting gender based violence should include sanctions for perpetrators and reparations for victims.<sup>28</sup> It further notes that 'all legal procedures in cases involving allegations of gender-based violence against women are impartial, fair and unaffected by gender stereotypes or the discriminatory interpretation of legal provisions, including international law', and that capacity building is required to ensure that women's right to equality is not affected by the application of preconceived and stereotyped notions of what gender based violence is, how women do and should react and the standard of proof required in proceedings<sup>29</sup>.

## 4.2 Provisions arising from the Gillen Review of serious sexual offence cases to exclude the public from all serious sexual offence hearings and to introduce anonymity for defendants' pre-charge

We greatly welcome the proposed provisions put forward in this bill that will help strengthen anonymity of victims in sexual offence cases. As the Committee are aware, Sexual offences are greatly underreported and within the financial years 2019/20, the PPS saw a 5.6% increase in the Public Prosecution Service receiving a total of 1,684 files involving a sexual offence. This was an increase of 5.6% on 2018/19 (1,594) and there was a rise of 6.9% in the number of files received involving a rape offence.

These proposed strengthened protections will give more reassurance to victims that their privacy and right to anonymity will have strengthened protections legislatively,

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<sup>26</sup> CEDAW Committee (67<sup>th</sup> session, 2017 ) [General Recommendation 35 on gender based violence against women](#)

<sup>27</sup> Ibidem, p.6

<sup>28</sup> Ibidem, p.10

<sup>29</sup> Ibidem, p.11

and as a result, hopefully encourage those who are reluctant to report what happened to the reassurance they need that their privacy will be protected.

Public confidence that breaches of anonymity are taken incredibly seriously in criminal justice proceedings are also essential to reassure the victims of serious sexual offences that they can have more confidence that our Justice System has appropriate measures in place to protect their anonymity through an incredibly daunting process for them.

We support the increase in penalty for breach of anonymity as a deterrent to those who would contemplate breaching the privacy of victims of serious sexual offences during criminal proceedings. Strengthening these penalties will give more reassurance to victims of serious offences that all measures possible are in place to protect their right to privacy following the trauma they have endured.

Judge Sir John Gillen was mindful of the potential outcomes of banning the public from courtrooms, bearing in mind the need, not merely for justice to be done, but for it to be seen to be done as well. With that said, there is an acknowledgement that certain types of trials and some court proceedings, including family courts, do take place away from the public gaze, and it is right for this to be an option where the anonymity of the complainant is at risk<sup>30</sup>. Judge Gillen also notes that, in a place as small as Northern Ireland, everything is local to some extent - it is difficult to keep information regarding an ongoing trial out of public conversation. To the extent that the legal system can mitigate that by limiting the risk of a trial becoming a public spectacle, it is right that this is done<sup>31</sup>. Similarly, extending this anonymity to cover the period after the death of a complainant is a welcome part of this legislation. We still live in a time and place where it is not always safe to disclose one's identity as a complainant, and where victim blaming, and shaming is common. Even if we did not, a person reserves the right to make themselves known on their terms alone. Extending anonymity beyond death reflects the value of that person's decisions and that they are not overwritten by death or by time, as well as encouraging victims near the end of their lives to come forward, knowing that their anonymity will be preserved after death<sup>32</sup>.

With regards to the anonymity of defendants before charge, we support this measure as a way to ensure that the proper procedure is followed in the correct order. As per many submissions to the Gillen Review itself, however, we agree that it is imperative

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<sup>30</sup> Gillen Report, p. 138 <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

<sup>31</sup> Gillen Report p. 143-144 <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf>

<sup>32</sup> Ibid. p.144

that defendants continue to be named once charged, both in order to facilitate other potential complainants coming forward, and so that serious sexual offences are not treated to other similarly heinous offences or carry any kind of implication that the charges are likely to be unfounded<sup>33</sup>.

### **4.3 Provisions to give effect to the outcome of a review of the law on child sexual exploitation and sexual offences against children to include live streamed images in the definition of exploitation for sexual purposes and to create a new offence of adults masquerading as children online**

The Women's Policy Group (WPG) endorses the response to this Bill provided by the National Society for the Prevention of Cruelty to Children (NSPCC). The NSPCC and the WPG welcome the creation of new offences to deal with issues around the streaming of indecent images and adults masquerading as children online. However, the WPG shares concerns raised by the NSPCC regarding the difficulty of proving that an adult is communicating with a child online with the intention of subsequently committing an offence.

### **4.4 Provisions to create a new offence of up-skirting and down blousing alongside a number of other sex offence adjustments to ensure the law operates as intended in these areas**

We are glad to see action on upskirting and downblousing in Northern Ireland. In a recent case that took place in a school, involving a student who filmed videos with the camera angled up two teachers' skirts. The charge he eventually faced was "committing an act of a lewd, obscene and disgusting nature and outraging public decency", which essentially treats this repeated violation as a public disorder offence, along the lines of indecent exposure. It appears that the PPS considered a charge of

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<sup>33</sup> Ibid. p. 21

voyeurism, but the test was not met to bring this charge, because the teachers were not engaged in a “private act” at the time. There is no law on our books at present that actually does fit the crime. We take the view that these women were violated by these acts, and further violated by our toothless laws on these kinds of issues. The law under which this was prosecuted focuses on public outrage and indecency, not on the rights to privacy and dignity of the victims of this type of crime. As such, we welcome a new law that centres the victims and the harm done to them.

However, we would strongly argue that the summary conviction (Section 4A of Clause One) is not in line with sentencing guidelines for almost identical legislation for the same crime in England, Scotland & Wales, and as such, Northern Ireland runs the risk of being seen as not taking acts of this nature as seriously for victims like in neighboring jurisdictions.

4A in Clause One of this bill states that *“on summary conviction, to imprisonment of term not exceeding 6 months or a fine not exceeding the statutory maximum or both”*

But in section 4A of **Voyeurism (Offences) Act 2019** that applies to England & Wales reads that: “on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine, or to both”

We would argue that by the summary conviction for these crimes in Northern Ireland being shorter than the rest of the UK, and indeed in the Republic of Ireland, that Northern Ireland will not be seen to be taking this violating act as seriously as we aren't in line with our neighboring jurisdictions, and as such, may result in some victims not coming forward to report what has happened to them.

Further, when considering the issue of up-skirting or down-blousing, the resource at [here](#) states that physically assaulting surgically or medically altered body parts, forcing an individual to expose scars and targeting sexual or emotional abuse towards parts of the body that the person may be ashamed of or detached from are all methods of domestic abuse. These methods are often used toward someone from the trans community. However, this issue is not something that only impacts the trans community. It could also impact on people who have had a mastectomy or those who are intersex<sup>34</sup>.

