



Department of
Justice

An Roinn Dlí agus Cirt

Männystrie O tha Laa

www.justice-ni.gov.uk

Consent to serious harm for sexual gratification: Not a defence

Consultation Responses

Citizen Space Responses

Question 1: Do you think the law in Northern Ireland is sufficient as it stands?

There were 162 responses to this part of the question.

Option	Total	Percent
Yes	3	1.83%
No	159	96.95%
Not Answered	2	1.22%

Please give reasons for your response.

There were 118 responses to this part of the question.

Response ID	Answer
ANON-W4AD-VN4P-R	Northern Ireland's law should be brought into line with the rest of the UK
ANON-W4AD-VN56-Y	Specific offence in law required.
ANON-W4AD-VN5V-Y	I feel that it is already indefensible to take someone's life or mutilate or maim them permanently with intent. Anyone claiming that their victim consented to such an outcome, as a certainty or very high probability, is dangerous to others.
ANON-W4AD-VN7C-E	Lack of judicial clarity could reduce the ability to adequately protect victims and the vulnerable.
ANON-W4AD-VN7R-W	I think depending on R v Brown is ambiguous and a law needs to be put in place.
ANON-W4AD-VN3E-C	The current law does not offer sufficient scope for the crime of serious harm for sexual gratification and allows for the 'rough sex defence' to be used to mitigate for serious harm or murder. The rough sex defence appears to be used in more cases were the victims are women
ANON-W4AD-VN76-1	A clear statement in statute is needed to ensure that it is clear to perpetrators and practitioners that consent is not a defence.
ANON-W4AD-VN32-S	PBNI works with perpetrators of domestic abuse and facilitates a number of programmes to promote change in the behaviour and attitudes of people committing domestic and sexual abuse. PBNI staff understand domestic abuse has a devastating effect on individuals and families and are committed to working with perpetrators to reduce the number of future victims. PBNI are of the view there is a gap in current Northern Ireland legislation.
ANON-W4AD-VN7G-J	there should be no room in the law for a defendant to claim that the victim consented to be killed by strangulation

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ANON-W4AD-VNWC-E	<p>It has been possible to successfully prosecute cases in which AOABH type injuries (and above) have been sustained and in which the issue of consent has been raised. As outlined above, this is on the basis of the principles established in R v Brown.</p> <p>Nonetheless, there has been some criticism of R v Brown and whilst the principles contained therein have been widely accepted and well regarded, the case is still arguably open to interpretation.</p> <p>Overall the proposed legislative amendment would strengthen and clarify the principles established in R v Brown.</p> <p>This option would involve the adoption of a model similar to that in England and Wales, moving case law into statute and outlawing consent as a defence to serious harm for sexual gratification.</p>
ANON-W4AD-VNW9-4	<p>Absolutely not. And as it stands is used for mostly men to quite literally get away with murder. Bondage is not an excuse for taking someone's life.</p>
ANON-W4AD-VNWN-S	<p>Because it does not provide adequate legal protection for women given the fact that violent pornography is influencing people's sex lives and that the 'rough sex' argument is providing men with a means of justifying/obscuring murder.</p>
ANON-W4AD-VNWS-X	<p>There should be greater clarification and statute should reflect precedent.</p>
ANON-W4AD-VNKW-P	<p>Although the leading case dates from the mid 90's the judiciary are equipped to deal with cases individually and consider all aspects of the evidence when such a defence is raised. The fact that the incidence of this defence being raised has risen from 2 per year in 1996 to 20 in 2016 is not suggestive of the law in this jurisdiction being insufficient or otherwise. As the evidence suggests there are many reasons why the defence is more prevalent now.</p>
ANON-W4AD-VNKY-R	<p>No, which is why we are calling for change. We believe that this is the chance for NI to act as a leader in this area of law by creating a new offence.</p>
ANON-W4AD-VNKH-7	<p>Allows abusers to escape punishment through loopholes.</p>
ANON-W4AD-VNKK-A	<p>It is allowing men to get away with murder.</p>
ANON-W4AD-VNK4-K	<p>"Deviant" sexual behaviour should not lead to death and every effort to avoid this outcome should be taken if engaging in risky behaviour.</p>
ANON-W4AD-VNBZ-G	<p>'Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in</p>

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	<p>these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.</p>
ANON-W4AD-VNBP-6	<p>In most cases of sexual assault on women it is at the hands of their partner. However this usually means the partner gets away with the (sometimes fatal) violence as they can claim it was consensual, that that's how their partner liked it etc.</p> <p>This is worrying and not good enough to protect women in Northern Ireland</p>
ANON-W4AD-VNBX-E	<p>It fails to provide adequate protection for women who are the victims of serious offences. Where a defence of 'consent for sexual gratification' is used, a victim is forced to try to show that she did not consent. This is often impossible.</p>
ANON-W4AD-VNBC-S	<p>It doesn't give enough protection for victims of near strangulation.</p>
ANON-W4AD-VNBD-T	<p>"Rough sex" should not be a get-out-of-jail-free card for men who are violent towards and/or kill women. Male violence against women should not be protected or defended in law. If a man harms or kills a woman he should not get a lighter sentence because he was experiencing sexual pleasure at the time. If anything he should get a harsher sentence, because he is obviously a threat to women.</p>
ANON-W4AD-VNBU-B	<p>Rough sex should never be considered a defense for murder.</p>
ANON-W4AD-VNBK-1	<p>It's allowing violent men to get away with murder and serious harm to women</p>
ANON-W4AD-VNBS-9	<p>No living creature wants to be hurt. It is our instinct to avoid hurt. A woman cannot consent to being choked, and if she does, it is to please him; he has groomed her to accept his form of sexual gratification. Please stop this.</p>
ANON-W4AD-VNP5-S	<p>It permits the "rough sex" defence.</p>
ANON-W4AD-VNPY-W	<p>Women are being brutalised and controlled by masochists who rely on the law as it stands to provide them with a defence. This is not right.</p> <p>When people engage in sex consent needs to be continually assured with communication. If for some reason communication isn't sufficient then signs need to be agreed mutually before continuing to intimacy. This is smart sexual practice.</p> <p>Clearly defining the legal parameters of the rough sex defence will not only protect women from being murdered and allowing their</p>

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	partners a defence, but it could also educate people further in how they should be proceeding with sex.
ANON-W4AD-VNPP-M	The 'Rough sex' defence is being used as defence at a higher frequency each year and I don't think the current law in place is protecting victims, especially women.
ANON-W4AD-VNPQ-N	The law favours men shaming women about certain sexual preferences. Consent needs to be continuous & clear. Rough sex is not a defence for assault. We need to do more to protect people from abusers trying to use this as a justification for doing harm.
ANON-W4AD-VNPR-P	If it was sufficient my rapist wouldn't be walking free!
ANON-W4AD-VNCY-G	Doesn't fully protect women.
ANON-W4AD-VNC5-C	3 women have been killed, murdered, by men who then said it was consensual and got off. They did not consent to being killed and this should not be a defence.
ANON-W4AD-VNPN-J	The fact that men can use rough sex as a peal is appalling. It can be used as an excuse for there behaviour and there are evidence of this in past cases. Bondage, 'rough sex' is not an excuse for a woman being strangled until she died or being beaten so badly because they thought she liked it. It is abuse and murder. Many woman are scared to even state that they have been raped in these current laws because men can very easily get away about free, it's simply just a way to shame women, say she liked rough sex, say she cheats. They're all excuses for men's poor behaviour. What type of relationship do you really have if you get such a kick out of your partner being strangled to death?
ANON-W4AD-VNCX-F	We need more to protect women they are dying.
ANON-W4AD-VNCC-T	It shouldn't be different from rest of uk.
ANON-W4AD-VNCH-Y	Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years. The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has

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	been viewed. All women who survive to give evidence in trials say they did not consent to the violence.
ANON-W4AD-VN66-Z	The continued use of the rough self defence is rooted in misogyny. It insinuates that by consenting to a specific type of sex you then bring your own rape on yourself. This is unequivocally false. All sex, including kink based or "rough" is based in consent. Rape is not.
ANON-W4AD-VNC2-9	There has been a significant increase in the use of the rough sex defence in recent years, and so it is necessary that this legislation is reviewed to keep up with this. The current case law is outdated and doesn't adequately capture the experience of people, or more specifically, women who are frequently the victims of these crimes.
ANON-W4AD-VN65-Y	Prison sentences for sexual offences are too lenient/ not long enough
ANON-W4AD-VN6M-Q	The law needs to change and be aware that using 'rough sex' is not a valid reason to kill or sexual assault someone.
ANON-W4AD-VNK9-R	<p>The killing of women is viewed through a sadomasochistic lens and not as what it truly is - often - cover for domestic violence !</p> <p>There is an increase in incidents of violence against women eg. strangulation in the bedroom. As it stands the law is insufficient.</p>
ANON-W4AD-VNDA-S	This does not sufficiently protect people from serious physical harm or even death, and also provides the perpetrators with a fall-back excuse in court when they have harmed or even killed women. It also inherently slut-shames women who enjoy tougher sex, as if rough sex leading to death is a normal thing and something to consider, when it should never be this way, and it is solely the fault of the perpetrator, never the victim.
ANON-W4AD-VND1-9	People can use loopholes to get away with murder
ANON-W4AD-VN63-W	<p>'Rough sex' defences are on the increase in the UK, including N.Ireland. and it is women who are the victims. We now have the lowest conviction rates for rape and Ian Hopkins, the chief constable of Greater Manchester police resigned after a report found that the force was failing to record 220 crimes a day, including violent and sexual assault and domestic abuse. We need to start taking sex crimes particularly against women, seriously.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence. It goes without saying that many women don't get to court to contest the 'rough sex' defence, such as Grace Millane. Her family had to listen to Jesse Kempson's</p>

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	detailed 'rough sex' defence, and defame her reputation. Even in death she was attacked as her murderer tried to walk free.
ANON-W4AD-VNDB-T	Women need further protection in law so that this defence cannot be used in future murder cases.
ANON-W4AD-VNDP-8	We cannot be left behind the rest of GB when it comes to protecting people especially women as we have suffered long enough. If there is more done regards this issue and it is talked about and criminalised then just maybe it will prevent someone from having this done to them.
ANON-W4AD-VND3-B	<p>Does not do anything to protect individuals who are abused or murdered during sex.</p> <p>It also leads to the victims private sexual life being made public which is not relevant to the crime.</p> <p>It also is a reason many victims do not come forward.</p>
ANON-W4AD-VNDN-6	<p>We know the statistics on domestic abuse are terrible and we know how manipulative abusers are, we also know that coercive control is used to psychologically attack and undermine an individuals ability to make safe decisions in their own interest. The law as it stands gives defence of an act that should have no defence. Where can the sexual gratification be in loosing your life, the law change would bring back balance and fairness to future trials.</p>
ANON-W4AD-VNDK-3	The 'rough sex defence' is unacceptable and is increasingly used to justify murder, assault and grievous bodily harm overwhelmingly against women.
ANON-W4AD-VN6Q-U	The law seems to put too many barriers in place for women to come forward, too many are given the "not enough evidence" speech (by everyone including services meant to support them) before psni have even really started to investigate. There also doesn't seem to be a lot to protect women, and the entire system isn't working in favour of victims
ANON-W4AD-VND2-A	I think more needs to be done to protect women
ANON-W4AD-VND4-C	There is an opportunity to lead the way in NI in creating a new offence.
ANON-W4AD-VNS7-X	No. The "rough sex" defence is an abomination that reflects a society that does not respect women.
ANON-W4AD-VNS5-V	<p>NO</p> <p>Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in</p>

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ANON-W4AD-VNSR-S	No one should be killed while enjoying consensual BDSM. The limit should be explicitly obvious between partners
ANON-W4AD-VNS3-T	There is not enough protection for women when it comes to sexual assault. Furthermore, the law favours men's defence
ANON-W4AD-VNST-U	The defence of rough sex is becoming a "go-to" get-out clause for sadomasochistic, violent men to get away with their crimes. The rise in uses in defence thereof in recent years only serves to prove this point.
ANON-W4AD-VN88-4	Neglects to protect those killed through non consensual sexual violence.
ANON-W4AD-VN85-1	Because alleged consent is no defence
ANON-W4AD-VN8A-D	The current law does not protect citizens, largely women, from being abused and killed during sex. Perpetrators are able to hide behind the rough sex defense that only perpetuates the idea that death can be a side effect of BDSM/sex games.
ANON-W4AD-VN8Q-W	I think women are in constant danger and better laws may protect them.
ANON-W4AD-VN8X-4	I endorse and repeat the comments of the organisation 'We Can't Consent to This'.
ANON-W4AD-VN8H-M	People are getting away with crimes for pathetic excuses after women have died!
ANON-W4AD-VN8D-G	There is currently no legislation on consent to do serious harm allowing this to be used as a defense .
ANON-W4AD-VN8N-T	It is not acceptable to allow people to use this defence. Claims are being used increasingly and will further harm victims of sexual violence. It should be made clear that no one can consent to abuse like this. All (living) victims of violent sadomasochism testify that they did not consent and this should be a given for all deceased victims who were killed as a consequence for someones twisted gratificatiogn.
ANON-W4AD-VN8V-2	There is a need to provide specific protection to assault victims. It cannot stand that a perpetrator can inflict serious harm on another and it not be a criminal offense
ANON-W4AD-VNV6-Z	This needs to be removed as a possible defence.

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ANON-W4AD-VNVW-1	Being able to use rough sex as a defence gives sexual offenders an easy excuse for their violence and will lead to more offenders walking free after committing violent crimes
ANON-W4AD-VNV3-W	'Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.
ANON-W4AD-VNYA-E	There needs to be more done to protect women from sexual violence. At the moment, men are able to blame defenceless women for the abuse inflicted upon them, and our justice system needs to address that.
ANON-W4AD-VNYM-T	It does not provide sufficient protection for victims.
ANON-W4AD-VNYE-J	It is never acceptable to kill it seriously harm someone during what should be a loving act.
ANON-W4AD-VNYG-M	Woman deserve protection
ANON-W4AD-VNYS-Z	Three women have already died from this defence and thousands more violently assaulted. The law needs to change
ANON-W4AD-VNUZ-3	"Rough sex" as a defence is increasing and leaves women vulnerable to being accused to consenting to Violence that can be life threatening.
ANON-W4AD-VNU9-2	<p>Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.</p>
ANON-W4AD-VNUN-Q	Abused women are not close to being well enough protected at the moment - it is too easy for a man to claim that a sex game has gone wrong when a woman ends up seriously hurt or worse. Many of these women are being abused, have not consented or have had to give consent under duress and the law needs to protect them, not making it easy for men to get off with serious assaults or worse.
ANON-W4AD-VNTM-N	"Consent" is not an excuse to murder women.

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ANON-W4AD-VNTW-Y	<p>As with recent cases in NI, in which men who have killed their partners have used in their defense the horrendous implication that a woman has consented to a torturous death in some sort of "sex game gone wrong" scenario.</p> <p>This defense is clearly wrong & in no other area of criminal law do we allow mitigation of a crime on the basis that a victim in some way "consented" to the assault.</p>
ANON-W4AD-VNTZ-2	It is being exploited as a get out clause.
ANON-W4AD-VNT5-W	If it was sufficient we wouldn't be asking for a change
ANON-W4AD-VNTX-Z	<p>Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.</p>
ANON-W4AD-VNTR-T	<p>'Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.</p>
ANON-W4AD-VNTN-P	<p>'Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism</p>

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ANON-W4AD-VNT3-U	<p>'Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.</p>
ANON-W4AD-VNTK-K	Without a law that specifically outlaws the rough sex defence horrific crimes will keep going on without any justice for the victims
ANON-W4AD-VNTS-U	It does not do enough to protect people from serious harm
ANON-W4AD-VN9A-E	There needs to be a stand alone charge for non fatal strangulation. This has happened to me and is in the process of going through the court system. I passed out from being strangled by my partner. However the charge is AOABH rather than a charge of strangulation.
ANON-W4AD-VNTU-W	It doesn't protect people enough and there are too many loopholes to ensure people are able to get away with domestic abuse
ANON-W4AD-VNS2-S	<p>Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals</p>

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ANON-W4AD-VN97-4	<p>'Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.</p>
ANON-W4AD-VNB2-8	<p>'Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland, consistent with the pattern seen across the UK, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years. In NI two serious violent assaults in 2016 and 2019 were , and in late 2020 with the homicide of Patrycja Wyrebek.</p> <p>The victims in NI assaults and homicides which are claimed to be rough sex are female and all accused are male. In all cases where the victim survives and can give evidence, she says she did not consent. This again is consistent with the wider UK picture.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose.</p> <p>Brown is rarely referenced in these criminal cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which later violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.</p> <p>For more on why reliance on the common law of R v Brown is not adequate, see our research: Consent Defences and the Criminal Justice System, England and Wales, 2020 https://wecantconsenttothis.uk/cjs-e-and-w-2020</p>

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ANON-W4AD-VNTD-C	<p>There has been a significant increase in the number of men using claims of rough sex as a defence in murder trials where they are accused of killing women. There has also, concurrently, been a significant increase in the amount of pornography that shows violent and degrading acts being inflicted on women and this pornography has become increasingly easy to access and has had a well-documented negative affect on society eg the increase in women encountering men who try to strangle, slap, choke or spit on them during sex.</p> <p>The current legislation applicable in NI is related to the practice of sadomasochism (Brown (1993) and holds that consent does not provide a defence in cases of serious injury. However, this precedent has become increasingly weakened by cases such as Broadhurst (2018) and Slingsby (1995). The precedents and rough sex defences of previous cases have meant that violence against women is increasingly viewed in court cases through the lens of determining whether it was consensual sadomasochism gone wrong rather than seeing it as violent assault and/or murder. Women who have survived to give testimony in cases such as these have given evidence to say they did not consent to violence committed against them. Women need stronger protections and civic society and our legal system needs to send the message that violence against women will not be tolerated and that there is no acceptable level of violence acceptable in any relationship.</p>
ANON-W4AD-VN9B-F	<p>'Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and throughout the world. There has been a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years, a direct extension of misogynistic and patriarchal policy that is explicitly damaging to women in all walks of life.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose whatsoever. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.</p>
ANON-W4AD-VN9F-K	<p>I do not think that relying on precedent is good enough when the option is there to introduce legislation which would limit the use of this excuse and I do not think that women in NI should be at more of a risk or disadvantage than women in England or Wales.</p>
ANON-W4AD-VN91-X	<p>The current law invites ambiguity because, as outlined in your information document, the rough sex defence continues to be used despite R v Brown. Also, the defence is on the rise for several reasons but you cannot consent to your own murder and</p>

Response ID	Answer
	<p>consenting to rough sex is not consent to GBH or death. By allowing this train of defence, it gives the idea that you can consent to GBH or death a legitimacy that it does not have.</p> <p>Changing the law to outlaw the use of this defence will make it clear that it is not a suitable defence. This has already been established in R v Brown, as that has clearly not been enough to stop the defence being used, a further step is needed.</p>
ANON-W4AD-VN9G-M	<p>The law needs to explicitly state that consent to rough or aggressive sexual activities is not an acceptable defence for causing death or serious injury.</p> <p>Such acts, if consensual, must be discussed and performed in such a way that no participants are at serious risk of harm or death. Failure of consenting parties to discuss the risks of such acts and ensure the risk of harm is minimised should be treated as negligence, at best.</p> <p>Allowing consent to be used as a defence leaves the door open for domestic abusers to get away with heinous acts against their partners. The dead can't speak and survivors/sufferers of domestic abuse are often too scared to speak out against their abusers.</p>
ANON-W4AD-VN9H-N	<p>It appears with out this specific law in other parts of the UK , men have been listened to with out evidence .</p>
ANON-W4AD-VN9C-G	<p>Recent cases in which perpetrators of appalling violence have attempted to use consent as a defence indicate clearly that it is not.</p>
ANON-W4AD-VN9T-1	<p>In recent cases in NI, including Broadhurst (2018), it has been claimed that women consented to violence. The common law stated that only 'trivial or transient' injuries could be consented to and, given this was not followed, the current situation is therefore insufficient.</p>
ANON-W4AD-VN9X-5	<p>The 'Rough sex' claim as a defence of violence is being used more and more frequently in Northern Ireland, as it is in the UK and also internationally. This defence has led to inappropriately short sentences, and there have been cases where the use of this defence has meant that charges have been dropped altogether. If men see that this is a viable defence they will increasingly use it. It will be seen as a 'get out of jail free card' for enacting violence against women and girls. Women and girls need to be protected from violence and femicide. We need clear laws that will protect women and girls from violent actions. Perpetrators must be held to account and face appropriate judicial sentences. Women who survive to give evidence in trials say they did not consent to the violence. Women cannot consent to their own murder, and the 'Rough sex' claim cannot be used as a defence.</p>
ANON-W4AD-VN9Z-7	<p>More needs to be done to prevent misogynistic murderers from trying to get off with manslaughter charges, while slandering the victim. The 'she was asking for it' defence is abhorrent and deeply</p>

Response ID	Answer
	offensive to all women, especially the murdered women and their families left behind.
ANON-W4AD-VN9U-2	Many women do not consent to rough sexual acts, yet they are dying from it with no justice because men are allowed to use it as a defence. It's sexual violence, it's not okay, it shouldn't be allowed. Just as rape shouldn't be allowed!
ANON-W4AD-VN93-Z	It is out dated and misogynistic.
ANON-W4AD-VN9K-R	Too many women are being killed and men are getting away with it.
ANON-W4AD-VN94-1	<p>Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.</p>
ANON-W4AD-VNTV-X	<p>'Rough sex' claims in defence to violence are increasing in frequency in Northern Ireland and across the UK, and the world, with a tenfold increase in rough sex claims in defence to homicide and non-fatal violence in the UK over the last 20 years.</p> <p>The 1993 Brown case law which currently holds for Northern Ireland - which concerned gay men in consensual sadomasochism and said that consent is not a defence to more than transient or trifling injury – is not fit for this purpose. It is rarely referenced in these cases and has been undermined by further decisions such as Slingsby [1995], which was referenced in Broadhurst [2018] to support the decision that the most severe injuries to the female victim were consented to. The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. Women who survive to give evidence in trials say they did not consent to the violence.</p>
ANON-W4AD-VNZA-F	Some preparators have used the “rough sex” defence to receive a lighter sentence and many more who reported rapes or sexual attacks have had their cases impeded by perpetrators who claimed they were engaging in consensual sexual violence. More recently the defence was used in New Zealand by the murderer of Grace Millane and the murderer of Patrycja Wyrebek in Newry has local recognition to this defence.

Response ID	Answer
	<p>At a recent Victim Support conference on the Gillen Review, the director of the PPS said that our current system and legislation is failing victims. Especially victims of sexual violence who seem are expected to have every aspect of their personal life interrogated before and perhaps during trial.</p> <p>The R v Brown case law which currently holds for Northern Ireland - which only concerned gay men in consensual sadomasochistic acts and said clearly that consent is not a defence. Subsequent cases such as R v Elliott - held that consensual activity between husband and wife in the privacy of the matrimonial home was not a matter for the courts. But the activities between consenting gay men was. This is an outdated view, we need better legislation and offences to deal with the most serious harm cases.</p> <p>Within the LGBTQ Community, some adults prominently Gay or Bi men engage in BDSM, sadomasochism or ChemSex on a consensual basis. Engaging in consensual BSDM or Chemsex activities does not equal to consenting to be raped or killed nor should it be used diminish the character or credibility of a victim.</p> <p>The Rainbow project alongside our colleagues in Sex Workers Alliance Ireland and Ugly Mugs, have been working with the PSNI to support sex workers who have experienced violence. Female, Male, Non-Binary and transgender sex workers face high levels of violence, stigma, discrimination and other human-rights violations in Ireland.</p> <p>Violence against Sex Workers is not always defined or perceived as a criminal act. Sex workers are often reluctant to report violent incidents to the police for fear of police retribution or of being prosecuted for engaging in sex work.</p> <p>There has been use of rough sex defence being against used sex workers because they engage in sex work. Their work is often used against them to discredit them as victims due to stigma and discrimination against sex workers.</p> <p>It is clear that a review of the current law as it stands needs reviewing. We Need to replace the outdated legislation with two hand approach of</p> <ul style="list-style-type: none"> (i) provision statute which states that victims cannot consent to serious injury or death and (ii) awareness raising and updated research on sexual behaviour. <p>Current research on sexual behaviour often characterizes “rough sex” as sexual aggression and as violent or abusive in nature. We need clarification difference between sexual behaviour and sexual violence.</p> <p>We believe it is unacceptable for defendants to suggest that the death of a person, is excusable or legally defensible because that person had engaged in sexual activity which they have consent to.</p>

Response ID	Answer
	<p>Violent and harmful serious sexual injury which results in a fatality, should be judged as accordingly.</p> <p>A change however will not be enough to stop defence representatives using whatever precedents or law available to present a case which will aid their defendants in getting a lighter sentence.</p> <p>There is much work that needs to take place to better inform all those within the criminal justice sector to identify and challenge myths and stereotypes around sex, consent and sexual exploration.</p> <p>We need our criminal justice system to better informed, gather appropriate data and have a range of offences to help protect victims of domestic and sexual violence to help bring perpetrators before the court.</p> <p>This consultation is another step forward.</p>
ANON-W4AD-VN92-Y	<p>While case law sets out that one cannot consent to their own death, the current law does not adequately deal with death or serious harm caused by negligent or reckless sexual behaviour.</p>
ANON-W4AD-VNZ7-5	<p>It is our position that the law is not currently sufficient to deal with cases where "rough sex" is being used as a defence. The rough sex defence is being increasingly used in Northern Ireland and throughout the UK in defence of homicide and non-fatal violence against women.</p> <p>R v Brown is a case which concerns two gay men in engaged in consensual sadomasochism. The judgement outlined that consent is not a defence to more than transient or trifling injury. This decision is rarely cited in decisions where the rough sex defence is being used and has been undermined by decisions such as Slingsby (1995). R v Brown deals with a case involving consensual sex, when viewed through the lens of violence against women and girls it does not deal with violence that isn't consented to. Where surviving women are putting forward evidence in trials outlining that there was no consent, there needs to be specific legislation in place in order to provide recourse. Legislation must be careful not to criminalise non-conventional, consensual sex so as to avoid being considered an issue of morality.</p> <p>60 UK women have been killed in violence that it's claimed they asked for, and the so called "rough sex" defence also used in non-fatal assaults of women, all of whom say they did not consent to this. Strangulation is prosecuted with astonishing lightness, if at all. 2 Million women in the UK women have suffered strangulation assault by sexual partners. The existing law is not working. Women's Aid do not think thatg the law in Northern Ireland as it stands is sufficient and we need change now.</p>

Response ID	Answer
ANON-W4AD-VNZY-7	<p>1. While the current law is on consent to harm is uncertain, complex and misunderstood (David Ormerod and Karl Laird, Smith, Hogan and Ormerod's Criminal Law, 15th ed. OUP 2015; Alison Cronin, Jamie Fletcher and Samuel Walker, 'Homicide and violence in sexual activity, moving from offence to defence' blog for Sexual Trauma and Recovery Service (STARS), Dorset, 22nd June 2020 at https://www.starsdorset.org/blog/homicide-and-violence-in-sexual-activity-moving-from-defence-to-offence), focus on the defence of consent obscures the fact that strangulation gives rise to distinctive issues to which the existing non-fatal and, consequently, fatal offences are ill-suited.</p> <p>1.2 The uncertainty of the current law of consent</p> <p>1.2.1 While consent to a common assault or battery is a valid defence, consent to actual bodily or more serious harm is not a valid defence unless the activity involved is recognized as being in the public interest. The validity of consent is determined by reference to:</p> <ul style="list-style-type: none"> a) the level of harm inflicted in fact, b) the level of harm foreseen or intended by the parties and c) the nature of the activity in which it is inflicted. <p>All three elements are problematic.</p> <p>1.2.2 Consent and the level of harm inflicted.</p> <p>Unless the activity falls within one of the excepted categories (see below at 1.2.4.1 – 1.2.4.4), the legal threshold at which consent is not a valid defence to injury is actual bodily harm. This has been defined as “any hurt or injury calculated to interfere with the health or comfort of the victim” (R v Miller [1954] 2 QB 282) and can be any harm that is more than “merely transient and trifling” (T v DPP [2003] Criminal Law Review 622).</p> <p>1.2.2.1 From the liberal perspective, this has been criticized as being far too low a threshold at which to deny personal autonomy and a higher threshold of “serious disabling injury” has been recommended (Law Commission, Consultation Paper no 139 on Consent in the Criminal Law, HMSO 1995, Part II, para 2.3-2.4; Julia Tolmie, 'Consent to Harmful Assaults: The Case for Moving Away From Category Based Decision Making' [2012] Criminal Law Review 656). This would accord with the higher threshold adopted in many other jurisdictions (Law Commission, Consultation Paper no 139 on Consent in the Criminal Law, HMSO 1995, Appendix B).</p> <p>1.2.2.2 In the context of strangulation*, in 50% of reported cases there are no visible injuries but this masks the fact that there are likely to be internal injuries sustained (see 4.2.2 below).</p> <p>* “strangulation” includes strangulation, choking, suffocation, asphyxiation and all other forms of oxygen restricting practices, although the terms have distinct definitions they are used interchangeably throughout the response</p> <p>1.2.3 Consent and the level of harm foreseen or intended.</p>

Response ID	Answer
	<p>1.2.3.1 Intention to cause actual bodily harm</p> <p>Where the accused intends to cause and does in fact cause actual bodily harm, or worse, the victim's consent to the harm is invalid unless the harm occurs in the course of an excepted activity (R v Donovan [1934] 2 KB 498; R v Brown [1994] AC 212; R v Dica [2004] EWCA Crim 1103) (see 1.2.4 below regarding excepted activities).</p> <p>1.2.3.2 Recklessness as to causing actual bodily harm.</p> <p>The law is not clear as to whether the victim's consent to a battery is invalid where the accused does not intend to cause actual bodily harm, or worse, but he does in fact cause such harm. Three different approaches have been taken:</p> <ul style="list-style-type: none"> a) In the Attorney-General's Reference (No. 6 of 1980) [1981] 1 WLR the court held that consent was not valid in such a case. b) In R v Boyea (1992) 156 JP 505 it was held that consent would be valid if the c) actual bodily harm was not objectively foreseeable. d) In R v Slingsby [1995] Crim LR 570 and R v Emmett [1999] EWCA Crim 1710 the court held that consent would be valid if the actual harm caused was not foreseen by the defendant himself/herself. <p>1.2.3.3 While recklessness is a subjective matter in the context of the offences against the person, and the approach taken in, for example, Slingsby [1995] Crim LR 570 in relation to consent at c) above, some cases have based liability on objective recklessness. In R v Boyea (1992) 156 JP 505, for example, at b) above, it was held that the defendant's twisting of his hand in the victim's vagina was "likely" to cause harm that was not "transient or trifling" and he was convicted of (indecent) assault albeit he neither foresaw the harm nor intended it. Although the Court of Appeal has apparently accepted the approach taken in c) (R v Meachen [2006] EWCA Crim 2414), an authoritative ruling is needed to provide the clarity (Jonathan Herring, Criminal Law Text, Cases and Materials, 8th ed. Oxford University Press 2018, p. 365).</p> <p>1.2.3.4 If Meachen [2006] is the correct approach, where the defendant intends to make physical contact with a person, with that person's consent, and intends to cause harm consistent with a battery, he/she will not be guilty of an offence of causing actual bodily harm, or worse, if that level of injury is in fact inflicted but it was not foreseen by the defendant. It should be noted that since this is a general principle of law, with application to all activities, there is no need to consider whether the conduct falls within an excepted category (see below at 1.2.4) in such a case. In view of its consequences in the law of manslaughter (see 1.3.5.2 below), it appears to be this legal principle that has caused public outcry, with the perception that killers are evading justice.</p>

Response ID	Answer
	<p>1.2.3.5 The law on consent to harm is further complicated by the fact that consent to the force is one issue and consent to the harm that results is another, the two issues typically arise together but are subject to different legal principles. The prosecution must prove intention or recklessness as to the infliction of unlawful personal violence (R v Rolfe (1952) 36 Cr App R 4) to make out an assault and, having done so, there is no need to prove intention or recklessness as to the harm actually caused (Savage & Parmenter [1991] UKHL 15; Veronica Cowan, 'Indecent assault – defence of consent – whether injury more than “transient or trifling” – take account of current day social attitudes to sexual activity among consenting adults’ (1992) Criminal Law Review 574-576). However, where the issue of consent is raised as a defence, intention or foresight of the actual harm is relevant. The confusion is such that the court in R v Boyea (1992) 156 JP 505 overlooked the fact that there was arguably no battery committed and therefore no basis upon which a conviction for assault occasioning actual bodily harm could be founded.</p> <p>1.2.3.6 Applying the current law, the following propositions can be made:</p> <ol style="list-style-type: none"> a) Liability for battery requires the unlawful infliction of force, it is unlawful if there is no consent. b) Liability for actual bodily harm requires liability for a battery + actual bodily harm caused, even if the harm was not foreseen. c) If the victim consents to the infliction of force there is no battery, unless actual bodily harm is caused and the defendant foresaw the risk of it (if R v Meachen [2006] is correct) and the harm occurred in the course of activity that is not an excepted category. In such a case the defendant may be convicted of assault occasioning actual bodily harm (Offences Against the Person Act 1861, s. 47). d) If the victim consents to the infliction of force and actual bodily harm is caused, the defendant will not be guilty of battery (and therefore not guilty of actual bodily harm) if he/she did not foresee the risk of the harm, whether or not the activity is in an excepted category. e) It follows from d) that if the victim consents to the infliction of force and death is the result, the defendant will not be guilty of unlawful and dangerous act manslaughter if he/she did not foresee the risk of some harm, whether or not the activity is in an excepted category. The fact that the conduct was dangerous,

Response ID	Answer
	<p>i.e poses the risk of some physical injury, objectively viewed (R v Carey [2006] Crim LR 842), is of no relevance since there was no unlawful act.</p>
ANON-W4AD-VNZ5-3	<p>It is clear that the so-called 'rough sex defence' is being used in courts across the UK, including in Northern Ireland, both in cases of serious physical harm and in cases where victims are killed. The law as developed in case law has clearly not adequately resolved this issue to date.</p>
ANON-W4AD-VNZZ-8	<p>The law is inept at dealing with fatal cases where sexual activity is claimed to have played a role in the death. The so-called "rough sex defence", is being used with greater frequency by defence teams to reduce or mitigate sentencing, in such cases. It is fundamental that the law cannot prevent a plea of accidental and not intended death. Therefore, the exceptional evidence of premeditation required for a murder charge, often means the lesser charge of manslaughter is given, which cannot adequately encompass the violence or intent of the death or great harm.</p> <p>We understand the urge to use case law for legislation, but this will not be sufficient to prevent legal representatives arguing that any death or injury was accidental and due to consensual sexual activity. The legal requirement to prove intent and accidental death cannot be eliminated as a defence.</p> <p>In order to circumnavigate this difficulty, Alliance for Choice, as part of the Women's Policy Group believes any legislation created needs to specify that injury or death was the result of negligent and/or reckless sexual activity. This might capture those cases where there is no evidence of intention to kill but that the recklessness was such that a responsible person should know that it could well result in serious injury or death. Recklessness can include intoxication and/or a lack of explicit and provable consent.</p> <p>It is vital this is done in a way that does not pathologise sexual behaviour that is entirely safe and consensual. We would urge that, like other sexual violence offences, the onus should be on proving consent not proving intent. Non-consensual choking or strangulation should be integral to intimate partner violence offences and other violence offences. There is evidence to show that an incident of non-consensual choking greatly increases the likelihood of intimate partner death further down the line, therefore a preventative measure would be the recognition of the great harm of non consent with choking.</p> <p>Alliance for Choice would also like to note that it is the defence solicitors and legal teams who use the law, not the defendants. Therefore we would argue that it is due to judges and lawyers deeming a defence as acceptable that certain arguments become used as 'loopholes'. This is not an acceptable way to think about interpersonal violence. If the criminal justice system ever hopes to gain the trust of sexual violence survivors, then it would understand that it is the people whose job it is to use the law that shapes legal precedent and behaviour. We are in 2021 and yet the</p>

Response ID	Answer
	<p>understanding and approach to consent used by criminal legal teams is putting people's lives and ability to thrive in danger. We re-iterate, the onus should be on proving consent not proving intent.</p>
ANON-W4AD-VNT9-1	<p>The law is not sufficient. We would have preferred more time to consult on this, exploring what are the perceptions within society and the implications for adults at risk. Abusers will often target people at risk and as there is currently zero education on this topic any normalisation of "Rough Sex" will have dangerous consequences, particularly for young adults. There is an increase in self defence cases where there is a fatality, claiming it was "Rough Sex" gone wrong and without any evidence that it was intentional the convictions provide inadequate sentencing or no sentence. The Gillen Review made several recommendations for the Criminal Justice System following many failures in dealing with sexual crime and we believe the need for education on this topic is urgently required for those within the CJS.</p>
ANON-W4AD-VNZ8-6	<p>The current lack of legislation leaves things too open to the use of the 'rough sex' defence in criminal proceedings. This has the potential to obstruct justice where someone has been killed in violent circumstances by a partner or someone they've had a sexual encounter with. Using this defence to claim an accidental death and therefore reduce a prosecution from murder to manslaughter causes untold distress to victims' families and makes all women less safe due to the impunity it creates for violent sex offenders. We want Northern Ireland to lead the way in creating a legislative framework that recognises this type of crime for exactly what it is and that fully acknowledges the fact that consent in sexual encounters does not extend to treatment that causes significant harm and death.</p> <p>Separately there needs to be a non-fatal strangulation law passed that focuses specifically on non-consensual choking or strangulation. This would need to be framed in a way that includes the use of strangulation within a context of domestic abuse and also its use within sexual encounters where there may be no pre-existing relationship or domestic relationship between the parties.</p>
ANON-W4AD-VNZB-G	<p>We do not think the current position is sufficient for effectively prosecuting serious harm or death caused by sexual practices. Currently following case law, one cannot consent to more than a transient or trifling injury as set down in R v Brown 1993. Therefore, we would argue that already one cannot use consent to a sex act as a defence to murder. The case law in R v Slingsby 1995, where injury was caused due to negligence rather than intent, highlights a gap which we would seek to rectify by the creation of a new offence centring on negligent or reckless sexual behaviour leading to serious harm or death. In order for a murder charge to be</p>

Response ID	Answer
	<p>successful, intent must be proven, this is extremely difficult especially where the defendant suggests the death occurred as part of consensual sexual practices. This is why we suggest a new offence detailed in our answer to question 4.</p>
ANON-W4AD-VNZIP-X	<p>We do not believe that the law in Northern Ireland is sufficient as it stands to effectively prosecute those who commit serious harm or death caused by sexual activities.</p> <p>Using the so called "rough sex defence" that death occurred accidentally as a result of sexual activity, the law at present cannot prevent a defendant from claiming this.</p> <p>Without specific evidence to support a case for premeditation, the outcome will be a charge of manslaughter which may not capture what actually happened and will in turn carry a lesser sentence.</p> <p>We acknowledge the step taken in England and Wales however the steps taken in effect only put in statute what had already existed in common law and do not go far enough leaving room for arguments of accidental death where there is no evidence of premeditation.</p> <p>In addition to this it should be recognised that these offences do not always happen within a domestic violence situation which may complicate the desired outcome further.</p>

Question 2(a):

Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?

