

Gillen Review

Report into the law and
procedures in serious
sexual offences in
Northern Ireland

Recommendations

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Key recommendations

This report contains a large array of individual recommendations, all of them important and relevant. Together they create a pattern of coordinated reform. Cherry picking will not work. The system needs a holistic approach. However, 16 key recommendations have emerged around which perhaps the others revolve.

1. Access of the public to trials involving serious sexual offences to be largely confined to close family members of the complainant and the defendant and such others as the judge shall permit. Access for bona fide press members should be maintained as the eyes and ears of the public.
2. Introduction of early pre-recorded cross-examination, initially of children and vulnerable adults, to be conducted away from the court setting. In time, consideration should be given to extending this to include all complainants in serious sexual offences.
3. A measure of publicly funded independent legal representation should be offered to complainants from the outset up to but not including the trial.
4. Measures should be introduced at the outset of the trial to combat rape myths for example, jury educational material, a short video and written judicial directions. In the wider context there is a need for an extensive public awareness and school education campaign.
5. New legislation should be developed and introduced to manage the dangers created by social media. There is a need to increase jury awareness of the risks social media creates, specifically in serious sexual offence trials.
6. A more robust judicial attitude and case management approach to prevent improper cross-examination about previous sexual history.
7. Radical steps to combat excessive delay in the criminal justice system. A wholly new mind-set is required, which will involve front-loading the legal system with an early-time-limited and case managed system that has at its core early joint engagement by both prosecution and defence representatives.
8. A restructuring of the disclosure process with greater and earlier trained Police Service of Northern Ireland (PSNI) specialists, prosecutorial guidance from the Public Prosecution Service (PPS) from the outset, early defence engagement, firm time-limited and early judicial management, and resource-led development of relevant digital technology.
9. Amendments to the Sexual Offences (Northern Ireland) Order 2008 to ensure juries do not bring sexual stereotypes into play and to impose a discernible shift towards a measure of affirmative expression of consent.

10. There should be no change in the current law concerning publication of the identity of the accused post charge. The identity of the accused should be anonymised pre-charge and the accused should have the right to apply for a judge-alone trial in the rare circumstances where the judge considers it to be in the interests of justice.
11. The Department of Justice should commission individual research projects to gather knowledge and data in Northern Ireland on the prevalence, extent, nature and experiences of serious sexual offences. This should include identifying how current law and procedures impact on black, Asian and minority ethnic groups, immigrants, LGBT+ groups, Traveller communities, sex workers, older people, males and those people with a physical, sensory and learning disability or mental ill health.
12. Introduction of a radical departure from the traditional style of advocacy when dealing with children and vulnerable adults in order to address the potential traumatisation of children and vulnerable adults. In particular the Department of Justice should give serious consideration to introducing the Barnahus system of child investigation and treatment. New advocacy skills are required by the legal professions to match this new culture.
13. The Judicial Studies Board, the Bar Council and the Law Society should afford a higher priority to training and awareness from outside agencies on such matters as the trauma suffered by victims including children, rape mythology, jury misconceptions and jury guidance. Training should also include topics such as under-reporting and the reasons around withdrawal of complainants from the process of sexual offences, and how best to approach the cross-examination of children and vulnerable witnesses.
14. All serious sexual offences should continue to be tried in the Crown Court with a jury, without the need for a gender quota or a not proven verdict. However, the pool of eligible jurors needs to be widened.
15. Alternative mechanisms, including an entirely victim-led concept of restorative practice, should be considered both inside the criminal justice system and parallel to it.
16. The appropriate statutory agencies should deliver a comprehensive resource impact assessment, with the assistance of affected stakeholders, into my recommendations, individually and cumulatively. This should include both the direct costs arising — for example, from the deployment of additional PSNI and PPS resources, and also indirect and consequential costs — for example, revisions required to the legal aid regime to support any enhanced services from counsel and solicitors at court.

Recommendations

Virtually all the issues raised in this chapter are the subject of recommendations in succeeding chapters, so they are not repeated here. However, it is worth setting out some of the steps to reduce the trauma of this process that may not fit easily into those chapters.

Chapter 2: The voice of complainants

1. The Department of Justice should undertake a comprehensive province wide survey and collection of data on the prevalence of sexual violence in Northern Ireland and the degree of under-reporting and attrition rates in the system.
2. All publicly funded advocates should have to undergo specialist training on working with children and vulnerable victims and witnesses before being allowed to take on serious sexual offence cases.
3. The PPS should make use of counsel who are considered to have the most appropriate experience and skills for handling the complex and sensitive nature of sexual offence cases, particularly in dealing with victims who may have significant vulnerabilities or children or young people, rather than basing selection decisions on seniority.
4. PPS should develop an action plan to further improve how counsel is utilised in cases involving serious sexual offences.
5. Achieving Best Evidence (ABE) interviews should be conducted by a cadre of specially trained and carefully selected police officers. In the case of children, the Barnahus system of employing the use of child psychologists should be considered.
6. The Department of Justice should set up a complainants' information service, including a helpline and website, to ensure better information and support. That service should offer a one-stop shop, enabling victims to submit complaints and feedback about their experience.
7. Complainants should be enabled to track the progress of their case throughout the criminal justice system.
8. All Crown Court buildings, no matter how old, should be given separate waiting areas and separate entrances for complainants in serious sexual offences.
9. Remote Evidence Centres should be made available in serious sexual offence cases.
10. In addition, all vulnerable victims and witnesses should be given the opportunity to give evidence remotely from the court building.

11. Witnesses attending court should be given pagers or be contacted via their mobile phones so they do not have to wait interminably in the stressful court precincts.
12. Availability of victim personal statements should be more carefully explained to victims.
13. The Judiciary should carefully scrutinise at preliminary or Ground Rule Hearings, the admissibility of cross-examination on the subject of criminal compensation claims made by complainants. In particular cross-examination on the subject of Criminal Injuries Compensation should only be permitted where there is evidence to support its introduction.
14. The Judiciary should be more interventionist to ensure complainants and other witnesses are treated in a courteous and dignified manner.
15. Complainants, at the end of their role in the criminal justice process in serious sexual offences, should be invited in all cases to give feedback to the PPS of their experience of the system.
16. Prosecuting Counsel, at the end of their role in unsuccessful prosecutions for serious sexual offences in court, should be requested in all such cases to give feedback to the PPS on the reasons for the acquittal and the trial process itself. Routine review would also facilitate a cycle of continuous learning.
17. The Court Observer's Project should be carefully analysed and future developments considered as a means of building public confidence in the criminal justice system. Such 'Scrutiny Panels' should be extended to allow members of the local community to examine details of anonymised cases.
18. The press and media should be party to a voluntary protocol governing how serious sexual offences are reported.

