

# **Women's** **Policy Group NI**

## WPG NI Response to Domestic Abuse Prohibitions for Cross-examination in Family Proceedings

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## **1. Introduction:**

The Women's Policy Group (WPG) is a group of policy experts and practitioners who advocate collectively for women and girls by promoting gender equality through an intersectional feminist lens. We challenge systemic injustice and discrimination affecting women and girls by informing society and influencing policy and law. Our work is informed by women and girls' lived experiences and rooted in international human rights law.

The WPG is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, LGBTQ+ 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 is endorsed as a coalition of expert voices that advocates for women in Northern Ireland on a policy level.

If you have any questions or queries about this response, or would like to discuss this evidence further with the WPG, please contact Elaine Crory, Women's Sector Lobbyist at [elaine.croory@wrda.net](mailto:elaine.croory@wrda.net)

This response was prepared by Elaine Crory who is the Women's Sector Lobbyist with the Women's Resource and Development Agency. Please note that this response may also include evidence from other WPG work, compiled by a range of WPG members, and not all member organisations have specific policy positions on all the areas covered in this response.

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

Several members of the Women's Policy Group have been campaigning on matters relating to domestic abuse for many years. The WPG has published a wide range of evidence through various evidence submissions, public consultation responses and specific briefings on issues relating to this issue. Responses made by the WPG and some of our members, in relation to domestic abuse include:

- Raise Your Voice Response to PPS Policy on Prosecuting Sexual Offences (2022)<sup>1</sup>

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<sup>1</sup> Raise Your Voice (2022) 'PPS Policy on Prosecuting Sexual Offences: Raise Your Voice response to consultation document' Available here: <https://static1.squarespace.com/static/5d0b8e80c3c6f40001ed29b5/t/62878b2734c61929bbb87f88/1653050152048/RVV+response+to+PPS+Policy+on+Prosecuting+Sexual+Offences.pdf>

- WPG Evidence Submission to Justice Committee on the Domestic Abuse and Family Proceedings Bill (2020)<sup>2</sup>
- WPG Joint Written Response to Call for Views: New Strategies: Domestic and Sexual Abuse Strategy (DOJ, DOH) Violence Against Women and Girls Strategy (TEO) (2022)<sup>3</sup>
- WPG Response to DOJ Public Consultation on Enhancing Legal Protections for Victims of Domestic Abuse (2021)<sup>4</sup>
- WPG Primary Research Report on Violence Against Women and Girls in Northern Ireland (2022)<sup>5</sup>
- WPG Primary Research Report on the Impact of COVID-19 on women in Northern Ireland (2021)<sup>6</sup>
- WPG Response to PPS Policy on Prosecuting Cases of Domestic Abuse (2023)<sup>7</sup>

## 2.1. Content from previous WPG Responses

Activists, women's organisations and support providers have spent many years calling for adequate domestic abuse legislation and policies in Northern Ireland. In the current global pandemic, evidence shows that rates of domestic abuse and violence has sharply increased. Women make up the majority of domestic abuse victims and therefore will be significantly impacted by any measures introduced aimed at tackling and prosecuting cases of domestic abuse. It is imperative that these measures are fit-for-purpose and work towards achieving a culture shift in how we think and speak about domestic abuse.

Short prison sentences, and indeed decisions by PPS to refer serious cases to lower courts with limitations on the severity of sentences that they can impose - communicate something to the public regarding the severity of the offence. This is

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

<sup>3</sup> WPG (2022) 'Joint Written Response to Call for Views: New Strategies: Domestic and Sexual Abuse Strategy (DOJ, DOH) Violence Against Women and Girls Strategy (TEO)' Available here: <https://wrda.net/wp-content/uploads/2022/03/WPG-Response-to-Call-for-Views-New-Strategies-Domestic-and-Sexual-Abuse-and-VAWG-Mar-22.pdf>

<sup>4</sup> WPG (2021) 'WPG Response to DOJ Public Consultation on Enhancing Legal Protections for Victims of Domestic Abuse' Available at: <https://wrda.net/wp-content/uploads/2021/02/WPG-Response-on-Enhancing-Legal-Protections-for-Victims-of-Domestic-Abuse-Public-Consultation.pdf>