It is important that issues such as those provided above are also included in legislation. Further, the WPG believes that it is important that the legislation is not restrictive, for

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<sup>34</sup> See more: <https://avaproject.org.uk/wp/wp-content/uploads/2016/03/Domestic-Violence-a-resource-for-trans-people-in-Brighton-and-Hove.pdf>

example 'breast' should be interpreted to include a mastectomy scar where there may be no breast tissue remaining. Previous strict interpretation of legislation has meant for example that initially a charge of voyeurism was rejected because the victim was wearing bikini bottoms not underwear, this attempted defence of using a technicality should be avoided<sup>35</sup>.

The WPG also endorses the response to this Bill submitted by the Irish Congress of Trade Unions (ICTU) and shares their concern regarding the requirement of proving the perpetrator's intent, in regards to up-skirting and down-blousing. The current Bill considers an offence of voyeurism to be committed if the perpetrator "acted for the purposes of obtaining sexual gratification or humiliating, alarming or distressing the individual." However, as the ICTU highlights in their response, in regions where similar legislation has been introduced, such as England and Scotland, this language has proven problematic in the practical implementation of the law.

The NI Assembly Research Team found that in England and Scotland: "The difficulty of proving the nature of an offender's intentions beyond reasonable doubt may be contributing to cases never reaching court." They therefore advocate for the replacement of the intent clause with "a form of words that conviction rests on intent to record/distribute, and whether consent was given for the image/video to be taken."

The WPG also shares the concerns raised by the ICTU, regarding the use of the term "revenge porn" by the Department of Justice, as the term is misleading and perpetuates victim-blaming myths around sexual crime and assault. The WPG and the ICTU recommend that the Department instead use terms such as "image based sexual assault or abuse" to refer to these types of offences.

## 4.5 Provisions to adjust the modern slavery strategy and improve services for potential victims of slavery and exploitation

Following The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 the then DHSSPS created a 'Leaving Prostitution Strategy'<sup>36</sup> which was to develop a strategy and accompanying programme of assistance and support for those wishing to exit the industry. This was mandated by section 19 of the 2015 Act. This strategy did not fulfil the requirement and emphasised

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<sup>35</sup> See more: [http://news.bbc.co.uk/1/hi/northern\\_ireland/7906407.stm](http://news.bbc.co.uk/1/hi/northern_ireland/7906407.stm)

<sup>36</sup> Leaving Prostitution: a Strategy for help and support (December 2015) [Leaving Prostitution: a strategy for help and support](#)

the financial constraints on the Government at the time; it was little more than a signposting document. The strategy listed services already provided by the state such as job centres, by community and voluntary sector organisations for example those offering counselling, domestic abuse support and the existing Belfast Drop-in Service for Commercial Sex Workers at Bryson House. No programme of assistance and support was developed.

The situation has not improved with time, the review of the Criminalisation of paying for Sexual Services<sup>37</sup> in 2019 found that there is currently no specific targeted support for exiting in Northern Ireland and that support and exiting facilities are underdeveloped in Northern Ireland. Additionally, no agency has been given responsibility for managing or operationalising it.

It emerged in 2021 that the so-called exit scheme amounted to an 18-page leaflet listing contact information for statutory services.<sup>38</sup> There is also an NI Direct webpage with similar information. When checked on 2 September, the link to an external support organisation was incorrect, this was reported and later corrected.<sup>39</sup> Given the previous failing of the Department to deliver on commitments to support those choosing to exit, including consensual sex workers, it is difficult to envision services that would be adequate to support those trafficked into the sex work. While it is important not to conflate all selling of sexual services, those who are trafficked must have targeted support and all those who choose to exit should have the access to the programme of assistance and support promised in 2015.

Any support services must be adequately resourced, communicated and evaluated.

It should, finally, be noted that on a global level, the UN reports that many trafficking victims are forced to commit crimes, or act as fronts for criminal activity<sup>40</sup>. Such activity can include running brothels, forcing others to engage in prostitution, drug trafficking and other offences, and victims are often convicted with no consideration given to the forced nature of the activity; the European Court of Human Rights issued a judgement against the UK in such a case earlier this year<sup>41</sup>. It would be helpful if consideration could be given to this issue of victims of trafficking being prosecuted for crimes they were **forced** to commit, ideally through an amendment to this Bill clarifying the need

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<sup>37</sup> A Review of the criminalisation of paying for sexual services in Northern Ireland (September 2019) [default/files/publications/justice/report-criminalisation-paying-for](https://www.nidirect.gov.uk/default/files/publications/justice/report-criminalisation-paying-for)

<sup>38</sup> Assembly's plan for £1.3m exit scheme for sex workers ended up as 'a helpline leaflet' (February 2021) [Assembly's plan for £1.3m exit scheme for sex workers ended up as 'a helpline leaflet'](#)

<sup>39</sup> Paying for Sexual Services [access 21 September 2021] [Paying for sexual services | nidirect](#)

<sup>40</sup> Report of the UN Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally Women (July 21) [Implementation of the non-punishment principle](#)

<sup>41</sup> Thomson Reuters 16 February 2021 [Europe's rights court orders UK to compensate human trafficking victims'](#)

to investigate cases comprehensively and institute appropriate mitigations, to ensure that victims of trafficking are not victimised a second time without due consideration of all relevant issues of the case.

The WPG also supports calls made by the NSPCC for the removal of the defence of reasonable punishment. This issue has so far not been addressed by the current proposed Bill. The removal of this defence would “afford children equal protection from assault as adults” and would bring Northern Ireland into line with more than 60 other countries, including Scotland and the Republic of Ireland. The NSPCC emphasises that the removal of this defence is not with the aim to criminalise parents, and this has not been the case in countries where a similar move has been taken. Rather, they stress that it is about clarifying the law and ensuring that children are equally protected from assault.

The WPG agrees with the NSPCC that the Government should take a “twin-track approach” by removing the reasonable punishment defence and introducing a public education campaign on “positive parenting.” This approach has proven to be successful in other countries. Between 2007-2008, the German Research Foundation found in a cross-country study that this joint approach of legal reform and public awareness-raising “is more effective in changing attitudes and behaviours than either strategy alone.”