Chapter 3: Restricting access of the public

- 19.* That the public at large be excluded in all serious sexual offence hearings in the Crown Court save for officers of the court, persons directly concerned in the proceedings, bona fide representatives of the press, a parent, relative or friend of the complainant or, a parent or relative of the accused together with such other persons (if any) as the judge, or the court, as the case may be, may in their or its discretion permit to remain. The public will be admitted for the verdict and sentencing in the event of conviction.
- 20.* A cipher be applied to the complainant's identity in all court hearings, including the initial charge sheet and the bill of indictment (albeit the identity must be revealed to the accused and their representatives) and their image shall not be publicly displayed during any hearing save to the accused and their representatives.

- 21.* Anonymity of complainants shall be made permanent so that it applies even after death.

Chapter 4: Pre-recorded cross-examination

22. Pre-recorded cross-examination of vulnerable victims and witnesses (which includes children under 18) at least in serious sexual offence cases but preferably in all Crown Court cases involving vulnerable witnesses and victims, should commence on a carefully phased basis.
23. My recommendations on the issue of disclosure should be addressed prior to commencement of this concept.
24. Before commencement, the police, the Public Prosecution Service, practitioners and the courts should all be appropriately trained and the necessary steps have been taken to ensure timely disclosure will be made and the necessary IT is in place.
25. An evaluation process, including participation by both the legal profession and the Judiciary, should be carried out by the Department of Justice at the end of the phased approach.
26. If this roll out is successful, it should be followed by a pilot scheme involving all adult complainants in all serious sexual offences.
27. A judicial protocol should be drawn up on the manner of implementing such hearings.
28. The Bar Council and the Law Society should produce a manual dealing with the concept for guidance purposes.
29. There should be an obligatory Ground Rules Hearing for all pre-recorded cross-examination hearings.
30. In cases involving children it should be the practice to require defence advocates to submit their proposed questions in advance for approval in a Ground Rules Hearing form.
31. At the Ground Rules Hearing, advocates should be required to certify that they have read the judicial protocol on the implementation of the concept.
32. Such pre-recorded cross-examination hearings should take place in a court setting (or a Remote Evidence Centre) with a live link to a video interview suite within the building.
33. In the case of children and vulnerable witnesses, consideration should be given to centres remote from the court building with the use of live link.
34. Prior to the hearing, the witness should have an opportunity to view a video of their Achieving Best Evidence interview.

35. On the day of the hearing, in most cases, the judge and counsel should meet the child witness to introduce themselves before going up to court.
36. The presiding judge may deem it fitting that they and counsel should join the child or other vulnerable witness in the video suite in order to carry out the questioning.
37. In time, the option of pre-recorded cross-examination should be extended to all complainants of sexual offences, domestic abuse, human trafficking and stalking.
- 38.* The Department of Justice in Northern Ireland should make provision for separate fees for pre-recorded cross-examination.
- 39.* Hearings of pre-recorded cross-examinations should be treated as the first day of the trial and the legal aid rules should reflect this.

Chapter 5: Separate legal representation

- 40.* Publicly funded legal representation should be granted to all complainants in all serious sexual offence cases in the following circumstances:
 - to afford relevant information and general legal advice on a time limited basis throughout the process up to the commencement of the trial, with the option of bringing such matters to the attention of the court prior to trial;
 - where complainants wish to exercise the right to appear in court to object to disclosure of private material to the accused's defence team or to ensure it is restricted to the minimum necessary; and
 - where complainants wish to appear in court to object to the introduction of their previous sexual history.
- 41.* That consideration be given to and a cost analysis made of extending legal representation during examination-in-chief and cross-examination at the trial itself after the recommendations above at number one have been piloted and analysed.
42. An amendment to the Victim Charter imposing an obligation on the PSNI to inform the complainant of the existence of such legal advice at the very outset of the process.
43. The Public Prosecution Service should make it a term of counsel's retention that, save in very exceptional circumstances, the same counsel (either junior or senior counsel) shall attend any preliminary/Ground Rules/committal hearings as well as the trial itself.
44. The Department of Justice should ensure that the Advocacy Support Service to be introduced in 2020 is similar to the Scottish government "Support to Report" project.

Chapter 6: Dispelling rape myths

45. The NICTS in consultation with the LCJ's Office should give detailed and careful consideration to the research and recommendations of Professor Thomas into her experiences with real jurors as to:
- the extent that jury myths influence jury verdicts here;
 - how widespread the problem is;
 - the understanding of judicial directions on the subject and the ability of jurors to apply them;
 - the desire for expert evidence on the subject;
 - the effect that current judicial direction has on the issue;
 - the effect that the playing of a video pre-trial would have on jurors;
 - the contents of such a video; and
 - the extent to which such myths can be removed.
46. A prescribed video film, similar or identical to that being currently piloted in England, provided the research results from Professor Thomas are favourable, should be introduced. The authoritative source in the video film should be the Lord Chief Justice and other members of the Judiciary and presented to the jury at the outset of the trial in all serious sexual offences.
47. The Judiciary should provide in addition appropriate written directions to the jury on the subject of rape myths at the outset of the trial.
48. The Judiciary should revisit the current directions that are given to jury members on rape myths to ensure they are clear, simple and not too complex with appropriate focus on comprehensibility avoiding standardised or "pattern" judicial instructions.
49. The Judiciary should, after discussion with counsel, encourage identification for the jury of the issues in the case by both prosecution and defence counsel before the evidence is called.
50. The Judiciary should give strong consideration to a greater emphasis on written directions to the jury at the end of the trial including the route to verdict, legal definitions and even directions to prevent false assumptions.
51. Parties should be encouraged to agree the content of any admissible expert evidence on this issue, and where possible admit it.
52. The Department of Justice and the Department of Education should speedily draw up plans for an awareness campaign through schools, television, radio, outdoor and internet advertising specifically on the myths surrounding serious sexual offences.