There were 161 responses to this part of the question.

Option	Total	Percent
Yes	148	90.24%
No	13	7.93%
Not Answered	3	1.83%

Please give reasons for your response.

There were 104 responses to this part of the question.

Response ID	Answer
ANON-W4AD-VN4P-R	Previous consent for serious harm as a result of sexual gratification should not be admissible as a defence for sexual abuse.
ANON-W4AD-VN56-Y	Cannot consent to serious harm. Has been used to get away with murder: literally saying that victim "asked for it". Distressing for family to hear.
ANON-W4AD-VN5V-Y	I think there are cases of lesser harm where consent would continue to contribute towards a defence. I worry that a blanket ban creates additional legal risk for people who engage in BDSM practices in a Safe Sane and Consensual (SSC) manner or a Risk Aware Consensual Kink (RACK) manner. think each case should be judged on its own merits and that investigators and judiciary should examine someone's history with BDSM practices, including previous relationships and social media activity, to assess whether both parties were operating as safely as possible for the type of activity. ie - is BDSM a feature of all parties lives generally or is the case in question an outlier for both parties.
ANON-W4AD-VN7C-E	Whilst Common Law seems clear, such broadness potentially results. in nuanced challenge. Creating clarity would enable cases to be prosecuted more quickly and effectively and could protect potential victims of homicide.
ANON-W4AD-VN7R-W	I think that clearer rules and regulations need to be put into place to help raise awareness of the seriousness of harm that can be caused and hopefully to reduce instances.
ANON-W4AD-VN3E-C	Yes we believe that serious harm should be outlawed in legislation in order to protect the victims. This legislation is required to ensure that there are boundaries in order to protect individuals from serious harm.

Response ID	Answer
ANON-W4AD-VNW6-1	<p>Mumsnet is the UK's largest network for parents, with around 10 million* unique visitors per month clocking up around 100 million page views. It has a network of over 10,000 influencers and its Mumsnet Jobs site, focused on flexible working opportunities, has nearly 30k monthly users. It regularly campaigns on issues including support for families of children with special educational needs, improvements in postnatal and miscarriage care, and freedom of speech on the internet. *Source: Google Analytics</p> <p>Mumsnet users, some of whom have personal experience of violence or of rough sex defences, strongly support this law change. In a recent onsite poll, 97% of users who took part supported this measure.</p> <p>Around nine out of ten Mumsnet users are women (Google Analytics data). Since the beginning of March 2020 alone, discussion threads specifically about domestic or sexual violence have received 1500 separate posts.</p>
ANON-W4AD-VN32-S	<p>PBNI is supportive of tightening the legislation to make it more difficult to raise a defence of consent to violence during sexual intercourse. Case law is clear on this, an amendment to legislation would codify the principle into statute.</p> <p>Such an amendment would provide additional protection to women. By using consent as a defence, violence against women is being normalised. Women cannot be blamed for their own injuries/death.</p> <p>PBNI is of the view that the Domestic Abuse Bill in England and Wales provides an effective and necessary enhancement to current provision under law.</p>
ANON-W4AD-VNWG-J	<p>by the very nature of the offence the victim cannot speak so the law should not allow their consent to be assumed without the victim confirming this - as they are dead to law should always assume they did NOT consent</p>
ANON-W4AD-VNWC-E	<p>This would help to make the law in Northern Ireland clear and unambiguous</p>
ANON-W4AD-VNW9-4	<p>Yes it is an appalling excuse for men to get off with murder and simultaneously tarnishes the reputation of the victims. Another instance of victim blaming.</p>
ANON-W4AD-VNWN-S	<p>Because it provides a means for men to kill women. As NI has the highest level of Domestic Abuse in Europe, this can not be taken lightly.</p>
ANON-W4AD-VNWS-X	<p>Yes because it is highly unlikely that someone actually consents to serious harm. They may consent to the act</p>

Response ID	Answer
	involved e.g. getting into a fight, but not to the consequences of such an act.
ANON-W4AD-VNKW-P	To deal with the issue in legislation presents an opportunity to clarify the position and indeed up date what will be considered as an offence as well as what would constitute serious harm given that the caselaw in NI dates from the early 90's.
ANON-W4AD-VNKY-R	We believe that there should be more to this offense other than that one cannot consent to their own death. Again, if NI is to lead the way, we need to create a stronger offense that's wider in scope.
ANON-W4AD-VNKH-7	Needs to be tougher - see above.
ANON-W4AD-VNKK-A	It is allowing reduced sentence for murder
ANON-W4AD-VNBZ-G	Without change, more men will use this defence: Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.
ANON-W4AD-VNBP-6	Women in Northern Ireland deserve the same level of protection.
ANON-W4AD-VNBX-E	Yes. This is important to protect women against sexual violence.
ANON-W4AD-VNBC-S	All uk citizens should have the same protection in law.
ANON-W4AD-VNBD-T	For the above reasons.
ANON-W4AD-VNBK-1	The person responsible for causing serious harm will be held accountable if there is a Bill introduced
ANON-W4AD-VNBS-9	See above
ANON-W4AD-VNPY-W	As above
ANON-W4AD-VNPP-M	Without change within law, men will continue to use this defence if they see it as a way to commit murder but get off with a lesser charge. This gives perpetrators a way to place blame onto their victim, who often doesn't survive to show they did not consent.
ANON-W4AD-VNPQ-N	There is too much possibility for different interpretations as to what serious harm is being consented to.
ANON-W4AD-VNC5-C	It should be against the law to cause serious harm to someone regardless of whether they're consenting. This leads to a very slippery slope that could allow those so inclined to talk someone into consenting to this and causing them harm and getting away with it. This is so dangerous
ANON-W4AD-VNPN-J	If as often said we are a part of the Uk why do these laws not apply to all the regions of the uk? Women in England and Wales are no different than ladies in Scotland and Northern

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	Ireland. There are numerous past incidents where women have been murdered here and men have used the plea that it was rough sex. It is unacceptable and of course it should be outlawed. It has been used an excuse for unacceptable behaviour and women have been sadly murdered.
ANON-W4AD-VNCX-F	It can only be a good thing to protect our women.
ANON-W4AD-VNCC-T	Why is it different compared to Uk? Why should the women of NI deserve less?
ANON-W4AD-VNCH-Y	Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.
ANON-W4AD-VN66-Z	Case law such as R v Brown has consistently shown us (despite the case law in question having sexist or homophobic undertones) that individuals cannot consent to GBH or murder. The NI legislation should be amended to reflect that. The E+W Domestic abuse Bill also bans the rough sex defence. Sex should not be used as an excuse to hurt someone to the extent of injury and to allow this to continue is ultimately damaging to sexual relationships and how we as a society treat sex as a whole.
ANON-W4AD-VNC2-9	Men are using this defence more because they know it works. They rely upon womens' characters being tarnished due to their sexual histories, where the problem lies wholly with the violence of the perpetrator. Without a review of this legislation to send a clear message to perpetrators, more people will die without justice being served.
ANON-W4AD-VNK9-R	The defense of consent can be used by men as a way of avoid responsibility for murder. We need to show predators / perpetrators that this defence will not stand.
ANON-W4AD-VNDA-S	While people can consent to rough sex and foreplay, one cannot consent to serious harm or even death
ANON-W4AD-VND1-9	This is a progressive move and stops violent men getting away with murder.
ANON-W4AD-VN63-W	When men see these 'rough sex' defences working, resulting in freedom instead of a prison term, they will continue to use them, and would be free to commit further violence, abuse, rape and sexual assault.

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ANON-W4AD-VNDB-T	To protect and ensure justice for people (majority of whom will be women) who face threat of death at the hands of a sexual partner.
ANON-W4AD-VNDG-Y	To protect women.
ANON-W4AD-VNDP-8	If making it illegal to do this without consent prevents someone from getting hurt then of course. Consent to rough sex etc is forgot about when talking how important it is to get consent for sex. Just because you consent to sex with a person does not mean you consent to rough sex that could leave you injured.
ANON-W4AD-VND3-B	To give protection to the victim and may encourage more people to come forward and report crimes.
ANON-W4AD-VNDK-3	Women in Northern Ireland experience high levels of sexual assault and domestic abuse, similar to those in England and Wales and therefore deserve the same level of legal protection against these crimes.
ANON-W4AD-VND4-C	Existing case law means one cannot consent to their own death. We would like to see a better law in NI.
ANON-W4AD-VNS7-X	<p>There is NO excuse to killing a woman during sex. Kinks should be acknowledged for what they truly are, objectification, dehumanisation and the subjugation of women for men's arousal. Unacceptable. And young girls are growing up learning that this is their place in society. Just yesterday I had to report a THIRTEEN yr old girl on TikTok for making "how to choke someone safely" content.</p> <ol style="list-style-type: none"> 1. How does a child even know this information? 2. How is she able to upload it on what should be a child safe server. 3. Why is she engaging in and encouraging such harmful behaviour. 4. How is she so indoctrinated by society as to believe there is such a thing as "safe" strangulation? There isn't.
ANON-W4AD-VNS5-V	<p>YES</p> <p>Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.</p>
ANON-W4AD-VNS3-T	No woman would "consent to serious harm". Women do not willingly put themselves in danger especially in a situation with a romantic partner. Furthermore, where is the limit on serious harm? Surely it can't be death

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ANON-W4AD-VNST-U	We need to move in line with other home nations to endorse a UK-wide response. The evident rise in implementation of this defence will only continue in an upward slant otherwise, because put simply, it works.
ANON-W4AD-VN88-4	Northern Irish laws should fall into line with the rest of the UK.
ANON-W4AD-VN85-1	It is important to have law instead of precedents to rely on in court
ANON-W4AD-VN8A-D	The law must change to remove the option of "rough sex" as a defense for the abuse and murder of women, without this we will continue to see an increase in abusive and dangerous acts carried out on women.
ANON-W4AD-VN8Q-W	It makes sense
ANON-W4AD-VN8X-4	I endorse and repeat the comments of the organisation 'We Can't Consent to This'.
ANON-W4AD-VN8H-M	Yes again they are getting away with assault and murder because it is just seen as rough sex
ANON-W4AD-VN8D-G	This will protect vulnerable women who are subjected to violent sex by manipulative partners as the partners will no longer be able to use consent to do serious harm as a defense.
ANON-W4AD-VN8N-T	All abusers will use this defence in hope of getting a lighter sentence. We need clearer legislation to deter abusers from harming women. It will encourage safer practices too and put more responsibility on the person who commits the violent act.
ANON-W4AD-VN8V-2	As a society it is imperative we protect persons against harm. Vulnerable persons are open to abuse. Pre meditated assault on another cannot be excused, the perpetrator pardoned, due to a defense based on their obtaining consent from the injured party. Consent can be thwarted and changed by the perpetrator to an exponential proportion. It is reasonable to assume no person could consent to severe injury requiring medical attention, or death.
ANON-W4AD-VNV6-Z	Particularly domestic/sexual harm to help protect vulnerable women or men
ANON-W4AD-VNVW-1	The law should most certainly change in line with England and Wales to make sure this defence is not used in further cases in NI
ANON-W4AD-VNV3-W	Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.

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ANON-W4AD-VNYA-E	Yes - this is a loophole used to allow men to inflict unbelievable harm on their sexual partners, and to get away with it. There needs to be a show of strength against this.
ANON-W4AD-VNYE-J	Otherwise it's an easy get out for abusers. It's disgusting and vile that harming someone during sex to the point that person is making a complaint can be seen as ok because they 'agreed' to it.
ANON-W4AD-VNUZ-3	Men are able to use this as a defence because it has worked for others in achieving a lesser sentence.
ANON-W4AD-VNU9-2	Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.
ANON-W4AD-VNUN-Q	It is too easy to claim a woman gave consent to get off with a serious assault when I would think often they did not do so or were also not in a position to ask their partner to stop - eg a bag over their head. Actually if someone ends up hurt, whether they consented or not, shouldn't the partner still be liable? If someone asked you to run them over with your car you'd still be liable if you did it and you hurt or killed them? Claiming they gave consent / asked you to doesn't absolve you of responsibility? So why should it in these circumstances? If we make it easy to claim consent more women will be abused and end up seriously hurt or killed.
ANON-W4AD-VNTM-N	Existing case law already says that we can't consent to our own death.
ANON-W4AD-VNTW-Y	No one can consent to their own murder. That this defense is available to men who kill women during sex in NI & UK is an outrage. It is also another way in which women's lives are devalued by the state & criminal justice system.
ANON-W4AD-VNTZ-2	The victims cannot confirm what happened.
ANON-W4AD-VNT5-W	Existing case law already means one cannot consent to their own death. We do not want to simply mirror the England and Wales domestic abuse bill but to create something better.
ANON-W4AD-VNTX-Z	we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.

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ANON-W4AD-VNTR-T	Without change, more men will use this defence: I believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.
ANON-W4AD-VNTN-P	Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.
ANON-W4AD-VNT3-U	Without change, more men will use this defence: I believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.
ANON-W4AD-VNTK-K	I absolutely welcome the new laws in England and Wales. Finally abusive, sexual predators may begin to be brought to justice.
ANON-W4AD-VNTS-U	This would remove the defence argument and being NI in line with English and Welsh laws
ANON-W4AD-VN9A-E	I did not consent to this. Being able to Use the rough sex defence in this situation is unacceptable.
ANON-W4AD-VNTU-W	Totally agree. As someone living in Newcastle, U.K., I think this was a welcome addition to the domestic rights bill. NI should follow immediately.
ANON-W4AD-VNS2-S	Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.
ANON-W4AD-VN97-4	Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.
ANON-W4AD-VNB2-8	Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.

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ANON-W4AD-VNTD-C	<p>Increasingly men are claiming in court that their female partners want to be violently assaulted and hurt, they are using this claim because it has worked for previous men, and because they want their violent behaviour to be seen as warranting a lower level of, or no punishment. Clarification of the law and outlawing consent to serious harm will send a message to society that violence against women is not acceptable and that it will incur serious legal consequences. It will also prevent perpetrators from attempting this defence and will ensure that men who assault women will be more likely to be held accountable for the violence they've committed.</p>
ANON-W4AD-VN9B-F	<p>Without a doubt it should be outlawed, to save the lives of many women and people of all genders. Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.</p>
ANON-W4AD-VN9F-K	<p>As above, I do not think women in NI should be at more of a risk or disadvantaged than women in England & Wales; I do not believe that the victims of this crime consent to being killed and if official legislation deters even one person from committing this crime, it is worth introducing it.</p>
ANON-W4AD-VN91-X	<p>For the same reasons as listed in my answer to question one, the defence continues to be used despite R v Brown and therefore further steps are needed to protect women and men from this defence being used against them, especially if they have been murdered and therefore can provide no defence for themselves, leaving them vulnerable to one-sided hearsay. It also helps protect those who have part taken in rough sex with consent who then have that used against them if they then are raped or attacked. By allowing the rough sex defence to be used, it allows perpetrators to use their victim's sexual history in their defence. Consent in the past does not give consent always, we know this as a society, yet if we do not prevent the defence from being used, it will continue to be used to defend the undefendable.</p> <p>Outlawing the rough sex defence makes it clear that it is unacceptable and will mean that victims feel they are better protected to come forward without fear of their previous sexual acts being used against them.</p>
ANON-W4AD-VN9G-M	<p>The law needs to explicitly state that consent to rough or aggressive sexual activities is not an acceptable defence for causing death or serious injury. Such acts, if consensual, must be discussed and performed in such a way that no participants are at serious risk of harm or death. Failure of consenting parties to discuss the risks of such acts and ensure the risk of harm is minimised should be treated</p>

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	<p>as negligence, at best.</p> <p>Allowing consent to be used as a defence leaves the door open for domestic abusers to get away with heinous acts against their partners. The dead can't speak and survivors/sufferers of domestic abuse are often too scared to speak out against their abusers.</p>
ANON-W4AD-VN9C-G	<p>The law in this area is unclear and both courts and especially police are inconsistent in their approach. Both the justice system and the public need clarity.</p> <p>No-one can give meaningful consent to serious harm. Moreover, there are substantial risks to society, and particularly to women, by claiming otherwise. Perpetrators of extreme acts should know that they are legally culpable and have no defence.</p>
ANON-W4AD-VN9T-1	<p>I have recently produced a systematic review of the neuropsychological outcomes of non-fatal strangulation in domestic and sexual violence. I reviewed over 1600 studies, comprising medical case reports, forensic analyses, and qualitative research with survivors. Thirty peer-reviewed studies were found which met inclusion criteria. The results were sobering.</p> <ul style="list-style-type: none"> • Neck structures are fragile: blocking the jugular vein can take less pressure than opening a can of Coke • In terms of pathology, strangulation was shown to lead to arterial dissection, compromise of blood flow to and from the brain, cerebral swelling, delayed stroke, and miscarriage • In fact, it is thought strangulation might be the second most common cause of stroke in women under 40 • Strangulation potentially carries all the consequences of other hypoxic-ischaemic injuries such as cardiac arrest (which it can itself provoke), but has its own additional burden • Neurological consequences include: loss of consciousness (indicating at least mild brain injury), paralysis, movement disorders, altered sensation, speech disorders, incontinence, and seizures • Cognitive consequences include: amnesia and impaired executive function (decision-making, judgement) • Psychological consequences include: existential fear, PTSD and other trauma reactions, dissociation, suicidality, depression, anxiety, and personality change • Behavioural consequences include: increased compliant and submissive behaviour, aggression <p>Based on the findings from this review, I feel strongly that consent is simply not possible. Consent needs to be informed, but there is scant public and institutional understanding of the risk of strangulation as set out above. Consent also needs to be able to be withdrawn at any point. If someone is being choked, the very organ required to give or withdraw consent -</p>

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	<p>the brain - is being compromised. Even if consciousness is not lost (which would render consent moot), hypoxia can set in - the brain is starved of oxygen and cannot function properly.</p> <p>A 1940s study by the US army to investigate why so many pilots were blacking out demonstrated this starkly. Research subjects were fitted with a manual strangulation neck cuff. They all had a button they could press to release themselves. Afterwards, all participants reported having wanted to press the button but, presumably because of hypoxic impairment, had either forgotten they could, or were unable to get their hand to move, despite wanting it to, indicating dyspraxia. The chief researcher himself almost died, despite having designed the apparatus himself - he just couldn't convert the thought 'I want this to stop' into action.</p> <p>Changing this in law will send a clear message to potential perpetrators that this defence would never stand. Importantly, it also sends a message to potential victims, highlighting the unacceptability of violence.</p>
ANON-W4AD-VN9X-5	<p>Without change, more men will use this defence: I believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether.</p> <p>Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.</p>
ANON-W4AD-VN9Z-7	<p>More needs to be done to prevent misogynistic murderers from trying to get off with manslaughter charges, while slandering the victim. The 'she was asking for it' defence is abhorrent and deeply offensive to all women, especially the murdered women and their families left behind.</p>
ANON-W4AD-VN9U-2	<p>There is no way to determine if consent was given, especially when someone dies. It's most likely not the case when things escalate to that extent!</p>
ANON-W4AD-VN93-Z	<p>The law as it stands re-victimises the victim. The current law is misogynistic.</p>
ANON-W4AD-VN9K-R	<p>There needs to be a clear message that domestic abuse is not acceptable</p>
ANON-W4AD-VN94-1	<p>Without change, more men will use this defence: we believe that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether. Clear law will send a message to perpetrators that this defence will not stand, and they will be held accountable for the violence they've committed.</p>
ANON-W4AD-VNTV-X	<p>In the Spring of 2020, I conducted research into women's experiences of non-consensual violence in sex, as part of my</p>

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	<p>Master's degree at London Metropolitan University's Child and Woman Abuse Studies Unit (CWASU). It comprises a survey and in-depth interviews with women. The research was supervised by Professor Liz Kelly and facilitated by We Can't Consent To This, of which I am a member. I have worked in the Violence Against Women and Girls sector since 2016.</p> <p>We Can't Consent To This (which submitted its own evidence) has documented the killings and assaults of women where the men accused claim consensual rough sex. In more than half of the killings there was a known history of domestic abuse against the woman from the man. And in all of the non-fatal assaults, where the woman is able to say so, she says she did not consent to the violence. [1]</p> <p>Removing the 'consent' defence is critical because there is a widespread issue with the violent assault of women in sex. Thirty-eight percent of UK women under 40 have experienced assault (choking/strangulation, spitting, slapping or gagging) in sex [2]. My research highlights that being subjected non-consensual violence in sex is very often in the context of a wider pattern of control and abuse. Eighty percent of respondents (66/82) had experienced non-consensual violence in sex from a partner or ex-partner [3]. Sixty-one women detailed further abuse from the same man:</p> <ul style="list-style-type: none"> - 46% said he had done it before; 33% said it happened regularly. - 75% said the same man had been abusive in other ways (for example: controlling, possessive, emotionally abusive, physically abusive). - 41% said he had raped or sexually assaulted her in ways other than non-consensual violence in sex. - 64% said he used sex as a way to control her - for example, by shaming or guilt-tripping her into doing particular things. - 28% said he had taken sexual images or videos of her and threatened to share them. [4] <p>The alleged 'consent' defence must be seen in this context. As one of my interviewees, who experienced many years of coerced violence in sex from her abusive ex-partner, put it: 'It made me think how easy it would have been for me to have died and my ex to have said 'she liked rough sex' [...] I realise now that he was making me say these things so that if ever he was in front of a prosecutor or whatever, that he could honestly, 100% sincerely say, I had asked for – I had even begged – him for it. I didn't know what I was begging for.'</p> <p>My research reiterates the findings of We Can't Consent To This, that non-consensual violence in sex is not only perpetrated by partners or ex-partners. Non-consensual</p>

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	<p>violence in sex happens multiple times across women’s lives, and from multiple perpetrators:</p> <p>Of 84 women responding to a question about frequency of non-consensual violence in sex, 55% had experienced it 1 – 5 times; 20% had experienced it 5 – 10 times, and 20% had it experienced it more than 10 times [5].</p> <p>Of 82 women responding to a question on perpetrators, 34% had experienced non-consensual violence in sex from someone they had met that day; 10% of respondents had experienced non-consensual violence in sex from someone they had planned to meet for consensual BDSM activities [6].</p> <p>Additional provision is needed to ensure all women – regardless of their relationship with the perpetrator – are meaningfully protected.</p> <p>A new offence of non-fatal strangulation is also needed. In line with the killings and assaults documented by We Can’t Consent To This, my research finds that strangulation is one of the most common forms of non-consensual violence used in sex, regardless of the perpetrator:</p> <p>Forty-five of the women surveyed had experienced non-consensual strangulation, choking or pressure on her neck from a partner or ex-partner; 32 women had experienced it from someone they were dating; 11 experienced it from someone they had met that day; five experienced it from someone she had planned to meet for consensual BDSM activities. [7]</p> <p>Strangulation/choking/pressure to the neck was the most common form of abuse when the perpetrator was someone the woman was dating; the second most common form of abuse from partners or ex-partners; and the third most common when the woman had met the perpetrator that day. [8]</p> <p>The prevalence of strangulation in my research and in We Can’t Consent To This data is particularly concerning, given the specific dangers of this form of violence (neurological, cognitive, psychological, and behavioural – as set out in Bichard et al, 2020 [9]) and its status as a predictor of domestic homicide. [10]</p> <p>[1] We Can’t Consent To This (Feb 2020) What can be consented to? Briefing on the use of “rough sex” defences to violence https://static1.squarespace.com/static/5c49b798e749409bfb9b6ef2/t/5e4da72920c08f54b94d91e4/1582147383202/WCCTT+briefing+sheet+2020+February.pdf</p> <p>[2] Thirty-eight percent of UK women under 40 have experienced assault in sex: choking/strangulation, spitting,</p>

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	<p>slapping or gagging. BBC Radio 5/ComRes (November 2019) https://www.bbc.co.uk/news/uk-50546184</p> <p>[3] Snow, L. (2020) Survey on women's experiences of non-consensual violence in sex (unpublished, in partnership with We Can't Consent To This)</p>
ANON-W4AD-VNZA-F	<p>Northern Ireland needs come into line with the rest of the laws which are applicable in the rest of England and Wales. There should be a clear uniformed message from all regions that rough sex defence should not be used for most serious or violent acts in order to ascertain lesser or shorter sentences.</p> <p>Perpetrators should be held accountable for the violence they've committed against victims.</p> <p>The Rainbow Project would concur with some other key UK stakeholders around the exclusion of admission of sexual history evidence in trials for violent sexual offences. Some cases where a victim has been at no fault, their name, location and sexual history can be presented in court and then reproduced in the media. This is keeping victims especially those who are experiencing sexual violence, making them resistant to report incidents, as they are afraid of that further victimisation and blame.</p>
ANON-W4AD-VN92-Y	<p>A new sexual violence offence should be created. Domestic Abuse legislation is not the appropriate way to deal with death or serious harm caused by negligent or reckless sexual behaviour, as it may or may not occur within an established domestic relationship. Rather than mirror law from England and Wales we should create a new law learning from the way similar cases have been prosecuted and the gaps identified - particularly the need to demonstrate intent for a successful murder charge.</p>
ANON-W4AD-VNZ7-5	<p>It is our position that the increasing numbers of men using this defence is a growing concern. Therefore, it is important to have legislation and policies in place that offer recourse to justice for those who are victims of non-fatal harms and for those victims who are murdered as a result. Statistics show that 38% of women in the UK have experienced some form of rough sex that was unwanted.</p> <p>The claim that a dead woman consented to violence has been made in 60 UK homicides. Further research shows that of those 60 homicide cases where a rough sex defence was used, 2 were found not guilty, 3 cases were not pursued, 17 cases were convicted as manslaughter, 3 murder convictions where the death was originally decided not to be a crime, 1 murder conviction where the defence had a sentencing benefit and 33 murder convictions. From this research we can see that only 33 cases out of 60 where this defence was used ended in a murder conviction without mitigations to sentences. Clearly</p>

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	<p>notions of rough sex are benefiting perpetrators of violence in court.</p> <p>Without change, more men will use this defence, as outlined above and Women’s Aid believe that men who use these defences do so because they see them working. Those accused of sexual and sadistic murders have particular incentive to recast sadistic sexual violence as consensual, as these have a 30-year life-sentence starting point. In the last Femicide Census there were 8 homicides of women with sadistic conduct: 6 of the men used a rough sex claim in defence.</p> <p>We Can’t Consent to This also reported that women were being seriously injured in what men claim to be consensual sexual violence, stating that it is now commonplace for a woman to be assaulted and abused by men they’re dating, with 38% of UK women under the age of 40 reporting being assaulted, choked, slapped, gagged or spat on, as part of otherwise consensual sex. We Can’t Consent to This stated this is not just a UK problem but one that occurs worldwide and argued that until it is made clear, in law, that consent is not a defence, defendants would continue to make claims in the pursuit of a lesser criminal charge or sentence, or with a view to being acquitted of any crime.</p> <p>Therefore, we would argue for the need for legislation to outlaw this defence, ensuring that victims have effective recourse to justice and that “rough sex” cannot be used as an excuse to perpetrate acts of violence against women, nor will it be used by courts as a mitigation to a sentence.</p> <p>There are too many cases in which sentences do not reflect the crime and the perpetrator has got off because of the current defence available.</p>
ANON-W4AD-VNZY-7	<p>2. The law of consent and its role as a “defence” to offences against the person is complex, uncertain and misunderstood and it should be clarified by legislation. In principle, there is no objection to placing the law on consent in a statutory provision, whether it is a codification of the common law emanating from cases such as R v Brown [1994] 1 AC 212 and R v Meachen [2006] EWCA Crim 2414 or a the adoption of a new statutory approach that clarifies the current uncertainty in the common law.</p> <p>2.1 However, in the context of sexual strangulation and other oxygen restricting practices, the defence of consent is not the primary issue and reform needs to focus instead on the creation of strangulation offences. The enactment of bespoke offences would clarify the scope of consent or, as is recommended here (see section 4), obviate the need to raise consent as a defence at all.</p>

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	<p>2.2 The Domestic Abuse Bill in England and Wales, Clause 65, appears to put the common law position on a statutory basis. However, the common law's threshold for valid consent to personal harm, other than in the excepted categories, is at the level of "actual bodily harm" and not "serious harm". While the Domestic Abuse Bill in England and Wales expressly includes the occasioning of actual bodily harm, (Offences Against the Person Act 1861, s. 47) as a relevant offence, the provision itself refers to "Consent to serious harm for sexual gratification". This will perpetuate confusion in this area of law in that its title infers that consent is valid to a more serious level of harm in the context of sexual gratification than it is in the context of other offences of violence, which, according to the same provision, (3), it is not. The provision is therefore doubly confusing in that it seemingly conflates actual bodily harm (s. 47) with the offences of grievous/ really serious harm (Offences Against the Person Act 1861, ss. 20 and 18) whereas these are distinct offences. To legislate in the same terms as the Domestic Abuse Bill in England and Wales, ie "Consent to serious harm for sexual gratification" would replicate the issues identified and fail to provide the desired legal certainty.</p> <p>2.3 The law on consent would still be complex and confusing if the meaning of consent to harm was codified in statute. There are still issues of ambiguity with the excepted categories and the difference between consent to harm and consent in other contexts. The law of consent needs reform.</p> <p>2.4 Notwithstanding the desirability of a clear statement of law in relation to the role of consent in the offences against the person, the approach taken in the Domestic Abuse Bill in England and Wales is fundamentally flawed in its identification of the legal problem, namely consent. Placing the common law on a statutory footing will have no effect on the outcome of future trials and whether defendants are found guilty of murder or manslaughter, or are acquitted, because in most cases consent is not raised as a defence but as an assertion that the defendant lacked the mens rea for murder or for the base offence of assault/ battery in unlawful and dangerous act manslaughter. Reform needs to focus on the potential offence(s) committed (Alison Cronin, Jamie Fletcher and Samuel Walker, 'Homicide and violence in sexual activity, moving from offence to defence' blog for Sexual Trauma and Recovery Service (STARS), Dorset, 22nd June 2020 at https://www.starsdorset.org/blog/homicide-and-violence-in-sexual-activity-moving-from-defence-to-offence) and clarify the role of consent to harm in the context of rough sex as a subsidiary point.</p> <p>2.5 The current approach in England and Wales, expressed in the Domestic Abuse Bill, fails to acknowledge that a) sexual relationships occur outside the statutory definition of "domestic" relationships and that b) joint consensual engagement in a</p>

Response ID	Answer
	<p>dangerous activity does not necessarily amount to “domestic abuse”. Whatever statutory provision is enacted regarding the role of consent to harm, generally or in the specific context of “rough sex”, it should not be contained in legislation dealing exclusively with domestic abuse.</p> <p>2.5.1 In 1995, the Law Commission of England and Wales considered the law of consent in the criminal law and received a “wealth of evidence on consultation from people of both sexes who indulged in sado-masochistic activities to enhance sexual pleasure”. It revealed a rapidly growing number of participants in Britain, showing that many thousands of people privately engaged in sado-masochistic practices, providing detailed insight into what was recognised as an increasingly mainstream practice. Contrary to the perception forms of rough sex are confined to relationships defined by domestic abuse, many respondents reported that participants typically swap the active and passive roles within a single encounter and that both roles provide sexual arousal (Law Commission, Consultation Paper no 139 on Consent in the Criminal Law, HMSO 1995, Part X, pp. 130-144).</p> <p>2.5.2 Since 1995 sado-masochism, or “rough sex”, has become increasingly normalized in the media. It is no longer confined to niche pornography (https://www.theguardian.com/commentisfree/2018/may/13/choking-women-me-too-breath-play >accessed Jan 7, 2021) and there is a proliferation of other publications with information on “choking” such as that found at the Healthline website (https://www.healthline.com/health/healthy-sex/erotic-asphyxiation >accessed Jan 1, 2021). It is discussed in popular women’s and men’s magazines, with headlines such as “Choking as a Sex Move – Is it for You?, It may sound hardcore, but a good amount of WH [Women’s Health] readers admit to loving it” (https://www.womenshealthmag.com/sex-and-love/a19938109/choking-during-sex/ > accessed Jan 1, 2021). The NHS has also contributed with reported findings such as those from a 2013 Dutch study in a publication entitled “Fans of bondage and S&M report better mental health” (https://www.nhs.uk/news/mental-health/fans-of-bondage-and-sm-report-better-mental-health/ >accessed Dec 31. 2020).</p> <p>2.5.3 To categorize “strangulation” as a form of domestic abuse per se is therefore open to objection on a number of grounds, not least libertarian, and it would also serve as an affront to a large section of the public who engage in various forms of rough sex.</p>
ANON-W4AD-VNZ5-3	<p>Yes and no.</p> <p>We agree that it would be valuable to codify the case law on this matter relating to serious harm in the context of sexual gratification. The utility of such an approach was aptly</p>

Response ID	Answer
	<p>summarised by Laura Farris MP in the Commons debate on the GB Domestic Abuse Bill in July. She noted:</p> <p>“R v. Brown, the authority for this issue, which is nearly 30 years old, does not cover consent in all forms of sexual harm. There are other cases—contradictory cases—that can be applied, and we saw that pretty starkly in the case of Natalie Connolly, where R v. Brown was applied, but only in part. When it came to her internal injuries—the ones that were the most savagely inflicted, the most serious and the most proximate cause of death—the court applied a completely different case and concluded that the violence in that context was lawful. That could not happen under new clause 20, because it rules out the possibility of consenting to any serious harm for sexual gratification, and the inconsistency goes.”</p> <p>It may also be valuable to have a statutory basis for consent not being a defence, given that the R. v Brown case and judgment have attracted criticism in the past.</p>
ANON-W4AD-VNZZ-8	<p>This approach will not achieve its intended purpose. We can do better than England and Wales, as we have done on paper for abortion legislation.</p>
ANON-W4AD-VNT9-1	<p>The DAB in E&W is not sufficient, we believe that we need to go further on this than England & Wales. We call for a bespoke piece of legislation to create a specific sexual offence that captures injury or death resulting from negligent and/or reckless sexual activity. This offence would succeed in capturing those cases where there is no evidence of intention to kill but that the recklessness was such that a responsible person should know that it could well result in serious injury or death. We expect new legislation introduced should be fit for purpose, which the current proposal is not.</p>
ANON-W4AD-VNZ8-6	<p>We don't think that the approach in England and Wales goes far enough. It simply codifies the existing caselaw which already ascertains that no one can consent to being killed. This existing case law has not proved to be sufficient in preventing the use of the 'rough sex' defence in trying to claim an accidental death and therefore we are concerned that the new law in England and Wales will not be effective at putting a stop to these claims. We think the legal framework in this area will only be effective if it provides a definition of these violent sexual offences and outlaws them; something we cover in more detail in question 4.</p>
ANON-W4AD-VNZB-G	<p>Existing case law already means one cannot consent to their own death. We do not want to simply mirror the England and Wales Domestic Abuse Bill, but to create something better. Additionally, sex does not only take place in established domestic relationships, therefore domestic abuse is not the correct strand of law for these crimes to be dealt with. As outlined in our answer to question 1, existing case law already means that one cannot consent to their own death. We</p>

Response ID	Answer
	<p>are asking for a novel approach in Northern Ireland rather than mirroring the law in England and Wales. Instead of solidifying R v Brown and other caselaw into legislation, we are calling for a new sexual offence to be created.</p> <p>We also note the Section 5 duty to report which exists in Northern Ireland, which has seen medical practitioners report people using abortion pills before decriminalisation. We worry that this duty to report would be a barrier for people who may need to seek medical attention should the ability to consent to any harm for sexual gratification be criminalised in law.</p>
1. ANON-W4AD-VNZIP-X	<p>Existing case law against the person already means that no one can consent to their own death.</p> <p>We have an opportunity to strengthen the law further than has been formalised in England and Wales using R v Brown, we need to ensure that defendants do not find a way to claim that they do not satisfy the definition of the offence they have been charged with.</p> <p>Cronin et al argue that, “to effect any reform, and not waste this golden opportunity, campaigners must therefore shift their focus from the defence of consent to the issue of the substantive offence. If campaigners continue to talk of preventing a defence, they will fail to address the real problem, the lack of an adequate offence with which to charge defendants in these circumstances.</p>

Question 2(b):

If yes to 2(a) do you think the offences to which the amendment applies are appropriate.