## 4.6 Additional Factors to be Considered:

### 4.6.1 Findings and Recommendations from the Gender Equality Strategy Expert Advisory Panel Report:

Several members of the Women’s Policy Group were recently involved in the development of the Department for Communities Gender Equality Strategy Expert Advisory Panel Report which provides further information on the recommendations from the Feminist Recovery Plan in relation to gender-based violence. Some additional factors to be considered as highlighted in the GES report<sup>42</sup> include the following:

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<sup>42</sup> Northern Ireland Gender Equality Strategy Expert Advisory Panel Report 2021: <https://www.communities-ni.gov.uk/system/files/publications/communities/dfc-social-inclusion-strategy-gender-expert-advisory-panel-report.pdf>

Additional areas of action are to support groups disproportionately impacted by domestic abuse including women and girls, rural women, LGBT+ people, disabled people and migrants. In recognising groups at great risk of domestic abuse, additional resourcing must be allocated to ensure specific community support services can be created for victims and to create educational campaigns that look beyond heteronormative messaging. In addition to this, specific support should be made available for men who are victims of domestic abuse due to social stigma attached to men speaking out. In order to facilitate meeting the diverse objective needs of different victim groups in Northern Ireland, much more robust reporting and monitoring of all section 75 groups is needed within the PSNI and broader Criminal Justice System.

For instance, it is estimated that one in two disabled women are in abusive relationships in the UK, however there is insufficient data collection in Northern Ireland to know the extent of disabled people experiencing abuse<sup>43</sup>. As disabled people face additional barriers in accessing support, not recording the numbers of disabled people specifically experiencing abuse prevents specific resources and support measures being put in place<sup>44</sup>. In addition, the lack of consistent Section 75 recording of victims and perpetrators has meant that statistics do not incorporate the levels of domestic abuse within LGBTQ+ relationships, and adequate community-based support is unable to appropriately support victims. Stonewall reports highlight that one in four of all lesbian and bisexual women has experienced domestic violence in the past, yet no data exists on this in relation to Northern Ireland specifically<sup>45</sup>.

It is important to have a great understanding of the identities of victims, as different minority groups may face unique forms of coercive control. For instance, further research from Stonewall found that 51% of transgender people who had experienced domestic abuse in the last year reported that their partner had ridiculed their gender identity, and many reported their partners threatening to “out” their gender identity or sexual orientation to their family and wider networks<sup>46</sup>. The spousal veto against allowing a trans partner access legal gender recognition

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<sup>43</sup> Women’s Budget Group, (2018), ‘Disabled Women and Austerity’, <https://wbg.org.uk/wp-content/uploads/2018/10/Disabled-women-October-2018-w-cover-2.pdf>

<sup>44</sup> Public Health England, ‘Disability and Domestic Abuse’: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480942/Disability\\_and\\_domestic\\_abuse\\_topic\\_overview\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/480942/Disability_and_domestic_abuse_topic_overview_FINAL.pdf)

<sup>45</sup> Stonewall.org.uk. 2008. Prescription For Change: [https://www.stonewall.org.uk/system/files/Prescription\\_for\\_Change\\_2008\\_.pdf](https://www.stonewall.org.uk/system/files/Prescription_for_Change_2008_.pdf)

<sup>46</sup> Safe lives (2018). Free to be safe: LGBT+ people experiencing domestic abuse: <https://safelives.org.uk/sites/default/files/resources/Free%20to%20be%20safe%20web.pdf>

can also be used as a unique form of coercive control. In the absence of adequate data collection in Northern Ireland, an example of community developed data on the domestic abuse experienced by trans communities in Scotland can be seen in Appendix 3, which highlights the urgent need for Northern Ireland specific data and robust monitoring of Section 75 groups in relation to domestic abuse.

In addition to enhanced recording of Section 75 groups, police officers and PPS staff should receive training to ensure cultural competency and best practice for supporting victims from different backgrounds and to address less recognised forms of domestic abuse. For instance, LGBT+/Disability/Migrant Domestic Violence Liaison Police Officers and specialist Independent Domestic Violence Advocates should be in place and there should be recognition of forms of abuse such as abuse from a carer to their partner/child or abuse by a parent against their LGBTQI+ child etc. These measures could be implemented and overseen by a Domestic Abuse Commissioner.

Having policies and procedures co-designed with community organisations representing different groups of victims should ensure better data collection that allows for more efficient allocations of support services.

### **Key findings/recommendations:**

- Domestic abuse crimes and incidents have been steadily growing in Northern Ireland since records began in 2004/5. Domestic abuse crime accounts for 19.1% of all crime in Northern Ireland.
- Women and girls are disproportionately impacted by domestic violence and a specific strategy for tackling Violence Against Women and Girls is needed in order to comply with the Istanbul Convention and CEDAW Recommendation 35.
- Despite the introduction of new legislation, several gaps remain in the protections afforded to victims in Northern Ireland compared to other regions. Victims in Northern Ireland should have equal protections and their geographical location should not impact their recourse to justice.
- Inadequate recording on the Section 75 Characteristics of both victims and perpetrators makes it impossible to adequately address objective need of all victims in NI. Specialist support provisions are needed for women and girls, rural victims, disabled people, men, LGBTQI+ people, migrants and more.
- There needs to be a recognition that coercive control can take unique forms for various intersectional groups, particularly disabled people and LGBTQI+ people. In line with similar recommendations in the LGBTQI+ Equality Strategy, there should be the removal of the spousal veto to prevent a trans partner accessing legal gender recognition.

- For rural victims, there needs to be recognition of the additional barriers in access support or fleeing domestic and sexual abuse. As communities tend to be smaller and less anonymised than urban settings, and fleeing a domestic violence situation can have consequences such as giving up rural life or access support, or leaving a family farm business, additional support must be adequately funded in rural areas.
- Split Universal Credit payments should be made the default, rather than opt in, to ensure victims have access to financial resources and to overcome general unawareness of the split payments option.
- The granting of secure tenancies for victims of domestic abuse should be implemented in line with requirements for the Istanbul Convention, to ensure that there is appropriate funding for refuge units; that this is increased with costs of living; and that housing allocations are reviewed to ensure the needs of all survivors are met.
- Given the increasingly high levels of femicide in Northern Ireland, and the plans to launch Domestic Homicide Reviews in Northern Ireland, it is crucial that these reviews are used as a learning tool to reduce domestic homicides. Monitoring this work could also be overseen by an Independent Domestic Abuse Commissioner.
- Training and education are needed across the entire criminal justice system, and wider society, to ensure any new domestic violence legislation is operational and that a culture of intolerance towards domestic violence is created.
- Addressing gender-based violence in all forms requires funding more than just education and public awareness campaigns. This needs to include robust statutory funding for support services for groups such as Rape Crisis, Women's Aid Federation NI, Men's Advisory Project, HERe NI/The Rainbow Project etc. as many of these groups currently rely on third party funding which is not sustainable, nor does it enable these organisations to provide full services to match other jurisdictions.
- Adequate resourcing is needed to ensure meaningful change, and there must be robust oversight of the application of any new legislation relating to domestic abuse to ensure it is working properly. An independent Domestic Abuse Commissioner could oversee the implementation of this legislation and the identification of remaining gaps.