53. The Director of Public Prosecutions should record on an annual basis any case in which a person is said to have made a false complaint of rape and/or serious sexual offences and was being considered for prosecution.
54. Judges, after discussions with advocates, should carefully consider appropriate questions on a case by case basis for jurors to disclose signs of rape myths before they are empanelled.
55. Judges should robustly intervene when defence or prosecution advocates seek to invoke complainant myths in serious sexual offence cases.
56. There should be extensive training provided to the Judiciary and the professions by their respective bodies, calling on the assistance of expert outside bodies on the issue of rape mythology and false stereotypes.

Chapter 7: Social media

57. There should be a fully coordinated cross-jurisdictional consultation and fresh approach to controlling the influence of social media in an attempt to co-ordinate enforcement measures in jury trials across the UK and Ireland.
- 58.* In the wake of such consultation, the following steps should be jointly considered:
 - Social media publishers should be made liable for legally objectionable material contained on their platforms.
 - Liability should accrue to social media outlets once notification of the objectionable material has been given of a posting that breaches an injunction or risks prejudice to a trial and that material has not been taken down within, say, 24 hours.
 - A legal onus should be placed on social media to take reasonable steps to identify and remove material potentially prejudicial to a trial in advance of the trial hearing.
 - Law enforcement agencies and the PPS should take steps to notify the main social media outlets in advance of a trial when it is anticipated that adverse social media comments prejudicial to the fairness of a trial may arise.
 - Mainstream media should turn off and disable public comment facilities about a trial in the course of live proceedings.
 - Twitter and similar outlets should deploy technology tools to review and block the accounts of users with a history of abuse.
 - The administrators and moderators of online groups should be made responsible for their content.
 - Bloggers should not have the defence of 'fair and accurate' reports on court proceedings. A new qualified privilege defence should be

introduced for court proceedings reports that do not meet the fair and accurate requirement, but are not the product of malice.

- **With the advent of the 2016 GDPR, data controllers, including internet intermediaries, must erase content based on right to be forgotten requests.**

- 59.* Legislation should be introduced in Northern Ireland, similar to the Criminal Justice and Courts Act 2015, bringing with it a stringent regime and codification of jurors' responsibilities.
- 60.* A specific offence should be introduced of a juror who intentionally seeks information relating to a case before them in the course of the trial. That information should include, but not limited to, asking a question, searching online, visiting a place, inspecting an object, conducting an experiment or asking someone to do anything of this nature.
- 61.* It should be ensured that information in the case "includes the person in the case, the judge dealing with the case, any other person in the case (including lawyers or witnesses), and the law relating to the case, the law of evidence or court procedure."
- 62.* The new legislation shall grant a power to a judge, if they are convinced it is in the interests of justice, to temporarily confiscate a juror's electronic devices and search a juror if it is believed they have not been surrendered.
- 63.* Judges should be empowered to order all mobiles and other communication devices be left outside the court if members of the public are to be admitted.
- 64.* A maximum penalty of two years' imprisonment should be imposed for breach of the juror offences.
65. The Northern Ireland Court Service to consider what reasonable steps it could take to monitor compliance with court orders in relation to social media and carry out surveillance of social media to reduce the risk of significant breaches.
66. Provide jurors with a helpline telephone number or email address to enable them to discreetly complain of breaches of which they become aware.
- 67.* Increase the current penalties for breaching the anonymity of complainants.
68. Immediately introduce a written document, at least to all sworn jurors in serious sexual offence cases, identical to that in use in England and Wales, entitled *Your Legal Responsibilities as a Juror*.
69. The Judiciary should give clear directions at the start and end of each day reiterating to jurors that:
- **the problem is that the internet is participatory. Content is user-created and is often inaccurate and can be untruthful;**

- **they must not conduct research about those participating in the trial or communicate with each other via social media or at all;**
- **they must not publish information about the trial; and**
- **decisions must be based solely on the evidence they hear during the trial.**

- 70.* The Judiciary be granted general powers to place restrictions on publication of material where it appears to be necessary to avoid risk of prejudice to the administration of justice.
- 71.* Provide for judicial powers to direct removal of material from websites and/or the disabling of public access to websites where it appears to be necessary to avoid risk of prejudice to the administration of justice.
- 72.* Provide for judicial powers to order online hosts and internet providers to disable specified sections of websites for limited periods.
73. As part of the overall package of reforms, the Attorney General for Northern Ireland should publish advisory notes on the government website and Twitter to help to prevent social media users from committing a contempt of court.
74. As part of the overall package of reforms, the Attorney General for Northern Ireland's website should publish infographics setting out what might be considered a contempt of court in the context of publishing comments on social media.
75. In addition the NICTS and/or the Department of Justice should provide easy to read guidance to the public similar to the Contempt of Court information, already issued by the Attorney General's Office, on the nidirect website.
76. The Attorney General for Northern Ireland should follow the path taken by the Attorney General's Office in England to work with Facebook, Google and Twitter to address contemptuous or otherwise unlawful social media posts. These will include working with the tools developed by those organisations to allow concerns to be raised regarding such posts.
77. A new online service should be established to help journalists and publishers reporting criminal trials to discover whether reporting restrictions are in force and, if so, why.
78. All court postponement orders should be posted on a single publicly accessible website.
79. A further restricted service should be available where, for a charge, registered users could sign up for automated email alerts of new orders to reduce the risk of contempt proceedings for publishers from large media organisations to individual bloggers, and enable them to comply with the court's restrictions or report proceedings to the public with confidence.

80. The Government should consider how an online reporting restriction database could be taken forward as existing technology is replaced and updated.
81. That the findings of the cross-government Online Harms White Paper in England and Wales should be carefully monitored for further steps relevant to this jurisdiction.
82. That the current notice in jury rooms that reads 'Do not put anything on social media' should be radically revised and replaced with the written document given to each juror.
83. A notice similar to that handed to the jurors be prominently displayed in the public gallery of each courthouse, emphasising that it is unlawful to breach the anonymity of the complainant in any circumstances.
84. That the introductory jury video should make the same points.
85. Live tweeting from the trial should remain universally banned in criminal trials save where permission is granted to the press.
86. The Judiciary and the PPS should undergo mandatory training and refresher training encompassing information technology, awareness of social media platforms, trends, language etc.
87. The Department of Education should strongly encourage Boards of school governors to introduce awareness sessions to ensure students understand the consequences of posting on social media.
88. The Department of Education, in consultation with the NICTS, should take steps to strongly encourage secondary schools to include in their Learning for Life and Work curriculum instruction on juries, jury responsibilities and contempt laws in order to encourage greater civic responsibilities among internet users.