Please give reasons for your response.

There were 94 responses to this part of the question.

Option	Total	Percent
Yes	29	30.85%
No	21	22.34%
Not Applicable	7	7.45%
Comments	52	

Response ID	Answer
ANON-W4AD-VN4P-R	Yes, all amendments and exclusions are in line with current UK law.
ANON-W4AD-VN56-Y	Any strangulation, beating, choking or suffocation needs to be included.
ANON-W4AD-VN7C-E	Yes
ANON-W4AD-VN7R-W	Yes but these could perhaps be listed clearer e.g. in the instance of suffocation or attempted suffocation, the victim may not have visible GBH but could as a result suffer severe mental health problems.
ANON-W4AD-VN3E-C	<p>Yes - the offences in the amendment are appropriate. However we also believe it should include a clause regarding serious harm as a result of the infection with a sexually transmitted infection in the course of sexual activity.</p> <p>The legislation should also take into account the psychological impact of the crime.</p>
ANON-W4AD-VNW6-1	Yes. The DoJ should also consider the impact of related work on non fatal strangulation. This assault is too commonly charged as Common Assault in Northern Ireland, and so would not be covered under these proposals to outlaw consent as a defence to serious harm for sexual gratification. Strangulation is present in two thirds of the UK homicides claimed to be "rough sex" and very common in non fatal assaults where a consent defence is attempted. Non fatal strangulation must be covered by these proposals.
ANON-W4AD-VN32-S	Yes, the relevant offences to which the amendment should apply are sections 18, 20 and 47 of the Offence Against the Person Act 1861.
ANON-W4AD-VNWXG-J	yes - the law must support victims especially when they are unable to speak for themselves

Response ID	Answer
ANON-W4AD-VNWC-E	<p>The case law would indicate that injuries sustained at AOABH level and above cannot be consented to. It therefore appears appropriate that the offences included within the amendment should reflect that position.</p> <p>Whilst it has been argued by some that the starting point should be at a higher level of harm and that the individual's rights should not be impinged, as a civilised society we have an obligation to protect those individuals from serious harm.</p>
ANON-W4AD-VNW9-4	It should also include strangulation, particularly given the number of times such instance have been seen here in recent years
ANON-W4AD-VNWN-S	Yes, I feel they are.
ANON-W4AD-VNWS-X	Yes
ANON-W4AD-VNKW-P	This will be a matter for the legislature but generally it is felt that it may be appropriate to restrict its application to more serious cases so as to capture intentional rather than unintentional offences.
ANON-W4AD-VNKY-R	N/A
ANON-W4AD-VNKH-7	More than not.
ANON-W4AD-VNBZ-G	<p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence.</p> <p>In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VNBC-S	Yes because they apply to a substantial amount of people.
ANON-W4AD-VNBD-T	No, special attention needs to be paid to strangulation, which is increasingly common, simulated/actual drowning, etc.
ANON-W4AD-VNBK-1	These cause serious harm so the amendment is appropriate
ANON-W4AD-VNBS-9	see above
ANON-W4AD-VNCY-G	The offences need to be reviewed in light of constituent feedback and the feedback from support groups of serious sexual crime. The offence list should protect everyone and should vastly cover

Response ID	Answer
	constituents. More information needs to be provided to cover everyone.
ANON-W4AD-VNPP-M	No. The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'.
ANON-W4AD-VNCY-G	Yes
ANON-W4AD-VNC5-C	Not sure
ANON-W4AD-VNPN-J	Yes I think they are appropriate these actions should of course be referred deeper. Education available of men think that strangling their partner to death is simply rough sex, rehabilitation from these behaviours and women should feel save with their partners and in my opinion these women could not and would not have felt safe that their partners were happy to exhibit these behaviours on them. Men need to be held accountable for their actions and in the current legislation rough sex is simply being used as a way out of the legal process.
ANON-W4AD-VNCX-F	Yes it should never be the victims fault.
ANON-W4AD-VNCH-Y	<p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, like this Lisburn man in 2019, this Belfast man in 2020, this Belfast man in 2020, and this Co Antrim man in 2020, then consent will be able to be used as a defence to these charges.</p> <p>We agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in our research – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VN66-Z	Yes.
ANON-W4AD-VNC2-9	No. Strangulation should be more closely considered. Any information or research into BDSM where this practice may feature

Response ID	Answer
	will show that this can be done safely and so anything beyond this, occasioning serious injury or death, is inexcusable and so legislation needs to reflect this.
ANON-W4AD-VN6X-2	Yes
ANON-W4AD-VNK9-R	No, it should apply to strangulation which is seen as common assault and not what it truly is : grievous bodily harm !
ANON-W4AD-VNDA-S	The amendment, while not perfect, is preferable and better at protecting sexually active people than the current one upheld in Northern Ireland
ANON-W4AD-VND1-9	I think it is a start but the list could go on.
ANON-W4AD-VN63-W	<p>The proposed amendment should also include strangulation, even if non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. Strangulation is being normalised as a sexual fetish by simply calling it 'breath play'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence.</p> <p>I agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in research provided by We Can't Consent To This, all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VNDP	Not sure I understand this part. Sorry.
ANON-W4AD-VNDN-6	It is appropriate to include all potential offences.
ANON-W4AD-VNDK-3	No, this amendment should also conclude offences relating to strangulation, as well as any new offence as part of the DoJ's review of law and practice on charging of non fatal strangulation.
ANON-W4AD-VND2-A	Yes
ANON-W4AD-VNSA-8	Yes
ANON-W4AD-VND4-C	N/A
ANON-W4AD-VNS7-X	They should be held to the same standard as any abuser and murderer.
ANON-W4AD-VNS5-V	<p>NO.</p> <p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough</p>

Response ID	Answer
	<p>sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, like this Lisburn man in 2019, this Belfast man in 2020, this Belfast man in 2020, and this Co Antrim man in 2020, then consent will be able to be used as a defence to these charges.</p> <p>We agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in our research – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VNSD-B	No. Strangulation should be addressed and the perpetrator punished appropriately so as to act as a deterrent to other potential attacks.
ANON-W4AD-VNS3-T	Sexual violence must be taken into consideration within limits. Just because women may like harsh activities in a sexual way it does not give partners the right to abuse these consents
ANON-W4AD-VNST-U	The amendment should apply to fatal and non-fatal assaults alike. Too often, these behaviours escalate over time so should be deterred on every level.
ANON-W4AD-VN8A-D	No. Women need protection from offences relating to non fatal strangulation, women shouldn't have to die for men to be properly punished for their actions. It is essential that non fatal strangulation is properly charged without the ability to use "rough sex" as a defense in order to protect women.
ANON-W4AD-VN8Q-W	Consent to serious harm is too often used as an excuse for violent men.
ANON-W4AD-VN8X-4	I endorse and repeat the comments of the organisation 'We Can't Consent to This'.
ANON-W4AD-VN8D-G	The amendment covers the various ways in which rough sex can lead to serious harm and even death.
ANON-W4AD-VN8N-T	<p>No. Strangulation must be included. It is done in most of homicides and around half of non-fatal assaults which are claimed to be 'rough sex'.</p> <p>Offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In</p>

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ANON-W4AD-VN8V-2	Yes, it
ANON-W4AD-VNVW-1	No. All strangulation offences should be included
ANON-W4AD-VNV3-W	The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice).
ANON-W4AD-VNYA-E	I do - nobody can consent to serious injury.
ANON-W4AD-VNYM-T	No. Perpetrators see this as a get out clause, it has worked in the past and so they will continue to use it.
ANON-W4AD-VNYS-Z	No
ANON-W4AD-VNUZ-3	The amendment should also include offences for strangulation.
ANON-W4AD-VNUF-F	No - strangulation should also be included
ANON-W4AD-VNU9-2	<p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, like this Lisburn man in 2019, this Belfast man in 2020, this Belfast man in 2020, and this Co Antrim man in 2020, then consent will be able to be used as a defence to these charges.</p> <p>We agree that the offences proposed should have this amendment applied (Actual Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to</p>

Response ID	Answer
	<p>criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that 'sex' is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>YES.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge. Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in our research – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VNTW-Y	<p>The amendment should apply to all related offences - there shouldn't be any loopholes allowing partners to get off with seriously hurting their partner.</p>
ANON-W4AD-VNTM-N	<p>N/a</p>
ANON-W4AD-VNTX-Z	<p>No. The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, like this Lisburn man in 2019, this Belfast man in 2020, this Belfast man in 2020, and this Co Antrim man in 2020, then consent will be able to be used as a defence to these charges.</p> <p>We agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in our research – all defendants</p>

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	<p>were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VNTR-T	<p>No.</p> <p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault then consent will be able to be used as a defence to these charges.</p> <p>We agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in the research by 'We Cant Consent To This' – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VNTN-P	<p>No.</p> <p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, like this Lisburn man in 2019, this Belfast man in 2020, this Belfast man in 2020, and this Co Antrim man in 2020, then consent will be able to be used as a defence to these charges.</p> <p>We agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and</p>

Response ID	Answer
	kicking. Of 115 UK non-fatal assaults in our research – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.
ANON-W4AD-VNT3-U	<p>No.</p> <p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault then consent will be able to be used as a defence to these charges.</p> <p>I agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in the research by 'We Cant Consent To This' – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VNTK-K	Yes I do. As a victim of rape, GBH and ABH before these laws have been changed I know all too well that the rough sex defence works for these perpetrators
ANON-W4AD-VNTS-U	Yes
ANON-W4AD-VNS2-S	<p>No.</p> <p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, like this Lisburn man in 2019, this Belfast man in 2020, this Belfast man in 2020, and this Co Antrim man in 2020, then consent will be able to be used as a defence to these charges.</p> <p>We agree that the offences proposed should have this amendment</p>

Response ID	Answer
	<p>applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in our research – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VN97-4	<p>NO.</p> <p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, like this Lisburn man in 2019, this Belfast man in 2020, this Belfast man in 2020, and this Co Antrim man in 2020, then consent will be able to be used as a defence to these charges.</p> <p>We agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in our research – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VN9Y-6	Yes
ANON-W4AD-VNTD-C	<p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. As I mentioned in a previous answer, surveys and research have shown that women are increasingly experiencing men attempting to carry out strangulation during sex. Strangulation and other forms of violently asphyxiating women have become increasingly prevalent in pornography and adult media.</p> <p>Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or</p>

Response ID	Answer
	<p>those being considered by the Department of Justice). If non-fatal strangulation is routinely charged as common assault, then perpetrators will be able to use consent as a defence to these charges, as has happened in at least four cases in NI since 2019.</p> <p>The offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent acts including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in research carried out by women's groups – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VN9B-F	<p>No. The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, like this Lisburn man in 2019, this Belfast man in 2020, this Belfast man in 2020, and this Co Antrim man in 2020, then consent will be able to be used as a defence to these charges.</p> <p>We agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in our research – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VN9F-K	<p>Yes, as we need to have protections in place for the sake of the people affected by this without interfering or judging other people's sexual conduct.</p>
ANON-W4AD-VN91-X	<p>Yes however they do not include rape, which is a both serious and relevant. That is, it should consider that because consent has been given for rough sex previously, does not mean consent is given to future sex, whether severe physical harm is caused or not. As outlined in this BBC article: https://www.bbc.co.uk/bbcthree/article/e3662eca-ded4-4d31-b728-1553cef7eae8 police are not prosecuting rape cases due to the</p>

Response ID	Answer
	rough sex defence possibly being used, which is shockingly unfair to victims.
ANON-W4AD-VN9C-G	No. Non-fatal strangulation must be specifically included. This is an incredibly dangerous activity and is becoming a common part of some people's sexual interests as a result of its appearance in porn. It needs to be criminalised so that victims have recourse and the public have clarity.
ANON-W4AD-VN9T-1	It needs to include strangulation. I understand there is separate legislation being reviewed for strangulation, but the law needs to be watertight on this, for all the reasons above.
ANON-W4AD-VN9X-5	<p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault.</p> <p>I agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in research carried out by https://wecantconsenttothis.uk – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VN93-Z	Yes
ANON-W4AD-VN9K-R	No - strangulation needs to be in there
ANON-W4AD-VN94-1	<p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, like this Lisburn man in 2019, this Belfast man in 2020, this Belfast man in 2020, and this Co Antrim man in 2020, then consent will be able to be used as a defence to these charges.</p>

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	<p>We agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in our research – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p>
ANON-W4AD-VNZA-F	<p>DoJ is reviewing the law on non-fatal strangulation, domestic abuse survivors of non-fatal strangulation are 7 times more likely to be killed by their partner or ex-partner</p>
ANON-W4AD-VN92-Y	N/A
ANON-W4AD-VNZ5-3	<p>Any proposed legislation must take into consideration offences relating to strangulation. The campaign group “We Cannot Consent to This” found that strangulation is a feature of most homicides and over half of non-fatal assaults in which “rough sex” has been used as a defence.</p> <p>We are aware that the Department of Justice has made a commitment to bring forward legislation on fatal and non-fatal strangulation and would encourage the department to consider this as another opportunity to emphasise that “rough sex” is not a defence for harm caused.</p> <p>We would also note that “We Cannot Consent to This” identified that of 115 non-fatal assault charges in their research, all perpetrators were male and 114 victims were female. All women in these non-fatal assault cases said they did not consent to the violence.</p> <p>While we understand that legislation in Northern Ireland is gender neutral, we would encourage the department to consider the gendered nature of this crime in any subsequent guidance produced to supplement an offence.</p>
ANON-W4AD-VNZY-7	<p>If the law were to be reformed in this way:</p> <p>2.6 Yes, if the law on consent to harm were to be codified ss 18, 20 and 47 Offences Against the Person Act 1861 are result crimes that address all actual and grievous bodily harms and, premised on constructive liability as well as intended grievous injury, they are comprehensive.</p> <p>2.6.1 Although there have been recommendations to raise the threshold of harm that cannot be validly consented to, for example the Law Commission’s suggestion of “serious disabling injury” (Law Commission, Consultation Paper no 139 on Consent in the Criminal Law, HMSO 1995, Part II, para 2.3-2.4), the proposal is not without criticism for its incoherence with the current offences against the</p>

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	<p>person (David C Ormerod and MJ Gunn, 'Second Law Commission consultation paper on consent: (2) consent – a second bash' [1996] Criminal Law Review 694.</p> <p>2.6.2 However, if the threshold of valid consent to harm were raised to a higher level of really serious/ seriously disabling injury, the defendant may be convicted of murder if, in accordance with that consent, he caused an injury that resulted in an unintended or unforeseen death. To alter the offences to which consent would apply would require a wholesale review of the law of non-fatal and fatal offences against the person.</p> <p>2.7 While the current level of harm that can be consented to, in the excepted activities, is set at an extremely low level, actual bodily harm, it neatly avoids many of the problematic issues associated with consent in other areas of law, for example those raised in the context of consent in the sex offences, such as the victim's capacity to consent, vulnerable victims, the effect of intoxication, mistake, duress etc.</p> <p>2.8 Given that most incidents of non-fatal strangulation do need leave external visible injuries, the law should be expressly extended to include trauma injuries may not currently be recognised as "actual bodily harm".</p> <p>2.9 Clarification of the law of consent and its scope does not obviate the need to enact bespoke strangulation offences, fatal and non-fatal for the other reasons outlined elsewhere in this response.</p>
ANON-W4AD-VNZ5-3	Yes, but see question 2(a) for comments on potential additional provisions.
ANON-W4AD-VNZZ-8	N/A
ANON-W4AD-VNZ8-6	N/A
ANON-W4AD-VNZ1-Y	Yes
ANON-W4AD-VNZP-X	N/A
ANON-W4AD-VNB2-8	<p>The proposed amendment should also include offences relating to strangulation, including any new offence considered as part of the DoJ's review of law and practice on charging of non fatal strangulation. Strangulation is a feature of most of the homicides and around half of non-fatal assaults which are claimed to be 'rough sex'. It is vital that this serious assault is charged appropriately, and not charged as a minor assault where consent can be used in a defence. The offences to which the amendment applies do not include common assault, nor strangulation offences (either those in current law, or those being considered by the Department of Justice). If non fatal strangulation is routinely charged as Common Assault, then consent will be able to be used as a defence to these charges. Below are a sample of strangulation assaults which were prosecuted as common assault:</p> <p>Lisburn, 2019: https://amp.belfasttelegraph.co.uk/news/northern-ireland/woman-was-attacked-by-her-partner-38783661.html</p>

Response ID	Answer
	<p>Belfast, 2020: https://www.irishnews.com/news/northernirelandnews/2020/05/30/news/man-ried-to-smother-and-choke-his-partner-court-told-1956794/</p> <p>Belfast, 2020: https://www.belfasttelegraph.co.uk/news/northern-ireland/prison-for-belfast-thug-kelly-who-tried-to-strangle-partner-39258293.html</p> <p>Co Antrim, 2020: https://amp.belfasttelegraph.co.uk/news/northern-ireland/man-who-punched-and-tried-to-strangle-partner-jailed-39019538.html</p>
	<p>We otherwise agree that the offences proposed should have this amendment applied (Actual Bodily Harm, Grievous Bodily Harm and wounding with intent to cause GBH). In Northern Ireland rough sex claims are used in defence to non-fatal assaults which include very serious violence – including suffocation and the breaking of a woman’s eye socket. In the UK as a whole, consent to violence is claimed in violent including waterboarding, wounding, electrocution, strangulation and asphyxiation, slapping, beating, punching and kicking. Of 115 UK non-fatal assaults in our research – all defendants were male, and 114 of the victims were female. All women in these non fatal assault cases said they did not consent to the violence.</p> <p>In Northern Ireland, 'rough sex' claims are used in defence even where there is no prior relationship between the accused and the victim. If the Domestic Abuse and Civil Proceedings Bill is amended to prohibit consent to serious harm, it would only apply where the parties had a personal connection. It is vital that all victims are protected by these proposals - this could be achieved by a widening of scope of the bill for the consent to serious harm clause. At Westminster, the Domestic Abuse bill scope was extended "to make provision about circumstances in which consent to the infliction of harm is not a defence in proceedings for certain violent offences" to resolve this issue [1].</p> <p>Policy makers should consider whether the amendment (or explanatory notes) should make specific mention of fatal offences (murder, manslaughter). The England and Wales approach is that the 'no consent to sexual gratification' clause applies to homicide charges 'by extension' [2]. We note there has been occasional public confusion as to whether the England and Wales proposal applies to homicide.</p> <p>References:</p> <p>[1] see page 1 of Domestic Abuse bill scope beginning: "A bill to..." https://publications.parliament.uk/pa/bills/lbill/58-01/124/5801124.pdf</p> <p>[2] UK Home Office Policy paper: Consent to serious harm for sexual gratification not a defence Updated 17 August 2020 https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/consent-to-serious-harm-for-sexual-gratification-not-a-defence</p>

Question 3:

Do you consider that a programme of education is needed to:

- raise awareness of the dangers of rough sex, and the meaning of consent; and
- raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?

There were 162 responses to this part of the question.

Option	Total	Percent
Yes	161	98.17%
No	1	0.61%
Not Answered	2	1.22%

Please give reasons for your response.

There were 105 responses to this part of the question.

Response ID	Answer
ANON-W4AD-VN4P-R	<p>Increasing availability and exposure to violent online sexual material is highly influential in young people's perception of sexual boundaries. Without proper education on the importance of consent and the realities of sex, young people can often believe that such acts are 'expected'. This means their consent is ill-informed. If those who reach out are ignored or forgotten by the criminal justice system, it encourages others to believe that their complaints will also be ignored. Therefore, education and criminal consequence are important in shaping a society where all consenting adults can engage appropriately in safe sexual behaviours of their choosing.</p>
ANON-W4AD-VN5V-Y	<p>Sexual consent is poorly understood by the public, police and the judiciary, even more so when BDSM activities are included. Media representations (eg 50 shades) that model very poor or missing consent and negotiation practices muddy the waters further. A person can only consent when that consent is informed - and I think this should be a central thread of investigation in cases where the 'rough sex' defence is floated. Did both parties fully understand the risks of the activities? Had they educated themselves on how to do these practices safely? Had they been to BDSM classes, read anatomy & physiology texts, taken first aid courses? Do they 'play' sober? (spoiler alert - all safe players play sober) Or had they just watched some porn and decide to give spanking and choking a go? (to my mind the latter would not constitute a legitimate defence)</p> <p>yes, this adds to the burden of evidence on all involved and could lead to lengthier cases, but I believe it would provide a level of differentiation between those unsafe abusers and predators who coerce or surprise partners with sexual violence and people who are responsible in their approach.</p> <p>In cases where even the most cautious approach results in tragedy then there must be some recourse under the law for the victim(victim's family) but retaining the principle of the defence allows for differing levels of response.</p>

Response ID	Answer
ANON-W4AD-VN7C-E	Legislation without education can only enable us to react to incidents after they have occurred. Our collective drive must be to educate potential victims, potential offenders and society more broadly, to enable us to prevent incidents occurring in the first place.
ANON-W4AD-VN7R-W	<p>I believe this is necessary, not only due to 50 shades of grey but other multimedia on YouTube, tiktok , TV such as the Fall etc. which shows behavior like this without full awareness and understanding of the warning and consequences involved.</p> <p>An awareness campaign should be brave and as such should be broadcast on TV, social media, news, billboards and radio. This issue can effect anyone and so the campaign should be loud and out there for everyone to see and hear.</p>
ANON-W4AD-VN3E-C	<p>Yes we would support an education programme which raises awareness of the dangers of rough sex and the meaning of consent. We would further support raising awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim make a complaint. For example an individual who has suffered a sexually traumatic event in the past may re-create this or they may put themselves in harmful situations as a result of that trauma as they feel a need for the 'high' that this gives them.</p> <p>Awareness raising would encourage more victims to come forward as there may currently be an issue where they feel shame, guilt or embarrassment and therefore may not report the crime.</p>
ANON-W4AD-VN32-S	<p>Change in legislation in itself will not address the problem. There needs to be a parallel programme of public education.</p> <p>Trial judges, prosecutors and defence solicitors should be required to participate in training re myths surrounding sexual violence and rape (Gillen Review). Trial Judges should also provide directions to juries in this area.</p>
ANON-W4AD-VN7G-J	In these days of readily accessible porn via mobile phones and our devices young people are accessing material which does not depict what is acceptable sexual behaviour and they have no idea about the potential harm inherent in this practice.
ANON-W4AD-VN7C-E	Education on this matter should be encouraged and welcomed.
ANON-W4AD-VN7G-4	It has become evident in recent years that education around many areas of sexual activity is needed in NI and particularly around any areas involving consent
ANON-W4AD-VN7N-S	Because young people are being exposed to rough, consensual sex and the degradation of women at early ages due to pornography, way before they are educated about consensual and healthy sexual relationships. As young people learn by what they see, this will undoubtedly create expectations of rough, non-consensual sexual relationships. This endangers the health and well-being of young people. The fact that levels of sexual assault are very high, whilst understanding on consent is low in NI (as suggested by SCORE and work by Common Youth etc), this has the propensity to wreak havoc

Response ID	Answer
	on young women, causing later issues, including mental health issues and their morbidities.
ANON-W4AD-VNWS-X	Absolutely. It is so important to shine a light on significant changes to the law, which are not generally discussed in the wider public sphere. Something that has been in the past taboo to talk about is becoming more and more important and significant importance should be placed on the perpetrator, rather than the victim, to change their actions.
ANON-W4AD-VNKW-P	Awareness raising for the general public is always a prudent course to take and would be supported by the Society. In addition, it would be of value within the criminal justice system to have a programme of education on this issue so that complainants may be sensitively dealt with when they come forward.
ANON-W4AD-VNKY-R	Education is key to this issue. As was stated in the document that accompanied the consultation, creating an offense is only dealing with the results of the issues, not preventing them. For us to tackle this issue, we need to approach it with preventative measures like comprehensive RSE in all school curriculums (recommended by CEDAW) that deal with issues like consent and safe sex. Practitioners should also receive training.
ANON-W4AD-VNKH-7	<p>Definitely. With films & pornography kids nowadays grow up thinking rough sex is acceptable & it's become normalised.</p> <p>In a macho world, males get 'lad' points for telling stories of how, 'she got what she deserved,' & 'she was asking for it.' Then high fives all round & pats on the back followed by free pints from their mates.</p>
ANON-W4AD-VNKK-A	Education is always the best way to ensure change
ANON-W4AD-VNK4-K	It is clear that men and women alike are not clear in terms of what kind of sexual behaviours require consent - awareness building is needed.
ANON-W4AD-VNBZ-G	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.</p>
ANON-W4AD-VNBP-6	Sexual education is not to the standard that it needs to be, especially surrounding consent. At only 25 years of age, I can think off the top of my head of numerous instances of sexual assault towards myself and friends over the last 10 years. Many of those instances could be described as "grey areas" with "nice guys". Although the truth is that there are no grey areas when it comes to consent and appropriate

Response ID	Answer
	and continuous education from a young age would teach that both to potential victims and perpetrators of assault.
ANON-W4AD-VNBX-E	There needs to be a public campaign, particularly among young people. The proliferation of pornography that often shows unrealistic ideas of sex, featuring rape themes and coercion as normal mean that there needs to be a clear counter balance. This education needs to start at school.
ANON-W4AD-VNBC-S	This needs to be an open discussion in senior school and college to raise awareness.
ANON-W4AD-VNBD-T	Because of the demands of violent men, and the widespread access to violent porn, it's important to let girls and women know that this is not something they should be expected to participate in, that it's not good and should not be considered normal, and they should be able to know that if they report it to the police, it will be taken seriously.
ANON-W4AD-VNBT-A	Far too often males think that women enjoy rough sex due to what they have seen in films/pornography and try it out before asking for consent. This needs to stop. Consent should always be asked when trying something new!
ANON-W4AD-VNBK-1	Education is vital around sex in general, especially in NI where it seems to be a taboo subject. Talking about sex is healthy and if it was normalised into education then people will know better
ANON-W4AD-VNBS-9	As a society we have grown complacent about rough sex and girls are being groomed to think it is normal. IT IS NOT NORMAL. Girls and boys, all young people, need to know that this is not a healthy way to have sex.x
ANON-W4AD-VNPY-W	<p>The issue with a lot of sex based crime is a lack of education from a young age. Consent is a concept a child can understand - do you want to allow X to play with your blocks Y? If consent is understood from a young age then the building blocks are there to educate further as the child gets older.</p> <p>Most people learn about sex from porn forums which glorify dehumanising the sexual experience for the pleasure of viewers. Sex won't always be like porn and expectations of young people need to be managed and education is key to this.</p>
ANON-W4AD-VNPP-M	<p>Sex education and relationships need to catch up with current trends, especially the pressure that young girls and women face in regards to 'rough sex'. So many women have had to deal with violence in sex, of which they did not consent too.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge</p>

Response ID	Answer
ANON-W4AD-VNPQ-N	Overall sex education is lacking & needs to be completely overhauled. Consent is not taught as standard.
ANON-W4AD-VNC5-C	With the widespread use of porn this idea of rough sex is being hailed as the norm. It is dangerous and so a re education in what sex is and how dangerous it is should be had to counter act the 'education' through porn
ANON-W4AD-VNPN-J	Yes there needs to be education for police, doctors, and the person who committed the crime. Women are afraid to admit that they have been abused by a partner, will the police believe me and often the ball is in the mans court. Women are afraid of the stigma they may face, the persecution, the man spreading rumours about the woman and who these professionals will treat the woman if she does decide to admit abuse, sexual abuse is happening. It should never get to the stage that a woman is murdered. Women, men and kids need to be educated properly on sex, consent and treating your partner with respect and dignity.
ANON-W4AD-VNCX-F	There is not enough education.
ANON-W4AD-VNCH-Y	Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that 'sex' is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.
ANON-W4AD-VN66-Z	Heavier weight needs to be placed on many things in regards to sexual education in Northern Ireland. In my opinion these include the following: <ul style="list-style-type: none"> - Consent (however this needs to come from parents as well as school) - Attitude towards sexual partners especially women in heterosexual relationships. Men need to be instructed and told that their partners have value as a lack of respect for a victim and a desire to overpower them is directly a cause of rape. - Kink based sex, that is to say how to safely practice it and a breakdown of the taboos surrounding it. Many people end up in abusive sexual relationships as a result of accepting what porn tells us about kink based relationships eg BDSM. - Porn, with less of a focus on not watching it all and a higher value placed on respecting sex workers, consuming porn from ethical sources and paying sex workers for their labour. - Same sex relationships and how to navigate and practice safe sex within these
ANON-W4AD-VNC2-9	Legislation is not enough. Education is required in schools, universities and in the legal sector itself.
ANON-W4AD-VN6Y-3	Sex education can be woefully inadequate and more and more our young people are 'learning' about sex from questionable Internet sources. To be able to have open and frank discussions within a safe

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	environment may just save a life or make an educated decision before attempting to try something more dangerous.
ANON-W4AD-VNK9-R	<p>Women need to be taught that the pressures culture and society places on them are inappropriate. Men need to be taught that violence against women is wrong and will land you in jail !</p> <p>Porn should not be educating our children about relationships and intimacy - we should!!</p>
ANON-W4AD-VNDA-S	Yes, however when education people about sex, it is important to not imply that rough sex leads to physical harm, as it shames people away from enjoying what they should, and also enables people who want power and control to believe they are allowed to harm their partners just because they're having 'rough sex'
ANON-W4AD-VND1-9	100% yes
ANON-W4AD-VN63-W	<p>Sex education already covers what constitutes consent but more can be done here. The effect of porn and how sexual gratification becomes harder to achieve the more porn is viewed so more and more extreme porn is used and it is addictive.</p> <p>This needs to be handled extremely sensitively when teaching secondary aged children. Showing porn to under 18s is a criminal offence and talking about porn, basically making children aware that porn exists, already encourages them to watch as children are naturally curious.</p> <p>In other laws online porn should be further restricted, following recent action by Pornhub and how complicit this company have been in the abuse and murders of women (and in the further sexual abuse of children).</p>
ANON-W4AD-VNDB-T	The lack of education on anything sexual is part of the problem. Please do more to educate future generations.
ANON-W4AD-VNDP-8	Absolutely. The more this is talked about the less likely it is for young people to forget that consent is essential. There needs to be more done to protect victims in the justice system instead of making the whole process easier for the offender. It is also important to high light the difference between just gaining consent from a person to have sexual intercourse with them but if you wish to do something different to a person you must also get their consent for that too. It should not just be assumed.
ANON-W4AD-VND3-B	I believe that if the individual has different sexual history or perhaps works within the sex industry they are viewed as somehow deserving of what has happened to them.
ANON-W4AD-VNDN-6	Especially aimed at men and women. Men need to be targeted and to see they have a role to play and are responsible for their behaviour.
ANON-W4AD-VNDK-3	There is a huge knowledge gap around sex in Northern Ireland and also a cultural blind spot when understanding the pressure that particularly women and girls feel to have violence be a part of their sex lives.
ANON-W4AD-VN6Q-U	If the information given is given early and at an accessible level then it would hopefully prevent this from happening, but any such programme needs to be proactive
ANON-W4AD-VND2-A	Consent was not ever discussed in swxup education for me and it should be the very first lesson

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ANON-W4AD-VNSA-8	It's an absolute disgrace that these things are not discussed at all on any level. There should be education in these subjects in schools at the very least. Sex is a taboo subject in Northern Ireland and is clearly leading to unsafe sex practices and a lack of awareness about consent and dangers
ANON-W4AD-VND4-C	Education, particularly around consent, is imperative. Comprehensive RSE should be in the school curriculum as soon as possible, following the measures in the Northern Ireland (Executive Formation etc) Act 2019 as recommended by CEDAW. Practitioners in the Criminal justice system must also receive training, following the recommendations in the Gillen Review. Education should focus on consent and safe sexual practices.
ANON-W4AD-VNS7-X	100%. Sex education does not reflect nor acknowledge the fact that children are already watching hard-core pornography by the time they have access to the internet. Access to these servers has drastic effects both on them and their developing brains, and adult brains. This needs to be acknowledged because it enables the culture of violence that women have to put up with, and gives children unrealistic expectations as to what a healthy and loving relationship is, that engages in sexual activities. Studies have always shown porn to be harmful to both men and women, in different ways (desensitising men's arousal, desensitising men to violence and rape, causing ED, causing a reduction in grey brain matter (a very important part of the brain), conditioning/ coercing women to engage in harmful and unhealthy sexual practices- trauma bonding, "kinks"-BDSM, DDLG, consensual- non consensual (to name only a few). It is about time, that we actually start using that evidence rather than ignoring it.
ANON-W4AD-VNS5-V	YES. Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that 'sex' is not the danger here – sex is not killing and injuring the women – serious and sustained violence is. YES. The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.
ANON-W4AD-VNS3-T	Porn has become such a big influence on young people's sex lives but there is no warning or education on the limits of this and consent surrounding it. Consent is not explained to the level it should be and needs trained into young minds. Sexual assault is still viewed as a taboo subject and is the reason so many women and men do not come forward. This needs to be a more open and fair discussion
ANON-W4AD-VNST-U	Our young people in particular have incredibly easy access to violent pornography which is normalising an expectation of giving/receiving violence in sex/relationships in general. A major overhaul of sex education to include concepts of consent vs coercion is required.