Further data and recommendations from the GES report relating to sexual harassment, violence and online abuse which we believe the Justice Committee should consider includes:

Sexual harassment as a workplace issue was explored in section 3 [of the GES report], however, in line with the other recommendations, much

more work is needed to create zero tolerance for sexual harassment and to remove barriers to reporting harassment in wider society. The 2008 amendments to the Sex Discrimination (NI) Order expressly prohibit sexual harassment in the field of employment, however, given the rapid increases in workplace sexual harassment alongside increasing sexual harassment in public spaces and on online platforms, it is imperative that more is needed to be done. A report from the House of Commons Women and Equalities Committee found evidence of 'routine and sometimes relentless' harassment of women and girls on the street, in parks, on public transport, in bars, clubs and universities and online<sup>47</sup>.

Surveys in the report found that 64% of women, including 85% of 18-24-year olds had experienced unwanted sexual attention in public places with 35% reporting unwanted touching. More than 60% of girls and young women did not feel safe walking home and growing numbers said they felt unsafe online. Incidents ranged from wolf-whistling to unwanted sexual comments, groping and sexual rubbing on public transport, upskirting, rape threats and men exposing themselves. Despite the prevalence of these issues, society continues to underplay the gravity of such behaviour and the impact it has on women and girls. The normalisation of such behaviour is evidence of how deeply embedded misogyny is in our society which leads to low levels of reporting on such incidents. In public awareness and education campaigns, it is important to ensure that people know what behaviours that constitute sexual harassment and where to go for support.

In addition to this, barriers to reporting sexual harassment or consequences for perpetrators need to be urgently addressed through more robust legislation. This is of increasing importance as technological advances create further opportunities for harassment largely without any consequences. Online harassment and abuse against women prompted Sir Tim Berners-Lee, creator of the internet, to say that "the web is not working for women and girls" and that while important progress has been made on gender equality, the "online harms facing women and girls, especially those of colour, from LGBTQ+ communities and other marginalised groups – threaten that progress"<sup>48</sup>. This is clearly evidenced in the recent sharing and leak of thousands of explicit images of women and girls in Ireland without their consent, including many women from Northern Ireland and images of children<sup>49</sup>. Online image

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<sup>47</sup> Sexual harassment of women and girls in public places, Women and Equalities Committee, House of Commons, October 2018 <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/701/701.pdf>

<sup>48</sup> Why the web needs to work for women and girls, Sir Tim Berners-Lee, March 2020 <https://webfoundation.org/2020/03/web-birthday-31/>

<sup>49</sup> For more information see Independent (2020), 'Thousands of explicit images of Irish women leaked', <https://www.independent.co.uk/news/world/europe/ireland-revenge-porn-images-leak-b1759685.html>

based sexual abuse needs to be legislated for in as a matter of urgency. Online abuse towards women, particularly women in public life, has also prompted calls for an All-Party Working Group on Misogyny to be set up. Given the extent of the issue of online abuse and harassment towards Northern Ireland, this would be welcomed, as online misogynistic abuse limits women's representation and visibility not just in politics, but other spheres of life.

Adequate funding and resourcing should also be made available to support groups such as the Raise Your Voice campaign works on tackling sexual harassment and sexual violence in Northern Ireland through work directly with the community, increasing public awareness, educating organisations on best practice and lobbying for legislative advances in this area.

### **Key findings/recommendations:**

Reported sexual offences have been rapidly increasing since official records began in 2002/3 and conviction rates remain extremely low.

- None of the recommendations contained in the Gillen Review Report into the law and procedures in serious sexual offences in Northern Ireland that require legislation have been brought into place. A timetable to implement all recommendations from the review should be published urgently.
- Relationships and Sex Education (RSE) needs to be standardised across all schools to ensure topics are dealt with appropriately and inclusively to ensure it provides the necessary information and skills for vulnerable demographics. This needs to be in line with CEDAW Recommendation 35 to inform individuals on consent, sexual harassment, victim-blaming and dismantling beliefs that women and girls are responsible for their own safety from sexual harassment and assault. RSE must also be actively pro-LGBTQI+ inclusive; be delivered in an age-appropriate manner from primary school age onwards and be developed in collaboration with civil society groups with expertise in these areas. RSE will be explored further in section 9.
- An adequately funded public awareness campaign on tackling victim-blaming, rape myths and rape culture, as recommended in the Gillen Review, needs to be co-designed with community organisations working in this area and rolled out as a matter of urgency.
- Barriers to reporting sexual harassment and inadequacy in tackling growing online harassment needs to be addressed through robust legislation. This needs to include greater consequences for perpetrators and provisions to tackle issues such as image based sexual assault.

- Adequate funding and resourcing should also be made available to support groups such as the Raise Your Voice campaign works on tackling sexual harassment and sexual violence in Northern Ireland through work directly with the community, increasing public awareness, educating organisations on best practice and lobbying for legislative advances in this area.
- An All-Party Working Group on Misogyny should be established.

#### 4.6.2 LGBTQ+ women:

While there is currently no local data on whether LGBTQ+ people are disproportionately impacted by up-skirting or downblousing American research<sup>50</sup> has demonstrated that LGBTQ+ people are more than 4 times more likely to be victims of image based sexual abuse than heterosexual people. While not necessarily up-skirting or downblousing, it is possible that these forms of images are amongst those reported, with 17% of respondents reporting either having an image shared without their consent or having someone threaten to share an image. It is well documented that bisexual women in particular are the demographic most vulnerable to rape, sexual assault, domestic violence and stalking, so it is likely there would be a high incidence of related crimes experience by bisexual women.

In service provision, quite often the LGBTQ+ community is overlooked because it is invisible due to the default of heteronormativity. As well as mainstream provision, there should be LGBTQ+ specific services for people who have experience up-skirting and downblousing. Mainstream services should be explicitly inclusive in their resources and awareness campaigns that they are inclusive of LGBTQ+ people. Service providers should also be adequately trained to support LGBTQ+ people.