<sup>5</sup> WPG (2022) 'Just a Fact of Life: Violence Against Women and Girls in Northern Ireland: Women's Policy Group Research Findings' Available at: <https://wrda.net/wp-content/uploads/2022/04/WPG-VAWG-Research-Report.pdf>

<sup>6</sup> WPG (2021) 'WPG COVID-19 Feminist Recovery Plan Supplementary Research Report: Putting Women's Voices at the Core' Available at: <https://wrda.net/wp-content/uploads/2021/07/WPG-Feminist-Recovery-Plan-Research-Report-Womens-Voices-at-the-Core.pdf>

<sup>7</sup> WPG (2023) 'WPG Response to PPS Policy on Prosecuting Cases of Domestic Abuse' <https://wrda.net/wp-content/uploads/2023/02/WPG-Response-to-PPS-Consultation-07.02.23.pdf>

especially relevant when we see these cases in the context of how crimes such as drug possession are sentenced, where we see a large disparity in sentencing, it communicates a great deal about how our society quantifies the harm done to victims and survivors.

We need to change the culture of how domestic violence and abuse is treated in Northern Ireland and a hefty sentence for domestic abuse is a means of highlighting the gravity of domestic abuse and the intolerance for it in our society.

## 2.2 Lived experiences collected through WPG Primary Research

As previously stated, the WPG has conducted two primary research projects which looked at the scope, scale and prevalence of violence against women and girls in Northern Ireland, including domestic violence. We would like to highlight some of the findings from this research, relating to domestic abuse, in this section.

Testimonies from WPG Primary Research on Violence Against Women and Girls in Northern Ireland:

*"Suffered domestic abuse both physical and verbal for several years from I was 19 yrs old and changed me dramatically as a person, not for the better. It made me anxious, aggressive, afraid, nervous and angry. I probably continue to suffer from PTSD, however, the services just are not available for me to address my issues."*

*"I experienced domestic abuse from an ex partner in my early 20s. It took years for me to realise that what happened was abuse. I was also raped in my early 30s (he removed condom without my consent). I was hurt and angry for a long time and still struggle to deal with what happened to me in a healthy way."*

*"At 16 years old I was the victim of Domestic Abuse where he tried to isolate me from friends and would break my phone or take any money I had. Also pushed me around when I got pregnant."*

Testimonies from WPG Primary Research on the impact of COVID-19 on Women and Girls in Northern Ireland (relating to domestic abuse):

*"I feel that we can pass all the domestic abuse laws, amend how the courts treat rape victims, that we like. But if we don't tackle the reason for the behaviours, toxic patriarchal views of men/women/ relationships, we are just using a toothpick to chip away at an iceberg."*

*"I have a teenage daughter and i believe that there is not enough knowledge to both male and female on the impact of domestic abuse, or the signs as such of it, bar the obvious of physical abuse, i believe that if i had been educated on this, and or aware of the signs or gate ways of support agencies or any other form of guidance and help, perhaps i may have seen it sooner and left."*

*"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. "*

The following paragraph is an extract from one of the case studies contained in the WPG Primary Research Report titled 'Putting Women's Voices at the Core.' This case study is based on an interview with a survivor of domestic abuse.

*Lisa's husband was physically, psychologically, financially and spiritually abusive towards her, with their marriage being characterised by high levels of coercive control. Her husband controlled the couple's finances and would take and spend all of their money as soon as it was received. This meant that Lisa had no money of her own to buy food or other necessities. Lisa described being extremely hungry, walking the streets, hoping to find a pound coin on the pavement that she could use to buy some food...*

*Lisa initially did not tell anyone about the abuse, due to the fear of being shamed by her community and bringing shame upon her family. Lisa's husband used this threat of shame to keep her silent; thereby allowing him to maintain control over her and keep her in the abusive relationship. In Lisa's words, the abuse was so severe and she felt so isolated that: "The only way I could see out was if he died or I died. I used to fantasise about just driving into a wall."*

Some of our main research findings from our primary research into Violence Against Women and Girls, relating to domestic abuse and sexual abuse, included the following:

- 68% of respondents were aware of domestic abuse as a form of violence against women and girls,
- 67.4% of respondents were aware of sexual abuse as a form of violence against women and girls.
- 95.8% of respondents thought that a Strategy on violence against women and girls should address all of the following forms of violence:

- Domestic abuse
- Sexual abuse
- Online abuse
- Honour-based abuse
- Economic abuse
- Coercive control
- Sexual harassment
- Street harassment
- Emotional abuse
- Unwanted rough sex
- Misogynistic hate crimes
- Spiritual abuse
- Workplace harassment
- Stalking
- Forced isolation from family and friends
- Controlling an individual's style and appearances
- Systemic violence by the state
- 54.3% of women were aware of all of the above forms of violence against women and girls, including various forms of domestic abuse such as honour-based abuse, economic abuse, coercive control, emotional abuse and forced isolation from family and friends.
- 83% of respondents have experienced or been impacted by men's violence against women and girls
- 82% of those who had experienced or been impacted by men's violence against women and girls first experienced this before the age of 20

Furthermore, our survey on the impact of COVID-19 on women and girls found that 58% of women had been a victim of domestic abuse, stalking, harassment, hate crime or assault.

### **3. General Comments on the Consultation document**

Overall we are pleased with the detail in this document and pleased that this legislation is being brought forward. We take the view that no survivor should be cross-examined by their abuser, and that a Justice System worth its name would never participate in or allow this, as it is itself both a form of abuse and an injustice.

However, the Women's Policy Group has some concerns about two aspects of this consultation:

i) Imprecise language - in a number of places, for example at 1 (g), provisions and entities are referred to that do not exist in Northern Ireland. It is vital that we do not end up with a situation where evidence cannot be gathered and presented because the designated authorities do not exist in this jurisdiction.

ii) Lack of clarity around advocacy organisations and expert opinions. The Women's Policy Group is concerned that individuals without suitable credentials can use these provisions to manipulate and distort the workings of justice, and to further traumatise and impoverish the survivor in the process.

We are concerned about this particularly with regard to the proliferation of self-declared experts in the field of "parental alienation" in recent years. Often used as a trump card in family hearings, parental alienation is more likely to be claimed when the other partner has alleged domestic abuse, thus it can be an attempt to reverse the order of victim and survivor in the eyes of the courts<sup>8</sup>. We stand with Women's Aid in this and on this issue, and therefore ask that the list of experts and advocates that can submit evidence be tightly controlled and carefully monitored, with proper safeguarding in place.

#### **4. Response to Consultation Questions**

##### **Consultee Details**

Please indicate if you are responding as: (please tick only one option)

☐ A member of the public

☒ On behalf of an organisation

☐ Other.....(please specify)

Please enter your details below:

Full Name: Elaine Crory

Title:

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<sup>8</sup> Women's Aid Parental Alienation Briefing, available online at: <https://www.womensaidni.org/parental-alienation-briefing/>

Ms

(please tick as appropriate)

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Question 1.

Please consider each type of evidence listed below and indicate if you think that it should be specified in regulations as evidence that will trigger an automatic prohibition on cross-examination in person in family proceedings. Note that P and V referred to below must be a party or witness in the same family proceedings and there must be a personal connection between them.

**Please explain the reason for your answer.**

Form of evidence	Response
<b>1(a) Binding over order</b> Evidence of a court order binding over P in connection with a specified offence against V.	<b>Yes</b> Reason: The purpose of a court order being put in place is to protect victims of abuse for a victim's safety. They include conditions that ensure that the perpetrator cannot contact the applicant either in person or by any other means of communication on penalty or arrest. They must not be undermined or treated permissively, either in a court setting or anywhere else.