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ANON-W4AD-VN88-4	Conversations around the meaning of consent should be integral to sex education. It is clear there is the perpetuation of victim blaming in the criminal justice system and this needs to be rectified in order to protect and serve the needs of the victim.
ANON-W4AD-VN85-1	Because the increase in pornography leads to an expectation of more adventurousness
ANON-W4AD-VN8A-D	<p>Sex and relationships education should be relevant to the current climate in which young people exist. It should help to prepare them for the world into which they are entering and prepare them to have safe and healthy relationships with others. We need to enable girls to say no to things they are not comfortable with, in particular violent and degrading sexual activities. Education on the importance and nature of consent is essential to ensuring young people can safely engage in sex.</p> <p>Further, ensuring the general population understand sexual consent is essential to ensuring that perpetrators are appropriately punished for their actions. Juries must be educated to prevent sympathies with perpetrators. Judges expressing sympathies for the defendant only validates the rough sex defense and must be stopped through education.</p>
ANON-W4AD-VN8Q-W	Yes education is vital, if the info isn't provided through education then other sources are concerning - violent movies, games, porn.
ANON-W4AD-VN8X-4	I endorse and repeat the comments of the organisation 'We Can't Consent to This'.
ANON-W4AD-VN8H-M	To educate boys and girls to know this isn't acceptable. Girls shouldn't have to think this is ok and this is what they have to do to make boys happy. Boys should be taught not to treat girls/women this way
ANON-W4AD-VN8D-G	The easy access to pornography which depicts the harm and humiliation of women is fueling a generation of young men who think this behaviour is normal. Rough sex is now seen as a normal by many young men who then pressure their partners into taking part. Hurting your partner during sex is not normal and this abusive behaviour needs to be made clear to all.
ANON-W4AD-VN8N-T	Serious and sustained violence are becoming increasingly normalised in young people. A significant proportion of women under 40 have been victims of violence during sex. Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. More must be done to educate young people who grow up with access to violent pornography and think these acts are normal or should be expected of them. We need to empower people to speak up about this abuse and understand that it is wrong and they are not at fault.
ANON-W4AD-VN8V-2	Given the impact on access to hard-core and sadistic pornography on the internet, it is vital this is raised as a subject amongst young persons. It is important young people understand such sexual representations are not standard. Dehumanizing, degrading, and harmful behavior in a sexual relationship should not be viewed as mainstream. Concept of consent and safety in a sexual relationship is paramount.
ANON-W4AD-VNVW-1	The proliferation of internet porn and how it portrays violent sex as 'normal' means that some education around consent is important.

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	Especially education that targets men who may commit violent sexual crimes against women
ANON-W4AD-VNV3-W	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that ‘sex’ is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn’t intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in ‘kinky sex’, he would be treated lightly by the judge.</p>
ANON-W4AD-VNYA-E	Yes - our young people need to be confident on what constitutes enthusiastic consent. This is so they know how to engage in sex in a way that is safe for both parties, but also so they feel empowered to act should they ever be victim of sexual assault.
ANON-W4AD-VNYE-J	Victims come first. These abusers think they can get away with anything, hiding behind consent.
ANON-W4AD-VNYG-M	Yes people need to be aware that it can be normal to want something like that but they can consent and they can withdraw their consent at any time
ANON-W4AD-VNYS-Z	<p>Meaning of consent should be taught- the dangers of rough sex should not-this is up to the individual and indicates that their is an aspect of Victim blaming if the individual does this.</p> <p>More awareness should be raised within the criminal justice system to deal with these appropriately. And not to blame the victim.</p>
ANON-W4AD-VNUZ-3	Violence should not be excused on the basis of being part of sex. There needs to an programme of education for men involved in such crimes to encourage their understanding of what a healthy sex life is and that violence is not part of that.
ANON-W4AD-VNU9-2	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that ‘sex’ is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>YES.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn’t intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of</p>

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	killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.
ANON-W4AD-VNUN-Q	Women are not well enough protected at the moment and the rise in internet pornography desensitises society to the seriousness of when these sexual encounters go wrong. Education should underline how things can go wrong AND the consequences of when they do ie you are responsible for the safety of your partner even if they do consent.
ANON-W4AD-VNTM-N	<p>Definitely. This education should be given to all school pupils of all genders from a reasonable age, as clarity on consent and sexual practices is essential to ensure children grow up to understand what they should and shouldn't do in sexual situations.</p> <p>Furthermore, offenders in prisons and ex offenders where at least part of their crime has been sex related or motivated should be thoroughly educated to contribute to rehabilitation.</p>
ANON-W4AD-VNTZ-2	To reduce the 'grey area' and make things more black and white for people.
ANON-W4AD-VNT5-W	Education, particularly around consent is imperative. Comprehensive rse should be included in school curriculum as soon as possible
ANON-W4AD-VNTX-Z	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that 'sex' is not the danger here – sex is not killing and injuring the women – serious and sustained violence is. The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.</p>
ANON-W4AD-VNTR-T	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. I note though that 'sex' is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.</p>

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ANON-W4AD-VNTN-P	<p>1) Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that ‘sex’ is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>2) The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn’t intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in ‘kinky sex’, he would be treated lightly by the judge.</p>
ANON-W4AD-VNT3-U	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. I note though that ‘sex’ is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn’t intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in ‘kinky sex’, he would be treated lightly by the judge.</p>
ANON-W4AD-VNTK-K	<p>I don’t believe at the moment that a jury would understand the role previous trauma, coercive control, manipulation and fear have in abusive relationships. I also know that ABH, GBH and death should never be put down to so called rough sex</p>
ANON-W4AD-VNTS-U	<p>Education around consent is clearly lacking in the curriculum.</p>
ANON-W4AD-VNTU-W	<p>Yes. This is needed immediately. People need to understand that actions have consequences and that consent is super important.</p>
ANON-W4AD-VNS2-S	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that ‘sex’ is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>YES.</p> <p>The law as written can only change so much. Rough sex claims have</p>

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	<p>succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.</p>
ANON-W4AD-VN97-4	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that 'sex' is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.</p>
ANON-W4AD-VNTD-C	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives.</p> <p>As mentioned in previous answers, pornography has become more easily accessible and more violent in recent years. Therefore, we need to ensure that, in schools, education should tackle these issues and counter the negative and violent content to which children and teenagers are being exposed. In general, wider-ranging public education campaigns which target men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. It is government's responsibility to educate the public that violence against women comes in many forms and is always unacceptable. We also need those within the police and legal system to realise that it is unacceptable for men to assault women, that claiming women want to be hurt during sex is unacceptable, that non-consensual sexual behaviour is a crime and for our justice system to take complaints regarding this behaviour seriously.</p> <p>Engaging in 'sex' should not be inherently dangerous. It is not sex that is killing and injuring women – it is serious and sustained violence from men that is killing women.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge. We need to prevent further</p>

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	occurrences of failures such as these within our legal system and we need the system to take all forms of violence against women seriously.
ANON-W4AD-VN9B-F	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that ‘sex’ is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn’t intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in ‘kinky sex’, he would be treated lightly by the judge.</p>
ANON-W4AD-VN9F-K	<p>As mentioned, the rise of violent porn and the easy access to it now may result in young people thinking that this type of sexual relationship is the only valid type - I think it is vital that rather than trying to hide from it, we discuss it openly with young people and make it clear that they have the right to say 'no' to any unwanted sexual behaviour and we need to ensure that when they say no, their partner acknowledges that.</p> <p>I also think that sensitivity and respect is important when a victim reports a crime like this and as such, education and training should be available for people working as part of the justice system.</p>
ANON-W4AD-VN91-X	<p>Yes because many people are unaware to the dangers of rough sex. They watch violent porn and try to emulate it in real life with no idea what harm it can actually do or how far they can go without causing serious damage or death. If people are actually accidentally killing people because of rough sex going too far, then educating people about possible dangers can help prevent these "accidents".</p> <p>Considering that cases are being thrown out because the rough sex defence might be used, shows that the current system is failing victims and so the system should be improved for everyone's benefit.</p>
ANON-W4AD-VN9G-M	<p>Sex is not as clinical as educational programmes and curriculums would suggest.</p> <p>Young people need to be educated about healthy sexual relationships, otherwise they are at risk of entering into unhealthy, harmful relationships without realising they are a victim or an aggressor until it is too late</p>
ANON-W4AD-VN34-U	<p>It is necessary to counteract the amount of dangerous misogynistic material available on poorly controlled internet sites and given out by poorly regulated voluntary organisations and magazines e.g. Teen Vogue.</p>
ANON-W4AD-VN9C-G	<p>Both of these programmes should be developed, but this should be done with extreme care and involving organisations from across society, including feminists.</p> <p>Some sexual health groups argue that people can provide consent to</p>

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	<p>dangerous and violent activities. It needs to be made clear that this will no longer be lawful.</p> <p>The training must be rooted in the law, not in activist claims, and in understanding of the legally circumscribed nature of the acts to which meaningful consent can be given, as well as the range of factors which may legally invalidate consent (intoxication, coercion etc). It must also be clear that consent is specific, i.e. consent to one act (e.g. vaginal sex) is not consent to another (e.g. slapping). Models of consent which may not align precisely with the law (e.g. FRIES or SSC) may be useful but should never be taught as if they are settled law.</p>
ANON-W4AD-VN9T-1	<p>I completely agree. Strangulation has become societally normalised, in porn, and in the media, in a way we could not conceive for other violent acts such as waterboarding. And yet strangulation is more dangerous, as it is not just the airway that is compromised (we can survive that for several minutes), but oxygen flow to and from the brain. Consciousness can be lost in as little as 4 seconds. And any loss of consciousness indicates at least mild brain injury. I am afraid that there is widespread lack of recognition of this. That an act glamorised in 50 Shades of Grey, on social media, in young women's magazines, has the potential to cause lasting brain damage. Public awareness and understanding of this would help women pause and consider. And it is women. In a San Diego forensic study of 300 counts of strangulation, only two weren't male on female. Of those 2, one was a gay couple, and one was a mother and child.</p> <p>But this isn't just about educating potential victims. It's about sending a clear preventative warning to potential offenders. And raising awareness amongst the frontline services likely to come across victims. Injuries are only visible in the minority of victims. The attention is, quite rightly, on getting the woman to a place of safety. Strangulation is not top of mind for police, social workers, or even many healthcare professionals, who may be more focused on the immediately visible wounds from punches etc. All women should be routinely asked about strangulation, and screened for possible brain injury.</p>
ANON-W4AD-VN9X-5	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives.</p> <p>The work of Dr Gail Dines (professor of sociology and women's studies at Wheelock College in Boston) exposes the effects of porn culture on popular culture and the impact that this has on children and young adults. Dines analyses how this cultural backdrop encourages young women to become 'porn ready', and to expect and accept a hyper sexualised image of themselves. Dines demonstrates how dangerous sexual attitudes and acts, and the erasure of protective boundaries harm women and children. A pornified culture, that increasingly eroticises violence against women and girls, encourages men to believe that women exist for their sexual gratification, no matter the psychological and physical damage this causes to those women and girls. The 'rough sex' defence excuses this damaging and violent behaviour.</p> <p>Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting</p>

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	<p>during sex. It should be noted here that 'sex' is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.</p> <p>The courts need to be a place where justice is adequately and appropriately served. Too often women as victims of sexual assault and domestic violence are let down by the courts with their perpetrators receiving suspended sentences, inappropriately light sentences, and walking free altogether. Justice must be served for women who suffer violence and die at the hands of men. The 'rough sex' defence cannot be used as a defence - it is NO excuse. Men must be held to account and made responsible for their actions – they must not be enabled by society, or facilitated by a judicial system to believe that violence against women is acceptable or excusable.</p>
ANON-W4AD-VN9U-2	<p>Education is definitely important, rough sex can be enjoyed but it must be done safely and always with consent! Young girls in particular need to be aware of their right to withdraw consent at any point during a sexual act!</p>
ANON-W4AD-VN93-Z	<p>The need to educate people about consent.</p>
ANON-W4AD-VN9K-R	<p>My goodness yes! The sex education in NI is minimal as is. Straight forward, clear and unbiased (no religion!) sex education that includes information on sex, contraception, abortion and all of the sexualities in a non-judgemental fashion will result in reduction of stigma and fear and bad choices through ignorance.</p>
ANON-W4AD-VN94-1	<p>Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex. We note though that 'sex' is not the danger here – sex is not killing and injuring the women – serious and sustained violence is.</p> <p>The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.</p>
ANON-W4AD-VNZA-F	<p>The Rainbow Project has argued for many years that our current RSE programme provided for young people in Northern Ireland is inadequate. Whilst RSE is a statutory obligation for curriculum, there is no uniformed approached in how or when this is taught. The Department of Education states “all grant-aided schools to develop their own policy on how they will address Relationships and Sexuality Education (RSE) within the curriculum. A school's policy</p>

Response ID	Answer
	<p>should reflect the school's ethos and should be subject to consultation with parents and pupils and endorsed by the Board of Governors."</p> <p>In regards to LGBTQ, research conducted by the Department of Education - Post-primary school experiences of 16-21 year old people who are Lesbian, Gay, Bisexual and/or Transgender (LGB&T)- https://www.education-ni.gov.uk/publications/post-primary-school-experiences-16-21-year-old-people-who-are-lesbian-gay-bisexual-andor-transgender .</p> <p>This research has shown direct institutional anti-LGBT bias, at all levels of education in Northern Ireland, and particularly within the Department of Education itself, directly breaching its statutory duty to promote equality of opportunity for LGBT people.</p> <p>59.2% of respondents said that their schools said did not cover LGBT issues within their teaching, while only 21.4% said that they did. Denying LGBT young people access to appropriate information around sexual orientation, healthy relationship and sexuality education, increases their risk of poor mental health and sexual health outcomes.</p> <p>Young people's opinions on Relationships and Sexuality Education (RSE) in Belfast has recently been address in the Belfast Youth Forum - Any use? Report released in 2019. It highlights some the key issues with RSE, which are reflected across the North.</p> <p>In this report, despite their critique of current RSE provision in school, an overwhelming amount of young people felt that school was the best place to receive RSE (86%). However, this must be tempered with the fact that 66% of the respondents had received some RSE at school, the frequency, content and delivery of this was deemed basic, unhelpful, useless and biased. Also, that the majority of classes took place in biology or science and were influenced by the school religion or ethos.</p> <p>We believe that RSE should be compulsory and that young people have the right to RSE, appropriate to their age.</p> <p>RSE should promote positive sexual health and our current system is not helping our young people to make healthy and safe decisions as they transition to intimate relationships.</p> <p>There should be a strategic review of RSE across Northern Ireland and that content should include more information around sexual orientation, issues around personal relationships including what is consent, healthy relationships, sexual health not just focusing on unwanted pregnancies or STDs and greater awareness around domestic and sexual violence.</p> <p>We agreed that there needs a programme to raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint. As previously stated in first question, PPS in Northern Ireland said our current system and legislation is failing all victims of sexual violence.</p> <p>Education and training need to take place to better inform all those within the criminal justice sector to help to identify victims quicker and challenge myths & stereotypes around sex, consent and sexual exploration.</p> <p>This consultation is another step forward.</p>
ANON-W4AD-VN92-Y	<p>Comprehensive RSE must be introduced as soon as possible, following the measures in the Northern Ireland (Executive Formation etc) Act 2019, as recommended by CEDAW.</p> <p>Education should focus on consent and safe sexual practice, and</p>

Response ID	Answer
	<p>avoid stigmatising sex outside of a heterosexual marriage or promoting an abstinence only message. Practitioners in the Criminal justice system must also receive training, following the recommendations in the Gillen Review.</p>
ANON-W4AD-VNZ7-5	<p>It is our position that a programme of education around rough sex and consent is necessary to ensure that wider society is aware of this as a wider issue and tolerance for these types of crimes is eradicated. This is also one of the recommendations of the Gillen Review. It is important to make people aware of what consent is and how rough sex fits into wider concepts of rape and rape myths. We would note that RSE in schools should cover these issues as well. Women's Aid have long campaigned for statutory healthy relationships programmes to be delivered in schools to promote respect, equality, values and consent within all relationships. We are aware of the work of the Gillen Review Team in relation to this, but as always we have to focus on intimate partner sexual abuse and rape as part of this education programme.</p> <p>We also support a campaign to raise awareness of this issue across the criminal justice system to ensure that victims are receiving the correct responses when they make complaints, they are able to stay engaged with the criminal justice system and, most importantly, they are not re-victimised by the process. We would note again that this was another recommendation of the Gillen review that is applicable to rough sex defences.</p> <p>Any awareness raising campaign for either of the above should be intersectional, ensuring that it is not simply representative of the heteronormative experience but shows that sex between other sexual orientations must also be consensual and safe as well. It is always advisable to reach out specialised organisations for advice on how to proceed with awareness raising campaigns in order to ensure that messaging is sensitive and relevant.</p>
ANON-W4AD-VNZ5-3	<p>This should be delivered as part of a broad, mandatory, standardised RSE curriculum, which is rolled out across all schools and age groups (with the curriculum being tailored and age-appropriate for each year group). This could be part of the Gillen educational piece, but these proposals should go further than the Gillen recommendations in that the programme of education should be mandatory and standardised, and embrace all elements of sex education.</p> <p>It is not possible to address issues around the rough sex defence without having frank, age-appropriate conversations with young people about sex and consent. In particular, issues like the boundaries of consent with regard to sexual preference for some types of harm (like in BDSM) are vital to be addressed. This must be delivered in a way that equips people with the tools they need to navigate consent and sexuality safely and in accordance with the law. If as a society we are to create laws that put limits on what can be consented to and what can be reasonably assumed to be consented to, it is incumbent on us to provide citizens with the tools to navigate those laws and nuances of consent in intimate relationships. To adopt an abstentionist or laissez-faire approach which leaves the detail of such education to individual institutions or educators, and fails to fully and frankly explore these issues with young people, is a failure in our collective responsibility towards them.</p>

Response ID	Answer
ANON-W4AD-VNZZ-8	<p>- Raise awareness of the dangers of rough sex, and the meaning of consent;</p> <p>Our lack of Sexual Health Education, particularly around consent, puts people in danger in many ways, not least the danger of intimate partner violence and death. Our unenviable figures on domestic violence, rape and intimate partner death are due to many factors, but an endemic lack of awareness about consent in NI society is one of them.</p> <p>Comprehensive RSE should be included in the school curriculum as soon as possible, particularly following the measures in the Northern Ireland (Executive Formation etc) Act 2019, as recommended by CEDAW. Yet Peter Weir has remained steadfast in his inaction, the legislation asks NI to;</p> <p>"Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory curriculum component for adolescents,". If we ensure, as is our obligation, that LGBTQ+ rights are also included in this education, then the survivors who fall through the cracks due to their sexuality or gender will not be failed to an even greater extent, as they are currently, by our legal system.</p> <p>The inquiry report went on to state: Access to sexual health education 75. The provision of age-appropriate, culturally sensitive, comprehensive, and scientifically accurate sexuality education and information is critical to the realisation of women's right to health. Schools' discretion to deliver the RSE curriculum results in poor quality sexuality education for youth and anti-abortion and abstinence ethos indoctrination. Finding 76. The Committee finds that the State party has failed to prioritise the prevention of unplanned pregnancy through the provision of quality sexuality education. Its lack of oversight on schools' discretion to deliver the RSE curriculum to ensure that it is evidence- based and includes contraceptive use, safe abortion and post-abortion care, violates article 10(h) of the Convention.</p> <p>- Raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?</p> <p>We would all prefer to prevent harm from happening, than we would using the criminal Justice System to punish harm. The Criminal Justice System has thus far proved ineffectual at tackling sexual violence and gendered crime in Northern Ireland. This not only speaks volumes about who the law benefits and who it discriminates against, but it also begs us to question if the Criminal Justice System as a whole is the place we can make a difference to those suffering sexual violence and death.</p> <p>Culture change towards ending toxic masculinity, homophobia transphobia and misogyny needs to be systemic, across all of our public institutions, embedded in our education system and our cultural programming. More people suffer sexual violence and domestic violence than sectarian violence, and yet most of our focus in NI is on the latter. This needs addressed urgently.</p> <p>Practitioners in the Criminal justice system must also receive training,</p>

Response ID	Answer
	<p>following the recommendations in the Gillen Review. Education should focus on consent and safe sexual practice; we do not believe alternative sexual practices are inherently dangerous.</p>
ANON-W4AD-VN4P-R	<p>Increasing availability and exposure to violent online sexual material is highly influential in young people's perception of sexual boundaries. Without proper education on the importance of consent and the realities of sex, young people can often believe that such acts are 'expected'. This means their consent is ill-informed. If those who reach out are ignored or forgotten by the criminal justice system, it encourages others to believe that their complaints will also be ignored. Therefore, education and criminal consequence are important in shaping a society where all consenting adults can engage appropriately in safe sexual behaviours of their choosing.</p>
ANON-W4AD-VNZZ-8	<p>- Raise awareness of the dangers of rough sex, and the meaning of consent;</p> <p>Our lack of Sexual Health Education, particularly around consent, puts people in danger in many ways, not least the danger of intimate partner violence and death. Our unenviable figures on domestic violence, rape and intimate partner death are due to many factors, but an endemic lack of awareness about consent in NI society is one of them.</p> <p>Comprehensive RSE should be included in the school curriculum as soon as possible, particularly following the measures in the Northern Ireland (Executive Formation etc) Act 2019, as recommended by CEDAW. Yet Peter Weir has remained steadfast in his inaction, the legislation asks NI to;</p> <p>"Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory curriculum component for adolescents,". If we ensure, as is our obligation, that LGBTQ+ rights are also included in this education, then the survivors who fall through the cracks due to their sexuality or gender will not be failed to an even greater extent, as they are currently, by our legal system.</p> <p>The inquiry report went on to state: Access to sexual health education 75. The provision of age-appropriate, culturally sensitive, comprehensive, and scientifically accurate sexuality education and information is critical to the realisation of women's right to health. Schools' discretion to deliver the RSE curriculum results in poor quality sexuality education for youth and anti-abortion and abstinence ethos indoctrination.</p> <p>Findings 76. The Committee finds that the State party has failed to prioritise the prevention of unplanned pregnancy through the provision of quality sexuality education. Its lack of oversight on schools' discretion to deliver the RSE curriculum to ensure that it is evidence- based and includes contraceptive use, safe abortion and post-abortion care, violates article 10(h) of the Convention.</p> <p>- Raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?</p> <p>We would all prefer to prevent harm from happening, than we would using the criminal Justice System to punish harm. The Criminal</p>

Response ID	Answer
	<p>Justice System has thus far proved ineffectual at tackling sexual violence and gendered crime in Northern Ireland. This not only speaks volumes about who the law benefits and who it discriminates against, but it also begs us to question if the Criminal Justice System as a whole is the place we can make a difference to those suffering sexual violence and death.</p> <p>Culture change towards ending toxic masculinity, homophobia transphobia and misogyny needs to be systemic, across all of our public institutions, embedded in our education system and our cultural programming. More people suffer sexual violence and domestic violence than sectarian violence, and yet most of our focus in NI is on the latter. This needs addressed urgently.</p> <p>Practitioners in the Criminal justice system must also receive training, following the recommendations in the Gillen Review. Education should focus on consent and safe sexual practice; we do not believe alternative sexual practices are inherently dangerous.</p>
ANON-W4AD-VNT9-1	<p>There is no question that a programme of education is urgently needed. We have been calling for training and education on Consent & Sexual Relationships for many years. Common Youth research "Any Use? Young people's opinions on relationships & sexuality education. 2019" supports the urgent need and demand for this type of education. Raise your Voice have engaged with over 1000 people during 2019 -20, through workshops where the demand for consent to be rolled into formal education is consistently the top recommendation.</p> <p>The total void in providing adequate formal education on consent & sexual relationships in this digital age is negligent. Young people can and do rely on sexual education through pornographic websites, that are free & easy to access and provide no context of consent, they are dangerous and damaging places for young people to learn about relationships.</p> <p>Pornographic sites promoting Rough Sex is particularly dangerous as it normalises a culture of abuse that is damaging for young girls and women. The Gillen review recommendations call for more education within the criminal justice system in dealing with crimes of sexual violence and this should be implemented.</p>
ANON-W4AD-VNZ8-6	<p>It seems quite obvious that education is needed to reduce the prevalence of sexual crime in general (as was noted by the Gillen review) and that education on the place of consent within rough sex is particularly important. We support the introduction of education both within the community and within the criminal justice system. This is an issue we have raised time and time again over many years stretching back to the foundation of BFN in 2010. We have engaged with the PSNI over the years on their public awareness raising campaigns, criticising the victim-blaming tone of earlier campaigns and praising the progress made in recent campaigns focused more on the responsibility to obtain consent. We also highlighted the need for consent based sex education in schools in the aftermath of the rugby rape trial and welcomed the fact that the Gillen report agreed with us on this point. There most definitely needs to be training within the criminal justice system to ensure that rape myths and other myths associated with sexual violence are not allowed to dominate the narrative in court rooms when victims are making a complaint or</p>

Response ID	Answer
	<p>where someone has been killed. There is a real danger that the understanding of juries and legal professionals around 'rough sex' could be underpinned by rape myths such as thinking that a victim was consenting to harmful treatment if they didn't fight back or scream. These need to be addressed. We're not sure how much progress has been made on Sir John Gillen's recommendations regarding education but we hope that this issue of rough sex will be included. We are also concerned that any meaningful education in the community must be properly funded by a range of responsible departments such as the Department for Communities and the Department of Education. These programmes must be embedded and sustainable and not just one-off awareness campaigns.</p>
ANON-W4AD-VNZZB-G	<p>Education, particularly around consent, is imperative. Comprehensive RSE should be included in the school curriculum as soon as possible, following the measures in the Northern Ireland (Executive Formation etc) Act 2019, as recommended by CEDAW. Education should focus on consent and safe sexual practice; we do not believe alternative sexual practices are inherently dangerous. It is important that any RSE delivered in schools takes into account different sexual orientations, rather than the current focus on married heterosexual relationships espoused by the pro-abstinence organisations which deliver the current one day paltry RSE provision in over 70% of our post primary schools.</p> <p>The wording of this question, 'the dangers of rough sex', must be challenged. Sexual practices such as BDSM are not inherently dangerous and can be practised in a safe and consensual way, both by LGBTQ+ and heterosexual people. Education on consent including measures like safe words, addressing rape myths, and on diverse sexual relationships will ultimately contribute to harm reduction more than legislation.</p> <p>Practitioners in the Criminal justice system must also receive training, following the recommendations made in the Gillen Review. Judges, juries and lawyers must all understand what constitutes consent.</p>
ANON-W4AD-VNZP-X	<p>We totally advocate for education where awareness of the dangers of rough sex forms an element of a comprehensive education programme where the central issue is and must be consent!</p> <p>In Northern Ireland we need a comprehensive RSE programme that forms part of the national curriculum that must be delivered in all schools that focuses on consent and safe sexual practice as recommended by CEDAW and Gillan.</p> <p>This needs to be all inclusive educational programme that does not alienate anyone and must meet the needs of all those it sets out to inform and engage, the worst thing would be to alienate any of our young people</p> <p>A survey by Belfast Youth Forum found that half of the young people surveyed think their right to relationship and sex education is currently not being met. 34% said that they had never received a relationship and/or sex education lesson in school, and of those young people who did receive lessons, only 10% said the information they received was "very useful." Only 23% of the young people felt adults trusted young people to make their own decisions. In addition to this, the older a young person becomes the poorer they think this education becomes. Further, only 1 in 5 received any information relevant to LGBT+ relationships. The four most common word associations were "basic", "unhelpful" "useless" and "biased".</p>

Response ID	Answer
	<p>Young people are reliant on digital access to information and this coupled with the lack of education has led to an increase in young people relying on pornography for their sex education and the reported rise of non-consensual violence in sexual encounters appears to be connected to this. We need to address this situation to ensure delivery of healthy, safe, inclusive, consensual sex education for all with no moralistic undertones.</p> <p>With regard to the criminal justice system, we reiterate the arguments that women’s organisations submitted to the Gillen Report and indeed the findings of the Gillen Report itself. The Gillen Report was clear that education on these issues must be addressed as part of “an extensive public awareness and school education campaign”, specifically recommending a “introducing educational material for the benefit of the jury which might include a short video outlining the fallacy of these myths and judicial directions to this effect for the benefit of educating jurors at the very commencement of the trial, together with, if necessary, expert evidence on the subject.” The Gillen Report focuses on this issue at length and there is an important reason for this; the dispelling of rape myths and the widespread acceptance and understanding of a robust concept of consent.</p>

Question 4: Do you consider something different is required for Northern Ireland?

There were 154 responses to this part of the question.

Option	Total	Percent
Yes	84	51.22%
No	70	42.68%
Not Answered	10	6.10%

If yes, please give reasons for your response.

There were 66 responses to this part of the question.

Response ID	Answer
ANON-W4AD-VN7C-E	Creating consistency between Northern Ireland and other parts of the UK creates strength in approach
ANON-W4AD-VN3E-C	<p>Attitudes towards sexual gratification can be different in NI and ROI due to our religious backgrounds and sometimes this makes opening up about issues like this a little more difficult, thought needs paid to this.</p> <p>Due to views in NI on issues such as homosexuality , some people hide their sexual desire and seek something else that could be seen as 'thrilling'. Studies have shown that when a person denies their sexual desires it can lead to unhealthy or dangerous activities in order for them to get the 'thrill' they desire from Sex, of course this isn't the case for many people but again its something that we need to be aware of in Northern Ireland and as such we need to move to a place where sexuality doesn't have to be hidden , denied or covered up with other thrills such as rough and dangerous sex.</p>
ANON-W4AD-VN7G-J	No - we believe that if the legislation was adapted as outlined above and an awareness raising programme delivered to the public and criminal justice system these would be important steps to address this issue.
ANON-W4AD-VN7G-J	we need to educate our young about this type of behaviour and also our judiciary and ensure that this practice is not allowed to flourish in our community
ANON-W4AD-VN7C-E	Please see above.
ANON-W4AD-VN79-4	That non fatal strangulation is also included.
ANON-W4AD-VN7N-S	I feel that sex education is still limited here. It is often taught by religious groups and people do not receive it young enough. Issues around consent, relationship abuse and the harm of pornography are often overlooked, which has an enormous impact on individuals. The impact of sexual assault and domestic abuse are directly linked to other health outcomes, such as mental health issues (PTSD, anxiety, depression), physical health issues (IBS, chronic pain, STIs, physical injury) and substance misuse. All of these are damaging to individuals, families and communities and put strain on the NHS.
ANON-W4AD-VN7K-P	Nothing to add.
ANON-W4AD-VN7K-R	As stated above, we believe that NI could lead the way by creating a new sexual offense that deals with death caused by negligent or reckless sexual behaviour. Sexual offense is preferable to domestic abuse offense because it's a more fair label for sentencing and

Response ID	Answer
	<p>monitoring, it prohibits the use of sexual history by the Defendant and the offense does not always occur between partners in an established relationship. A new non-fatal strangulation offense should also be created.</p>
ANON-W4AD-VNKH-7	<p>To bring in in line with the rest of the UK.</p>
ANON-W4AD-VNKK-A	<p>Amendment is a start to tackle the issue of femicide but it is by no means the end</p>
ANON-W4AD-VNBZ-G	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this. Collection of data and reporting on the effectiveness of the amendment.</p>
ANON-W4AD-VNBC-S	<p>All uk citizens should be the same protection in law.</p>
ANON-W4AD-VNBD-T	<p>As well as all of the above, women's sexual history should not be used against them in court. You need to collect data on "rough sex" defences by men. Too many men have already got away with assault, ABH, GBH, murder etc because of these defences.</p>
ANON-W4AD-VNPY-W	<p>Schools need to get their heads round the responsible to educate children as do parents/guardians.</p>
ANON-W4AD-VNPP-M	<p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on 'rough sex' claims – the DoJ will require its own</p>

Response ID	Answer
	data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.
ANON-W4AD-VNPN-J	I think it should be the same legislation throughout, why are women in England and Wales being protected more than those women living in Northern Ireland. Women in Northern Ireland are just as important, lives are just as important and should be shown the same respect. Men across the board should be held accountable for their actions.
ANON-W4AD-VNCX-F	It should be taught in school.
ANON-W4AD-VNCH-Y	The law as written can only change so much. Rough sex claims have succeeded UK-wide at every stage of the criminal justice system, from prosecutors who pursue a lesser charge, to judges who comfort the defendant that they accept he didn't intend to cause the death of the woman [see trial judge comments in Porter, 1997, Armagh]. In Northern Ireland, police in 2000 reportedly told a man accused of killing his wife that if he claimed he strangled her in 'kinky sex', he would be treated lightly by the judge.
ANON-W4AD-VNK9-R	Yes, non fatal strangulation should be something that a person CANNOT consent to in the eyes of the law !
ANON-W4AD-VN63-W	<p>If non fatal strangulation is to be made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <ol style="list-style-type: none"> 1. Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this, whilst the names of perpetrators (in the case of Jesse Kempson) are kept out of the media coverage. 2. Collection of data and reporting on the effectiveness of the amendment. At present I am only aware of the We Can't Consent To This collecting data on 'rough sex' claims. The DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.
ANON-W4AD-VND3-B	Unsure at this time
ANON-W4AD-VNDK-3	Because DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must make sure that non fatal strangulation assaults are not able to be consented to.
ANON-W4AD-VN6Q-U	Given the context of paramilitary punishment I think the process needs to move more swiftly, so that legal justice can be viewed a a valid response to crime rather than approaching paramilitary or community groups for physical punishment.
ANON-W4AD-VNSA-8	The fact we are so far behind other progressive nations means we have a lot more work to do to catch up and save our communities

Response ID	Answer
ANON-W4AD-VND4-C	<p>We are calling for a new sexual offence to be created to deal with death caused by negligent or reckless sexual behaviour. A sexual offence is preferable to a domestic abuse offence for several reasons:</p> <ul style="list-style-type: none"> - Fair labelling for sentencing and monitoring - Prohibits use of sexual history by defendant - The offence will not necessarily occur within an intimate partner relationship <p>One can consent to 'rough sex' practices either within or outside of an intimate partner relationship.</p> <p>We are also calling for the creation of a new non-fatal strangulation offence.</p>
ANON-W4AD-VNS7-X	<p>To tackle the “rough sex defence” alone, is not good enough. We need to go to the source, otherwise very little will change. Furthermore, I would go as far to say that we need to start cracking down on pornography and criminalise it’s distribution. It involves women who are exploited for men’s sexual gain. It has horrific effects on love and relationships, as a 21 yr old woman, this much has always been very evident to me and my relationship choices.</p>
ANON-W4AD-VNS5-V	<p>YES</p> <p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this. Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on ‘rough sex’ claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VNSD-B	<p>Non fatal attacks should be addressed more effectively, and the use of consent should not be seen as a defence.</p>
ANON-W4AD-VNS3-T	<p>There have been several cases in the past few years with regards rough sex and the discussions and outcomes have been utterly unfavourable to those who have suffered on account of enjoying rough sex and that being taken advantage of. More must be done</p>

Response ID	Answer
	by Northern Ireland. It's that simple. There must be harsher laws, more open minded discussions, less judgement.
ANON-W4AD-VNST-U	Further measures would be needed to ensure proposed amendment works in practice.
ANON-W4AD-VN8A-D	We need to ensure that non fatal strangulation cannot be consented to.
ANON-W4AD-VN8X-4	I endorse and repeat the comments of the organisation 'We Can't Consent to This'.
ANON-W4AD-VN8N-T	To ensure the law works in practice, some changes must be made: <ul style="list-style-type: none"> - Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of the victims sexual history may be presented in court. In cases which have no sexual assault charge, their name and sexual history can be widely reported in news, and there are no restrictions on this. This must change. - Collection of data and reporting on the effectiveness of the amendment. The DoJ should have it's own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.
ANON-W4AD-VNV3-W	As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.
ANON-W4AD-VNYE-J	Protection for women and victims of abuse. Nobody consents to be violently injured during sex. Rough sex is not the same as actually causing someone bodily harm and people need to be held accountable for their actions. Perhaps thinking twice if it's not legal, rather than thinking they can do what they like and if the victim complains it was too much and they were hurt it can be blamed on 'they consented'. Just no.
ANON-W4AD-VNUZ-3	Non fatal strangulation should be made an offence.
ANON-W4AD-VNUN-Q	We should be clear that this will absolutely not be tolerated within any kind of relationship - no one deserves to end up hurt this way.
ANON-W4AD-VNTM-N	A new sexual offence needs to be created in order to deal with deaths as a result of negligent sexual behaviours. It simply isn't possible to suggest a person can be accidentally killed during rough sex.
ANON-W4AD-VNTZ-2	What has been suggested is a definite improvement to current legislation.
ANON-W4AD-VNT5-W	We are calling for a new sexual offence to be created to deal with death caused by negligent or reckless sexual behaviour
ANON-W4AD-VNTX-Z	As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.