#### 4.6.3 Migrant and Ethnic Minority Women:

Migrant women who have been victims of serious crimes may be less likely to report these crimes to the authorities due to a number of reasons. Lack of knowledge of the criminal justice system as well as support services, lack of English language skills, lack of local support networks, mistrust of police, negative experiences of the judicial system in their countries of origin, community/family discouragement to report, fear

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<sup>50</sup> Nonconsensual Image Sharing : one in 25 Americans has been a victim of ‘revenge porn’ (December 2016) [Data & Society — Nonconsensual Image Sharing](#)

of children being taken into care, perceived lack of cultural sensitivity by statutory or voluntary support organisations, financial barriers including financial dependency on the perpetrator, stigma and shame attached to sexual offenses including cultural stigma and 'honour', and fear of punishment based on their immigration status should they come forward are all barriers to reporting.

Victims may feel that if they come forward about their abuse to the PSNI, the NHS, statutory agencies, or even voluntary support organisations, they may run the risk of deportation or penalty based on their immigration status. Immigration reporting by the PSNI, NHS, Housing Executive, and other statutory bodies has a potential deterrent effect on victims reporting crimes and seeking help.

No Recourse to To Public Funds has severe negative impacts on migrant victims of sexual offenses and trafficking. It denies victims from receiving support from any public benefit, including housing support for those experiencing homelessness, or financial support for those forced into destitution. For victims who are financially dependent on the perpetrator, NRPF may contribute to not coming forward with abuse or leaving an unsafe situation. **Furthermore, research indicates that No Recourse To Public Funds contributes to destitution, making migrant women more vulnerable to domestic and sexual violence.** Asylum seeker women are particularly likely to have experienced sexual violence prior to their arrival in the UK and are then made more vulnerable to the prospect of further sexual violence should they become destitute with no recourse to public funds. Research by Women for Refugee Women on destitute asylum seeker women in the UK found that over three-quarters of asylum seeker women experiencing destitution experienced gender-based violence in their country of origin, and that "almost a third a third of the women who had been raped or sexually abused in their home country were then raped again or subjected to further sexual violence while destitute in the UK". Over a third of destitute women were forced into unwanted relationships in order to secure things like housing or basic necessities, with over 60% of these women reporting rape or unwanted sexual contact by their partners. Particularly troubling in light of the Home Office's new Immigration Rule to deport rough sleepers, a quarter of destitute asylum seeker women reported being raped or sexually assaulted when sleeping outside or in other people's homes<sup>51</sup>.

No specialist services for migrant and minority ethnic victims of sexual violence currently exist in Northern Ireland. These have not been established due to a lack of resourcing. The Gillen Review into the law and procedures in serious sexual offenses in Northern Ireland acknowledges that a criminal justice approach to gender-based

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<sup>51</sup> Women for Refugee Women, Will I Ever Be Safe? Asylum-Seeking Women Made Destitute In the UK (2020) <https://www.refugeewomen.co.uk/wp-content/uploads/2020/02/WRW-Will-I-ever-be-safe-web.pdf>

violence, when carried out in the absence of adequately resourced support organisations for victims, represents a “complete failure” on the part of the government. In order for this legislation to be effective, proper resourcing for organisations that support victims of sexual offenses and trafficking is a necessity. This should include resourcing to establish specialist support for migrant and ethnic minority victims of gender-based violence.

The Gillen Review makes a number of recommendations as it relates to ethnic minority victims of serious sexual offenses. Training should be instituted for all statutory organisations supporting victims on the “prevalence and changing character of sexual offenses”, to be undertaken on a regular basis, and with particular regard for the victims with particular vulnerabilities. Specific reference should be made and best practice training developed for supporting victims from migrant and ethnic minority backgrounds. All publicly funded advocates should also be required to undertake specialist training.

Furthermore, the Gillen Review states that PSNI figures reflecting sexual offenses against ethnic minority victims in all likelihood represent a “gross underestimate” due to significant under-reporting. There is limited research on just how severe this reporting gap is and most knowledge on the topic comes from anecdotal reports by ethnic minority support organisations. The collection of disaggregated data on migrant and ethnic minority victims interfacing with the criminal justice system should be prioritised and resourced to ensure that these victims are engaged with and their vulnerabilities and needs are adequately addressed.

#### 4.6.4 Disabled Women

Disabled women who have been victims of serious crimes may be less likely to report these crimes to the authorities due to a number of reasons. As highlighted earlier in section 4.6.1, it is estimated that one in two disabled women are in abusive relationships in the UK, however there is insufficient data collection in Northern Ireland to know the extent of disabled people experiencing abuse<sup>52</sup>. As disabled people face additional barriers in accessing support, not recording the numbers of disabled people specifically experiencing abuse prevents specific resources and

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<sup>52</sup> Women’s Budget Group, (2018), ‘Disabled Women and Austerity’, <https://wbg.org.uk/wp-content/uploads/2018/10/Disabled-women-October-2018-w-cover-2.pdf>

support measures being put in place<sup>53</sup>. In addition, the lack of consistent Section 75 recording of victims and perpetrators has meant that statistics do not incorporate the levels of domestic abuse amongst disabled people, and we would urge measures to be put in place to accurately record all the intersectional backgrounds of victims and survivors of sexual exploitation.

Further, disabled women have also been disproportionately impacted by austerity and the ongoing COVID-19 pandemic, which places many in extremely precarious positions. Consideration must be given to the border attacks on the socio economic wellbeing of women, particularly disabled women, which can provide unique opportunities for abuse and exploitation of disabled women.

Finally, disabled women face many barriers in accessing the justice system, and in the operationalisation of this Bill, it is crucial that the specific accessibility requirements of disabled women in accessing justice are considered.

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<sup>53</sup> Public Health England, 'Disability and Domestic Abuse':  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480942/Disability\\_and\\_domestic\\_abuse\\_topic\\_overview\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/480942/Disability_and_domestic_abuse_topic_overview_FINAL.pdf)

# 5. Clause by Clause Comments:

## **PART 1 - SEXUAL OFFENCES**

### **CHAPTER 1**

#### **CRIMINAL CONDUCT**

##### **1. Voyeurism: additional offences**

As stated previously, we welcome measures to include 'upskirting' and downblousing' within this Bill. Section 4.4 of this response provides further detail. The WPG would recommend that section 4A of Clause One be amended to read:

*"on summary conviction, to imprisonment of term not exceeding 12 months"* in line with our neighbouring jurisdictions.

##### **2. Sexual grooming: pretending to be a child**

As stated previously, we endorse the NSPCC response and their recommendations in relation to this clause. The WPG would recommend that section 22G of Clause Two should be amended to read:

*"On summary conviction, to imprisonment of term not exceeding 12 months"*.