Chapter 8: Cross-examination on previous sexual history

89. The Department of Justice should carry out an exercise to determine the extent of admission of previous sexual experience in trials in Northern Ireland. Legislation concerning admission of previous sexual experience should be revisited in light of such an exercise.
90. There should be a greater emphasis on firm judicial case management in this area, with recognition of the statutory time limits for such applications under Article 28 of The Criminal Evidence (Northern Ireland) Order 1999.
91. There is a need to invite defence advocates to state in open court at a pre-trial hearing whether it is intended to make an application under this Article.
92. All late applications must be in writing, together with the proposed reasons why the court should grant or refuse the application.

93. There should be mandatory hearings for such applications, with the complainant notified and permitted to attend.
94. Wherever possible, the Judiciary should give reasons in writing when determining such applications.
95. In the event of a late application under Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, contrary to the time limits set out in rule 44H of the Crown Court Rules, the Court should take full account of the earlier opportunity, the requirements of the rules, the potential impact on the complainant of a late application, and on police resource availability at short notice.
96. The Judiciary should actively limit questions and evidence on previous sexual history to the minimum required.
97. The Judiciary should recognise that there are strong reasons for imposing a narrower prohibition on the complainant's sexual behaviour with third parties than with the defendant.
98. Intense training, seminars and workshops should be provided to the Judiciary on this area of law.
99. Appropriate resources to be made available to the Judicial Studies Board for Northern Ireland (JSBNI) to ensure that all Crown Court judges attend in England the appropriate prescribed serious sexual offence seminars on a regular basis.
100. Advocates for the prosecution and for the defence should be required to attend specialist training in all areas pertaining to sexual offence trials. The Bar Council and the Law Society should insist on attendance at a sufficient number of CPD sessions in vital areas of law, practice and procedure before competence can be demonstrated in areas of serious sexual violence.
- 101.* Legal aid should not be granted to counsel or solicitors in such cases unless such specialist training has been certified.
- 102.* Legal aid for legal representation should be extended to complainants in this area.
103. The Court of Appeal in Northern Ireland should avail itself of the earliest opportunity to address the following issues under the Criminal Evidence (Northern Ireland) Order 1999:
 - **the circumstances in which "similarity" arises;**
 - **the appropriate definition of sexual behaviour; and**
 - **the circumstances in which sexual relations with a third party can be explored in cross-examination.**

104. Trial judges and prosecuting counsel should make efforts to avoid causing complainants unnecessary distress wherever possible by adducing admissible evidence of previous sexual history by a means other than cross-examination or through brief questioning confined to the specific point.

Chapter 9: Delay

105. Recommendations by the Criminal Justice Inspection Northern Ireland and Northern Ireland Audit Office reports should be analysed, implemented and monitored by the Department of Justice as a matter of urgency.
106. Very experienced police officers should be deployed to oversee file quality in every case involving serious sexual offences before it is submitted to the PPS. Specific training should be given to these appointed officers.
107. The Indictable Cases Process (ICP) scheme should be extended to all serious sexual offence cases.
108. A special discount for 'really early' guilty pleas should be granted in serious sexual offences.
109. The PPS must be sufficiently resourced to speed up unacceptable delays in decision-making.
- 110.* The Department of Justice should make provision for the direct transfer of serious sexual offences to the Crown Court, bypassing the committal process pursuant to the affirmative resolution procedure under section 11(4) of the Justice Act (Northern Ireland) 2015.
- 111.* Mandatory early proactive communication and engagement between the parties in serious sexual offences. This should be inserted into the Crown Court Rules together with a codification of the duties of all parties.
- 112.* The first such engagement should be between the PPS Directing Officer and the defence solicitor, occurring between committal and the first appearance before the Crown Court judge, leading on to subsequent engagement between counsel/advocates.
- 113.* Counsel/advocates should certify such engagement has occurred before the first appearance before the Crown Court judge.
- 114.* The Department of Justice should institute a bespoke legal aid fee structure for serious sexual offences and in particular, provide for the role of counsel at the early engagement stage.
- 115.* Each serious sexual offence should be listed before the Crown Court judge within 28–35 days (or whatever time the Crown Court Rules Committee deems appropriate) from being sent from the District judge.

116. At the first hearing before the Crown Court judge, target dates for the processing of the case shall be fixed given the circumstances of the particular case.
- 117.* Thereafter, a four-stage process will follow if the case is to be contested:
- **Stage 1**
Prosecution to serve the bulk of its material (including what disclosure it proposes to make) with the essential issues in the case within whatever period is determined by the Crown Court Rules Committee as appropriate.
 - **Stage 2**
Defence to serve defence statement within whatever period is determined by the Crown Court Rules Committee as appropriate thereafter. At this stage defence must state what disclosure it requires, setting out how such material relates to the issues when providing a defence statement.
 - **Stage 3**
Prosecution respond within whatever period is determined by the Crown Court Rules Committee as appropriate.
 - **Stage 4**
Defence to provide final comments and applications dealing with disclosure.
118. If disclosure remains unresolved by stage 4, there must be a written application to the court under section 8 of the Criminal Procedure and Investigations Act 1996 by the defence within a specified time.
119. Third-party disclosure shall be timetabled and appropriate orders granted against the third parties at this hearing.
120. The case should then be referred back to the judge for explanation if non-compliance has occurred.
121. Fast-tracking and priority listing to be afforded to serious sexual offences involving children and vulnerable adults.
122. Case Progression Officers to be appointed (as is intended from January 2019) to ensure all participants have complied with their obligations; and to enable the Court to hold police, the PPS and defence practitioners accountable for repeated default.
123. The PSNI and the PPS should take steps to engage in the NICTS digital strategy and collaborate when developing and maintaining their own technology in order to ensure systems for the transfer of digital information across the justice system that are fit for purpose.