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	<p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this. Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on ‘rough sex’ claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VNTR-T	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>Collection of data and reporting on the effectiveness of the amendment. At present the ' We Can't Consent To This' campaign is the only organisation collecting data on ‘rough sex’ claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VNTN-P	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p>

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	<p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on ‘rough sex’ claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VNT3-U	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>Collection of data and reporting on the effectiveness of the amendment. At present the ' We Can't Consent To This' campaign is the only organisation collecting data on ‘rough sex’ claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VNTK-K	<p>I believe that the laws that have been going through parliament in the England and Wales should be fit for purpose for NI too</p>
ANON-W4AD-VNS2-S	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p>

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	<p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this. Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on ‘rough sex’ claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VN97-4	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on ‘rough sex’ claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VNB2-8	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that consent defences are not able to be used in strangulation assaults. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <ul style="list-style-type: none"> - Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted

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	<p>as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>- Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on 'rough sex' claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VNTD-C	<p>The DoJ is reviewing the law on non-fatal strangulation, any proposal on consent to sexual gratification must ensure that non-fatal strangulation assaults are recognised as violent acts that a person cannot legally consent to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <ol style="list-style-type: none"> 1. The exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Currently, where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent (or of a woman's sexual history) may be presented in court. In cases which have no sexual assault charge, a woman's name and sexual history can be widely reported in news coverage and there are no restrictions on this. These things need to change to ensure fairness and to remove old-fashioned attitudes that remain in laws that were written during times where sexism was more accepted and prevalent. 2. It is important that data is collected and analysis is carried out on the effectiveness of the amendment. At present, women's campaigning groups are the only organisations collecting data on 'rough sex' claims – the DoJ must require data to be collected to ensure that amendments have had the intended effect and whether further measures (in law, in training, in guidelines) are needed.
ANON-W4AD-VN9B-F	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers</p>

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	<p>sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on 'rough sex' claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VN9C-G	<p>NI has its own legal system and NI law must be looked at closely to ensure victims and survivors are protected, not simply bolting on clauses from English law.</p> <p>NI also has particular social challenges, including in relation to sexism, homophobia and other issues which can affect the reporting and prosecution of sexual violence. Once these changes are introduced, an expert report should be commissioned to identify how they are working in practice in NI and whether further changes are needed.</p>
ANON-W4AD-VN9T-1	<p>As above, if strangulation is made a specific offence, then it must still be included in the list of offences to which consent cannot be given.</p>
ANON-W4AD-VN9X-5	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <ul style="list-style-type: none"> • Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this. • Collection of data and reporting on the effectiveness of the amendment. At present https://wecantconsenttothis.uk is the only organisation collecting data on 'rough sex' claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.
ANON-W4AD-VN9K-R	<p>Make the laws better than other places - including strangulation, gather data and don't bring sexual history into it - there is no implicit consent and you can't consent if you are being killed.</p>

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ANON-W4AD-VN94-1	<p>As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on ‘rough sex’ claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VN92-Y	<p>We are calling for a new sexual offence to be created to deal with death caused by negligent or reckless sexual behaviour.</p> <p>We agree with the recommendations made by Women's Policy Group and Raise Your Voice in their submissions. A sexual offence is preferable to a domestic abuse offence for several reasons:- Fair labelling for sentencing and monitoring Prohibits use of sexual history by the defendant at a trial The offence will not necessarily occur within an intimate partner relationship</p> <p>One can consent to ‘rough sex’ practices either within or outside of an intimate partner relationship, consensual sexual activity between adults should not be criminalised. Criminalisation may push people away from accessing healthcare if needed, or stigmatise alternative sexual practices.</p> <p>We are also calling for the creation of a new non-fatal strangulation offence.</p>
ANON-W4AD-VNZ7-5	<p>In England Clause 65 of the Bill re-states the current law, particularly in relation to the use of the so-called ‘rough sex defence,’ making it clear that a person cannot consent to the infliction of serious harm or, by extension, to their own death, for the purposes of obtaining sexual gratification.</p> <p>Women’s Aid supports this position of Clause 65 above but In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice,</p>

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	<p>including exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>The DoJ is currently reviewing the law on non-fatal strangulation and Women’s Aid have long campaigned for this change to our legislation (as stated in question 2). Currently the Domestic Abuse Bill going through Westminster has included this within an Amendment to the current Bill which we welcome. The Assembly needs urgently to look at this issue and any proposal on consent to sexual gratification must ensure that non-fatal strangulation assaults are not able to be consented to. If non-fatal strangulation is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.</p> <p>From a study by St Mary’s SARC) it showed non-fatal strangulation in adult females reporting sexual assault and rape was common, with 1 in 5 giving a positive history when the alleged assailant was either a partner or ex-partner. The vast majority will give a history of symptoms associated with non-fatal strangulation and have evidence of injuries which may be associated.</p> <p>It is also a recommendation by CJINI: Operational Recommendations: 1 The DoJ should review, with input from relevant stakeholders, how potential inadequacies in current legislation regarding the act of choking or strangulation by defendants could be addressed (paragraph 2.17).</p> <p>Changes to legislation will give the power to police and the justice system to treat these offences with the seriousness it deserves. Some violence is more dangerous and frightening than others, not just in that it is more likely to cause death or serious injury, but in what it predicts. Strangulation is a very particular form of assault for three reasons:</p> <ol style="list-style-type: none"> 1.It is likely to cause serious injury or death 2.It is perceived by the victim as a direct threat to their life 3.It is a highly predictive of future homicide <p>We Can’t Consent to This also reported that women were being seriously injured in what men claim to be consensual sexual violence, stating that it is now commonplace for a woman to be assaulted and abused by men they’re dating, with 38% of UK women under the age of 40 reporting being assaulted, choked, slapped, gagged or spat on, as part of otherwise consensual sex. We Can’t Consent to This stated this is not just a UK problem but one that occurs worldwide and argued that until it is made clear, in law, that consent is not a defence, defendants would continue to</p>

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ANON-W4AD-VNZY-7	<p>make claims in the pursuit of a lesser criminal charge or sentence, or with a view to being acquitted of any crime.</p> <p>4. Even if enacted, the Domestic Abuse Bill in England and Wales will only enshrine the existing and confusing common law principles of consent, it will not prevent defendants from claiming that they do not satisfy the offence they have been charged with. If Northern Ireland wants a meaningful reform it needs to go beyond empty gestures and window dressing.</p> <p>4.1 The law in this area needs to reflect the spectrum of different circumstances in which strangulation/ oxygen restricting practices are undertaken. While there is considerable research into the association between strangulation, domestic violence and murder there is also evidence that strangulation is coming to be considered mainstream in terms of sexual behaviour. Although little research has been undertaken in relation to strangulation in the latter context, there is an apparent link between its increased practice and the normalization of strangulation in pornography and the media. Anecdotal evidence suggests that this phenomenon has a significant bearing on the issue of consent with (predominantly) females reporting sexual encounters in which they were unexpectedly subjected to pressure to the neck/ throat area by their partner. For many this was an unwanted element of the encounter but one to which they yielded nonetheless, conscious of the derision often afforded to so-called “vanilla” sex and anxious to satisfy what that they thought was the current social expectation. There is also some anecdotal evidence that males engage in strangulation of their sexual partner for the same reason.</p> <p>4.1.1 The problems resulting from the normalization of strangulation in sexual encounters are twofold: firstly, it serves to obscure and conceal strangulation performed as a manifestation of violence, and therefore shields exceptionally dangerous men (this is a gendered offence) and, secondly, it obscures the fact that any form of oxygen restriction is exceptionally dangerous, even when it occurs in the context of sexual pleasure-giving.</p> <p>4.2 Evidence shows that early intervention is the key to meaningful reform in this area since victims of one episode of strangulation are at a significant risk of subsequent murder, see para 3.3 above. The criminal law needs to be invoked at the stage of non-fatal strangulations because a high number of men (it is a gendered crime) who strangle go on to kill.</p> <p>4.2.1 Studies in the US show that strangulation is common in domestic abuse with 68 – 80% of women who seek professional services reporting that they have been strangled (Lee Wilbur et al, ‘Survey Results of Women Who Have Been Strangled While in an Abusive Relationship’ (2001) 21 Journal of Emergency Medicine 3: pp. 297–302; Erin Schubert, Hope Lives Here: Impact of the Family Peace Center (2018) Sojourner Family Peace Center at https://www.familyjusticecenter.org/resources/hope-lives-here-impact-of-the-family-peace-center/ >accessed 10 Jan 2021; Whitney Bryen, “Strangulation of Women Is Common, Chilling—and Often a Grim Harbinger” (May 29, 2019) Oklahoma Watch at https://oklahomawatch.org/2019/05/29/539132/ > accessed Jan 10, 2021).</p>

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	<p>4.2.2 Strangulation is a unique crime that has been described as the equivalent to waterboarding and torture (Susan B. Sorenson et al, 'A Systematic Review of the Epidemiology of Nonfatal Strangulation, a Human Rights and Health Concern' (Nov. 2014) 104 American Journal of Public Health 11: pp. 54–61 at https://ajph.aphapublications.org/doi/10.2105/AJPH.2014.302191 > accessed Jan 10, 2021).</p> <p>4.2.3 In the domestic violence context strangulation usually about control, rather than the infliction of pain or injury, whereby the defendant shows that he has life or death control over the victim (Adam J. Pritchard et al, 'Improving Identification of Strangulation Injuries in Domestic Violence: Pilot Data from a Researcher Practitioner Collaboration' (2016) 13 Feminist Criminology 2: pp. 160–181).</p> <p>4.2.4 Deprived of oxygen, the body has a an automatic reaction and knows it is about to die (Susan B. Sorenson et al, 'A Systematic Review of the Epidemiology of Non-fatal Strangulation, a Human Rights and Health Concern' (Nov. 2014) 104 American Journal of Public Health 11: pp. 54–61 at https://ajph.aphapublications.org/doi/10.2105/AJPH.2014.302191 > accessed Jan 10, 2021). It is therefore far more cruel in intent and far more dangerous than other forms of assault, causing brain injuries, internal harm and terror/ psychological effects, but since there are usually no visible signs of violence it is a weapon of choice for abusers (see https://www.familyjusticecenter.org/wp-content/uploads/2020/09/Strangulation_2020-Online-Version.pdf p. 25> accessed Jan 9, 2021 and the range of authorities cited at fn 34).</p> <p>4.2.5 The two largest US studies into non-fatal strangulation found that 50% of incidents reported to the police lack visible injuries (Gael B. Strack, et al., A Review of 300 Attempted Strangulation Cases Part I: Criminal Legal Issues (Oct. 2001) 21 Journal of Emergency Medicine 3: 303–309; Adam J. Pritchard, et al., Improving Identification of Strangulation Injuries in Domestic Violence: Pilot Data from a Researcher Practitioner Collaboration (2016) 13 Feminist Criminology 2: pp. 160–181). The lack of visible injuries masks the fact that there is often internal injury and serious psychological impact on the victim.</p> <p>4.2.6 The current law deals with non-fatal strangulation in the offence contained in Offences Against the Person Act 1861, s.21 but it is not standalone offence and only criminalizes the conduct, described unsatisfactorily in inchoate terms as “attempting to choke”, where it is perpetrated in order to commit or assist in the committing of an indictable offence. The current law lacks a non-fatal strangulation offence.</p> <p>4.2.7 Responding to decades of research, the California District Attorneys Association guidance on Investigation and Prosecution of Strangulation Cases 2020 observes “[t]here is no doubt that passing a new, standalone strangulation law has the potential to shine a spotlight on this issue and send a strong message to perpetrators that the community takes domestic violence and strangulation very</p>

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	<p>seriously” (https://www.familyjusticecenter.org/wp-content/uploads/2020/09/Strangulation_2020-Online-Version.pdf > accessed Jan 8, 2021 at p. 17).</p> <p>4.3 A bespoke offence of non-fatal strangulation.</p> <p>On 5th January 2021, the Domestic Abuse Bill for England and Wales was returned to the House of Lords for the second reading with the former Victim’s Commissioner, Baroness Newlove, putting forward an amendment to make non-fatal strangulation a stand-alone offence. If enacted, this will provide an important means of early intervention that is necessary to prevent future homicides by strangulation and a bespoke approach to non-fatal strangulation is recommended here for Northern Ireland.</p> <p>4.3.1 Reform along the lines of criminalizing per se non-fatal strangulation, as is suggested by some campaigners (https://wecantconsenttothis.uk/blog), is susceptible to the same objections outlined above in relation to evidence of the consequences of the unsupervised practice that will follow (see section 3 para 3.5) and on lifestyle autonomy grounds (see para 2.5.3). Again, such a reform would be to criminalize on the basis of moral judgment and could lead to the unprincipled extension of the criminal law to any other activity considered to be unreasonably dangerous.</p> <p>4.3.2 It is recommended that two non-fatal strangulation offences are enacted for NI.</p> <p>Given the starkly contrasting circumstances in which strangulation occurs, on the one hand in relationships of domestic abuse or other violent encounters and, on the other, in the context of intimate consensual sexual relations, it is submitted that the better way to distinguish the offending behaviour is with the enactment of two distinct offences.</p> <p>The recommended offences are:</p> <p>4.3.2.1 Offence 1: Non-fatal strangulation causing fear of personal injury</p> <p>“Any person who strangles, chokes, asphyxiates, suffocates or by any means whatsoever restricts the oxygen flow of another person when he knows or ought to know that it will cause other person to fear personal injury, shall be guilty of an offence.”</p> <p>4.3.2.2 This offence is intended to create liability in all cases where the strangulation occurs in the context of abuse/violence and in cases where a victim is, for example, unexpectedly strangled during the course of otherwise consensual sexual relations or the defendant continues strangulation beyond what was consented to such that the victim was put in fear of injury. Bearing in mind the typical escalation of abusive behaviour, fear of injury is not confined to the immediate strangulation and may include fear of future personal injury.</p> <p>4.3.2.3 Drafted in the same terms as the harassment offence of</p>

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	<p>putting people in fear of violence, Protection From Harassment Act 1997, s. 4, and the coercive control offence, Serious Crime Act 2015, s76, the test that the defendant “knows or ought to know” is objective such that the defendant will be guilty “if a reasonable person in possession of the same information would think the course of conduct would cause the other to fear”, s. 4(2) and s. 76(5) respectively. Such an approach accords with policy considerations.</p> <p>4.3.2.4 Offence 2: Non-fatal strangulation causing actual bodily harm</p> <p>“Any person who strangles, chokes, asphyxiates, suffocates or by any means whatsoever restricts the oxygen flow of another person, either manually or with any implement, and thereby causes actual bodily harm, with or without the other person’s consent, shall be guilty of an offence.”</p> <p>4.3.2.5 This offence is intended to create liability in any circumstances, including consensual sado-masochistic activities, where strangulation causes actual bodily harm. It amends the current common law of consent to harm in the context of strangulation in that it extends criminal liability to cases where actual bodily harm is caused, even where the defendant did not foresee the risk of harm (i.e. he was not subjectively reckless). In addition, there is no subjective mens rea requirement for the offence itself. While this is unusual in the criminal law it is justifiable in that oxygen restriction activities are so dangerous that they pose not just a risk of some harm but an obvious and real risk to life. This construction is consistent with the imposition of constructive liability in the offences against the person and it expressly avoids the problems identified above in relation to the application and scope of the consent to harm defence.</p> <p>4.3.2.6 It is of note that in cases of this nature, where the victim does have signs of reddening to the skin, minor bruising, swelling etc these injuries should be considered as actual bodily harm because they are indicators of a more serious internal injury. This approach accords with existing authority, see R v Langford [2017] EWCA Crim 498, which also took account of the degree of fear experienced by the victim.</p> <p>4.3.2.7 Although the offence is broadly drafted, it is of note that victims of domestic abuse are often reluctant complainants and witnesses. The same is likely to be true of the victim who has fully consented to the sado-masochistic activity that has caused the injury and has otherwise (albeit not valid in law) “consented” to the injury. This construction allows for legal intervention on policy grounds if typical strangulation injuries come to light in the course of other professional intervention, e.g. medical. The criminal law may then be invoked, where appropriate, regardless of any reluctance on the victim’s part to make a complaint.</p> <p>4.3.3 It is recommended that the non-fatal offences are indictable only.</p> <p>This would reflect the especially serious and distinct nature of the</p>

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	<p>crime, i.e. the gravity of the defendant's state of mind, the extent of fear typically suffered by victims, that the conduct is life-endangering even if there are no visible injuries sustained or they appear superficial.</p> <p>4.3.4 It is recommended that the non-fatal offences are not contained in domestic abuse legislation.</p> <p>The offences need to address all incidents of strangulation, whether perpetrated in the domestic abuse context or not and whether or not strangulation occurs during the course of sexual activity.</p> <p>4.3.5 It is of note that "Clare's Law", (Domestic Violence Disclosure Scheme, Dec 2016) would give future partners the right to know about previous offences.</p> <p>4.3.6 Obviation of the problematic issue of consent</p> <p>The particularized "strangulation" offences, as drafted above, do not involve the element of "unlawfulness" of force that exists in the general law of assault and battery and other non-fatal offences. The suggested reform therefore obviates the need to focus on the problematic issues of consent and consent to harm and the enactment of a non-fatal offence on these terms will also resolves the same issue as it is encountered in the context of the base offence in unlawful and dangerous act manslaughter (see 4.6.2.5 and 4.6.2.6 below).</p> <p>4.4 Murder - for the reasons outlined above, at 1.3.4.1 – 1.3.4.4, no reform of the current law of murder is recommended.</p> <p>4.5 The non-fatal strangulation offences and implications for the law of manslaughter.</p> <p>4.5.1 For various reasons, including the stigma of the "murder" label, fair-labelling and the mandatory life sentence, where death occurs in circumstances where the defendant's state of mind is less heinous, and there is no intention to kill or to cause serious harm, liability is classified as manslaughter. Prosecutors may indict a defendant for manslaughter or a jury may return a verdict of manslaughter as an alternative to murder.</p> <p>4.5.2 The law of manslaughter includes the common law offences of unlawful and dangerous act manslaughter and gross negligence manslaughter. Where death occurs during rough sexual activity, consensual or not, and an intention to kill or to cause grievous/ really serious harm cannot be proved (i.e. murder), liability may be established where appropriate under one of these heads.</p> <p>4.5.3 In most cases of "rough sex gone wrong" the conduct is unlikely to amount to murder. Unlike murder, the sentence for manslaughter is not a mandatory life-sentence but discretionary and the sentence imposed on conviction will reflect the moral blameworthiness of the defendant.</p> <p>4.5.4 However, the existing law of unlawful and dangerous act manslaughter requires firstly, proof that a base offence has been</p>

Response ID	Answer
	<p>committed, with the actus reus and mens rea of that offence made out, and secondly, that the conduct causing the death was dangerous. The first element is problematic in the context of rough sex fatalities in that the base offence is typically a battery which involves proof that the infliction of force was unlawful. Since consent is a valid defence to a battery, the issue of consent to strangulation often becomes a live issue at trial. Although the law on consent and consent to harm is uncertain and complex, consent to a battery in circumstances where the actual harm thereby caused is not foreseen, provides a defence to manslaughter. It is likely that the law in this area underlies the concern that defendants who strangle their partners during sex are “getting away with murder”. The enactment of non-fatal strangulation offences as recommended above (at 4.3.2.1 and 4.3.2.4) offers a solution to the weakness of the current law in that the construction of the offences are such that the consent of the victim is not relevant.</p> <p>4.5.5 The non-fatal strangulation offences (as drafted above at 4.3.2.1 and 4.3.2.4) provide a base offence on which unlawful and dangerous act manslaughter can be established irrespective of the consent of the victim.</p> <p>The enactment of the non-fatal offences is pivotal to achieving a satisfactory law of homicide in strangulation cases where the defendant lacks the mens rea for murder.</p> <p>4.6. Reform by way of bespoke homicide offence for sexual strangulation fatalities.</p> <p>4.6.1 If the law is to express something of particular significance about death occurring as a result of sexual activity going wrong, where there is no intention to kill or to cause grievous bodily harm (i.e. murder), it would be more appropriate to enact a bespoke offence (Alison Cronin, Jamie Fletcher and Samuel Walker, ‘Homicide and violence in sexual activity, moving from offence to defence’ blog for Sexual Trauma and Recovery Service (STARS), Dorset, 22nd June 2020 at https://www.starsdorset.org/blog/homicide-and-violence-in-sexual-activity-moving-from-defence-to-offence).</p> <p>4.6.2 An eponymous offence, such as “sexual strangulation manslaughter” would satisfy the expressive function of the law and accord with principles of fair-labelling (Jeremy Horder ‘Rethinking Non-Fatal Offences against the Person’ (1994) 14 OJLS 335) without destroying the fabric of the criminal law and its conceptual underpinnings. This offence would siphon homicides not reaching the mental culpability for murder involving violent sexual behaviour.</p> <p>4.6.2.1 It is recommended that a sexual strangulation manslaughter offence is enacted</p> <p>4.6.2.2 The application of the existing common law of manslaughter with the additional element that the death occurs in a sexual context would provide parity with homicides committed in non-sexual circumstances. The sexual element would be a matter of fact. For certainty and fair-labelling purposes, the two heads of the offence suggested are:</p>

Response ID	Answer
	<p>a) sexual strangulation manslaughter by unlawful and dangerous act, and b) sexual strangulation gross negligence manslaughter.</p> <p>4.6.2.3 These heads of liability would involve the same legal principles involved in the common law unlawful and dangerous act manslaughter and gross negligent manslaughter and would not require a wholesale reform of the law of manslaughter for deaths that occurring in the context of sexual activity.</p> <p>4.6.2.4 The advantages of this approach are that:</p> <p>a) it obviates the need to develop new and uncertain legal principles that may spawn future case law or retrospective appeals.</p> <p>b) it takes advantage of the fact that the existing common law definitions are sufficiently broad as to encompass dangerous or grossly negligent sexual conduct of any nature involving oxygen restriction.</p> <p>c) as the general law of homicide develops, either in common law or statute, the sexual manslaughter offence would develop in step without the need for additional enactment/reform.</p> <p>4.6.2.5 Head one: sexual strangulation manslaughter by unlawful and dangerous act</p> <p>4.6.2.6 If enacted, the non-fatal strangulation offences as drafted above (at 4.3.2.1 and 4.3.2.4) will provide base offences on which unlawful act manslaughter can be established, where appropriate, under the existing principles of law and regardless of the consent of the victim. It is the base offence rather than the element of dangerousness that has proved problematic in practice, the element of dangerousness would remain.</p> <p>4.6.2.7 Head two: sexual strangulation gross negligence manslaughter</p> <p>4.6.2.8 This head of liability will not alter the existing law on gross negligence manslaughter but it will serve the fair-labelling and expressive functions of the law. It will apply in appropriate cases and will be serve as an addition to the law where it is an alleged failure to act that renders the defendant liable.</p> <p>4.7 Summary of recommendations for Northern Ireland:</p> <p>a) The enactment of an non-fatal offence of ‘strangulation causing fear of personal injury’ whereby,</p> <p>“Any person who strangles, chokes, asphyxiates, suffocates or by any means whatsoever restricts the oxygen flow of another person</p>

Response ID	Answer
	<p>when he knows or ought to know that it will cause other person to fear personal injury, shall be guilty of an offence.”</p> <p>b) The enactment of a non-fatal offence of ‘strangulation causing actual bodily harm’ whereby,</p> <p>“Any person who strangles, chokes, asphyxiates, suffocates or by any means whatsoever restricts the oxygen flow of another person and thereby causes actual bodily harm, with or without the other person’s consent, shall be guilty of an offence.”</p> <p>c) The enactment of a bespoke offence of ‘sexual strangulation manslaughter by unlawful and dangerous act’, (the efficacy of which lies in the enactment of the non-fatal offences as above).</p> <p>d) The enactment of a bespoke offence of ‘sexual strangulation gross negligence manslaughter’.</p> <p>e) The offences should</p> <p>not to be contained in domestic abuse legislation. f) The provision of education to raise awareness of the dangers of rough sex and the provision of specialist training within the criminal justice system in recognition of the distinctive nature of the offence, the exceptional dangerousness of the conduct (and often the offender) and the different nature of injuries it causes.</p> <p>g) While it does not address the deficiencies in the current law specific to strangulation, clarification of the law of consent to harm in relation to non-strangulation offences would be a useful addition to any programme of reform.</p>
ANON-W4AD-VNZ5-3	<p>Please see our comments under question 2(a).</p> <p>Further additional steps may also be considered by the Department:</p> <ul style="list-style-type: none"> • Extending anonymity for victims and their families in the press in cases where no sexual offences are charged (for example if homicide but no rape charges are brought forward). • Guidelines for media to follow when reporting on cases murder cases where rough sex may be introduced to sensitively manage impact on families <p>If no additional legislation around using the rough sex defence in murder cases is forthcoming, the Department may in the alternative wish to consider:</p> <ul style="list-style-type: none"> • Extending previous sexual history rules to cases in which victim is dead and the murder charge relates to alleged consensual sex • If Defence are to raise rough sex defence in murder cases, DPP should automatically review the case to avoid unnecessary downgrading or dropping of charges (as proposed by Harriet Harmon in early stages of GB Domestic Abuse Bill)

Response ID	Answer
	<p>Further, wider measures could also be taken to tackle the root cause that allows such misogynistic defences to be used:</p> <ul style="list-style-type: none"> • Meaningful change to the adversarial system – much of the impetus for using such defences is that the drama of the adversarial system suits such defences. Anecdotal examination of continental legal regimes has shown that this is not really a problem that exists in inquisitorial systems. • Replace jury trials in these cases, and other sexual offences cases, with a judge-led panel, consisting of one judge and two expert lay assessors. This would mitigate the possibility of such defences being relied upon in the hope that they successfully tap into the public's belief in rape myths around the character of 'women who like rough sex' etc. Such claims of 'rough sex gone wrong', even if not credible, may nonetheless weigh heavily on a jury of non-experts in sexual offences when considering the reasonable doubt threshold. Juries may be more inclined to acquit out of fear of 'getting it wrong' and may hold a number of unconscious biases about the nature of rape, sex and what they view as 'the kind of woman who are into rough sex'. • Introduce a standalone non-fatal strangulation offence. Many of the homicides of women where consensual rough sex is alleged have been killed by strangulation. We welcome the Department's intent to bring forward separate legislation on non-fatal strangulation at the earliest opportunity.
ANON-W4AD-VNZZ-8	<p>We are calling for lawyers to desist in taking advantage of a defence that was deemed inappropriate a long time ago. Instead if the defence is of a sexual nature, then the charge must be a sexual offence, even if it has to be created to deal specifically with death caused by negligent or reckless sexual behaviour.</p> <p>A sexual offence is preferable to a domestic abuse offence for several reasons:-</p> <ul style="list-style-type: none"> -Fair labelling for sentencing and monitoring. -Prohibits use of sexual history by the defendant. -The offence will not necessarily occur within an intimate partner relationship. -One can consent to 'rough sex' practices either within or outside of an intimate partner relationship. -Non-fatal strangulation should be included in sexual violence and intimate partner violence cases. -The onus should be on proving consent not proving intent. <p>To clarify, this law would be suitable for other jurisdictions also, but it is especially relevant in Northern Ireland because of our persistent issues with inadequate sex and relationships education, our higher rates of homophobia and our section 5 duty to report any crimes to the PSNI, meaning for instance that a person injured during consensual sex may fear seeking medical attention as medical personnel would have a duty to report anything that they believed to be a crime.</p>

Response ID	Answer
ANON-W4AD-VNT9-1	<p>As outlined in response 2a, adopting DAB from E& W is not sufficient. We believe a new category of sexual offence needs to be introduced that provides accountability for causing death by reckless behaviour. A sexual offence is preferable to domestic abuse offence:</p> <ul style="list-style-type: none"> Proper labelling for sentencing and monitoring Prohibits the use of sexual history by the defendant The "offence" will not necessarily occur within an intimate partner relationship.
ANON-W4AD-VNZ8-6	<p>We want to see the creation of a new sexual offence that effectively criminalises harmful sexual behaviour. The law in England and Wales sets the bar too low, in our opinion. It is not possible to stop defendants in a murder case to claim the death was accidental during consensual sex and therefore a proper deterrent in the form of a relevant sexual offence is necessary. We agree with other women's organisations such as Raise Your Voice and the Women's Policy Group that this offence should be reckless or negligent sexual activity that causes harm such that a reasonable person would know the outcome is likely to be serious injury or death. This is the only way to properly hold perpetrators of these crimes accountable for their violent actions within the framework of our criminal justice system. Victims deserve to have these crimes recognised for what they are.</p>
ANON-W4AD-VNZB-G	<p>We are calling for a new sexual offence to be created to deal with death caused by negligent or reckless sexual behaviour. This new offence would address the gap highlighted in our answer to question 1 above where murder charges hinge on intent.</p> <p>The new offence would apply in circumstances where the sexual activity was reckless or negligent to such a degree that a reasonable person must know that serious injury or death would be the likely outcome.</p> <p>We draw on the work of Dr Alison Cronin, Dr Jamie Fletcher and Dr Samuel Walker at Bournemouth University, whose work has informed our argument here. The importance of categorising this as a sexual offence is as follows:</p> <ol style="list-style-type: none"> 1. It accords with the principle of "fair labelling" and would allow for the development of fair and proportionate sentencing guidelines for this category of homicide. 2. Categorisation as a sexual offence has the procedural advantage that evidence of the victim's past sexual history could be restricted by an extension of the Youth Justice and Criminal Evidence Act 1999 ss. 41 and 42 provisions. This would address widespread criticism that the current procedural approach in homicide cases contains no bar to the inclusion of the victim's past sexual history. 3. Framing the offence in terms of a sexual nature is preferable to the contextualisation as domestic abuse that has occurred in England and Wales. This would recognise that sexual relations occur outside "domestic" relationships and that joint consensual engagement in a dangerous activity does not necessarily amount to "domestic abuse" – to suggest that it would be a denial of the autonomy of both parties. <p>Therefore, we are calling for a new sexual homicide offence that would take into account deaths and serious harm occurring due to negligent or reckless actions in sexual practice. Northern Ireland has a chance to set the standard internationally by both preventing</p>

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	<p>these crimes, and delivering justice for victims and survivors. Dr Cronin also explains that “The adoption of the existing common law definitions with the addition of the sexual context has a number of benefits:</p> <ol style="list-style-type: none"> 1. The application of the existing law to the sexual context provides parity with homicides committed in non-sexual circumstances, the sexual element being a matter of fact and serving as an aggravating or mitigating factor as appropriate. 2. There is no need to develop new and uncertain legal principles that may spawn future case law or retrospective appeals. 3. The existing common law definitions are sufficiently broad as to encompass dangerous or grossly negligent sexual conduct of any nature. 4. As the general law of homicide develops, either in common law or statute, the sexual killing offence would develop in step without the need for additional enactment/reform. <p>We are also calling for the creation of a new non-fatal strangulation offence that focuses specifically on non-consensual choking or strangulation. This should apply both where strangulation constitutes part of a pattern of domestic abuse, as well as where it occurs in a sexual encounter where there is no intimate partner relationship.</p>
ANON-W4AD-VNZZP-X	<p>We propose that a new law would deal with the concerns raised around the so-called “rough sex defence” and the loopholes that still exist. A defendant will still be able to claim that a death was the accidental outcome of consensual activity, however this new law would provide for cases where this defence can be met with a new charge – that the sexual activity was reckless or negligent to such a degree that a reasonable person would know/be aware that serious injury or death could/would be the likely outcome.</p> <p>We propose that this law should be a new category of sexual offence, based partially on the work of Dr Alison Cronin, Dr Jamie Fletcher and Dr Samuel Walker at Bournemouth University, whose work has informed our argument here. In the article Homicide and Violence in Sexual Activity, Moving from Defence to Offence they provide a persuasive argument that the legislation that would formalise the findings of R. V Brown (1994) would not actually prevent people from claiming that death caused during sexual activity was accidental, whatever its cause, resulting in the outcome that most of these cases are prosecuted as manslaughter or the defendant pleads guilty to the lesser charge of manslaughter. This cannot be avoided by formalising R. V Brown, as the legislation proposed would do; “in order to avoid a major legal pitfall, campaigners need to articulate the problem and their aim more clearly, engage with the current law and adopt the legal terminology that will effectively make their point. It is suggested that this could amount to a momentous change in criminal law that would see justice for victims who die as the result of violent sexual attacks. In order to achieve this, campaigners must move on from their discussion of defendants using a defence, which is not in law technically correct, and towards reform of the offence that the defendant has committed.”</p> <p>In addition there is precedent for the creation of a specific offence lying between murder and manslaughter in the form of the offence of “causing death by dangerous driving” which captures offences where the driver should have known that their conduct while driving was such that it could have resulted in serious injury or death, even</p>

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	<p>if the intent was not to kill, effectively prosecuting them for the outcome of their recklessness and negligence that could have been avoided with due care and attention.</p> <p>Having read as much as possible around this issue, our argument is supported by and we draw on the work of Dr. Alison Cronin et al. at Bournemouth University who are working on the same assumption that this needs to be a bespoke offence and also advocate the need for this to be classified as a stand-alone sexual offence. The importance of this being as follows:</p> <ol style="list-style-type: none"> 1. It accords with the principle of “fair labelling” and would allow for the development of fair and proportionate sentencing guidelines for this category of homicide. 2. Categorisation as a sexual offence has the procedural advantage that evidence of the victim’s past sexual history could be restricted by an extension of the Youth Justice and Criminal Evidence Act 1999 ss. 41 and 42 provisions. This would address widespread criticism that the current procedural approach in homicide cases contains no bar to the inclusion of the victim’s past sexual history. 3. Framing the offence in terms of a sexual nature is preferable to the contextualisation as domestic abuse that has occurred in England and Wales. This would recognise that sexual relations occur outside “domestic” relationships and that joint consensual engagement in a dangerous activity does not necessarily amount to “domestic abuse” – to suggest that it is would be a denial of the autonomy of both parties and could potentially also contradict case law as established in R v Wilson . <p>Accordingly, we are specifically advocating the enactment of a sexual homicide offence, as an addition to the provisions of the Sexual Offences (NI) Order, that encompasses the existing law on manslaughter in the forms of unlawful and dangerous act, gross negligence, and reckless manslaughter with the additional element of sexual activity.</p> <p>Cronin adds that “The adoption of the existing common law definitions with the addition of the sexual context has a number of benefits:</p> <ol style="list-style-type: none"> 1. The application of the existing law to the sexual context provides parity with homicides committed in non-sexual circumstances, the sexual element being a matter of fact and serving as an aggravating or mitigating factor as appropriate. 2. There is no need to develop new and uncertain legal principles that may spawn future case law or retrospective appeals. 3. The existing common law definitions are sufficiently broad as to encompass dangerous or grossly negligent sexual conduct of any nature. 4. As the general law of homicide develops, either in common law or statute, the sexual killing offence would develop in step without the need for additional enactment/reform.”
ANON-W4AD-VNU9-2	<p>(Actual Sex and relationships education should reflect and challenge the intense cultural pressures on young women and girls to receive violence in their sex lives. Wider education which targets men who commit this violence would be very welcome – in 2020, Savanta Comres found that 25% of UK men under 40 admit to criminal assault of women, in the form of unbidden violence such as choking, slapping, gagging or spitting during sex.</p>

Question 5: Please provide any other or additional comments.

There were 37 responses to this part of the question.