##### **3. Miscellaneous amendments as to sexual offences**

Again, the WPG fully endorses the NSPCC response in relation to the abuse of children under 18 and engaging in sexual communication with a child.

The WPG also strongly welcomes this Clause which removes victim blaming terminology in legislation that is designed to protect children and young people from sexual exploitation. Further, the WPG endorses the Women's Aid response to this clause whereby the victims of child exploitation need protection and reassurance that the horrendous acts done to them are not their fault as they do not have the capacity to consent to their own exploitation.

In relation to streaming or other transmission of indecent images, the WPG supports the intent of the Bill to extend offences that relate to this under Schedule 2 Part 1.

## CHAPTER 2 - ANONYMITY AND PRIVACY (Gillen)

### *Anonymity of victims*

- 4. Extended anonymity of victims
- 5. Disapplication of anonymity of victim after death
- 6. Increase in penalty for breach of anonymity
- 7. Special rules for providers of information society services

### *Anonymity of suspects*

- 8. Restriction on reports as to suspects of sexual offences
- 9. Meaning of sexual offence in section 8
- 10. Power to disapply reporting restriction
- 11. Magistrates' courts rules
- 12. Offence relating to reporting
- 13. Interpretation of sections 8 to 12
- 14. Consequential amendment

The WPG welcomes **Clauses 4 and 5** and steps to exclude the public from all serious sexual offence hearings and to introduce anonymity for defendants' pre-charge, to extend the current lifelong anonymity of victims and survivors and to provide their anonymity for 25 years after death. These changes should strengthen protections for victims and survivors and encourage more to report abuse, seek justice, and hopefully receive adequate support throughout the process.

Further, the WPG would echo recommendations from Women's Aid to extend legislative provisions for anonymity to circumstances where there is a domestic abuse offence. Those who have experienced domestic abuse should be offered the same protections and considerations within legislation for their protection and to reduce the re-traumatisation that comes with trial proceedings.

We would also like to endorse comments from Women's Aid in relation to **Clause 6** whereby this clause would ensure public confidence that breaches of anonymity are taken extremely seriously in criminal justice proceedings relating to serious sexual offences and that victims and survivors can feel confident that all measures possible are in place to protect their anonymity through an already traumatic trial experience.

In relation to **Clause 7** on special rules for providers of information society services, the WPG understands that this Clause is to remove ambiguity in the law regarding illegal publication of content when the service provided is merely a conduit for the relevant information.

In relation to **Clause 8** on restrictions on reports as to suspects of sexual offences, the disclosure of the name of serial perpetrators can encourage other victims to come forward and provide evidence of their own experiences. This in turn, may establish a pattern of offending or escalating behaviour and aid convictions of dangerous perpetrators.

As Women's Aid highlighted in their written evidence submission to this Bill, sexual violence crimes are one of the most under-reported and difficult to secure a conviction. Granting anonymity to perpetrators is the last thing that would assist in overcoming issues of under-reporting and low conviction rates. The WPG would therefore support the removal of anonymity upon the specific conditions stated in Section 3, subsection 2 of Clause 8 of this Bill.

In relation to **Clause 9**, we would need further explanation of the definitions of this Clause.

In relation to **Clauses 10 and 11** on the Power to Disapply Reporting Restriction and Magistrates Court Rules, we understand the need for Clause 10 as a result, and as referenced in our response to Clause 8, the disclosure of their name and charge against them that can encourage other victims to come forward and provide evidence of their own experiences. We are conscious of the need for a fine balance in dealing with suspects in these circumstances, and therefore, understand the need for the provisions in this clause.

On **Clauses 12 and 13** on Offences Relating to Reporting and Interpretation of Sections 8 to 12, the WPG understands the need for appropriate sentencing when it comes to breaches of privacy for victims of serious sexual offences. We support this Clause as an additional deterrent to help protect the identity and privacy of victims and survivors.

Finally, in relation to **Clause 14** on Consequential Amendment, the WPG understands the need for this consequential amendment to ensure there is no legislative overlap when it comes to reporting and offence while that person is under the age of 18,

### ***Exclusion from proceedings***

#### **15. Serious sexual offences: exclusion of public from court**

The WPG strongly welcomes the exclusion of the public from the court in serious sexual offence cases, particularly as victims of sexual offences often feel a reluctance to come forward and report crimes committed against them for fear of being ostracised in their communities if their identity becomes well known. This is a

particular barrier to reporting sexual crimes given the culture of victim blaming – recent WPG research found that only 4.5% of respondents did *not* believe Northern Ireland had a problem with rape culture<sup>54</sup>. Therefore, the WPG believes it is not within the best interest of the victim to allow the public in court, and the exclusion of non-relevant parties from the trial should ultimately make the experience of the trial process less distressing.

Many international frameworks such as the Istanbul Convention<sup>55</sup> and UN Committee against Torture (CAT)<sup>56</sup> identifies that all measures to provide protection and support to victims should be with the aim of preventing secondary victimisation. Further, CAT requires that “judicial and non-judicial proceedings shall apply gender-sensitive procedures which avoid re-victimisation and stigmatisation of victims of torture or ill treatment”<sup>57</sup>.

In line with the NSPCC response to this Bill, **we would also suggest that this be extended to all sexual offence cases involving a child**, whether they are tried in the Crown and Magistrates’ courts in order to protect the privacy of the young witness who may be involved.

This exclusion from proceedings should also apply to other upcoming legislative changes relating to sexual abuse and domestic abuse, including Coercive Control and Non-Fatal Strangulation. Therefore, we recommend that **such legislative provisions be extended in circumstances where there is a domestic abuse offence**.

The WPG has also made recommendations recently in our response to the Non-Fatal Strangulation Consultation in relation to what court **offences of this nature should be heard in and recommended that they be heard in Crown Court only**. We are mindful that the use of Magistrates’ Court generally allows for a more efficient process which can enable a swift delivery of justice. However, at present, Magistrates’ court cases with listed contents of a sexual nature can be observed by the public which can be extremely difficult for witnesses involved, particularly young witnesses.

Ultimately, the WPG believes that this clause, which allows for the victims’ support network and press to remain in court, balances the need for transparent, accessible justice and that anything that makes the victim’s experience of the criminal court process less distressing is greatly welcomed.

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<sup>54</sup> WPG COVID-19 Feminist Recovery Plan Relaunch: One Year On

<sup>55</sup> Article 18(3), Istanbul Convention

<sup>56</sup> UN Committee against Torture, General Comment 3: Implementation of article 14 by States parties, CAT/C/GC/3 (13 December 2012) para 33.