124. The NICTS should urgently pursue the current steps being taken to ensure high-quality equipment for remote hearings and digital evidence can be presented easily and without delay.
125. Wi-Fi and equipment for presenting digital evidence should be available in all Crown Court hearings.
126. A properly qualified and experienced IT member of court staff must be readily available for every Crown Court hearing where remote hearings and digital evidence are being presented.
- 127.* Ground Rules Hearings should initially be held in every case involving a child or vulnerable witness, leading to a stage where a Ground Rules Hearing will be held in every case of a serious sexual offence.
128. A case management handbook for serious sexual offences should be commissioned by the Judicial Studies Board.
129. Applications for adjournment require special scrutiny. All applications for adjournments in serious sexual offence cases must be made in writing and, save in exceptional circumstances, should be served not less than 72 hours in advance of the hearing.
130. In serious sexual offence cases, issues of previous personal experience should be raised with potential jurors.

Chapter 10: Disclosure

131. A recognition that disclosure is a specialism by the PSNI. Minimum standards and accreditation are necessary in the appointment process of Designated Disclosure Officers in the PSNI.
132. The PSNI should scope and deliver a new Central Disclosure Unit as a matter of urgency.
133. In all training delivered to the PSNI and the PPS, the potential significance of failures in disclosure should be underscored by using appropriate examples from actual cases.
134. Disclosure training should emphasise the continuing obligation on Designated Disclosure Officers throughout an investigation to seek to ensure that all relevant information has been identified, is recorded and submitted to the PPS. The PSNI should provide an audit trail of work done by the police in the course of the disclosure exercise.
135. The PPS and PSNI should be particularly flexible in the approach to the relevance test.
136. The PSNI must afford a higher priority to schedules of unused material to be, without exception, submitted with the police file to the PPS.

137. The duty of the Designated Disclosure police officer must include flagging up what is relevant when submitting unused material and third-party material to the PPS.
138. The PSNI should address potential third-party disclosure issues at the outset of the investigation.
139. In training, the investigative mind-set necessary for the PSNI must be highlighted, indicating the need to identify evidence that would be helpful not only to the prosecution but potentially to the defence.
140. The police must be trained to see disclosure as a core justice duty rather than an administrative add-on.
141. The PPS should introduce forthwith a Disclosure Management Document.
142. The PPS should reintroduce Disclosure Champions throughout the system.
143. Robust judicial case management must be introduced at an early stage, highlighting the importance of a defence statement identifying the key issues in the case and setting time limits to shape expectations.
144. Resources must be invested in technology. The Digital Strategy Group in Northern Ireland should lead the process of technological advance in serious sexual offences.
145. In all serious sexual offences where disclosure has been substantial, the PPS should forward to the relevant Disclosure Champion in the PSNI, at the termination of the case, a brief report on how disclosure was handled in the case, highlighting any defects and suggested improvements.
146. Guidelines should be revised to assist the prosecution in ensuring that privacy and data protection considerations are properly embedded in disclosure practices and procedures.
147. Such guidance should emphasise the importance of police making arrangements to ensure that prosecutors are satisfied that informed agreement to disclosure has been given by complainants and that complainants and witnesses are aware that disclosure is to be made before this happens.
148. There should be a rebuttable presumption in favour of disclosure for categories of key documents/materials that usually assist the defence.
149. The Northern Ireland Criminal Justice Board and the Criminal Justice Programme Delivery Group should consider and draw up sanctions in order to hold PSNI, PPS and defence practitioners accountable for repeated default in relation to disclosure duties.
150. The Disclosure Improvement Plan for Northern Ireland should be carried out as a matter of urgency.

151. The Disclosure Improvement Plan for Northern Ireland should establish a working group to consider guidance on pre-charge engagement of prosecution and defence practitioners.
152. Before a defendant is charged, the PPS should demand adequate assurance from the PSNI investigators on disclosure issues and, wherever possible, insist on the preparation of draft Disclosure Schedules pre-charge.
153. The Criminal Justice Board supported by the Criminal Justice Programme Delivery Group should become the forum through which improvements to disclosure and delay are overseen.
154. The Criminal Bar Association, the Law Society, the PPS and the PSNI should set up a joint steering group to consider methods of improving the disclosure process.

Chapter 11: Consent

155. * The Sexual Offences (Northern Ireland) Order 2008 should be amended to provide:
 - that a failure to say or do anything when submitting to a sexual act, or to protest or offer resistance to it, does not of itself constitute consent;
 - for the expansion of the list of circumstances as to when there is an absence of consent to include, for example (i) where C submits to the act because of a threat or fear of violence or other serious detriment such as intimidation or coercive conduct or psychological oppression to C or to others; (ii) where the only expression of consent or agreement to the act comes from a third party; and (iii) where C is overcome, voluntarily or not, by the effect of alcohol or drugs;
 - that where any of these circumstances exist, the complainant does not consent to any sexual act, and if the defendant was aware of these circumstances, the defendant did not reasonably believe that C was consenting;
 - this section does not limit the circumstances in which it may be established that a person did not consent to a sexual act;
 - that the definition as to what constitutes a reasonable belief in consent should add that, in determining whether there was a reasonable belief in consent, the jury should take account of all the circumstances, including a failure to take any steps to ascertain whether C consented; and
 - consent to a sexual act may be withdrawn at any time before the act begins, or in the case of a continuing act, while the act is taking place.

156. The offence of gross negligence rape be not introduced.

Chapter 12: Voice of the accused

157. There should be no change in the current practice of naming accused persons after they have been charged.

158.* Legislation should be introduced to protect the identity of schoolteachers accused of sexually assaulting a child at their school pre-charge.

159.* There should be statutory regulation to prohibit the publication of the identity of those being investigated for serious sexual offences until they are charged.

160. The Judiciary should more readily exercise their discretion to prohibit publication of the identity of witnesses other than complainants in cases of serious sexual assault.

161. Counselling services in the voluntary sector should be made available to accused persons who have been acquitted of serious sexual offences.

162. Greater weight should be given to the assertions of complainants that publication of the name of the accused will lead to their identity.

Chapter 13: The voice of marginalised communities

163. The Bar Council and the Law Society should cooperate to create a toolkit that would set out guidance on identifying vulnerability in these marginalised groups, with the assistance of groups in the voluntary sector specialising in these fields.

164. The Judiciary, the Bar Council and the Law Society should provide training courses:

- **to help members determine what special adjustments and screening tools may be needed for those with communication needs, with the assistance of groups in the voluntary sector specialising in these fields; and**
- **to better understand the LGBT+ community, with all its complexities and particular culture, relevant to serious sexual offences.**

165. Both prosecutors and defence representatives should take great care to assess vulnerability, and if practitioners suspect vulnerability in complainants, witnesses or accused persons, they should request the services of registered intermediaries.