	<p>Please note also that this applies to Civil orders such as Non-Molestation or Occupation orders which must be taken seriously.</p> <p>In his report on civil and family law, Lord Gillen identified that allowing for cross- examination by people where the other party has an order in place against them ‘allows men to ignore restraining orders imposed by the criminal courts to protect the women’.</p> <p>Undermining the authority of these Orders is dangerous and may retraumatise survivors.</p>
<p><b>1(b) Undertaking</b></p> <p>An undertaking given in Northern Ireland or Scotland in place of a protective injunction or given in England and Wales under sections 46 or 63E of the Family Law Act 1996 by P for the protection of V (provided that no cross-undertaking relating to domestic abuse was given).</p>	<p><b>Yes</b></p> <p>Reason: Undertakings are similar to Orders in that they exist to protect survivors and victims. It is not right to allow flexibility where these restrictions - not given lightly - are in place. It retraumatises survivors and does not serve the ends of justice.</p>
<p><b>1(c) Fact-finding hearing</b></p> <p>A copy of a finding of fact, made in previous legal proceedings, including in a tribunal, in the United Kingdom, that there has been domestic abuse between P and V.</p>	<p><b>Yes</b></p> <p>Reason: It is wrong to force a survivor, who has already been through the process of a hearing that has found domestic abuse to be a fact of the case, to relitigate that finding or to face their</p>

	<p>abuser again in court. The ends of justice are not served by allowing abuse to be perpetrated in the court room itself.</p>
<p><b>1(d) Expert report for court/tribunal</b></p> <p>An expert report produced as evidence in previous proceedings in the United Kingdom for the benefit of a court or tribunal, confirming that V was assessed as having suffered domestic abuse by P.</p>	<p><b>Yes</b></p> <p>Reason: Experts can offer invaluable insight into domestic abuse including coercive control, financial control and sexual violence. Their voices should be welcomed and valued in the process.</p> <p>However we are eager to stress that there needs to be a review of the current situation and tightly controlled criteria for what counts as “expertise”. Not all claimed expertise is genuine, and it is important that credentials are vetted to avoid both miscarriages of justice and a long term situation where the very definition of “expertise” becomes suspect and degraded.</p>
<p><b>1(e) Letter or report from an appropriate health professional</b></p> <p>A letter or report from an appropriate health professional (e.g. doctor, nurse, dentist, psychologist, social worker) confirming that:</p> <p>a) the professional or another appropriate health professional has examined V, following a report of abusive behaviour by P; and</p> <p>b) in the reasonable professional judgement of the author, or the examining appropriate health professional, V has, or has had, injuries or a</p>	<p><b>Yes</b></p> <p>Reason: Yes, provided specifically that “injuries or a condition” is understood to mean more than the physical injuries that may be associated with violence. Abuse can, in the law, be entirely non-physical, and therefore present no evidence of the kind listed here - it is important that this is reflected throughout all legislation and that appropriate training to this effect is made available to all doctors and medical professionals.</p>

<p>condition consistent with being a victim of domestic abuse.</p>	<p>It is also important to note that GP appointments, in particular, can be difficult to access at present and that waiting lists for experts may be long. GPs also often charge for these letters, and it would be vital for the Government to look to waive these costs or compensate GPs for costs in cases such as these, not least because financial abuse is so often a factor in these cases and many survivors leave their abusive home with no money to spare at all.</p>
<p><b>1(f) Appropriate health professional referral to a domestic abuse support service</b></p> <p>A letter or report from:</p> <ul style="list-style-type: none"> <li>a) the appropriate health professional who made the referral;</li> <li>b) an appropriate health professional who has access to the medical records of V; or</li> <li>c) the person to whom the referral was made, confirming there was a referral by an appropriate health professional of V following a report of domestic abuse by P, to a person who provides specialist support or assistance for victims of, or those at risk of, domestic abuse.</li> </ul>	<p><b>Yes</b></p> <p>Reason: We support this but reiterate our reservations about expertise outlined at 1 (d). It is vital that any agencies involved in producing evidence are monitored and assessed for their suitability to be independent, professional and not capable of or designed to manipulate justice.</p> <p>Again, we need a robust definition of what is meant by an independent advocacy service as there is evidence that people are setting themselves up as “experts” in order to benefit financially and in the process undermining the credibility of the justice system.</p>