<sup>57</sup> Ibid.

## **PART 2 - TRAFFICKING AND EXPLOITATION**

### **16. Support for victims of trafficking etc.**

### **17. Reports on slavery and trafficking offences**

Recommendations in relation to trafficking and exploitation can be found in section 4.5 of this response. We would also like to note that between 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021, Women's Aid supported 51 women who were victims of human trafficking in Northern Ireland. We support recommendations from Women's Aid to enhance legislative provisions to help victims of trafficking including:

- Social Security entitlement for survivors of trafficking
- Statutory defence for survivors of trafficking
- Quashing historical convictions relating to exploitation
- Healthcare entitlement for survivors of trafficking

It is crucial that more support is given to victims of human trafficking and modern slavery aside from a signposting leaflet as highlighted in section 4.5.

## **PART 3 - PREVENTION ORDERS**

### **18. Qualifying offences for sexual offences prevention orders**

### **19. Time limit for making violent offences prevention orders Justice (Sexual Offences and Trafficking Victims)**

In line with the comments from Women's Aid, the WPG welcomes **Clause 18** and the inclusion of this qualifying offence for a Sexual Offences Prevention Order (SOPOs) to help protect children and young people in Northern Ireland. The WPG understands the inclusion of the qualifying offence as offering another method of protection for vulnerable children and young people who have been placed in care and this provides another tool in which the PSNI can use to ensure that adults who pose a threat to safety of children and young people can be closely monitored.

As this qualifying offence will be another method of protection for our children and young people from offenders, the WPG supports its inclusion to the SOPO criteria.

In relation to **Clause 19**, the WPG supports the removal of the six-month time limit on making a complaint, which will give a wider window for victims to come forward and report the abuse and violence they've experienced, in some cases which lasted for years or decades.

## **PART 4 - FINAL PROVISIONS**

### **20. Ancillary regulations**

#### **21. Commencement**

#### **22. Short title**

### **SCHEDULES:**

**Schedule 1** Consequential amendments: voyeurism (additional offences)

**Schedule 2** Miscellaneous amendments as to sexual offences

**Part 1** Amendments of references to certain forms of child sexual abuse

**Part 2** Amendments relating to the offence of engaging in sexual communication with a child

**Part 3** Amendment relating to the offence of paying for the sexual services of a person

**Schedule 3** Offence of breach of anonymity: providers of information society services

All other comments relating to the above clauses are embedded throughout this response. We would now like to provide comments on the proposed amendments to the Bill below.

## **6. Additional Comments on Proposed Amendments from Department of Justice:**

**6.1 A legislative fix to re-instate four offences incorrectly removed into Schedule 2 of the Magistrates' Courts Order 1981 to allow for the summary prosecution of these indictable offences under Article 45 of that Order**

The WPG would need to see the wording of this amendment in full before making any comment. In general, the WPG believes that summary prosecutions of these offences must at least match other neighbouring jurisdictions to ensure these crimes are taken as seriously in Northern Ireland.

## 6.2 Abolition of the rough sex defence

In December 2020 - January 2021, the Justice Department consulted on provisions to ban the use of the so-called “rough sex defence”. The WPG took the view that this consultation presented an opportunity to examine an alternative approach to that taken in England and Wales, one that will help victims and their families more than the formalisation in legislation of the existing *R v Brown* case law.

There is no way to prevent defendants claiming that death occurred by accident, which is the essence of the so-called “rough sex defence”. The approach taken in England & Wales was attempting to address this, but the defence amounts to a claim that the defendant lacked the mens rea for murder and therefore the defence cannot be banned as such; one can always claim a lack of intent as a defence to murder. In practice, this usually means that the charge becomes one of manslaughter rather than murder, and this is why these cases tend to result in unsatisfactory outcomes, and leaves families feeling like justice has not been delivered.<sup>58</sup> This reality has been highlighted again just this month as a defendant in an all too familiar case in England was charged with manslaughter and received a short sentence after killing his lover, apparently during sex - despite the supposed ban on the “rough sex defence”. The prosecutor told the court that “the prosecution had “not accepted any form of ‘defence’ advanced by the defendant”. Rather, it was a case in which an allegation of murder could not be proved beyond reasonable doubt.”<sup>59</sup>

To truly bring justice for these crimes we need a new offence that would capture these reckless and negligent forms of sexual manslaughter and allow for appropriate sentencing in accordance with the culpability of the defendant. We have argued for this and outlined a suggested shape for the kind of offence that we have in mind as below, once the *R v Brown* ruling is formalised in law as per this legislation.

We also take the view that education is central to addressing this issue in a way that might prevent further cases and indeed cases of sexual violence more broadly. We believe that the best course of action would be the drafting of a new, bespoke law designed with this issue in mind which would best deal with the concerns raised around the so-called “rough sex defence”. Since the legal system cannot prevent defendants claiming that death was the accidental outcome of consensual activity, sexual or otherwise, this new law would provide for these cases. In these cases, this argument can be addressed with a new charge – that the sexual activity was reckless

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<sup>58</sup> WPG (January 2021), Response to DOJ Public Consultation on ‘Consent to Harm for Sexual Gratification: Not a Defence’, <https://bit.ly/3d9Onmq>

<sup>59</sup> <https://www.theguardian.com/uk-news/2021/sep/07/darlington-man-jailed-for-four-years-for-choking-woman-during-sex>

or negligent to such a degree that a reasonable person must know that serious injury or death would be the likely outcome, akin to how the offence of causing death by dangerous driving charge creates a specific category of culpable manslaughter for cases where death or serious injury should have been foreseen as a possible outcome of the driver's conduct.