Response ID	Answer
ANON-W4AD-VN4P-R	I also believe that the issue of withdrawing consent much be educated fully. Should someone originally engage in a sexual behaviour which they then decide they do not like for whatever reason (for example, it is more rough than they expect), it must be made clear that withdrawal of consent means the behaviour must stop immediately. Many victims of sexual assault have been noted to have withdrawn consent during the act, which is then scrutinized heavily by the court.
ANON-W4AD-VN51-T	O
ANON-W4AD-VN32-S	This amendment would enhance the level of protection for victims in conjunction with the Domestic Abuse and Family Proceedings Bill and the introduction of Domestic Homicide Reviews in NI.
ANON-W4AD-VNWC-E	N/A
ANON-W4AD-VNKW-P	Nothing to add.
ANON-W4AD-VNBC-S	This is really important and impacts a substantial number of people who at present are denied justice in these circumstances.
ANON-W4AD-VNBD-T	You need to try to end violence and sexual violence against women and girls, and not pander to the desires of violent and sexually violent men. For the sake of the safety and wellbeing of women and girls, who are at least half your population, and some of the most vulnerable.
ANON-W4AD-VNPP-M	Would be great to see this amendment go through.
ANON-W4AD-VNPP-M	Ní Saoirse go Saoirse na mBan
ANON-W4AD-VNPN-J	Reading through past cases where women have been murdered by their partners, it is clear the men often try and shame the memory of the women by discussing and labelling the women with a stigma, she cheated or she loved when I beat her up. No one loves being treated that way and if those women actually did say they enjoyed that, it was so their partners wouldn't be mad at them. So they wouldn't displease their partners and their partners took it too far as which will happen again and women are not being protected from this. It's disgusting nowadays that men have legislation in place that rough sex can be used as a plea and I find it degrading and disrespectful to women. Because where do we stop, men not being persecuted probably for raping women or murdering them? So they can literally do as they want to us with no repercussions? Yes that is how it feels, men don't understand in anyway what it is like to be a woman and this legislation highlights that even further. It's not good enough that a stranger in the street can attack us with no repercussions, that we are afraid to go places by ourselves because we could be hurt, we can't even trust that are partners would be held accountable if they killed us because if they label it as rough sex then that's fair enough. Disgusting
ANON-W4AD-VNCH-Y	As above, given the DoJ is reviewing the law on non fatal strangulation, any proposal on consent to sexual gratification must ensure that non fatal strangulation assaults are not able to be consented to. If NFS is made a specific offence, then it must be included in the offences listed under any amendment on

Response ID	Answer
	<p>consent to violence for sexual gratification.</p> <p>In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including:</p> <p>Exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.</p> <p>Collection of data and reporting on the effectiveness of the amendment. At present our campaign is the only organisation collecting data on ‘rough sex’ claims – the DoJ will require its own data to understand if the amendment has had the intended effect and whether further measures (in law, in training, in guidelines) are needed.</p>
ANON-W4AD-VNC2-9	<p>Exclusion of sexual history from such cases should be incorporated into legislation. The problem is with the perpetrator and not the victim, and this message should be clear.</p>
ANON-W4AD-VNK9-R	<p>We need to protect women.</p>
ANON-W4AD-VNSA-8	<p>I eagerly await one N.Ireland case to come to trial...</p> <p>20 year old Patrick Wyrebek was killed by her partner. He has told police he killed her in 'erotic asphyxiation' - a claim repeated in his first court hearing. His defence barrister said that it was a normal part of their sex life, and when Patrycja died “she never gave him such signal to actually stop.”</p> <p>Maybe she did and he is lying, maybe she wanted to but couldn't due to her lack of oxygen, maybe she was utterly terrified and was paralysed with fear, maybe she couldn't speak a 'safe word' because she was being strangled.</p> <p>When John Broadhurst killed Natalie Connolly he and his barrister used the 'rough sex' defence and though her murder is one of the most horrific deaths you might have, at least her murder wasn't in vain as the U.K. Government ended the 'rough sex' defence as a result of this case.</p> <p>I hope N.Ireland follows suit and doesn't let Patrycja Wyrebek's death be just another murder where the 'rough sex' defence means her killer gets away with it, or gets a minimal punishment, like John Broadhurst, who was sentenced to 3yrs 8months.</p> <p>With all the rapes that are reported and aren't investigated, with all the rapes that are reported, investigated and do not result in prosecution, and with all the rapes where the victim is degraded, judged, undermined and dismissed...we need laws to start protecting women and men, but overwhelmingly women, from rapists and when murderers successfully kill their victims they</p>

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	shouldn't be able to blame their victims and say "she wanted it, she asked me to", because no woman does. Ever.
ANON-W4AD-VNSA-8	The law within Northern Ireland consistently fails many, with women in particular. This could LITERALLY save lives and help justice to be served.
ANON-W4AD-VND4-C	N/A
ANON-W4AD-VNS7-X	Thank you for doing this, and asking these questions. Best of luck
ANON-W4AD-VN8X-4	I endorse and repeat the comments of the organisation 'We Can't Consent to This'. I hope that Northern Ireland will not fall behind its counterpart jurisdictions in this area of human rights and criminal justice, as it has so many times in the past. I would expect serious concerns to be raised in respect of any elected representative or government official, or respondent to this consultation, who sought to argue against this much-needed change to the law.
ANON-W4AD-VN8D-G	This is a very welcome amendment
ANON-W4AD-VN8N-T	There needs to be more responsibility for one's actions in this all. It does not and should not matter if someone was asked to perform an act of violence on someone else, the assaulter should know the consequences of their actions could result in grievous bodily harm or death and they should decline to do so, for their own benefit at the least. It is not okay to deliberately hurt someone, even if they ask you to do it to them.
ANON-W4AD-VNYM-T	Strangulation should also be included. There are too many references to stangulation in the porn industry and many feel that this is an acceptable act during intercourse - it most definitely is not!
ANON-W4AD-VNYE-J	It is time abusers stopped thinking they have a right to hurt others. Legally if nothing else this needs to be the case. No matter what the victim says it is unacceptable to cause someone bodily harm during sex or any other act.
ANON-W4AD-VNUN-Q	We owe a duty of care to these women, if their partners realise that the consequences are serious when things go wrong (even with consent) they will be less likely to push situations to dangerous levels. No one should end up hurt or killed to sexually satisfy another person and often consent may be given under duress.
ANON-W4AD-VNTW-Y	This defense is an outrage in a modern society. Consent to sexual activity is not consent to harm nor consent to one's murder. This defense should not be available to perpetrators who kill their partners during sex.
ANON-W4AD-VNTX-Z	No one consents to be killed and all women who have survived have said that they had not consented to rough sex. Disproportionately women are being murdered and their killers are getting lighter sentences, if this consent was 'real' why do we not see the same with male victims
ANON-W4AD-VN91-X	As a Northern Irish woman, I am glad that the public is being consulted on this issue. I want the civil service and my elected representatives to give all forms of violence against women serious consideration in terms of then writing comprehensive legislation that will provide effective sanction and act as a deterrent. I want a justice system that will take all forms of violence against women seriously. I want a wide public

Response ID	Answer
	education programme that teaches men that non-consensual sex acts are sexual assault and that they are wrong and will be punished by the legal system and I want women to have the legal backing to be able to seek help from the police and justice from the courts when they have been violently sexually assaulted.
ANON-W4AD-VN9B-F	Allowing for a loophole of this nature to exist in law is abhorrent and violently misogynistic in nature.
ANON-W4AD-VN91-X	Thank you for this consultation.
ANON-W4AD-VN9C-G	As an immigrant to NI, I was surprised and disappointed by the levels of sexism, as has been borne out by numerous studies. NI must take the opportunity to address a major threat to the safety and wellbeing of women and girls, and to educate everyone, especially boys and men, about the limits of consent.
ANON-W4AD-VN9T-1	<p>The systematic review has been peer-reviewed and is due to be published next week in international journal 'Neuropsychological Rehabilitation'. This will be its DOI number:</p> <p>10.1080/09602011.2020.1868537</p> <p>In the meantime, I have shared an earlier preprint on the Open Science site, where it has been downloaded over 1000 times, and was used by the Select Committee reviewing the Domestic Abuse Bill for England and Wales: https://psyarxiv.com/c6zbv/.</p> <p>Please do not hesitate to contact me if you require any further details. I would be delighted to provide evidence more formally, or to answer any specific questions.</p>
ANON-W4AD-VN9K-R	This is overdue but I am glad this is finally being looked at.
ANON-W4AD-VNZY-7	5. As an emerging area of significant concern, it is important to note that it would benefit from further research and the increased specialization of professionals dealing with victims of strangulation. This has been recognized in other jurisdictions where considerable progress has already been made in relation to the law, the investigative process and prosecutorial guidelines. Of note, a wealth of information that might guide this and further reform in this area can be found in the California District Attorneys Association 'Investigation and Prosecution of Strangulation Cases' 2020.
ANON-W4AD-VNZ5-3	It is extremely positive that this work is being carried out so swiftly and that the Minister and Department have made it a priority piece of work.
ANON-W4AD-VNZZ-8	<p>All of the above is recommended with a note of caution: Alliance for Choice and its membership have been in courtrooms in NI, where inappropriate suggestions about the complainants have been made, where Judges have made casual misogyny part and parcel of the recommendations to Jurors, where esteemed barristers and senior legal actors have gladly undermined survivors. The whole system and process, from start to finish, for survivors of violence or sexual violence, will not be changed by making a few people go to a training course. The law does not serve us as it should, instead it is played like a game where no-one wins.</p> <p>Northern Ireland needs lawyers who have grown up with a deep understanding of consent, not just what plays out well in a</p>

Response ID	Answer
	<p>courtroom. Judges should require in ALL sexual offences in NI, that the need for consent to be proven be higher than the need to prove intent.</p> <p>NI is still a place where women and LGBTQ+ people are treated as sexual objects. Between July 2019 to June 30 this year, there were 32,127 domestic abuse incidents in Northern Ireland (PSNI figures). Northern Ireland has the second highest rate (0.53) of female intentional homicide victims by intimate partner, per 100,000 inhabitants, in Western Europe as defined by WEOG and the regions covered by the data published by Eurostat. We have a significant problem, and every actor in the Criminal Justice System contributes to this shocking picture.</p> <p>The Gillen report has not yet made any tangible difference to our daily lives. Education for our children and adolescents and public health awareness campaigns for adults, free access to mental health and trauma counselling for all, well-resourced support organisations, greater social supports for single parents (as finances are a key part in preventing people leaving abusive relationships), better resourced addiction services, all of this instead of the recent divestment in social supports we have seen, would do much more to prevent harm that arresting someone after the harm is done.</p>
ANON-W4AD-VNT9-1	<p>We support the detailed submission by Women's Policy Group . We are disappointed that in the current health pandemic this consultation period was less than three months over a holiday period, we feel it is insufficient time to fully consult and engage on the issue. The questions asked are leading, particularly Q 2a. When consulting among our members, answering negatively to that was conflicted as we do want to see "consent to serious harm, outlawed" but we also want to ensure that the outcome of any fatality through reckless sexual activity is able to be managed effectively by the Criminal Justice System where the victims are protected and sentencing reflects the crime.</p>
ANON-W4AD-VNZB-G	<p>Please note - This response is a duplicate of an emailed response which received an error message – I have include the CS response and removed the non CS response</p> <p>HERE NI (previously LASI), established in 2000, is a regional organisation that works across all areas of Northern Ireland and the boarder counties to support lesbian and bisexual (LB) women and their families.</p> <p>We advocate for and support LB women and their families and improve the lives of LB women across Northern Ireland. We do this in lots of different ways; through providing information; peer support; facilitating training; lobbying government and agencies; offering a community space for meeting and much more.</p> <p>Here NI is the only women focused organisation within the NI LGBTQ+ sector. Jointly with Cara Friend, we run the gendered violence project supporting LGBTQ+ women who have experienced or at risk of sexual and domestic violence.</p>

Response ID	Answer
	<p>There have been a number of high profile cases where a man has attempted to use the so called 'rough sex' defence following a murder or manslaughter charge. Locally, just last year with the killing of Patrycja Wyrebek in Newry and in 2018 in England in the killing of Natalie Connolly in England in 2016. We do not think the current legislation and case law is sufficient for these circumstances.</p> <p>We believe that there are a number of issues we need to address as a society, including education about consent and safe sexual practices, awareness raising on domestic abuse and healthy relationships, and improvements to the criminal justice system for victim and survivors as laid out in the Gillen review.</p> <p>However, we do not think the proposed legislation, and its counterpart in the Domestic Abuse Bill in England and Wales, is sufficient to tackle these issues. Therefore, we are proposing a new sexual offence which we will detail in our answer to question 4.</p> <p>We have an opportunity to address this often misogynistic violence in a way that does not stigmatise consensual sexual practices, which may take place within or without of an established intimate partner relationship.</p> <p>As members of both the Women's Policy Group and the Raise your Voice steering group, we also endorse their responses to the consultation.</p> <p>We note with thanks the one week extension to the consultation period, however we are also concerned that the relatively short consultation period, which included a customary holiday period, has presented a barrier to drafting our own response and is likely to result in fewer responses from the general public. We recommend that the Department review the WRDA guidance 'Women at the Heart of Public Consultation, A guide for Public Authorities and Women's Organisations'.</p> <p>We note when considering previous case law, heterosexual and homosexual relations have been treated differently by the courts. For example, in R v Brown 1995 consensual sadomasochism between gay men was criminalised, whereas one year later in R v Wilson 1996 consensual branding of a woman by her husband was not as the court found that consensual activity between husband and wife in the privacy of the matrimonial home was not a matter for the courts. We would argue that consensual sexual activity between adults is not a matter for the criminal justice system. Legislators must be careful not to remove autonomy from individuals engaging in consensual sexual practices, regardless of gender and sexual orientation.</p> <p>Rather than any moralistic approach to RSE, we need to focus on the needs and realities of our young people. Any education</p>

Response ID	Answer
	programme must discuss all sexual orientations, consent, and safe sexual practice. Limiting so called education to a pro-abstinence and heteronormative syllabus is failing our young people, and contributes to a lack of awareness of healthy relationships and safe sexual practice.
ANON-W4AD-VNXP-X	We advocate for a new sexual offence, independent of the DA and Family Proceedings Bill. So called 'rough sex' does not only occur in domestic settings, in addition to this by law already in existence no one can consent to their own death, however unless there is a evidence of premeditation someone cannot be found guilty of murder, therefore there needs to be a specific law, just as there is for death caused by 'drink/drug driving' reckless driving etc. In the majority of cases no one sets out to kill by driving however they will know circumstances that may lead to a death. If there is a specific law, this can be included in the much needed education programme for Northern Ireland and by very nature of knowing the consequences will lessen the activity in the first place !!!

NON CITIZEN SPACE RESPONSES

No 1. The Bar of Northern Ireland



THE BAR *of*
NORTHERN
IRELAND

Introduction

1. The Bar Council is the regulatory and representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court. The Bar Council is continually expanding the range of services offered to the community through negotiation, tribunal advocacy and alternative dispute resolution.
2. The Bar welcomes the opportunity to comment on the Department of Justice's consultation paper on the use of 'consent to serious harm for sexual gratification' as a defence. This submission also reflects the views of the Criminal Bar Association which represents the views of prosecuting and defence counsel, serving to ensure an independent and quality source of specialist criminal law advocacy in Northern Ireland. It is worth highlighting that counsel involved in prosecuting and defending sexual offence cases have many years of experience in dealing with this type of work; they have also undertaken extensive and ongoing training and are bound by professional ethics and the Bar of Northern Ireland's Code of Conduct. The Bar's response is structured according to the questions contained in the consultation paper.

Retain the status quo

Q1. Do you think the law in Northern Ireland is sufficient as it stands?

3. The case of *R v Brown* already makes clear the legal precedent that a victim's consent to serious harm for sexual gratification is not a defence and therefore, by extension, such consent cannot serve as a defence where such sexual activity resulted in the victim's death. It is important to note that victims are not being directly disadvantaged by the current position in Northern Ireland at present as the courts can rely on existing case law. However, the Bar takes the view that this DOJ review provides a useful opportunity to consolidate and provide greater certainty around the existing position taken by the courts by placing it into statute.

4. The Bar accepts that incorporating the position into statute, as has been done in England and Wales through an amendment to the Domestic Abuse Bill, is a chance to make the law clear on the matter in Northern Ireland too. Furthermore this restating of common law in statute, to highlight that a person cannot consent to the infliction of serious harm or worse for the purposes of obtaining sexual gratification, must also involve the creation of a parallel education campaign in this jurisdiction to help boost wider public knowledge and awareness.

Change the law so that ‘consent to serious harm for sexual gratification’ is not a defence.

- Q2. (a) Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?**
(b) If yes, do you think the offences to which the amendment applies are appropriate?

5. Yes – The position adopted through the amendment contained in the Domestic Abuse Bill in England and Wales accords with evolving public attitudes and provides an opportunity to give greater protection to vulnerable victims. Under the Domestic Abuse Bill amendment introduced in England and Wales a “relevant offence” means an offence under section 18, 20 or 47 of the Offences Against the Person Act 1861 (“the 1861 Act”); “serious harm” means (a) grievous bodily harm, within the meaning of section 18 of the 1861 Act, (b) wounding, within the meaning of that section, or (c) actual bodily harm, within the meaning of section 47 of the 1861 Act. The Bar is generally content with this approach being taken in Northern Ireland, subject to some observations in relation to the inclusion of (c) actual bodily harm within the meaning of section 47 of the Offences Against the Person Act 1861.
6. We would query whether the inclusion of this could result in unintended consequences such as the defence being outlawed in cases where harm of a low level of seriousness has occurred. An alternative might be to restrict the relevant offences to those involving “really serious harm”, perhaps through the cases falling under categories (a) and (b), which might be most appropriate in terms of capturing intentional misogynistic offences whilst also filtering out those cases involving more minor injuries sustained in a consensual context such as, for example, light bruising.
7. A specific example which could occur is a defendant being charged with a sexual offence, such as rape or attempted rape, and also assault due to minor bruising on a complainant. A judge could then be in the position of having to charge a jury that if they found the sexual act had been consensual they should acquit the defendant of the sexual offence. However, as consent would no longer be a defence to the assault the jury would be obliged to convict on that count if they were satisfied to the appropriate level that the defendant had caused the bruising. The outcome of such a difficult scenario might not be viewed as particularly fair or just if the sexual act was found to be consensual but could be a potential reality in the courts if section 47 is included within any legislation in Northern Ireland.
8. However, if the Department ultimately concludes that reference to section 47 should be included within any legislation then it will be vital that the PPS prosecute any cases appropriately so that those which involve minor bruising and abrasions instead proceed as common assaults under section 42 of the 1861 Act.

9. We would also comment on the sexually transmitted infection exception contained in the amendment to the Domestic Abuse Bill in England and Wales. It states at (4) that: Subsection (2) does not apply in the case of an offence under section 20 or 47 of the 1861 Act where (a) the serious harm consists of, or is a result of, the infection of V with a sexually transmitted infection in the course of sexual activity, and (b) V consented to the sexual activity in the knowledge or belief that D had the sexually transmitted infection.
10. It is clearly important to strike the right balance in this part of any new legislation and the Department might wish to consider widening it further so that the provision does not apply in the case of an offence under section 47 of the Offences Against the Person Act 1861 where the “serious harm” does not amount to physical injury and amounts instead to hurt, damage or psychiatric injury. This suggested exception takes account of the case DPP v Smith [2006] EWHC 94 in which the defendant cut off the complainant’s hair which was in a pony tail without her consent. The court held that “harm” is not limited to “injury” but extended to hurt or damage and that “bodily”, whether used as an adjective or an adverb, is “concerned with the body” and not limited to skin, flesh and bones.

A parallel programme of education

Q3. Do you consider that a programme of education is needed to:

- **Raise awareness of the dangers of rough sex, and the meaning of consent; and**
- **Raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?**

11. The Bar takes the view that a programme of education is vital in this area. A more informed public discourse around the dangers of rough sex and the meaning of consent is hugely important and the steps already taken by the PSNI and other agencies in promoting the ‘No Grey Zone’ sexual consent awareness campaign since 2018 are to be welcomed. Education in our schools and universities on healthy relationships and consent should also form an important part of any work that the Department undertakes in this area.

12. Any changes in legislation will also necessitate awareness raising across the criminal justice system for professionals including police, prosecutors, barristers, solicitors and the judiciary. The Bar is active in developing opportunities for members around specialist training and resources relevant to serious sexual offences, such as our Vulnerable Witness CPD Resource Pack and a new Vulnerable Witness Training Programme which is in development for launch in 2021. Our Criminal Bar Association also supports the delivery of a wide variety of CPD events and training to practitioners and could develop a programme of work for members relevant to any future legislative change.

An alternative or additional options

Q4. Do you consider something different is required for Northern Ireland?

13. See our comments above. The Bar also notes the Criminal Justice Inspection Northern Ireland inspection report from 2019 *“No Excuse: Public Protection Inspection II: A thematic inspection of the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland”* which has resulted in the

DOJ commissioning a review to identify any inadequacies in current legislation around the act of choking or strangulation by defendants. We would welcome the opportunity to comment on this work in due course as anecdotal reports from our practitioners suggest that they are increasingly seeing cases involving serious acts of choking and strangulation by defendants.

No 2. Belfast Area Domestic & Sexual Violence Response



Consultation response: Consent to Serious Harm for Sexual Gratification: Not a Defence.

The Belfast Area Domestic & Sexual Violence Partnership is one of five local domestic violence partnerships operating across Northern Ireland. We bring together agencies with an interest in domestic and sexual violence with the aim of sharing resources, knowledge, best practice and expertise. We have a wide and diverse membership, with approx. 26-member agencies including Belfast Health & Social Care Trust, Men's Advisory Project, Women's Aid and criminal justice agencies.

We are very grateful to Minister Long and to the Department of Justice for the opportunity to comment on the issue of consent to serious harm for sexual gratification: not a defence.

1. Do you think the law in Northern Ireland is sufficient as it stands?

No, we do not feel the law in Northern Ireland is sufficient and would welcome specific legislation around this issue.

We feel specification legislation is required to bring us in line with other jurisdictions in the UK. Although a precedent exists in case law, there are still many examples of where this defence has been attempted in Northern Ireland. Most recently the death of Patricia Wyrebek in Newry in August 2020. Across the UK the number of attempts to use this defence has continued to rise.

Not only are we seeing attempts to cite this defence but there are also instances where the defence has been successful in getting a lesser sentence or in some circumstances no conviction at all.

Specific legislation would set a clear precedent that it will not be tolerated or accepted. It clearly sets out the position in law and we feel would act as more of a deterrent. It would also highlight the issue and raise awareness that this behaviour is unacceptable and should not be normalised.

Question 2:

(a). Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?

(b). If yes do you think the offences to which the amendment applies are appropriate?

Yes, this sends a very clear message that it is not acceptable to use this as a defence and that, people do not freely consent to being seriously harmed. Without changing the law, perpetrators will continue to cite this defence.

Within the context of domestic abusive relationships, many victims are coerced into consenting to sexual acts they do not want to engage in. We know that non-fatal strangulation is very prevalent in domestic abusive relationships, with many perpetrators strangling during sexual activity.

Outlawing this defence would remove the options for perpetrators to explain and justify their actions and the harm inflicted on the victim by saying they consented. We know many victims of domestic abuse feel too frightened to say they did not consent and go against their perpetrator. Equally many victims may have on the surface consented but only out of fear of the consequences if they did not. Outlawing the defence would provide some protection to these victims.

We agree that the offences proposed should have this amendment applied (ABH, GBH and wounding with intent to cause GBH). We would also like to see the amendment include offences relating to strangulation and understand the Department are considering the issue of non-fatal strangulation separately. As previously stated non-fatal strangulation is a huge issue within domestic abusive relationships, it is vital that this serious assault is charged appropriately and not viewed as a minor assault, where consent can be used as a defence. The offences to which the amendment applies do not include common assault or strangulation offences.

3. Do you consider that a programme of education is needed to:

- Raise awareness of the dangers of rough sex, and the meaning of consent and
- Raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint.

Yes, unfortunately these behaviours are prevalent within our society and have been normalised, to an extent, through pornography and violent video games, etc. A large proportion of young people learn about sex from the internet and through porn, where images of strangulation, choking, etc are extremely common. Many young people accept this as the norm in a sexual relationship and feel they have to consent to it. Appropriate awareness raising and sex education would be extremely important to address and challenge this. This should be consistent across Northern Ireland and not down to individual schools, etc.

Discussions around consent are also paramount, understanding what consent is and how consent and compliance out of fear for the consequences are not the same thing.

Awareness raising amongst criminal justice agencies is also essential, they need to understand the issues. We still see numerous examples of where rough sex defence has succeeded in the UK courts. All parts of the criminal justice system need to fully understand the seriousness of the issues and the consequences of rough sex for the victim. Instances of non-fatal strangulation need to be taken seriously by all criminal justice agencies, as well as better understanding of the long-term health implications of it. A good understanding of coercive control within domestic abusive relationships would also be necessary. Fully understanding coercive control would enable them to understand that victims can seemingly comply but only out of fear for further consequences, again highlighting the difference in compliance and consent.

4. Do you consider something different is required for Northern Ireland?

We would be very keen to see specific legislation on non-fatal strangulation. Should non-fatal strangulation be made a separate offence we would want to see it listed under any amendment on consent to violence for sexual gratification.

No 3. Hourglass



HOURGLASS RESPONSE TO THE DEPARTMENT OF JUSTICE CONSULTATION:

CONSENT TO SERIOUS HARM FOR SEXUAL GRATIFICATION: NOT A DEFENCE.

JANUARY 2021

Introduction:

Hourglass is the only charity dedicated to calling time on the harm, abuse, and exploitation of older people across the United Kingdom. With more than 25 years' experience and expertise, our mission is to listen, advise and support vulnerable older people and all those affected throughout the UK. We will influence, challenge, and educate society and work in partnership to bring about real and positive change and seek an end to the abuse of older people.

Hourglass is pleased to have the opportunity to respond on this important and timely consultation.

QUESTION 1:

Do you think the law in Northern Ireland is sufficient as it stands?

While the "rough sex" claims as a defence to violence are rarely seen in cases involving older victims, the sexual abuse of women, girls, and men, whatever their age or background is a key problem. However, sexual abuse, rape, and sexual assault are often overlooked in older people, and fall outside the traditional stereotypes normally associated with sexual violence.¹

Older victims are usually less capable of resisting a physical attack or violent act of sex compared with younger females, and therefore they are less likely to avoid violence during the crime.² As a number of scholars have noted, the physical consequences of sexual violence in later life can include genital

trauma, gastrointestinal, and musculoskeletal problems,³ as well as pelvic problems, broken bones, and dislocated joints.⁴ Mental health issues can also occur, with reports of anxiety and depression.⁵ Jeary noted that other long term and life changing effects could result, with older victims feeling unable to continue living in their homes, suffering insomnia, incontinence, and nightmares.⁶

As “We Can’t Consent to This,” a campaigning organisation lobbying against the use of the “rough sex defence” notes, since 1972, 67 people in the UK have been killed in claimed sex “gone wrong,” and more injured; this includes one women over 65, Lesley Potter.⁷

In Northern Ireland and the rest of the UK, nearly 40% of women under 40 have experienced unwanted sexual violence during sex.⁸ In 2020, Patrcyja Wryebek was killed in Newry, Co. Down via “erotic asphyxiation” as claimed by the perpetrator, and in 2019 a County Down man was convicted of a 2017 assault on a woman; she had been tied up with cable ties, raped, and strangled with a plastic bag over her head. Initially claiming consent, the perpetrator later pleaded guilty to rape, a serious sexual assault charge, unlawfully and injuriously imprisoning the victim, assaulting her occasioning actual bodily harm and common assault.

Current legislation in Northern Ireland is focused around the 1993 case of R v Brown. This case concerned gay men engaging in consensual sadomasochism and laid down case law that consent is not a defence to more than transient or trifling injury. However, it is rarely cited in rough sex defence cases, and as “We Can’t Consent to This” notes “The common law of Brown only deals with the question of consensual violence in sadomasochism, and it is this lens through which violent assault and killing of women has been viewed. All women who survive to give evidence in trials say they did not consent to the violence.¹⁰”

Although as noted, the “rough sex” claims as a defence to violence are rarely seen in cases involving older victims, Hourglass is of the opinion that it is still hugely important that no matter what their age, sexual assault victims have the necessary legislation and are taken seriously - currently that legislation is lacking in Northern Ireland.

QUESTION 2 (a):

Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the domestic abuse bill in England and Wales?

Hourglass are of the view that yes, this will provide a robust defence for women, girls, and men who have suffered from violent sexual assault. Clear law will both hold perpetrators accountable as well as send a clear message. It will also bring the legislation in Northern Ireland into line with other UK nations.

QUESTION 3:

Do you consider that a programme of educations is needed to:

- raise awareness of the dangers of rough sex, and the meaning of consent; and
- raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?

Please give reasons for your response.

Hourglass argues that an education programme or an education campaign around sexual abuse, consent, and rough sex is key to challenging preconceived notions around the sexual abuse of older victims and victim survivors.

As Bows and Westmarland note with their investigation into the notion of “real rape,” the stereotype of rape focuses on a young white victim, who is attacked at night by a stranger.¹¹ This notion excludes those victims and victim survivors who do not fit into this narrow dynamic, and can lead to reluctance to report sexual assault

and rape offences, and increased disbelief in victim-survivors’ stories from law enforcement agencies.¹²

As well as this, cases that confirm to the “real rape” stereotype are more likely to result in prosecution.¹³

For older people in particular, ageist attitudes that revolve around deterioration and decay posit a view of older people as asexual¹⁴. While older people continue to both engage in normal sexual relationships¹⁵ and suffer from sexual abuse and rape¹⁶ – because of such attitudes and the taboo nature of older sexuality, understanding, belief, and research of the sexual abuse of older people is lacking among the general public, the police, and the judicial system.¹⁷ Educational programmes focused on both the normalness of older sexuality, and the sexual assault and abuse of older people are key to further understanding, and will provide impetus for victim-survivors to report their abuse.

In considering the criminal justice system, substantial evidence of the barriers faced by older victims of crime have been found. Most significantly by the HMICRFS and HMCPSI joint report, “The Poor Relation”, into the work of the police and the CPS in relation to crimes against older people,¹⁸ and an academic study into access to procedural justice in Northern Ireland.¹⁹ The former identified that crime against older people in England and Wales is not well understood by the Police and CPS, impacting the experiences of older people. The latter used data, unique to the PSNI, to compare outcomes rates by age of the victim. This study demonstrated that the criminal justice system was failing to adequately consider additional needs of older people, disproportionately impacting on older people’s ability to engage with the justice process. Both reports identified barriers experienced by older victims, including: fear of being a burden, fear of retribution, and fear of increased isolation or breakdown of support network.

The barriers identified in the literature on crimes against older people, convene around the idea of fear. The fear experienced by older victims is directed both at harm resulting from crime but also at ideas of further harm in the fallout from engaging with criminal justice processes. While a focus on new legislation or harsher sentencing may empower some older people to disclose experiences of crime, there is a corresponding risk that others will be turned further away from reporting, and as such educational campaigns are a legitimate way to encourage older people to report abuse.

Hourglass welcomes the Department of Justice in Northern Ireland undertaking a close examination and public consultation on this matter and is happy to be contacted to discuss the above in more detail.

For more information please contact:

Hourglass

- ¹ Chopin, J., & Beauregard, E. (2018). Sexual Abuse of Elderly Victims Investigated by the Police: From Motives to Crime Characteristics. *Journal of Interpersonal Violence*, 1-23. doi:10.1177/0886260518821456
- ² Bows, H. (2019). Sexual Violence Against Older Women in the UK. *Violence Against Older Women*, Volume I, 81-95. doi:10.1007/978-3-030-16601-4_5
- ³ Bows, H. (2019). Sexual Violence Against Older Women in the UK. *Violence Against Older Women*, Volume I, 81-95. doi:10.1007/978-3-030-16601-4_5
- ⁴ Fisher, B. S., & Regan, S. L. (2006). The Extent and Frequency of Abuse in the Lives of Older Women and Their Relationship With Health Outcomes. *The Gerontologist*, 46(2), 200-209. doi:10.1093/geront/46.2.200
- ⁵ Bows, H. (2019). Sexual Violence Against Older Women in the UK. *Violence Against Older Women*, Volume I, 81-95. doi:10.1007/978-3-030-16601-4_5
- ⁶ Jeary, K. (2005). Sexual abuse and sexual offending against elderly people: A focus on perpetrators and victims. *Journal of Forensic Psychiatry & Psychology*, 16(2), 328-343. doi:10.1080/14789940500096115
- ⁷ <https://wecantconsenttothis.uk/northern-ireland-consultation>
- ⁸ <https://wecantconsenttothis.uk/our-stories>
- ⁹ <https://wecantconsenttothis.uk/northern-ireland-consultation>
- ¹⁰ <https://wecantconsenttothis.uk/northern-ireland-consultation>
- ¹¹ Bows, H., & Westmarland, N. (2015). Rape of Older People in the United Kingdom: Challenging the 'Real-rape' Stereotype. *British Journal of Criminology*, 57(1), 1-17. doi:10.1093/bjc/azv116
- ¹² Brown, J. M., Hamilton, C., & O'Neill, D. (2007). Characteristics associated with rape attrition and the role played by scepticism or legal rationality by investigators and prosecutors. *Psychology, Crime & Law*, 13(4), 355-370. doi:10.1080/10683160601060507
- ¹³ Bows, H., & Westmarland, N. (2015). Rape of Older People in the United Kingdom: Challenging the 'Real-rape' Stereotype. *British Journal of Criminology*, 57(1), 1-17. doi:10.1093/bjc/azv116
- ¹⁴ Jones, H., & Powell, J. (2006). Old age, vulnerability, and sexual violence: Implications for knowledge and practice. *International Nursing Review*, 53(3), 211-216. doi:10.1111/j.1466-7657.2006.00457.x
- ¹⁵ <https://www.cqc.org.uk/publications/major-report/promoting-sexual-safety-through-empowerment>
- ¹⁶ <https://wearehourglass.org/sexual-abuse>
- ¹⁷ Bows, H., & Westmarland, N. (2015). Rape of Older People in the United Kingdom: Challenging the 'Real-rape' Stereotype. *British Journal of Criminology*, 57(1), 1-17. doi:10.1093/bjc/azv116
- ¹⁸ <https://www.justiceinspectrates.gov.uk/hmicfrs/publications/crimes-against-older-people/>
- ¹⁹ Brown, K. J., & Gordon, F. (2020). Improving access to justice for older victims of crime by reimagining conceptions of vulnerability. *Ageing and Society*, 1-18. doi:10.1017/s0144686x20001051



NIACRO Response to the Department of Justice Consultation of Consent to Serious Harm for Sexual Gratification: Not a Defence

30th November 2020

Introduction

NIACRO is a voluntary organisation that has been working for almost 50 years to reduce crime and its impact on people and communities. Our vision is of a society in which the needs and rights of all citizens, including victims of crime, adults and children who offend and those who are at risk of offending, are equally respected.

The Charity's Articles of Associations, approved in October 2015 by the Charity Commission for NI, identify NIACRO's objects which meet public benefit test, as being:

- to alleviate need and disadvantage through the provision of services, assistance, advocacy and representation to care for, resettle and rehabilitate offenders and ex-offenders, alleged offenders, persons at risk of becoming offenders and to care for the victims of crime and the families.
- to work for the prevention and reduction of crime for the benefit of the public in Northern Ireland.

Specifically, NIACRO's contributions are to:

- support the resettlement of adults leaving prison and those on community supervision.
- build skills, confidence and employability of people both in prison and in the community.
- support children, young people, families and adults who are displaying behaviour that would put them at risk of engaging with the criminal justice system, to make positive lifestyle choices.
- influence service providers in the statutory, voluntary and community sector and build their capacity to provide appropriate support to those affected by the criminal justice system.

- impact policy and practice by communicating our policy asks and engaging relevant publics at every level.

At the heart of NIACRO's work is the aim to reduce (re)offending in the belief that integrated and flexible approaches towards desistance are most effective.

Preliminary Comments

NIACRO welcomes the opportunity to respond to the Department of Justice Consultation on Consent to Serious Harm for Sexual Gratification: Not a Defence. This response, based on our experience of service delivery to both those who offend and are victims, builds upon our previous submission of a Call to Evidence for the Justice Committee for the Domestic Abuse and Family Proceedings Bill submitted earlier in the year. As the Justice Minister says in the Ministerial Forward to the public consultation, there is a gap in current Northern Ireland legislation regarding the act of choking or strangulation by defendants. As the consultation states, there are many reasons that the 'Rough Sex' defence is problematic.

Rough play is a complex issue that is not understood by the public and is often seen as a taboo topic. Whether it is a sexual gratification activity made popular by BDSM- themed forms of entertainment, such as the *'50 Shades of Grey'* trilogy, or from a more heinous form of intimidation and abuse.

NIACRO Responses to Consultation Questions

Question 1. Do you think the law in Northern Ireland is sufficient as it stands?