166. Recruitment exercises for Registered Intermediaries should encourage members of the deaf and visually impaired communities to apply.

167. The Department of Justice should develop systems and commission individual research projects, where not already (for example two research projects into sex

- workers have been commissioned) to gather knowledge and data in Northern Ireland of the prevalence, extent, nature and experiences of serious sexual offences among BAME groups, immigrants, LGBT+, Traveller communities, sex workers, older people and disabled people, including those with physical, sensory and learning disabilities or mental ill health.
168. The Department of Justice, the Executive, the Equality Commission, the Human Rights Commission, and the Northern Ireland Commissioner for Children and Young People should take steps to provide specialist sexual violence services, harnessing the assistance of local grass-roots organisations for marginalised communities to encourage engagement with the criminal justice system.
169. The NICTS should:
- **upgrade its website to include links to various disability support organisations;**
 - **expedite implementation of The Criminal Evidence (Northern Ireland) Order 1999;and**
 - **ensure the recommendations of the Criminal Justice Inspection report of November 2018 be implemented where relevant.**
170. The PSNI and the PPS should monitor and collect accessible individual data of all allegations of serious sexual offences against persons who are members of BAME groups, immigrant, LGBT+ and Traveller communities, sex workers, older people and disabled people, including those with physical, sensory, learning disabilities or mental ill health.
171. The PSNI should reach out and mount an educational programme amongst marginalised communities to increase knowledge of the criminal justice law and procedures in serious sexual offences.
172. PSNI officers in the Public Protection Unit should undergo obligatory further training in dealing with all marginalised communities, building upon their foundation training, with the assistance of groups in the voluntary sector specialising in these fields.
173. The PSNI should reintroduce LGBT+ liaison officers.
174. PPS prosecutors in the Serious Crime Unit should undergo obligatory training in dealing with marginalised groups, with the assistance of experts in the voluntary sector specialising in these fields.
175. Specific attention should be given by the DoJ and the statutory agencies to the need to ensure that both deaf complainants and accused persons have access to publicly funded qualified interpreters in both British Sign Language and Irish Sign Language throughout the criminal justice process and to counsellors thereafter who will have the services of qualified interpreters.

176. At the commencement of trials involving the deaf as either a complainant or an accused, the trial judge should highlight to the jury the problems of deafness.
177. Advocates for deaf people should be trained and made available to explain documentation to a deaf complainant or accused person.
178. The Law Society should arrange training for solicitors, and the Bar Council should arrange training for barristers, in physical, sensory, learning disabilities or mental ill health, hearing and visual awareness problems and that a list of solicitors and barristers who have undergone such training should be made publicly available so that those who are physically, or visually impaired or those who are deaf or hard of hearing can make an informed choice regarding legal representation.
179. The NICTS should liaise with professional technical officers in the Royal National Institute of Blind People (RNIB) and the Sense and Action on Hearing Loss when considering technology requirements to support visually impaired and deaf persons to participate fully in court proceedings.
- 180.* Adult Safeguarding Legislation should be introduced to provide protection for older people at risk of abuse or harm in line with similar legislation in the rest of the United Kingdom.
181. The Department of Education should address the need to include in the school curriculum for disabled children, children with sensory disability and those who are members of marginalised communities' sex education designed in a culturally sensitive manner on matters such as consent, personal space, boundaries, appropriate behaviour, relationships, fears of homophobia and transphobia, gender identity and sexuality.
182. There must always be a Ground Rules Hearing when a witness is vulnerable, save in very exceptional circumstances.
183. Obviating delay in a case of vulnerable witnesses including the aged or those suffering from a disability should be a key component in case management from the outset of the process and if necessary, such cases should be fast tracked.
- 184.* The need for legal representation for complainants to obtain advice on the law and procedures in serious sexual offences for those in marginalised communities is particularly pressing.

Chapter 14: Voice of the child

Training

185. Regular mandatory training should be carried out on the issues of children's rights, child protection, developmentally appropriate questioning, and the dynamics of child sexual abuse in serious sexual offences in the court process

(with specific reference to UNCRC and the Lanzarote Convention) by the Judicial Studies Board, the Law Society, the Bar Council, the PPS, the PSNI and other major stakeholders in the criminal justice system dealing with children.

186. * Publicly funded advocates in serious sexual offence cases must have undertaken approved specialist training in serious sexual offences involving children.
187. Each Crown Court judge, to be given a physical copy of the Equal Treatment Bench Book.

Judiciary

188. In every Crown Court case involving sexual offences against a child either as complainant or as accused, Crown Court judges should, well in advance of the date of trial and in accordance with the Equal Treatment Bench Book consider:
- the use of closed courts and combined measures for the child;
 - the possibility of alternative court venues or non-court facilities such as non-court remote live link if court facilities are unsuitable for the child;
 - prioritising the attendance of children at a fixed time early in the day, with a target maximum waiting time from arrival of two hours;
 - making provision at the outset for adequate breaks during the hearing;
 - adopting a flexible attitude and seeking the advice of the intermediary as to the manner in which the child gives evidence and where that evidence should be given;
 - ensuring, wherever possible, hearing dates are suitable for members of the YWS and intermediaries who are familiar to the child;
 - robustly enquiring into reasons for adjournments, which should be granted only exceptionally;
 - insisting technology is tested in advance of the hearing before the child arrives and that a suitable expert is available;
 - ensuring there is an interim assessment of each child by an intermediary where appropriate in light of their communication difficulties and ascertaining if the intermediary has discussed the needs of the child with the YWS;
 - discussion with the relevant intermediary as to the needs of the child before the day of hearing;
 - ensuring that there will be familiarisation of the child with the court, the judge and counsel prior to the hearing commencing;
 - careful use of and insistence on simple language and control of aggressive cross-examination;

- ensuring that child witnesses are not cross-examined in an authoritarian or frightening manner; and
 - ensuring that stereotypical mythology about the behaviour of children is not permitted and is addressed at early hearings.
189. All cases involving child complainants or other vulnerable witnesses in serious sexual offences should be afforded an obligatory case management hearing, with appropriate administrative staff to ensure timely and comprehensive compliance with directions.
190. GRHs should be introduced in all hearings involving child complainants/vulnerable adults or a child/vulnerable adult accused addressing such matters as:¹
- defining the issues for trial;
 - proposed questions to be asked in cross-examination, with written notice in advance to the judge and the intermediary of their content for his/her approval;
 - emphasis on the need to avoid tag questions, to use short and simple sentences and easy-to-understand language, and to avoid a tone of voice that implies an answer;
 - time limits on cross-examination;
 - if limitation is to be put on cross-examination, how the jury will be directed;
 - the presence of an intermediary and YWS;
 - an emphasis on agreed evidence to shorten the trial;
 - any legal aid complications arising;
 - disclosure in general and third-party disclosure in particular, with firm involvement of the defence and prosecution;
 - venue including live links;
 - special measures;
 - timings; and
 - the need for a more interventionist judicial approach.
191. Directions given at the Ground Rules Hearing to be committed to written form.