We propose that this law should be a new category of sexual offence, based partially on the work of Dr Alison Cronin, Dr Jamie Fletcher and Dr Samuel Walker at Bournemouth University, whose work has informed our argument here. In the article *Homicide and Violence in Sexual Activity, Moving from Defence to Offence* they provide a persuasive argument that the legislation that would formalise the findings of *R v Brown* (1994) cannot actually prevent people from claiming that death caused during sexual activity was accidental, whatever its cause, resulting in the outcome that most of these cases are prosecuted as manslaughter or the defendant pleads guilty to the lesser charge of manslaughter. This cannot be mitigated against by formalising *R v Brown*, as per the approach in England and Wales; "in order to avoid a major legal pitfall, campaigners need to articulate the problem and their aim more clearly, engage with the current law and adopt the legal terminology that will effectively make their point. It is suggested that this could amount to a momentous change in criminal law that would see justice for victims who die as the result of violent sexual attacks. In order to achieve this, campaigners must move on from their discussion of defendants using a defence, which is not in law technically correct, and towards reform of the offence that the defendant has committed."<sup>60</sup>

Accordingly, we are specifically advocating the enactment of a sexual homicide offence, as an addition to the provisions of the Sexual Offences (NI) Order, that encompasses the existing law on manslaughter in the forms of unlawful and dangerous act, gross negligence, and reckless manslaughter with the additional element of sexual activity. The importance of categorising this as a sexual offence is as follows:

1. It accords with the principle of "fair labelling" and would allow for the development of fair and proportionate sentencing guidelines for this category of homicide.
2. Categorisation as a sexual offence has the procedural advantage that evidence of the victim's past sexual history could be restricted by an extension of the Youth Justice and Criminal Evidence Act 1999 ss. 41 and 42 provisions. This would address widespread criticism that the current procedural approach in

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<sup>60</sup> STARS (2019), 'Homicide and Violence in Sexual Activity, moving from defence to offence', <https://bit.ly/3xNfBaA>

homicide cases contains no bar to the inclusion of the victim's past sexual history.

3. Framing the offence in terms of a sexual nature is preferable to the contextualisation as domestic abuse that has occurred in England and Wales. This approach would recognise that sexual relations also occur outside "domestic" relationships and that joint consensual engagement in a dangerous activity does not necessarily amount to "domestic abuse" – to suggest that this is the case would be a denial of the autonomy of both parties and *R v Wilson* has shown a reluctance within the legal system to intrude on the domestic relationship from a paternalistic standpoint.

Therefore, we recommend the following course of action:

- Formalisation of *R v Brown* (as per this legislation)
- Introduction and enactment of a sexual homicide offence, as an addition to the provisions of the Sexual Offences (NI) Order, that encompasses the existing law on manslaughter in the forms of unlawful and dangerous act, gross negligence, and reckless manslaughter with the additional element of sexual activity.
- RSE reform in schools and a specific public awareness campaign addressing the issues that arise with regards to "rough sex", consensual or otherwise.
- Separately, the introduction of legislation on non-fatal strangulation.<sup>61</sup>

### 6.3 An extension to existing revenge porn provisions to include a threat of publication

In April 2021, the WPG submitted evidence to the Justice Committee regarding the introduction of stalking legislation in Northern Ireland.<sup>62</sup> This evidence submission was informed by WPG primary research, which took the form of an online survey. One of the key themes which emerged from this research was the rise of Image Based Sexual Abuse (IBSA), also known as "revenge porn."

The survey found that most respondents had experienced both digital and in-person stalking, suggesting that these two forms of stalking are inter-connected. However, it also found that the distinction between these forms of stalking can become blurred, as perpetrators will often use their digital stalking to plan their in-person stalking.

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<sup>61</sup> WPG response to Non-Fatal Strangulation consultation (September 2021) <https://wrda.net/wp-content/uploads/2021/09/WPG-response-to-NFS.docx.pdf>

<sup>62</sup> WPG Joint Evidence Submission to Justice Department on the Protection from Stalking Bill (April 2021): <https://bit.ly/2UxMOII>

Image Based Sexual Abuse (IBSA) illustrates how these forms of stalking can become blurred, as having or gaining access to intimate images of the victim makes them vulnerable to very real-life consequences through deliberate sharing designed to control and humiliate the victim which are in perpetuity. Perpetrators are acutely aware of how lacking legislation is in this area and use this to control their victims and increase their sense of vulnerability.

The WPG recommends that the “revenge porn” offence be widened to cover threats to share intimate images and IBSA. This recommendation is supported by the NSPCC, who recommend that the Bill go further to “include threats to share images where there is an intention to cause fear that the threats to share images will be acted upon.” The NSPCC suggests that this could be done by including an amendment to additional voyeurism offences listed under sections 71A and 71B.

## 6.4 Provisions to widen the scope and strength of the current law on abuse of trust

As highlighted in section 4.3 of this response, The Women’s Policy Group endorses the response to this Bill provided by the National Society for the Prevention of Cruelty to Children (NSPCC). In their briefing titled ‘Close the Loophole Campaign,’<sup>63</sup> the NSPCC identify a legislative gap in the current Sexual Offences (Northern Ireland) Order 2008, which is primarily aimed at protecting young people, aged 16 and 17, from sexual abuse and exploitation. This Order means that it is currently illegal for adults in a position of trust to engage in sexual activity with a child in their care, but these offences only apply in the context of statutory functions, such as education and state care, and do not include offences by sports coaches, faith group leaders or other adults working with children in extracurricular activities.

The NSPCC believe that “this legislative gap leaves young people, aged 16 and 17, at risk of grooming and sexual abuse” by adults in positions of power, and should be urgently addressed. In order to address this gap, the NSPCC are calling for the definition of “position of trust” to be expanded to “all adults in positions of power and authority over children.” This expanded definition would include employers, employees and volunteers, regardless of the setting. The NSPCC would like this

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<sup>63</sup> Briefing from NSPCC on ‘Close the Loophole’:

<http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/justice/primary-legislation/justice-etc-bill/nsdcc-merged-briefing-r.pdf>

definition to be expanded to cover all adults working in positions of trust to children, regardless of the setting, paid or volunteers.

The NSPCC emphasises the importance of expanding this legal definition in a way that is “clear and unambiguous” so that children, adults, and those working within the criminal justice system can easily understand it. The WPG supports calls by both the NSPCC and ICTU for the introduction of a clear public education campaign to accompany this legal change, to ensure that the new offences are easily understood by all children, young people and adults. The WPG also supports the call made by the NSPCC for the removal of the defence of reasonable chastisement to be included in the Justice Bill (as a child protection / public protection measure in line with Part 3 and the PoT amendment).

Through a comparison of legislative approaches taken in other regions, the NSPCC identifies two potential options for the Department to consider when consulting on amending the legal definition of ‘position of trust’ in the Justice (Sexual Exploitation and Trafficking Victims) Bill. These include:

- 1) ‘To extend the law widely to include all persons in a position of trust by creating an expansive definition of persons of trust, akin to the scope in Jersey,
- 2) ‘To extend the law in a more limited way but provide the ability to add to its scope. This option would reflect the approach taken in England and Wales whereby the activities of the position of trust are restricted to the area of sport and faith but where provision has been included to expand upon these areas and to add to the activities contained at a future stage.’

Finally, the WPG would like to recommend that the defence known as ‘reasonable punishment’ is abolished in Northern Ireland to protect children and young people.