No, NIACRO does not think the law in Northern Ireland is sufficient as it stands. The defence that a person can consent to serious harm and/or death should not be an available option.

Should the defence remain, the outcome of cases may be dependent on the jury or judge's understanding or misunderstandings of rough consensual sex, and, to date, many trials have caused great harm and distress to families of the victims.

As the 'We Can't Consent to This' campaign found in their research, 38% of women aged 18-39 had experienced slapping, choking, gagging or spitting during consensual sex and that the acts were predominately unwanted .

Through our work with women who have criminal convictions, those who were victims of domestic abuse have disclosed that they have experienced strangulation or other methods of abuse during sex. The 'Rough Sex' defence is potentially harmful and dangerous for all victims, but especially for women in vulnerable positions such as being in an abusive relationship or in the sex trade. Women in abusive relationships often have a high tolerance for physical violence and might not be able to say 'no' or know when they are being manipulated or coerced.

A 2009 study conducted by Glass, et al, titled *Non Fatal Strangulation is an Important Risk Factor for Homicide of Women* concluded that non-fatal strangulation by an intimate partner was a risk factor for a major assault, attempted murder or murder of women.

The study found that non-fatal strangulation was reported in:

- 10% of abused controls
- 45% of attempted homicides
- 43% of homicides

Prior non-fatal strangulation was associated with greater than six-fold odds of experiencing an attempted homicide, and over seven-fold odds of a homicide.¹ Even when individuals consent to risky sexual practices, the ‘Rough Sex’ defence is a loophole at risk of exploitation by perpetrators of domestic abuse, violent sexual offences or any form of misogyny that disregards the wellbeing of and care for an individual. NIACRO agrees that “having the ability in legislation to deal effectively with offenders who may be playing out misogynistic or extreme sadomasochistic fantasies in the most serious cases is essential.”

Furthermore, NIACRO agrees with the consultation’s proposal to restrict the application to capture the more serious cases and filter out cases where minor injuries are sustained in a consensual context.

Question 2 (a) Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?

Yes, NIACRO thinks that consent to serious harm should be outlawed in legislation, in line with the amendment in the Domestic Abuse Bill in England and Wales.

Question 2 (b) If yes, do you think the offences to which the amendment applies are appropriate?

Yes, NIACRO finds no issue with the proposed offences to which the amendment applies and find the exemption reasonable.

Question 3. Do you consider that a programme of education is needed to:

- **raise awareness of the dangers of rough sex and the meaning of consent; and**
- **raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?**

Yes, a public programme of education raising awareness of the dangers of rough sex and the meaning of consent, training for criminal justice professionals would be helpful to raise awareness, create accountability, and encourage partnership working.

There needs to be attitudinal changes with society about what might be considered taboo sexual practices, how to engage safely, and the meaning of consent and on-going consent (i.e. that it is needed throughout the entirety of an encounter).

¹ https://www.researchgate.net/publication/5883869_Non-fatal_Strangulation_is_an_Important_Risk_Factor_for_Homicide_of_Women

Question 4. Do you consider something different is required for Northern Ireland?

No, NIACRO doesn't think that something other than suggested in the consultation is required for Northern Ireland.

Conclusion

NIACRO welcomes the opportunity to contribute to the Consent to Serious Harm for Sexual Gratification: Not a Defence Public Consultation and looks forward to furthering developments.

For further information please contact:
NIACRO



No 5. NSPCC

NSPCC

Northern Ireland

Consultation on the need for legislation in the area of consent to serious harm for sexual gratification

Introduction

The NSPCC is the leading children's charity fighting to prevent child abuse in the UK and Channel Islands. We help children who have been abused to rebuild their lives, protect those at risk, and find the best ways of preventing abuse from every happening. To achieve our vision, we:

- create, deliver and evaluate services for children which are innovative, distinctive and demonstrate how to enhance child protection;
- provide advice and support to ensure that every child is listened to;
- campaign for changes to legislation, policy and practice to ensure the best protection for children; and
- inform and educate the public to change attitudes and behaviours.

The NSPCC broadly welcomes this consultation and we are grateful for the opportunity to provide comments. We commend the Justice Minister for fast tracking a review of current legislation and the intention to close cross-jurisdictional gaps.

Question 1. Do you think the law in Northern Ireland is sufficient as it stands?

No. The consultation document makes clear that the current position in case law is that, where someone is seriously injured or killed in the course of sexual activity, the person who injured or killed the victim cannot raise a defence by saying the victim consented to the activity that caused the injury/death. Notwithstanding, the increased prevalence of the defence being used concerning¹.

EVERY CHILDHOOD IS WORTH FIGHTING FOR

National Society for the Prevention of Cruelty to Children (NSPCC). Royal Patron: Her Majesty The Queen. President: HRH The Countess of Wessex. Founded in 1884. Incorporated by Royal Charter RC000374. Registered charity number 216401 (England and Wales) and SC037717 (Scotland).

The campaign group "We Can't Consent to This" lobbied the Westminster Government on what they report as the increasingly successful use of claims of 'rough sex gone wrong' by defendants

in cases of serious harm or death of females, including young victims aged 16 and 17 year old.². In the light of the amendment to the Westminster Domestic Abuse Bill, the NSPCC does not think that the law in Northern Ireland is sufficient and we believe that robust legislation and a similar level of certainty, as in England and Wales, is needed to ensure a consistent and equitable approach.

Question 2(a) Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?

Yes. As above, robust legislation is needed and we agree with a model similar to the England and Wales legislation by moving case law into statute and outlawing consent as a defence to serious harm for sexual gratification. In terms of children and young people, NSPCC understand that the application of the defence should not be impacted by the victim's age and that 'consent' in this context is simply consent as would generally understood, not legal consent to a sexual activity which is age limited. As such defining any new legislation, we ask that 'consent' should continue to mean 'ordinary' consent regardless of the victim's age. In terms of sentencing guidelines, it is essential that the vulnerability of a victim, by virtue of their age or other factors; or motivation on the basis of the victim's perceived vulnerability be a statutory aggravating factor with higher maximum sentences than currently exist for the offence.³

¹see <https://www.bbc.co.uk/news/uk-50546184> and specifically reports that the defence was used two cases per year in 1996 increasing to 20 in 2016.

in [We Cant Consent to This Briefing](#)

² <https://wecantconsenttothis.uk/>³ Similar to the child aggravator provisions at Clause 9 of the Domestic Abuse and Family Proceedings Bill

Question 3. Do you consider that a programme of education is needed to: raise awareness of the dangers of rough sex, and the meaning of consent?

Yes. As mentioned in the document, the widespread availability of extreme pornography is a potential contributory factor to the problem. In its 2018 report on sexual harassment, the Women and Equalities Select Committee in Westminster found that "*there is significant research suggesting there is a relationship between the "consumption of pornography and sexist attitudes and sexually aggressive behaviours -including violence"*".⁴ Furthermore, research commissioned by the British Board of Film Classification supports the growing body of evidence that pornography is affecting the way young people understand healthy relationships, sex, body image and consent. This research reported that "some young people felt pornography had actually affected their behaviour during sex; particularly in the copying of "rough" or "forceful" sex seen in pornography. Some also felt that pornography had affected their or their partner's understanding of consent because consent was "implied" in pornography rather than openly discussed and spoken about by participants."⁵ The NSPCC has campaigned for years for laws to protect children from accessing pornography online and we have urged the UK Government to bring forward robust Online Harms legislation including the introduction of age verification to protect children from sexually explicit or harmful material.

As with any social harm, prevention should be the Government's aim and although age verification will drastically reduce children's accessibility to online pornography, this alone will not resolve the current shortfall in quality, age-appropriate sex and relationship information.

⁴[Sexual harassment of women and girls in public places](#) (2018) and specifically Select Committee evidence provided by Dame Vera Baird QC (SPP0087), Dr Jane Meyrick and Dr Kieran McCartan (SPP0041), Tom Farr (SPP0069).

⁵<https://darkroom.bbfc.co.uk/original/afbb24f1c54ba176b01a6eeba58b5b8c:4fcba53db>

It is vital that all children get consistent and uniform age appropriate relationship and sexuality education and this includes information on both giving and withdrawing consent, personal space, boundaries, appropriate behaviour, relationships and the use and impact of social media and the internet.

Opportunities to embed a programme of preventative education are key and they require attention. The NSPCC are represented on Gillen Education and Awareness Working Group and while we recognise the cross-departmental focus and commitment from the Department of Justice, we make clear that this is a responsibility for the Department of Education.

Finally, 'rough sex' in practice is marked by gender asymmetry as it is overwhelmingly females who are victims. Broadly, the idea of girls and women being subordinate needs to be broken down.

Regionally a gender-neutral approach is given to domestic violence and abuse which potentially obscures the reality that the majority of this crime is perpetrated against women. The Government in Westminster published its Ending Violence Against Women and Girls strategy' in 2016 and we believe that a similar cross-departmental strategy to tackle the nature and specific impact of gender based violence on women needs to be considered in Northern Ireland. In addition, the UK Government signed the Istanbul Convention in 2017 and once ratified, it will require devolved administrations to apply protections to all victims of domestic violence with particular attention being paid to women victims of gender based violence.⁷

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522166/VAWG_Strategy_FINAL_PUBLICATION_MASTER_vRB.PDF

⁷ Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Act 2017. Available online at: <http://www.legislation.gov.uk/ukpga/2017/18>

Public consultation

Consent to serious harm for sexual gratification: not a defence

Submission by Queen's University Belfast School of Law¹

This is a submission to the Department of Justice, in order to assist their review into '*consent to serious harm for sexual gratification not being a defence*'. The consultation provides that:

'In light of the inclusion of the amendment to the Domestic Abuse Bill in England and Wales, and the increased prevalence of the use of the 'Rough Sex' defence, the time is right to have a discussion about the law as it stands in Northern Ireland.

We seek your views on whether a change to the law is required and, if so: what the change should be; and whether you think there is a need for a parallel programme of education to address this type of offending at the outset'.

The consultation sets out four specific questions and this submission will address each consultation question in turn.

1. Do you think the law in Northern Ireland is sufficient as it stands? Please give reasons for your response.

As stated in the consultation document, while there is no explicit legislation on consent to serious harm for sexual gratification in Northern Ireland, the courts in this jurisdiction are bound by the precedent of *R v Brown*.² In this section we provide an introduction to this case and the key legal principles to discern whether continued reliance on this case is appropriate.

Consent to harm: *R v Brown* and the search for a legal principle

The judgment of the House of Lords in *R v Brown* forms the basis of the law of consent to assault in Northern Ireland, as elsewhere in the United Kingdom. The defendants in *Brown* were middle-aged men engaging in consensual sadomasochistic bondage/domination, discipline/submission and

¹ This submission was led by students (Justyna Granaeka, Daniel Watson, Rebecca Poots, Meghan Hoyt, Alannah Faulkner, Emer Smyth, Laura Martin Rosemary Cowan, Alexandra Cook, Cameron Chisim, Sara Racicot, Timothy Carson, Antonia Boorman, Nicolas Saddler), supported by Law School staff (Dr Eithne Dowds, Ms. Sarah Craig, Dr Elizabeth Agnew).

² [1993] 2 WLR 556.

sadism/masochism (BDSM). Injuries were consented to, even positively desired, for the purposes of sexual gratification. In *Brown*, the following point of law required the answer of the court:

Where A wounds or assaults B occasioning him actual bodily harm in the course of a sado-masochistic encounter, does the prosecution have to prove lack of consent on the part of B before they can establish A's guilt under section 20 and section 47 of the *Offences against the Person Act 1861*?³

The Court answered that question in the negative, with the legal principle emerging from the case that consent cannot be raised as a defence to the infliction of harm above and including actual bodily harm (ABH), unless the activity falls within one of the 'general exceptions.' These exceptions not being a closed category, rather they can be added to either by Parliament or the common law in line with the shifting attitudes and values of society. The satisfaction of sadomasochistic desires did not constitute such an exception.

The decision in *Brown* was split 3 to 2, with the majority opinion captured by Lord Templeman:

Society is entitled and bound to protect itself against a cult of violence. Pleasure derived from the infliction of pain is an evil thing. Cruelty is uncivilised.⁴

In the minority, Lord Mustill held that the case was not one concerning the law of assault; but the law of sexual relations⁵ - an area of private morality into which the criminal law should not enter lightly. Herein lies the difficulty with the present law flowing from *Brown* relating to consent to serious harm for sexual gratification: it can involve both a consideration, on the one hand, of the public good served by consensual private sexual relations and, on the other, that serious harm to the person, even where that is consented to, lacks social value.⁶ This elision of ideas means that the description of an assault can be given a consensual sexual narrative in a bid to lessen the severity of that assault. For example, the so-called 'Fifty Shades of Grey'⁷ or 'rough sex' defence.

The parameters of *Brown* were explored in the case of *R v Wilson*,⁸ in which a wife consented to her husband (the defendant), using a hot knife to brand his name on her buttocks. However, the wounds became infected and a doctor reported the incident to the police. While the defendant was originally charged with ABH, the charges were later dropped, as the branding, it was held, was similar to tattooing. *Wilson* has been criticised

³ Ibid at 559.

⁴ Ibid at 566.

⁵ Ibid at 584.

⁶ H Bows and J Herring, 'Getting Away with Murder? A Review of the 'Rough Sex Defence' (2020) 84(6) *Journal of Criminal Law* 525, 528.

⁷ HC Deb 2 October 2019, vol 664, col 1278 <https://hansard.parliament.uk/commons/2019-10-02/debates/C34_88538-CFEC-4670-9299-732672E2BE67/DomesticAbuseBill> Accessed on 11 December 2020.

⁸ [1996] 3 WLR 125.

on the grounds that it confirms the prejudice involved in the reasoning in *Brown*. In *Brown*, Lord Lowry stated that he would not allow an exception for '[s]ado-masochistic homosexual activity,'⁹ whereas in *Wilson*, the principle was not deemed applicable because the relationship was that of a married heterosexual couple. Irrespective of that view, *Wilson* shows that the application of *Brown* is not straightforward, causing problems for the current clarity of the law based on that decision. In *Emmett*,¹⁰ however, the Court held that sadomasochistic activity between a heterosexual couple, including suffocation and burning, was not exempt from the legal principle in *Brown* (even when carried out consensually in a domestic relationship).

In *R v Slingsby*,¹¹ the defendant accidentally cut the victim's vagina with his signet ring, who then developed septicaemia and later died. In *Slingsby* there was no intent to cause harm; whereas in *Brown*, the harm caused was intended and consented to. Part of the case report reads, '[t]he deceased sustained her unfortunate injuries as an accidental consequence of the sexual activity which was taking place with her consent.'¹² Therefore, *Slingsby* distinguishes the legal principle in *Brown* as it did not criminalise lawful activity which results in accidental injury. This is problematic and apt to confusion. By way of an example, B cannot consent to sexual activity with A where that activity involves the deliberate infliction of serious harm (*Brown*) but B can consent to sexual activity that merely carries a risk of such injury (*Slingsby*). In other words, the consensual taking of risks is not criminalised.

In 2013, Steven Lock was charged and then cleared of ABH to his girlfriend, when he tied her up and whipped her, causing bruising to the buttocks and neck.¹³ His girlfriend had consented to being whipped as they had read about it in the popular novel *50 Shades Of Grey*, and she had even signed a contract. His defence team analogised with the case of *R v Barnes*,¹⁴ where an amateur footballer seriously injured his opponent and was charged with grievous bodily harm (GBH). The charges were dropped as, generally speaking, footballers play knowing of, and therefore consenting to, the risk of injury. Lock claimed that was what happened in this situation, and therefore was similar to a 'mistimed tackle.'¹⁵ Most recently, in *R v BM*,¹⁶ the Court of Appeal declined to extend the general exceptions established in *Brown* to the case of body modification which involved the mutilation of parts of the body. However, the discussion of the law at the beginning of this judgement has the potential to cause confusion, and throws the principle established in *Emmet* into doubt, by

⁹ [1993] 2 WLR 556 at 583. Emphasis added.

¹⁰ [1999] EWCA Crim 1710.

¹¹ [1995] Crim LR 570.

¹² *Ibid* at 571.

¹³ 'Fifty Shades' sex-session assault accused cleared', BBC News (London, 22 January 2013) <<https://www.bbc.co.uk/news/uk-england-suffolk-21145816>> Accessed on 9 December 2020.

¹⁴ [2004] EWCA Crim 3246.

¹⁵ BBC News (n 13).

¹⁶ [2018] EWCA Crim 560.

asserting that ‘consensual activity between married couples is not an area for criminal investigation and prosecution under section 47.’¹⁷

Critical Discussion of *Brown*

The case of *Brown* and its subsequent application leaves the possibility of consent being raised as a defence to a charge for an offence involving serious assault, murder and/or manslaughter. In the context of a domestically abusive relationship this is particularly problematic, as Herring notes, ‘[i]n cases where a domestic abuser is charged with assaulting their partner [...], explaining the injuries as the results of consensual sadomasochism is one of the few defences available to them [...].’¹⁸ Indeed, there is a growing problem of men using the alleged consent of their victims to ‘rough sex’ as a way to diminish or defend against charges of serious harm or murder. Activist groups such as ‘We Can Not Consent to This’ (WCCTT) as well as news coverage of recent cases¹⁹ has focused attention on the extent and nature of the problem.²⁰ WCCTT research indicates that between 1972-2019, there have been 60 cases of so-called ‘sex game gone wrong’ killings perpetrated by men against their intimate female partners. Academic research also indicates the scale of the problem²¹ and the need to seriously address legal ‘loopholes’ in order to ‘shut down this misogyny.’²²

Take for example the recent and horrific case of Natalie Connolly. Ms Connolly (26), died with over 40 injuries, including extensive bruising to the breasts, buttocks and head, a blow-out fracture of the left orbit, and vaginal venous and arterial haemorrhaging.²³ John Broadhurst was charged with her murder; but the prosecution accepted his plea of guilty to gross negligence manslaughter. The case also highlights questionable charging/prosecution practices (which may well arise from the confusing state of the law), as it was not the case of the prosecution that any of the injuries inflicted by Broadhurst on Connolly were unlawful;²⁴ despite

¹⁷ Ibid [33].

¹⁸ J Herring, ‘*R v Brown* (1993)’ in P Handler, H Mares and I Williams (eds) *Landmark Cases in Criminal Law* (Hart Publishing 2017) 333, 348.

¹⁹ Recent examples include the murder of British backpacker Grace Millane in New Zealand and of Patrycja Wyrebek in Newry. See: Eleanor Ainge Roy, ‘Grace Millane Murder: man jailed for life for killing UK backpacker’ *Guardian* (Manchester, 20 February 2020) <<https://www.theguardian.com/world/2020/feb/21/grace-millane-man-jailed-for-life-for-killing-of-uk-backpacker>> Accessed on 6 December 2020; Kate McCurry, ‘Patrycja Wyrebek murder accused claimed 20-year-old died during sex act, court told’ *The Irish News* (Belfast, 20 August 2020) <<https://www.irishnews.com/news/northernirelandnews/2020/08/06/news/patrycja-wyrebek-murder-accused-claimed-20-year-old-died-during-sex-act-court-told-2028597/>> Accessed on 6 December 2020.

²⁰ We Can’t Consent To This, ‘What Can be Consented to? Briefing on the Use of “Rough Sex” Defences to Violence’ (2019) <<https://wecanconsenttothis.uk>> Accessed on 5 December 2020.

²¹ Bows and Herring (n 6); S Edwards, ‘Consent and the ‘Rough Sex’ Defence in Rape, Murder, Manslaughter and Gross Negligence’ (2020) 84(4) *The Journal of Criminal Law* 293-311.

²² Edwards *ibid*, 293.

²³ Judiciary of England and Wales, ‘*R v John Broadhurst: Sentencing Remarks*’ (17 December 2018) <<https://www.judiciary.uk/wp-content/uploads/2018/12/broadhurst-sentencing-remarks.pdf>> Accessed on 12 December 2020. In the case itself, it was not clear how Connolly died: from her injuries or as a result of the concentrations of alcohol and cocaine in her blood.

²⁴ Ibid [22].

the sentencing judge finding that some were criminally inflicted. *Brown* applied to some injuries but not others.²⁵ Indeed, the insertion of a bottle of spray carpet cleaner into the vagina was not held to be unlawful. The judge accepted in favour of Broadhurst that Connolly had instigated this extreme request (confirming the difficulties mentioned above with this line of defence where the victim cannot give evidence) and rehearsed the law in this area, citing *Slingsby* as follows:

A woman may lawfully consent to having something inserted into her vagina (or rectum) for the purposes of sexual gratification but without an intention to cause injury, even if doing so carries a risk of injury, and injury is indeed caused.²⁶

Here, it can be seen in practice how distinguishing *Slingsby* from *Brown* carries with it problems. Broadhurst's beating of Connolly so as to cause bruising on her buttocks and breasts was unlawful, applying *Brown*, even with her consent. Yet, his 'grossly irresponsible behaviour'²⁷ of inserting the bottle into her vagina was not unlawful, despite the risk of serious injury that it surely carried (and did in fact inflict). If legal commentators find this difference baffling,²⁸ it is sure to cause difficulties in the jury room. The key point then is that the dividing line between the two cases²⁹ appears to be so porous as to make the task of reframing a case which really concerns assault into one about 'sex games gone wrong'³⁰ a relatively straightforward one.

Within this context, the question of consent is central. Yet, consent is an extremely contested social and legal concept. The *Sexual Offences Act (Northern Ireland) Order 2008* is the only statute which defines consent in criminal law: Article 3 describes it as when a person 'agrees by choice, and has the freedom and capacity to make that choice.' However, there is no statutory nor common law definition of consent for (non-sexual) fatal and non-fatal offences against the person, leading Elliot and De Than to suggest that the 'law on consent risks being a patchwork of statute and *ad hoc* case law, without any overarching principle to deal with new situations and different offences.'³¹ This is particularly problematic when consent is raised as a defence to harms caused during a sexual interaction,³² especially due to evidential issues that arise where the victim is deceased and is therefore unable to give evidence regarding the incident and testify on whether they did in fact consent.³³ As will be discussed in more detail in response to question 3 of the consultation, often this defence focuses on the sexual rather than violent aspects of the case and results in a narrative that positions the victim as the responsible party for the events that lead to their death. Rape myths and evidence relating to the victim's

²⁵ Ibid [26].

²⁶ Ibid [31].

²⁷ Ibid [32].

²⁸ Bows and Herring (n 6).

²⁹ In *Brown* the defendants acknowledged intention to inflict the injuries whereas in *Slingsby* the defendant claimed not to have intended the injury/that the injury was merely a risk, ancillary to the chief motivation of pleasure.

³⁰ E Yardley, 'The Killing of Women in "Sex Games Gone Wrong": An Analysis of Femicides in Great Britain 2000-2018' (2020) *Violence Against Women* 1-22.

³¹ C. Elliot, and C. De Than, 'The Case for a Rational Reconstruction of Consent in Criminal Law' (2007) 70(2) *Modern Law Review* 225, 225.

³² Bows and Herring (n 6) 529.

³³ C Nowlin, 'Should Deceased Persons Be Allowed to Raise Self-Defence? A Comment on R v Knibbs' (2011) 43(2) *U.B.C. Law Review* 447-470.

previous sexual history are often relied upon by the defence,³⁴ and even if the defendant is found guilty of murder in ‘sex gone wrong’ cases, the reputation of a woman becomes the central focus and continues to distort the memory of a victim even after completion of the trial.³⁵

In this respect, it is argued that the case law is confusing, and the key points of law are not applied uniformly. Further, a lack of consistency in application has resulted in an increased use of the ‘rough sex’ defence. The next section turns to consider what a legislative intervention in this area might look like with attention to developments in England and Wales.

2. (a) Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?

In the broader context of legislative attempts to enhance the national response to domestic abuse, Clause 65 of the *Domestic Violence Bill* in England and Wales was added in reaction to pressure from MPs,³⁶ activists³⁷ and the women’s sector³⁸ to address the growing use of a victim’s alleged consent to ‘rough sex’, specifically as a way to diminish or defend against charges of serious harm or murder. This section considers whether, in light of the critique of *Brown* above, the addition of Clause 65 to the *Domestic Violence Bill* will provide a more robust legal barrier to the use of consent as a defence to serious harm in cases involving sexual gratification.

Additional support to existing case law

There are three main ways in which Clause 65 provides additional support to the existing case law. The first is an important codification of the common law.³⁹ Clause 65 places the common law threshold outlined in *Brown* on a statutory footing. In relation to offences under Section 18, 20 and 47 of the *Offences against the Person Act 1861*, the Clause provides that it is ‘not a defence that V consented to the infliction of the serious harm for the purposes of obtaining sexual gratification.’⁴⁰ Serious harm is defined as grievous bodily harm, wounding or actual bodily harm within the meaning of the *Offences against the Person Act 1861*. Existing common law exceptions are maintained which exempts activities in the public interest such as sporting, tattooing and piercing, surgery and religious ceremonies from criminal prosecution. Clause 65 also contains a statutory exception where the serious harm is the acquisition of an STD.⁴¹ Arguably, creating a statutory

³⁴ M Iliadis, ‘Victim Representation for Sexual History Evidence in Ireland: A Steep Towards or Away from Meeting Victims’ Procedural Justice Needs?’ (2019) 20(4) *Criminology and Criminal Justice* 416-432.

³⁵ C Spohn and J Honey, ‘Rape Law Reform and the Effect of Victim Characteristics on Case Processing’ (1993) 9 *Journal of Quantitative Criminology* 383-409.

³⁶ Harriet Harman MP and Mark Garnier MP.

³⁷ We Can’t Consent to This (n 20).

³⁸ Women’s Aid Federation England, ‘Joint Evidence on the Domestic Abuse Bill’ <<https://www.womensaid.org.uk/wp-content/uploads/2020/07/Joint-Recommendations-on-the-Domestic-Abuse-Bill-.pdf>> Accessed on 6 December 2020.

³⁹ Bows and Herring (n 6) 535.

⁴⁰ Domestic Abuse Bill Clause 65, s. 2.

⁴¹ Ibid s. 4.

threshold provides a more secure and robust commitment to ensuring consent is not capable of being used as a defence to serious harm for sexual gratification.

The second is an important clarification of the common law which, as discussed above, has the potential to be confusing. Following the decision in *R v Wilson*,⁴² there was the suggestion that consent to ABH for the purpose of sexual gratification could be relevant within the context of marriage.⁴³ Bows and Herring point to the fact some case law suggests where serious harm for the purpose of sexual gratification occurs within the context of a marriage, there is a question as to whether it is covered by *Brown*.⁴⁴ In *Wilson*,⁴⁵ the conviction for ABH was overturned because ‘consensual activity between husband and wife, in the privacy of their matrimonial home, was not a matter for criminal investigation or prosecution.’⁴⁶ Write J’s comments in *R v Emmett*⁴⁷ seemed to confirm *Brown*⁴⁸ still applied to sexual gratification within a marriage, maintaining that there was no reason to draw ‘any distinction between sadomasochistic activity on a heterosexual basis and that which is conducted in a homosexual context.’⁴⁹ However, the recent case of *BM*,⁵⁰ as noted above, seemed to contradict the ruling in *Emmett*.⁵¹ Placing this prohibition within a legislative framework could alleviate this uncertainty.

The third is symbolism. The criminal justice system is often framed as ameliorating the lives of citizens and protecting them from harm.⁵² The addition of this amendment to the *Domestic Abuse Bill* occurred in the context of pressure from lobby groups to address the growing use of ‘consent to rough sex’ being used to reduce sentences for perpetrators involved in the serious assault, or death of sexual partners.⁵³ The inclusion of the amendment in the *Domestic Abuse Bill* is perhaps, at least, symbolically important as a demonstration that the law views this behaviour as unacceptable and that the legislative process can be collaborative and take on the concerns of different groups within society.

Remaining challenges

Despite the additional support Clause 65 provides, numerous issues remain. The first being that the amendment will not have the desired effect. Jonathan Rodger argues that while Clause 65 might appear to address the concerns of WCCTT by removing the defendant’s ability to claim that a victim consented to serious harm, in

⁴² *Wilson* (n 8).

⁴³ Bows and Herring (n 6) 535.

⁴⁴ *Brown* (n 2).

⁴⁵ *Wilson* (n 8).

⁴⁶ Bows and Herring, (n 6) 535.

⁴⁷ *Emmett* (n 10).

⁴⁸ *Brown* (n 2).

⁴⁹ *Ibid* [4].

⁵⁰ *BM* (n 16).

⁵¹ *Ibid* [33].

⁵² C Barlow et al, ‘Putting coercive control into practice: problems and possibilities’ (2020) 60(1) *British Journal of Criminology* 160.

⁵³ *We Can’t Consent To This* (n 20).

reality it does not.⁵⁴ Rodger maintains that consent has never acted as a ‘defence’ to murder or serious harm, rather it has been used to establish whether the defendant ‘foresaw any risk of injury.’⁵⁵ Evidence of the defendant’s intent to cause serious harm or the extent to which serious harm was foreseeable, will remain relevant to offences against the person offences, despite Clause 65.

Second, the law on consent remains ambiguous. A complicating factor in the functioning of Clause 65 is the ‘the lack of consistency in the conceptual boundaries and definitions of consent across criminal law.’⁵⁶ As noted above, though the Sexual Offences Act 2003 provides a statutory definition of consent, it is only relevant to offences within the 2003 Act. It is *Brown*⁵⁷ which provides the leading authority on consent regarding violent offences against the person. The lack of clarity and consistency regarding the function of consent within offences against the person⁵⁸ should be addressed more directly and statutory definitions should be created for the avoidance of doubt.

Third, the law fails to acknowledge the gendered harm. Clause 65 makes no reference to the fact that while it is possible for both men and women to experience serious harm in the pursuit of sexual gratification, every known killer in the UK who has used the defence of a ‘sex game gone wrong’ is male.⁵⁹ The gendered nature of this problem must be acknowledged if it is to be tackled without inadvertently criminalising sex-workers and the BDSM industry.⁶⁰ This point will be elaborated upon in the response to question 3 below.

(b) If yes, do you think the offences to which the amendment applies are appropriate?

In its current form, the amendment applies only to three offences (s18, s20 and s47) within the Offences against the Person Act 1861. This allows some offences to remain outside the scope of Clause 65, creating a damaging disparity. For example, Section 21 Offences against the Person Act 1861 (strangulation or choking) is not included within the scope of Clause 65. While, presumably *Brown*⁶¹ would continue to apply in this context, it does suggest that the amendment is not as comprehensive as it could be in protecting against the use of consent as a defence in the context of sexual gratification. Some activists maintain the need for a stand-alone offence of Non-Fatal Strangulation to underscore the potential for harm.⁶²

⁵⁴ J Rogers, ‘“Abolition” of the “Rough Sex” Defence: Hurried Legislation and Missed Opportunities’ (2020) <<http://www.clrnn.co.uk/blog/law-reform-general/>> Accessed on 6 December 2020.

⁵⁵ *Ibid.*

⁵⁶ Bows and Herring (n 6) 528.

⁵⁷ *Brown* (n 2).

⁵⁸ Bows and Herring (n 6) 528.

⁵⁹ We Can’t Consent to This (n 20).

⁶⁰ Rogers (n 54).

⁶¹ *Brown* (n 2).

⁶² Centre for Women’s Justice, ‘Submission to the Domestic Abuse Bill Committee’ (21 May 2020) <<https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/5ec69e2d6bbca20d0d49acb7/1590074927743/CWJ+non-fatal+strangulation.Committee+briefing.21.5.20.pdf>> Accessed on 5 December 2020.

The proposed amendment should be added to the Domestic Abuse Bill – but only on the understanding that this is not legal reform, but merely a confirmation of the status-quo. In order to seriously address this pressing social issue, Clause 65 should be extended to cover more offences, the legal standing of consent must be reconsidered and clarified, and damaging patriarchal myths which understand women to be complicit in their own harm⁶³ must be comprehensively challenged. In light of this, the next section turns to consider whether educational initiatives should be established to complement any legislative intervention.

3. Do you consider that a programme of education is needed to:

- ***raise awareness of the dangers of rough sex, and the meaning of consent; and***
- ***raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?***

Context: the nature of BDSM and defence narratives

Rough sex or BDSM has progressively pervaded Western popular Culture, particularly in the past decade, while extreme pornography portraying BDSM themes has become easily accessible online.⁶⁴ However, greater acceptance and tolerance of both idealised mainstream representations of BDSM and violent misogynistic pornographic tropes, combined with widespread ignorance of BDSM philosophy and practices, creates opportunities for exploitation in court.⁶⁵

As noted above, an increasing number of male defendants are attempting to absolve themselves of responsibility for serious injuries and deaths, usually of women, by claiming these resulted from consensual BDSM sexual activity.⁶⁶ This must be set in the context of extensive global violence against women, including the highly gendered nature of intimate partner abuse, domestic homicide and sexual violence, all largely perpetrated by men against women.⁶⁷ Recent studies show that significantly more men

⁶³ Edwards (n 21) 295.

⁶⁴ J Monckton-Smith, *Murder, Gender and the Media: Narratives of Dangerous Love* (Palgrave Macmillan 2012); JMW Kratzer (ed), *Understanding the Influence of the Fifty Shades of Grey Phenomenon* (Lexington Books 2020) 10.

⁶⁵ S Edwards, 'Assault, Strangulation and Murder – Challenging the Sexual Libido Consent Narrative' in A Reed, M Bohlander (eds), *Consent: Domestic and Comparative Perspectives* (Routledge 2017) 88-103; C Gallant and A Zanin, 'The Bogus BDSM Defence' in KA Malinen (ed), *Dis/Consent: Perspectives on Sexual Consent and Sexual Violence* (Fernwood 2019) 32, 37.

⁶⁶ There has been a 90 per cent increase in use of the 'rough sex defence' in England and Wales since 2010, according to campaign group. We Can't Consent To This (n 20).

⁶⁷ R Pain, 'Everyday Terrorism: Connecting Domestic Violence and Global Terrorism' (2014) 38(4) *Progress in Human Geography* 531; <<https://theconversation.com/factcheck-is-domestic-violence-the-leading-preventable-cause-of-death-and-illness-for-women-aged-18-to-44-94102>> Accessed on 3 December 2020. Home Office, *Domestic Homicide Reviews: Key Findings from Analysis* (Home Office 2016) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575232/HO-Domestic-Homicide-Review-Analysis-161206.pdf> Accessed on 3 December 2020; Crime Survey for England and Wales, *Domestic Abuse Victim*

than women are aroused by fetishism and sadism, many women have participated in so-called ‘rough sex’ unwillingly, and numerous men have engaged in violent sexual behaviour to which their female partners have not consented.⁶⁸

Many defendants accused of sexual violence against women rely on rape myths, based on patriarchal cultural scripts and sadomasochistic narratives that excuse cruelty and abuse by claiming women want ‘rough sex.’⁶⁹ When the woman concerned is dead, she is completely voiceless, unable to offer any testimony to contradict these scripts, the power of which may be amplified by false perceptions about BDSM. Alternative verdicts of manslaughter or grievous bodily harm are available to murder trial juries, and more defence counsel are now using ‘rough sex’ narratives to try to persuade judges and jurors that any death or potential injury resulting from the defendant’s actions was accidental or due to carelessness rather than intent.⁷⁰ For example, strangulation was the cause of death in two-thirds of ‘rough sex defence’ cases in recent years, but it is also the primary method of killing an intimate female partner in a heterosexual relationship over the last three decades.⁷¹ While strangulation does not always kill, defence counsel often reframe it as ‘pressure to the neck,’ ‘squeezing’ or ‘pushing down’ to euphemise the defendant’s behaviour into a less serious form of violence.⁷² Therefore, even if legislation is amended to explicitly reflect common law, that an individual cannot consent to a sexual act which causes death or serious harm, juries which believe that a complainant consented to a dangerous sexual act are more likely to acquit defendants on the grounds that they lacked the necessary *mens rea* for murder.⁷³

Characteristics, England and Wales: Year Ending March 2019 (Office for National Statistics 2019) <www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/domesticabusevictimcharacteristicsenglandandwales/yearendingmarch2019#sex> Accessed on 3 December 2020.