<p><b>1(g) Multi agency risk assessment conference (MARAC) or other suitable local safeguarding forum</b></p> <p>A letter from any person who is a member of a multi-agency risk assessment conference (or other suitable local safeguarding forum) confirming that V has experienced domestic abuse by P.</p> <p><u>Note that:</u> a local safeguarding forum would consist of more than one organisation/agency. Examples of bodies that might be part of other suitable local safeguarding forums are: police, probation service, prison service, health, housing, education, social services, domestic abuse adviser/advocate, victim support services, women and male support services, etc.</p>	<p><b>Yes</b></p> <p>Reason: If a victim has been referred to a MARAC it is recognised that they are a high risk victim of domestic abuse, and that the MARAC is composed of appropriate experts who are capable of making such an assessment.</p> <p>Please note the importance of language and the importance of attention to detail in these provisions; Northern Ireland does not have an IDVA (Independent Domestic Violence Advocate) attached to MARAC as they do in England and Wales, so attention must be paid to the precision of these legal instruments.</p>
<p><b>1(h) Letter from an independent advocacy service providing support to victims of domestic abuse</b></p> <p>A letter from an independent advocacy service in Northern Ireland providing support to victims of abuse, or an independent domestic or sexual violence advocate in England and Wales, confirming that they are providing, or have provided, support to V, following a report of domestic abuse by P.</p>	<p><b>Yes</b></p> <p>Reason: Many advocacy services do vital work but it is absolutely vital that there is a robust definition of what this means, how an organisation can qualify as an advocacy service, and on what basis this assessment is made. We need to avoid a “free for all” approach to this so that people eager to manipulate the system are not inadvertently enabled to do so.</p>
<p><b>1(i) Letter from the Housing Executive</b></p>	<p><b>Yes</b></p> <p>Reason: This would represent a valuable option for survivors to gather evidence, but it will be</p>

<p>A letter from an officer employed by the Northern Ireland Housing Executive or its equivalent in England and Wales or Scotland containing:</p> <p>a) a statement to the effect that, in their reasonable professional judgement, V is a victim of domestic abuse by P;</p> <p>b) a description of the matters relied upon to support that judgement; and</p> <p>c) a description of the support they provided to V.</p>	<p>usable only if the necessary and appropriate training is given to the Housing Executive to enable their staff to make such an assessment with confidence and with accuracy.</p>
<p><b>1(j) Letter from organisation providing domestic abuse support services</b></p> <p>A letter from an organisation providing domestic abuse support services confirming that:</p> <p>a) in the reasonable professional judgement of the author of the letter, V is a victim of domestic abuse by P;</p> <p>b) a description of the matters relied upon to support that judgement;</p> <p>c) a description of the support provided to V; and</p> <p>d) a statement of the reasons why V needed that support.</p>	<p><b>Yes</b></p> <p>Reason: Once again, this can be enormously helpful to survivors as organisations like Women’s Aid, Men’s Advisory Project etc know best about these issues and may well be supporting the victim already, meaning they do not need to open up again and risk retraumatising themselves.</p> <p>Once again however it is absolutely vital that expertise is defined and that a list of appropriate and recognised organisations is provided so that the evidence is credible and cannot be manipulated.</p>
<p><b>1(k) Domestic abuse support organisation refusal of admission to a refuge</b></p> <p>A letter or report from an organisation providing domestic abuse support services in the United Kingdom confirming:</p>	<p><b>Yes</b></p> <p>Reason: Noting that there may be confidentiality issues and that this provision should be careful not to place an undue burden on refuge</p>

<p>a) that V was refused admission to a refuge; b) the date on which V was refused admission to the refuge; and c) that V sought admission to the refuge because of allegations of abuse by a party/witness to the proceedings.</p> <p><u>Note that:</u> a refuge will be either a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic abuse or a residential home established and maintained by a public body for any other purpose that also provides accommodation to the victims of, or those at risk of, domestic abuse. A reason for refusal could be on the grounds that the refuge was full.</p>	<p>facilities, we support this provided as noted that it includes reasons such as a refuge being full.</p>
<p><b>1(l) Letter from a public authority</b></p> <p>A letter from a public authority confirming that V was assessed as being a victim of domestic abuse by P (or a copy of that assessment).</p> <p><u>Note that:</u> “public authority” would have the same meaning as in section 6 of the Human Rights Act 1998.</p>	<p><b>Yes</b></p> <p>Reason: Again noting the need for relevant expertise in the field of domestic abuse in order to make such an assessment, and the possibility that this will have resource and training implications, we agree with this provision.</p>
<p><b>1(m) Economic abuse</b></p> <p>Evidence which the court is satisfied demonstrates that V has been the victim of domestic abuse by P in the form of abuse which relates to economic matters.</p> <p><u>Note that:</u> relevant types of evidence might include copies of bank statements, cancelled</p>	<p><b>Yes</b></p> <p>Reason: Another form of evidence that should be considered for this section is solicitor’s costs already incurred, and evidence of debt associated with these costs. Women’s Aid have many examples of women who have incurred</p>