Department of Justice

192. Implement without further delay, and to the extent deemed appropriate, the provisions of the 2014 Independent Inquiry into Child Sexual Exploitation.
193. Implement fully the recommendations of the Northern Ireland Audit Office report of March 2018.

¹ Rook, P and Ward, R. (2016) *Sexual Offences: Law & Practice*. 5th ed. London: Sweet & Maxwell at p.1563

194. Engage research assistance to keep abreast of developments in child sexual abuse and draw on research and innovative practice overseas.
195. Give urgent consideration to the advantages of the Barnahus scheme and Child House pilots now operating in England and to consider the viability of a similar pilot in Northern Ireland.
196. Given the unique circumstances that often arise with child complainants and defendants in serious sexual offences, approach with caution the implementation of statutory case management and time limits, which do not carry the imprimatur of the Judiciary.
197. Provide legal representation for child complainants until the trial commences.

Institute of Professional Legal Studies and the Legal professions

198. The Bar Council and the Law Society to set up special CPD training and bespoke manuals for those wishing to engage in cases of serious sexual offences involving children.
199. New barristers should receive training and guidance both whilst at the Institute of Professional Legal Studies and at the Bar about the basic principles of questioning children and vulnerable adults.
200. It should be a matter of specific professional misconduct to inappropriately question a child or vulnerable person.

Public Prosecution Service

201. The PPS to take further steps to ensure pre-trial engagement with the child or family well in advance of trial and that prosecuting counsel must arrive in court with a detailed awareness of the case.
202. The PPS to appoint prosecutors with a special expertise in the dynamics of child sexual offences, who should have exclusive oversight of all such cases from the time of reporting to the PSNI until disposal at trial.
203. The PPS should make it a condition of the retainer for serious sexual offences involving children that counsel have attended a specified awareness course.
204. The current case management should be amended to record special measure applications in the case of children.

Police Service of Northern Ireland

205. The PSNI should revisit its training and selection of officers for ABE interviews, invoking the assistance of the Judiciary, the legal professions and other outside bodies, including child psychologists.

206. The PSNI should take steps to ensure adjustable camera angles, with the presence of a camera operator, and adequate sound quality are available in rooms where ABEs are occurring.
207. The PSNI should appoint from within the PPB or Child Abuse Investigation Unit (CAIU), a specialised child unit that will deal exclusively with child witnesses.
208. Provide appropriate child-sized furniture and toys in all ABE rooms from where children are likely to be giving evidence.

Northern Ireland Courts and Tribunals Service

209. Carry out an audit of facilities suitable for child witnesses in all Crown Courts and draw up a plan to meet deficiencies.
210. Provide appropriate child-sized furniture and toys in all link rooms from where children are likely to be giving evidence.
211. Take steps to ensure adjustable camera angles are available in live link rooms.
212. Draw up a list of non-court venues and make provision for non-court remote live link such as NSPCC premises or investment in mobile live link equipment.
213. Introduce a system that records waiting times at court for child witnesses, commencing from time of arrival.
214. Set up a system of feedback of the experience of children after the case is completed to better inform future changes.
215. Ensure adequate equipment is available to encourage a child to act naturally and in a relaxed manner during the ABE experience.
216. Ensure the availability of an RI at all stages for all child complainants and accused children, where that is deemed appropriate in light of the child's communication difficulties.
217. Ensure that an initial needs assessment is carried out on all child complainants and accused children, where it is deemed appropriate in light of any communication difficulties.
- 218.* Article 21A of The Criminal Evidence (Northern Ireland) Order 1999 should be amended to extend the availability of live link measures to a child defendant on the basis of fear or distress.
- 219.* The phrase 'child prostitute' should be removed from existing legislation and not included in future legislation. It should be replaced with the phrase 'child sexual exploitation'.

Chapter 15: Training

220. The Northern Ireland Criminal Justice Board should set up a committee to coordinate subjects for training and multiple stakeholder engagement in the various training programs suggested in this chapter.
221. Such training should highlight the importance of human rights and appropriate international standards. In particular those specific to the issue of victims' rights and sexual crime, must be incorporated into any training programme for all relevant personnel. The incorporation of human rights standards should not be a discretionary part of any training programme.

Judiciary/Law Society of Northern Ireland/Bar Council of Northern Ireland

222. The Judicial Studies Board, the Bar Council and the Law Society should afford a higher priority to training and awareness from outside agencies on such matters as the trauma suffered by victims, rape mythology, jury misconceptions, jury guidance, the reasons for under-reporting of, and withdrawal from, the process of sexual offences, questioning and cross-examining children and vulnerable witnesses, the problems of marginalised communities, international human rights standards and how these may be best addressed.
223. The Judicial Studies Board, the Bar Council and the Law Society should afford a higher training priority to developments and research in jurisdictions outside Northern Ireland in dealing with serious sexual offences.
224. The training mentioned above may profitably include an online element highlighting, for example, the commitments under the EU Victims' Rights Directive, the Victim Charter and the Witness Charter.
225. The Law Society and the Bar Council should produce joint CPD events, with the assistance of relevant outside agencies, specifically dealing with such matters as are set out above.
- 226.* The Judicial Studies Board, the Bar Council and the Law Society should consider offering their services to the PSNI in assisting to train officers involved in serious sexual offences.
227. A judicially led committee should be set up, working to develop specific training aimed at advocates who appear in trials involving serious sexual offences.

The Police Service of Northern Ireland

228. Training and, importantly, regular refresher training should emphasise the following:
- relevant human rights standards;
 - a greater emphasis on specially selected skilled and trained officers to conduct ABEs, including how to sensitively interview complainants.

There should be provision of planning booklets to officers carrying out ABEs;

- a recognition of the potential of assistance from the Bar Council, the Law Society and the Judiciary in training officers for ABE interviews;
- a recognition that in ABE interviews occurring in the immediate aftermath of a sexual attack, consideration should be given to postponing the interview for a matter of days, depending on the physical and mental state of the complainant, albeit it has to be recognised that investigative imperatives may demand an earlier interview;
- a greater priority to be given to complainants being provided with comprehensive explanations as to the progress or lack of progress in the case and specifically what has happened at each individual court hearing;
- the need, at the earliest stages of reporting, to find quiet, distraction-free, comfortable rooms where a complainant can be spoken to before transfer to a centre such as The Rowan in Antrim;
- the need to positively explain to the complainant what the legal process may involve, including, for example, a full explanation of special measures;
- the need to deal with visits by the accused to police stations in a private and dignified manner and, wherever possible, on an appointment basis;
- the need to ensure that when a case is completed, a full explanation is given to the complainant about the outcomes; and that the complainant is informed of a perpetrator's release from prison; and
- the problems facing marginalised communities in addressing serious sexual offences.

The Public Prosecution Service

229. In training, a greater emphasis on:

- the need to invoke the assistance of outside agencies in training sessions;
- relevant human rights standards;
- the need to ensure all victims can access special measures;
- interpersonal interaction with complainants;
- the need to meet with complainants well in advance of trial save in the most exceptional of circumstances;

- the need to be fully knowledgeable of the facts of the case no matter how late counsel has come into the case;
- the need to discuss with the complainant the issues that are likely to arise in the trial, including a detailed analysis of special measures that may be available;
- the need to vigorously oppose the introduction of previous sexual experience of the complainant at trial, when permission to do so has not been granted;
- marginalised communities and the problems of serious sexual offences;
- the need for directing officers in the PPS to explain fully and adequately their role and how they make and have made decisions; and
- the need to ensure that when a case is completed, a full explanation has been given to the complainant about the outcome.

230. Regular refresher training should take place on:

- rape mythology and stereotypical responses in the criminal justice system;
- sensitive examination of children and vulnerable witnesses in serious sexual offences; and
- the traumatic effects of serious sexual offences.

The Institute of Professional Legal Studies

231. The IPLS should invoke the services of outside agencies to address such issues as:

- rape mythology and stereotypical responses in the criminal justice system;
- sensitive cross-examination of children and vulnerable witnesses in serious sexual offence cases;
- the impact of trauma on witnesses; and
- the under-reporting and high attrition rate of serious sexual offences.

The Department of Justice

232. The DoJ should invoke the services of outside agencies and multiple stakeholder engagement in training their officials.

Technology

233. Frontline investigators in the PSNI and prosecutors in the PPS must benefit from simple, clear and practical training and assistance in performing their duty relating to digital material, including the legitimacy of appropriate use of technological solutions.
234. Accordingly, outlines and protocols should be drawn up to provide such clarity. The PSNI should immediately take steps to assess what products already exist on the market or ought to be developed to assist the roll out of greater technology.
235. The PSNI and the PPS should take steps to attend the Attorney General of England and Wales' 'Tech Summit (co-chaired by the Solicitor General in England and Policing Minister)' to be held in 2019 to assess the results of the Home Office supported Landscape Review and to identify a way forward with police leaders, private tech specialists and companies.
236. Greater emphasis should be given to the development and delivery of digital investigative training to ensure that all officers in the PSNI have a base level of training and understanding of digital principles.

Chapter 16: The jury system

237. All serious sexual offences should continue to be tried in the Crown Court by a judge and jury in the adversarial system.
- 238.* Legislation should be introduced to the effect that where, in a serious sexual offence trial, the defence has made an application that the trial should continue with a judge alone in the interests of justice, and the judge agrees, the trial should be heard by a judge alone.
239. A verdict of not proven should not be introduced in Northern Ireland.
240. There should be no gender quotas in juries in Northern Ireland.
- 241.* The current exemptions from jury service in Northern Ireland should be reviewed significantly so that the legislation in Northern Ireland operates in parallel with the Criminal Justice Act 2003 in England.
242. Following acquittals in serious sexual offences, prosecution advocates should complete Adverse Outcome Reports.

Chapter 17: Measures complementing the criminal justice system

- 243.* The Department of Justice should give serious consideration to providing State funding for a scheme of accredited practitioners to operate a system of restorative justice at any stage in the criminal justice process dealing with serious sexual offences where the offender has admitted their guilt, the victim has requested the scheme be invoked and the perpetrator has agreed to be involved. The scheme must be victim led.

244. * The Department of Justice should, in time, give consideration to making available to complainants, a self-referral voluntary justice mechanism involving a restorative practice element as an alternative to participation in the criminal justice system in order to resolve certain serious sexual offences, provided it is victim led.
245. * Section 5 of the Criminal Law Act (Northern Ireland) 1967 should be repealed at least in relation to all serious sexual offences save that in cases where an individual had knowledge of a relevant offence (which would include rape or other serious sexual offence) concerning a child or vulnerable adult (as currently defined in law) or where failure to report the offence is likely to put others at serious risk that individual would be obliged to report it to the police in the absence of a reasonable excuse.
246. In the absence of repeal of section 5 of the Criminal Law Act (Northern Ireland) 1967 in relation to serious sexual offences, the Attorney General for Northern Ireland should consider giving additional guidance to the same effect as recommendation 150 above for serious sexual offences.

Chapter 18: Resources

247. There needs to be early liaison with the Department of Justice to consider aligning fee schemes.
248. * The Department of Justice, in liaison with the professional bodies needs to review and restructure the Fee Schemes to take into account the recommendations of this report, in particular the need to support early engagement between prosecution and defence teams.
249. * A fee should be set to include all work, including early engagement, preparation for cross-examination of the complainant outside the course of the main trial and Ground Rules Hearings.
250. * Appropriate remuneration should be structured for dealing with significant disclosure third party issues on a case by case basis.
251. * Advocates should be remunerated by concentrating on the complexities of the case rather than the page count, particularly taking into account the considerable reliance on electronic evidence.
252. Those responsible for allocating resources must ensure male victims receive a fair share of the finance available.
253. There must be a comprehensive resource impact assessment by the Department of Justice of the recommendations in this Review.