cheques and/or relevant letters from banks, credit card accounts, emails, text messages, etc.	high levels of debt due to being repeatedly brought back into court.
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## Question 2.

Is there other evidence of domestic abuse that ought to be specified in the regulations (bearing in mind that the (alleged) victim and (alleged) perpetrator must both be parties to the proceedings and personally connected, and the evidence needs to be sufficiently objective and robust to justify an automatic prohibition)?

Please tell us what this evidence is and why you think it should be included.

Yes

If “yes” -

Type of evidence: Evidence of coercive control evidencing a pattern of behavior.

Reason for inclusion: The provisions outlined above may or may not cover these kinds of abuse cases but are largely skewed towards evidence of physical abuse or financial abuse. It is important that all evidence that could contribute towards establishing coercive control be considered also; we have updated the law in this respect and this list of evidence needs to be updated also.

## Question 3.

Do you think that section 5 (Penalties for concealing offences, etc.) of the Criminal Law Act (Northern Ireland) 1967 has any implications for the forms of evidence that should be specified in the regulations (see paragraphs 3.8 - 3.10)?

If you think it does, please tell us why.

No

If “yes”, reason:

This is clear from the Attorney General's Guidance[1] - Guidance by the Attorney General for NI pursuant to Section 8 of the Justice (NI) Act 2004. This guidance is primarily for the Public Prosecution Service and the Police Service for NI. At point 9 : Consideration of Reasonable Excuse the issue which is key to a PSNI investigation and decision making for the PPS is of paramount consideration within this section. Given the recognition of trauma by the Attorney General as an indication of why victims do not contact the police, why supporters do not want to contact and disclose confidential information without the victim's agreement and consent – all a 'reasonable excuse'.

Organisations such as Women's Aid must always manage risk appropriately and take into account child and adult safeguarding. This must be balanced with their duty to ensure the well being of the women and children in their care.

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[1] [Human Rights Guidance for the Public Prosecution Service and the Police Service of Northern Ireland on the application of section 5 of the Criminal Law Act \(Northern Ireland\) 1967 to victims of serious sexual.pdf \(attorneygeneralni.gov.uk\)](https://www.attorneygeneralni.gov.uk/human-rights-guidance-for-the-public-prosecution-service-and-the-police-service-of-northern-ireland-on-the-application-of-section-5-of-the-criminal-law-act-(northern-ireland)-1967-to-victims-of-serious-sexual.pdf)

Question 4.

Do you agree with the outcome of the screening exercises?

If you disagree, please tell us why.

Yes

If "no", reason:

n/a

## **5. Additional Comments**

To conclude, the NI Women's Policy Group firmly believes that victims and survivors ought not be cross-examined by the person who has abused them and that any credible evidence that they have to demonstrate that this was the nature of their relationship must be given due consideration.



We know from experience that abusers may seek to use the legal process to further abuse, impoverish and traumatise their victims. It is vital that every effort is made to ensure that this cannot be allowed. Traumatising victims is not helpful to the ends of justice and there is no evidence that cross-examining survivors produces anything more than additional trauma.

*ENDS*

*For any questions or queries relating to this submission, please contact:*

- Elaine Crory, Women's Sector Lobbyist at WRDA: [elaine.croory@wrda.net](mailto:elaine.croory@wrda.net) or
- Aoife Mallon, Women's Sector Lobbyist Policy Assistant at WRDA: [aoife.mallon@wrda.net](mailto:aoife.mallon@wrda.net)