⁶⁸ J Richters, RO De Visser, CE Rissel, AE Grulich and AMA Smith, ‘Demographic and Psychosocial Features of Participants in Bondage and Discipline, Sadomasochism and Submission (BDSM): Data from a National Survey’ (2008) 5(7) *Journal of Sexual Medicine* 1660-1668; A Brown, E.D Barker and Q Rahman, ‘A Systematic Scoping Review of the Prevalence, Etiological, Psychological, and Interpersonal Factors Associated with BDSM’ (2020) 57(6) *The Journal of Sex Research* 781-811; ‘Women are being strangled, choked, slapped and spat on during sex – we need to stop pretending this is normal’, *The Telegraph* (London, 3 March 2020) <<https://www.telegraph.co.uk/women/life/women-strangledchoked-slapped-spat-sex-need-stop-pretending/>> Accessed on 9 December 2020.

⁶⁹ G Bohner, F Eyssel, A Pina, F Siebler and GT Viki, ‘Rape Myth Acceptance: Cognitive, Affective and Behavioural Effects of Beliefs that Blame the Victim and Exonerate the Perpetrator’ in M Horvath and J Brown (eds), *Rape: Challenging Contemporary Thinking* (Willan 2009) 17, 18; Edwards (n 65) 88; JM Gray and MH Horvath, ‘Rape Myths in the Criminal Justice System’ in E Milne, K Brennan, N South and J Turton (eds), *Women and the Criminal Justice System: Failing Victims and Offenders* (Palgrave Macmillan 2018) 15.

⁷⁰ Criminal Law Act (Northern Ireland) 1967, s 6(4)(a); Edwards (n 21).

⁷¹ Edwards (n 21); A Moore and C Khan, ‘The Fateful, Hateful Rise of Choking During Sex’ *The Guardian* (London, 25 July 2019) <<https://www.theguardian.com/society/2019/jul/25/fatal-hateful-rise-of-choking-during-sex>> Accessed on 3 December 2020; Bows and Herring (n 6) 526.

⁷² Bows and Herring (n 6) 528.

⁷³ Brown (n 2); Bows and Herring (n 6) 529.

Thus, outsiders' ignorance of BDSM culture and practices leaves many legal professionals and jurors vulnerable to erroneous assumptions.⁷⁴ Busby claims that '[j]udges' contextual analyses would be stronger if the extreme dangers of erotic asphyxiation were taken more seriously, and they had a better understanding of safe, sane and consensual practices.'⁷⁵ Erotic asphyxiation, non-fatal strangulation for sexual pleasure, is often incorrectly portrayed as a common feature of BDSM. Yet, like other dangerous and controversial activities, it is considered 'edgeplay,' at the limits of acceptability within BDSM.⁷⁶ Contrary to popular belief, most BDSM practitioners are generally risk-adverse and follow strict rules, usually avoiding intoxication or loss of control, whilst communication, consent and safety are key.⁷⁷ The BDSM community endorses a strong culture of clear, affirmative, ongoing consent, advocating guidelines which ensure that no participant forces another beyond their limits and creating the difference between BDSM and abuse.⁷⁸ BDSM participants commonly negotiate boundaries in advance, deciding what activities they are willing to engage in and to what degree of pain. They usually agree a safe word (selecting a word not normally used in this context), which, when spoken by any participant indicates immediate retraction of their consent and signals that activities should cease immediately.⁷⁹ It is also important for participants to check in with one another to ensure they are still enjoying the activities.

Moreover, the purpose of erotic asphyxiation in genuine BDSM, namely, 'light headedness that comes when one is taken to the point of unconsciousness, but not past it' is also frequently misconstrued.⁸⁰ Once someone is unconscious, consent can no longer be given, safe words can no longer be communicated, and one can easily take advantage of someone in such a vulnerable position. People can die when sadomasochistic encounters go too far, therefore, safe words, communication, and check-ins are crucial.⁸¹ Genuine BDSM practitioners value knowledge-sharing and some BDSM communities hold workshops, where experienced participants mentor newcomers

⁷⁴ K Busby, 'Every Breath You Take: Erotic Asphyxiation, Vengeful Wives, and Other Enduring Myths in Spousal Sexual Assault Prosecutions' (2012) 24(2) *Canadian Journal of Women and Law* 328, 346.

⁷⁵ *Ibid*, 352.

⁷⁶ S Newmahr, *Playing on the Edge: Sadomasochism, Risk and Intimacy* (Indiana University Press 2011) 147.

⁷⁷ M Weiss, *Techniques of Pleasure: BDSM and the Circuits of Sexuality* (Duke University Press 2011) Ch 2; A Fanghanel, *Disrupting Rape Culture: Public Space, Sexuality and Revolt* (Bristol University Press 2019) 116.

⁷⁸ Busby (n 74) 340.

⁷⁹ T Bennett, 'A Fine Line Between Pleasure and Pain: Would Decriminalising BDSM Permit Non-consensual Abuse?' [2020] *Liverpool Law Review* 1, 12.

⁸⁰ Busby (n 74) 339.

⁸¹ C Hanna, 'Sex is Not a Sport: Consent and Violence in Criminal Law' (2001) 42(2) *Boston College Law Review* 239.

on safe techniques and basic medical knowledge, while aftercare, such as hydration, sustenance, quiet, physical contact, is also promoted.⁸²

The importance of education

In light of the preceding section it is apparent that all professionals involved in the investigation and prosecution of ‘rough sex’ cases would benefit from more knowledge about BDSM, and domestic abuse and coercive control - victims of which may contradict statements through fear of their abusers.⁸³ It is vital police know the appropriate questions to ask alleged victims, but also of suspects. This would include inquiring whether negotiations on BDSM activity took place and what they covered; what limits were set; if a safe word was agreed and used; whether checking-in took place; and what steps participants took to minimise potential risks.⁸⁴

Counsel and judges should also receive training: prosecutors particularly would benefit from specialist psychological coaching in how to robustly challenge defence counsel’s use of rape myths and BDSM narratives.⁸⁵ Juror training, guidelines and expert witnesses on rape myths, intimate partner violence, coercive control and BDSM may also prove useful. The recommendations contained within the 2019 Gillen Review for brief training on rape myths for jurors in sexual offences trials in Northern Ireland, perhaps a concise 30-minute video and written judicial guidelines, could be adapted and extended to jurors in all trials in which the defendant is claiming a ‘rough sex’ defence.⁸⁶ The issue of expert witnesses is more contested and open to fears of costly battles between opposing professionals testifying for defence and prosecution; nevertheless, they could be considered on an individual case-by-case basis.⁸⁷ However, any judicial directions, jury education and expert testimony must be neutral and non-case

⁸² Bennett (n 78) 12.

⁸³ The Serious Crime Act (2015) s76 England and Wales legislation on coercive control is to be extended to Northern Ireland in the forthcoming Domestic Abuse Bill; *R v Challen* [2019] ECWA Crim 916; E Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press 2007); S Pegg, ‘BDSM: When is Sadomasochism an Act of Domestic Violence?’ (The Conversation 2018) <<http://theconversation.com/bdsm-when-is-sadomasochism-an-act-of-domestic-violence-108376>> Accessed on 3 December 2020.

⁸⁴ Bennett (n 79) 13.

⁸⁵ N Burrowes, *Responding to the Challenge of Rape Myths in Court: A Guide for Prosecutors* (NB Research, March 2013) <http://nb-research.com/wp-content/uploads/2013/04/Responding-to-the-challenge-of-rape-myths-in-court_Nina-Burrowes.pdf> Accessed on 3 December 2020 5, 12, 20, 24.

⁸⁶ J Gillen, *Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland* (Ministry of Justice NI 2019) <www.justice-ni.gov.uk/publications/gillen-review-report-law-and-procedures-serious-sexual-offences-ni> Accessed on 3 December 2020.

⁸⁷ J Horn, ‘Fifty Shades of Oppression: Sadomasochism, Feminism and the Law’ (2015) 4(1) DePaul Journal of Women, Gender and the Law 1, 32; Gillen (n 86)

specific, hence, their impact could be weakened by a skilled defence argument tailored to specific case facts - thus, training prosecutors to refute rape myths is key.⁸⁸

In addition to education on BDSM, domestic abuse and coercive control training should also cover consent. Although the legislative parameters of consent within the context of offences against the person require attention, work can still be undertaken from an educational perspective drawing on the rich literature that has developed on sexual consent. The affirmative model of consent emphasises communication and requires active signals of agreement before an encounter is to be considered consensual, similar to the active affirmations used in safe, consensual BDSM.⁸⁹ Crucially, affirmative consent is active, clearly sought and received and manifested through positive words or action, not implied from dress or previous conduct, and most importantly, it is ongoing and can be withdrawn at any point.⁹⁰ Consent under this approach is a ‘performative act, rather than a state of mind, and if there is no positive affirmation on the part of the complainant there can be no consent and no reasonable belief in consent.’⁹¹ The use of this model would help protect victims of domestic abuse and violence, making it harder for defendants who did not receive proper consent or who did not respect withdrawal of consent to justify their actions.

However, as acknowledged by Sir John Gillen in his recent report on sexual offences, the problem of belief in rape myths, and thus susceptibility to false BDSM scripts, is wider than the criminal justice system.⁹² Northern Ireland is an acutely patriarchal and deeply morally conservative society, whose judgmental attitude to sexual matters can ultimately lead to ignorance and victim-blaming.⁹³ Beyond the biological facts, sex education in Northern Irish schools is left to the discretion of individual schools, which, due to religious influence and pressure from parents, may omit highly relevant topics and curtail open discussion.⁹⁴ Parents may also request that their child be withdrawn

⁸⁸ Burrowes (n 85).

⁸⁹ See, E Dowds, *Sexual Consent in Northern Ireland: The Social and Legal Dimensions* (Queen’s University Belfast 2020) Queen’s Policy Engagement: Policy Paper 6 <[www.http://qpolicy.qub.ac.uk](http://qpolicy.qub.ac.uk)> Accessed on 3 December 2020 1, 2.

⁹⁰ Ibid at 4.

⁹¹ Ibid.

⁹² Gillen (n 86).

⁹³ N Gavey, *Just Sex? The Cultural Scaffolding of Rape* (Routledge 2005) 231, 232; L McCormick, *Regulating Sexuality: Women in Twentieth-Century Northern Ireland* (Manchester University Press 2009); PJ Maginn and G Ellison, “‘Ulster Says No’: Regulating the Consumption of Commercial Sexual Spaces and Services in Northern Ireland’ (2017) 54 *Urban Studies* 806.

⁹⁴ Education (Curriculum Minimum Content) Order (Northern Ireland) 2007; B Rolston, D Schubotz and A Simpson, ‘Sex Education in Northern Ireland Schools: A Critical Evaluation’ (2005) 5(3) *Sex Education* 217.

from the sexual education programme altogether.⁹⁵ Northern Ireland is therefore not meeting international recommendations to ensure that all adolescent girls and boys receive accurate and suitable information to safeguard their health and development ‘which should include information on safe and respectful social and sexual behaviours.’⁹⁶ Hence, well-funded public and age-appropriate school campaigns, such as the Gillen report recommends to combat rape myths, may also be useful to highlight issues around consent and safe sex.⁹⁷

4. Do you consider something different is required for Northern Ireland?

As specified in the consultation outline and above, consent to GBH as a defence should not necessarily be outlawed for cases where low-level seriousness of harm occurs,⁹⁸ yet there still is a need to have clearly defined boundaries and limits. For this reason, we propose clearly and explicitly defining consent based upon the affirmative approach to consent as outlined in the previous section. Clarifying and defining limits on the use of consent as a defence will enable prosecutors to identify and separate intentional killings from accidental harms, filtering out those with criminal intent from those where minor harms have resulted from consensual sexual activity.

We propose that consent to *serious harm* for sexual gratification, as any form of defence, should be outlawed in circumstances where the victim:

- Dies as a result of injuries sustained during ‘rough sex’.
- Is left with life-altering injuries sustained during ‘rough sex’.
- Is unconscious during ‘rough sex’.

In addition and as clarified above, we propose improving social and public education within Northern Ireland on consent, boundaries and safe ‘rough’ sex (i.e., BDSM) including: (i) the expansion of secondary school **education**, including sexual health and relationship education (RSE); (ii) increasing **access to information** i.e. internet sources, educational courses, etc., to dissolve the taboo aspect of BDSM so that more conversations on safe practices become the norm;

⁹⁵ L Lundy, L Emerson, K Lloyd, B Byrne and J Yohanis, *Education Reform in Northern Ireland: A Human Rights Review* (Northern Ireland Human Rights Commission 2012) 25.

⁹⁶ United Nations Committee on the Rights of the Child, ‘Adolescent Health and Development in the Context of the Convention on the Rights of the Child’ (UN Office of the High Commissioner Human Rights 2003) CRC/GC/2003/4, [26] <www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC4.pdf> Accessed on 3 December 2020.

⁹⁷ Gillen (n 86).

⁹⁸ Department of Justice ‘*Consent to Serious Harm for Sexual Gratification: Not a Defence*’ (November 2020), 10.

and (iii) providing resources to the **victims of sexual violence**, focusing on why victims of sexual violence do not report perpetrators.

Interrelated and importantly, research carried out by Savanta ComRes, as outlined in the Consultation document, shows that 38% of women surveyed had experienced slapping, choking, gagging, or spitting during consensual sex, and that at least some of the time this was unwanted, indicates a significant and concerning attitude to sex among a younger demographic.⁹⁹ It is also clear that this is a rising, rather than falling (or static) figure. Accordingly, what we might term ‘counter-education’ should, of necessity, be a component of the DOJ’s legislative plan. Research needs to be undertaken to identify: (i) precisely where these impressions of sex are acquired by young people; (ii) why they are increasingly pervasive; and (iii) the dynamics that commonly underpin them in sexual relationships.

The Offence of Non-Fatal Strangulation

Building on the discussion in response to question 2, we draw particular attention to the offence of non-fatal strangulation and propose that any new legislation explicitly address this offence. In 50 years, there have been approximately 60 cases where women in the UK were killed by a man who claimed it was a sex act gone wrong. Two-thirds of the women were strangled. This is around 3 times higher than the average rate of strangulation in the killing of women in other contexts.¹⁰⁰ Northern Ireland has an opportunity to lead by example by enacting legislation to cover explicitly the offence of non-fatal strangulation. ‘New Clause 8’ was previously proposed in the House of Commons:

A person (A) commits an offence if that person unlawfully strangles, suffocates, or asphyxiates another person (B), where the strangulation, suffocation, or asphyxiation does not result in B’s death.¹⁰¹

In Northern Ireland, organisations including Women’s Aid, HERe NI, Women’s Policy Group, Women’s Resource and Development Agency, Relate NI, and MAP have highlighted that there is no specific legal means to adequately tackle non-fatal strangulation and choking offences, and have

⁹⁹ Department of Justice (n 98), 7.

¹⁰⁰ We Can’t Consent To This, ‘What can be consented to? Briefing on the use of “rough sex” defences to violence’ (February 2020) [We Cant Consent to This Briefing](#) Accessed on 6 December 2020 1, 2.

¹⁰¹ House of Commons, Hansard Domestic Abuse Bill (Tenth sitting) Debated on Tuesday 16 June 2020, <[https://hansard.parliament.uk/Commons/2020-06-16/debates/3fa90c32-4bc5-4477-ab1e-aaf665da56e6/DomesticAbuseBill\(TenthSitting\)](https://hansard.parliament.uk/Commons/2020-06-16/debates/3fa90c32-4bc5-4477-ab1e-aaf665da56e6/DomesticAbuseBill(TenthSitting))> Accessed 21 December 2020.

called for the legal framework to be strengthened and a specific criminal offence introduced.¹⁰² Similarly, the South Eastern Domestic and Sexual Violence Partnership have registered concerns that the ‘rough sex’ defence is ‘increasingly used in Domestic Homicides to explain a death’ and that ‘acts of non-fatal strangulation are explained as consensual acts and yet women are predominantly the victims and held responsible.’¹⁰³

Section 21 of the *Offences against the Person Act 1861* contains the offence of attempting to choke, suffocate or strangle, though only when the act is committed in the commission of another offence. In the majority of cases, prosecutions can only be brought for an assault offence. The lack of observable injuries means that offenders’ conduct is often minimised, and they are charged with common assault rather than ABH or GBH.¹⁰⁴ In making the case for similar legislation, which was enacted in 2018, the Law Commission of New Zealand stated that, since its charging practice was clearly inadequate, a new offence would be a more effective criminal sanction than the existing options.¹⁰⁵

As the dominant cause of death in cases where the ‘rough sex’ defence has been used, the enactment of specific legislation on the offence of non-fatal strangulation would go some way to: (i) recognising strangulation as a serious offence; (ii) dissuading would-be offenders; (iii) protecting vulnerable survivors by enabling them to bring charges against their assailants; and (iv) increasing public awareness of the issue, particularly in light of the potential long-term medical effects precipitated by non-fatal strangulation. Unpacking the latter issue, although there is little or no visible injury, numerous longer-term effects of strangulation include fractured trachea/larynx, internal bleeding, tinnitus, neurological injuries, PTSD, depression, and stroke.¹⁰⁶ It may also prevent fatal harm to survivors by the same perpetrators in the future.

¹⁰² Committee for Justice, ‘Report on the Domestic Abuse and Family Proceedings Bill’ (2020) Northern Ireland Assembly 48/17-22, [636]. <<http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/justice/reports/domestic-abuse-and-family-proceedings-bill/>> Accessed on 6 December 2020,

¹⁰³ Ibid, [639].

¹⁰⁴ Written evidence submitted by the Centre for Women’s Justice (DAB06) (2020) UK Parliament: submission to Domestic Abuse Bill Committee, [11]. <<https://publications.parliament.uk/pa/cm5801/cmpublic/DomesticAbuse/memo/DAB06.pdf>> accessed 6 December 2020.

¹⁰⁵ The Law Commission of New Zealand, ‘Strangulation: The Case for a New Offence’ (2016) [1.18] <<https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC-R138.pdf>> Accessed on 6 December 2020

¹⁰⁶ Written evidence submitted by the Centre for Women’s Justice (n 104) [7].

No 7. Raise Your Voice Response



Raise Your Voice
Response to:

Consent to serious harm for sexual gratification – not a defence

11th January 2021

Web: www.raiseyourvoice.community / www.wrda.net

Raise Your Voice is a joint project of Women's Resource & Development Agency (WRDA), Northern Ireland Rural Women's Network (NIRWN), Women's Support Network (WSN) and Reclaim the Agenda (RTA)

Introduction:

Raise Your Voice is a joint project of Women's Resource & Development Agency (WRDA), Northern Ireland Rural Women's Network (NIRWN), Women's Support Network (WSN) and Reclaim the Agenda (RTA). This project began in 2019 and is funded by Rosa: the UK Fund for Women & Girls and Times Up: UK, and led by WRDA, which has been a leading women's organisation in NI since its founding in 1983.

The goal of the project is to tackle sexual harassment and sexual violence in communities across Northern Ireland. We draw upon the combined decades of experience from all four organisations to do so. As well as lobbying work we work directly in the community delivering training on issues related to sexual harassment and consent. In 2020 alone, we reached over 1000 individuals with our workshops, in person and online.

Much of our campaigning is influenced by the work we do in the community that has made it clearer to us than ever the need for greater education on these issues, more openness in discussing the impacts and more intervention as a preventative measure – as well as the need for more support services for those who are victims of sexual violence.

Our views in regard to this consultation is that this is a golden opportunity to do something of great significance that will help victims and their families more than the formalisation in legislation of the existing R v Brown case law, as has happened in England and Wales. This cannot prevent defendants claiming that death occurred by accident, and this is why these cases tend to result in unsatisfactory outcomes. One example is the case of the death of Natalie Connolly where the defendant was found guilty of manslaughter and served a short sentence. Instead, to truly bring justice for these crimes we need a new offence that would capture these reckless and negligent forms of sexual manslaughter and

allow for appropriate sentencing in accordance with the culpability of the defendant. We have argued for this and outlined its likely shape in response to Q. 4.

Finally, while we note the one week extension to the consultation period, we are concerned that the relatively short consultation period, which included a holiday period, has presented a barrier to drafting our own response and is likely to result in fewer responses from the general public, as well as making it impossible for us to usefully consult with stakeholders. We recommend that the Department review the WRDA guidance 'Women at the Heart of Public Consultation, A guide for Public Authorities and Women's Organisations'¹⁰⁷.

Q1 Do you think the law in Northern Ireland is sufficient as it stands?

No.

The law at present lacks the provision to deal with fatal cases where the defendant claims that death resulted accidentally as a result of sexual activity. This is the essence of the so-called "rough sex defence", but it is vital to consider that the law cannot prevent a defendant from claiming that a death was accidental and not intended. This leads to a situation where murder charges are difficult to prove without exceptional evidence of premeditation, and therefore the resulting charge is often a charge of manslaughter, which in itself does not capture the nature of what has happened. This has knock on effects on sentencing guidelines and often leaves victims' families feeling that justice has not been properly delivered.

We are sympathetic to the impulse to codify the existing case law into legislation, as has happened in England & Wales, but we do not believe that this will be sufficient to prevent a defendant from arguing that any death or injury occurred accidentally in the course of consensual sexual activity, because to prove murder one has to prove intent, and accidental death must be allowed as a defence.

This leaves the legal system in a bind that seems to be resolved only by the introduction of a new category of offence. Therefore we will argue that we need to go further in this than England & Wales has, and create a bespoke piece of legislation that will create a specific sexual offence that captures injury or death resulting from negligent and/or reckless sexual activity. This offence would succeed in capturing those cases where there is no evidence of intention to kill but that the recklessness was such that a responsible person should know that it could well result in serious injury or death. In addition we can do so in a way that does not pathologise certain kinds of sexual behaviour that can be entirely safe and consensual – as indeed all sexual encounters ought to be.

Separately there needs to be a non-fatal strangulation law passed that focuses specifically on non-consensual choking or strangulation. This would need to be framed in a way that includes the use of strangulation within a context of domestic abuse and also its use within sexual encounters where there may be no pre-existing relationship or domestic relationship between the parties.

Q2(a) Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England & Wales?

No.

We understand the impetus behind the campaign and are sympathetic to the unease with the way in which these cases are framed but we believe that this approach is insufficient. This is because a defence

¹⁰⁷ https://wrda.net/wp-content/uploads/2018/10/WRDA_WomenAtTheHeartOfPublicConsultation.pdf

against a charge of murder cannot be outlawed and therefore this approach will not achieve its intended purpose, and we outline a better approach in response to Q4.

Cronin et al argue that formalising R v Brown in legislation is insufficient “this will not prevent defendants from claiming they do not satisfy the definition of the offence they have been charged with. To effect any reform, and not waste this golden opportunity, campaigners must therefore shift their focus from the defence of consent to the issue of the substantive offence. If campaigners continue to talk of preventing a defence, they will fail to address the real problem, the lack of an adequate offence with which to charge defendants in these circumstances.”¹⁰⁸

Q2(b) If yes, do you think the offences to which the amendment applies are appropriate?

N/A

Q3 Do you consider that a programme of education is needed to:

- * raise awareness of the dangers of rough sex, and the meaning of consent; and**
- * raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?**

Yes.

Raise Your Voice takes the view that education around consent must be the foundation of any attempt at wiping out the offence that leads to the so-called rough sex defence being used in the first place, as well as to dealing with it properly when it comes before a court.

Education is an absolutely vital piece of the puzzle if cases like this are to be prevented and if they are to be dealt with in an appropriate way when they come before the courts. Having said that, we are careful to stress that we do not want to stray into a situation where any education on this topic is heteronormative, cisnormative, assumes ablebodiedness or indeed is overly moralistic with regards to sexual practices.

At present sex education in Northern Ireland is woefully insufficient, tending to be strictly heteronormative and to focus on abstinence rather than encouraging open discussions of these topics. Young people have made their views on the present state of sex and relationships education clear in a survey by Belfast Youth Forum where only half of young people think their right to relationship and sex education is currently not being met. 34% of young people who completed the survey had never received a relationship and sex education lesson in school, and of those young people who did receive lessons, only 10% said the information they received was “very useful.” Only 23 percent of young people felt adults trusted young people to make their own decisions. Also, the older a young person becomes the poorer they think this education becomes. Further, only 1 in 5 receive any information relevant to LGBT+ relationships. The four most common word associations were “basic”, “unhelpful” “useless” and “biased”.¹⁰⁹

The result of this gap in education colliding with the digital age has been an increase in young people relying on pornography for their sex education and the reported rise of non-consensual violence in sexual

¹⁰⁸ <https://www.starsdorset.org/blog/homicide-and-violence-in-sexual-activity-moving-from-defence-to-offence>

¹⁰⁹ <https://www.belfastcity.gov.uk/documents/youth-forum/any-use-report#subjectsrse>

encounters¹¹⁰ seems obviously connected with this situation. We must not allow this to continue and we must face the reality that the situation will not improve without intervention.

We argue that the focus ought to be on healthy, safe and consensual sex education that relies on communication and it must unpack and work through a rigorous understanding of consent in a sexual context, taking into account the prevalence of sexual violence within and outside of sexual relationships. It must be inclusive of LGBT relationships and seek not to take a moralistic tone about what may be unconventional sexual practices but which are nonetheless happening, this includes the need to encourage the use of safewords and other means of communicating throughout all sexual encounters.

In response to the Gillen Review and indeed over a period of decades numerous womens' and LGBT+ organisations stressed the need for a shake-up in how sex and relationships education is approached here. It is difficult to combat myths, debunk stereotypes and encourage healthy relationships and a safe approach to sex. Despite the recommendations of CEDAW, the commitments made in the Northern Ireland (Executive Formation etc) Act 2019 to introduce compulsory SRE in schools and the evident need for reform in this area, it is evident that there remains an urgent need for thorough reforms.

With regard to the criminal justice system, we reiterate the arguments that women's organisations submitted to the Gillen Report and indeed the findings of the Gillen Report itself; there is an urgent need for educational material that will not only inform on the current legal status of various acts but will actively seek to dispel the myths that tend to surround issues like rape and other serious sexual offences. The Gillen Report was clear that education on these issues must be addressed as part of "an extensive public awareness and school education campaign", specifically recommending "introducing educational material for the benefit of the jury which might include a short video outlining the fallacy of these myths and judicial directions to this effect for the benefit of educating jurors at the very commencement of the trial, together with, if necessary, expert evidence on the subject."¹¹¹ This work is absolutely necessary and urgent – not just for cases of the kind covered by this consultation, but for serious sexual offences of all kinds.

The Gillen Report focuses on this issue at length and there is an important reason for this; the dispelling of rape myths and the widespread acceptance and understanding of a robust concept of consent could be the most important part of the educational puzzle as regards this issue.

Q4. Do you consider something different is required for Northern Ireland?

Yes.

We argue that a new law would best deal with the concerns raised around the so-called "rough sex defence". Since we cannot stop defendants claiming that death was the accidental outcome of consensual activity, this new law would provide for cases where this defence can be met with a new charge – that the sexual activity was reckless or negligent to such a degree that a reasonable person must know that serious injury or death would be the likely outcome.

In our view this moment presents us with an opportunity to set the standard internationally as to how crimes like this can be dealt with in a way that both seeks to prevent them from occurring in the first place and that can deliver meaningful justice for victims.

We propose that this law should be a new category of sexual offence, based partially on the work of Dr Alison Cronin, Dr Jamie Fletcher and Dr Samuel Walker at Bournemouth University, whose work has informed our argument here. In the article *Homicide and Violence in Sexual Activity, Moving from Defence*

¹¹⁰ <https://www.theguardian.com/society/2019/jul/25/fatal-hateful-rise-of-choking-during-sex>

¹¹¹ <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf> p.30

to Offence they provide a persuasive argument that the legislation that would formalise the findings of *R v Brown* (1994) would not actually prevent people from claiming that death caused during sexual activity was accidental, whatever its cause, resulting in the outcome that most of these cases are prosecuted as manslaughter or the defendant pleads guilty to the lesser charge of manslaughter. This cannot be avoided by formalising *R v Brown*, as the legislation proposed would do; “in order to avoid a major legal pitfall, campaigners need to articulate the problem and their aim more clearly, engage with the current law and adopt the legal terminology that will effectively make their point. It is suggested that this could amount to a momentous change in criminal law that would see justice for victims who die as the result of violent sexual attacks. In order to achieve this, campaigners must move on from their discussion of defendants using a defence, which is not in law technically correct, and towards reform of the offence that the defendant has committed.”¹¹²

In addition there is precedent for the creation of a specific offence lying between murder and manslaughter in the form of the offence of “causing death by dangerous driving” which captures offences where the driver should have known that their conduct while driving was such that it could have resulted in serious injury or death, even if the intent was not to kill, effectively prosecuting them for the outcome of their recklessness and negligence that could have been avoided with due care and attention.

In our preparation for this consultation we have contacted Dr. Alison Cronin and she has further advised us as to the outline of what such a bespoke offence could look like. One key element is that this ought to be classified as a sexual offence.

The importance of categorising this as a sexual offence is as follows:

1. It accords with the principle of “fair labelling” and would allow for the development of fair and proportionate sentencing guidelines for this category of homicide.
2. Categorisation as a sexual offence has the procedural advantage that evidence of the victim’s past sexual history could be restricted by an extension of the Youth Justice and Criminal Evidence Act 1999 ss. 41 and 42 provisions. This would address widespread criticism that the current procedural approach in homicide cases contains no bar to the inclusion of the victim’s past sexual history.
3. Framing the offence in terms of a sexual nature is preferable to the contextualisation as domestic abuse that has occurred in England and Wales. This would recognise that sexual relations occur outside “domestic” relationships and that joint consensual engagement in a dangerous activity does not necessarily amount to “domestic abuse” – to suggest that it is would be a denial of the autonomy of both parties and could potentially also contradict case law as established in *R v Wilson*¹¹³.

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

Cronin adds that “The adoption of the existing common law definitions with the addition of the sexual context has a number of benefits:

¹¹² <https://www.starsdorset.org/blog/homicide-and-violence-in-sexual-activity-moving-from-defence-to-offence>

¹¹³ <http://www.e-lawresources.co.uk/cases/R-v-Wilson.php>

1. The application of the existing law to the sexual context provides parity with homicides committed in non-sexual circumstances, the sexual element being a matter of fact and serving as an aggravating or mitigating factor as appropriate.
2. There is no need to develop new and uncertain legal principles that may spawn future case law or retrospective appeals.
3. The existing common law definitions are sufficiently broad as to encompass dangerous or grossly negligent sexual conduct of any nature.
4. As the general law of homicide develops, either in common law or statute, the sexual killing offence would develop in step without the need for additional enactment/reform.”

We take the view that the vision of a new, bespoke offence laid out by Cronin and her colleagues could be the remedy to the way these cases play out in the courtroom in Northern Ireland and elsewhere. To clarify, this law would be suitable for other jurisdictions also, but it is especially relevant in Northern Ireland because of our persistent issues with inadequate sex and relationships education, the higher rates of homophobia here and because of the section 5 duty to report any crimes to police, meaning for instance that a person injured during consensual sex may fear seeking medical attention as medical personnel would have a duty to report anything that they believed to be a crime.

For definition and fair labelling, the offence could be called “sexual manslaughter” or some variant, eg. “unlawful and dangerous sex manslaughter”, “sexual gross negligence manslaughter”, “manslaughter in the course of dangerous sexual activity”, “killing by dangerous sexual conduct”.

In addition the full roll out of sex and relationships education, alongside the public awareness campaigns and education for those working within the legal system that was recommended in the Gillen Report, will help to both to ensure justice for victims as well as to help prevent these kinds of cases from occurring.



No 8.

SINN FÉIN SUBMISSION TO THE DOJ CONSULTATION: “CONSENT TO SERIOUS HARM FOR SEXUAL GRATIFICATION: NOT A DEFENCE”

Introduction

Sinn Féin welcome the opportunity to respond to the above consultation on the so-called “rough sex defence”. This issue is one that has been raised on several occasions by the party’s members of the Committee for Justice, including during the Committee Stage of the *Domestic Abuse and Family Proceedings Bill* given the obvious links between the issues.

In June 2020 Sinn Féin welcomed the review of legislation regarding choking or strangulation offences and called for the terms of the review to be expanded to include the defence of “consent to serious harm” (or the so-called “rough sex defence”). Whilst this request was not acceded, we welcome the Department of Justice’s consultation on proposals regarding this defence.

Options for moving forward

There are many reasons why the current law in the north is not sufficient. Despite the fact that the 1994 case of *R v Brown* set the legal precedent that victims’ consent to serious harm for sexual gratification is not a defence, this defence continues to be raised. The most recent example in the north being Patrycja Wyrebek in August. Sadly, there have been at least three women killed here by men who claim the women had consented to the violence.

Research from the organisation ‘We Can’t Consent to This’ shows that there has been a series of non-fatal serious assaults where this defence has been used.¹ There is also evidence to show a tenfold increase in rough sex claims in defence to homicide and non- fatal violence in Britain and the north of Ireland over the last 20 years.² The fact that this defence continues to be used regularly is clear evidence that the current law is insufficient to protect against perpetrators of abuse and violence from abusing the law. Case law is routinely ignored and this demonstrates that it is not fit for purpose for this issue.

¹ <https://wecantconsenttothis.uk/northern-ireland-consultation>

² <https://www.theguardian.com/society/2020/jun/03/rough-sex-defence-led-to-over-60-victims-having-to-deny-giving-consent-finds-research>

Sinn Féin would prefer to change the law by moving case law into statute so that consent is explicitly outlawed as a defence to serious harm for sexual gratification, in line with the similar model which has been adapted in England and Wales via an amendment to their own Domestic Abuse Bill.

Given that consent as a defence continues to be raised, it is clear that the legal precedent of *R v Brown* has not been properly interpreted or implemented and putting this in statute would strengthen the law in this area. This is important in addressing the worrying trend of increasing numbers of defendants using this defence.

“We Can’t Consent To This” organisation have stated their belief that men who use these defences do so because they see them working, in obtaining a lesser charge, a lighter sentence, or charges dropped altogether.³ By explicitly outlawing this defence in statute it will send out a clear message that this defence is morally wrong, that victims cannot consent to serious harm for sexual gratification, and it will prevent further abuse of the law.

The consultation document proposes a list of offences (Actual Bodily Harm, Grievous Bodily Harm, and wounding with intent to cause GBH) to which the amendment applies in England and Wales. While all of these offences should apply to any new law here, it should be expanded to include offences relating to strangulation, and consider new offences proposed as a result of the Department of Justice review of existing legislation and practices regarding the act of choking or strangulation. Strangulation is a serious and horrific offence and the prevalence of non-fatal strangulation within domestic abuse is a serious concern. We look forward to engaging with the outcome of this review once its findings are published however the list of offences to which the outlawing of this defence applies should be kept live to incorporate any new strangulation offences.

It is essential that a programme of education is put in place to raise awareness of the dangers of rough sex, and the meaning of consent, and to raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint. A similar programme of education regarding similar issues of consent and rape myths were key recommendations of the Gillen Review of Serious Sexual Offence cases, and we understand a programme of work is underway by the Gillen Review Implementation Team to implement these.

A programme of education in this regard would be essential to both learn from and compliment other education programmes related to sexual offences. Research from Savanta ComRes found that an increasing amount of men engage in assaulting women in acts of violence such as choking, slapping, gagging or spitting during sex, and that a third of women have experienced this unwanted violence during sex.⁴ There must be a concerted effort to challenge and counteract this culture and therefore education in relation to healthy sex and relationships is essential.

The criminal justice system has, to date, failed to recognise and reject the use of this defence at every stage of the criminal justice system, and more must be done to better support victims within the criminal justice process.

Conclusion

Sinn Féin notes that this consultation forms only one cog in a wider array of legislative proposals to tackle violence against women, and domestic and sexual violence and abuse.

³ <https://www.bbc.co.uk/news/uk-politics-53064086>

⁴ <https://www.bbc.co.uk/news/uk-50546184>

This direction of travel – following on from the landmark Gillen Review – is a positive one and whilst much work remains to be done, this consultation is an important step.

The law as it currently stands in relation to the defence of consent to serious harm for sexual gratification (or the rough sex defence) is inadequate, and the reliance on case law to which there is no rigid adherence is insufficient. This defence must be outlawed, and it must also accompany an ongoing programme of public awareness and education to ensure not only that perpetrators are held responsible for their actions, but that we do all in our power to prevent this type of violence from occurring in the first place.

In developing proposals from this consultation, DOJ must also pay careful attention to the outcome of the review into non-fatal strangulation offences, as both issues are closely intertwined. Should that review propose any new criminal offences related to choking or strangulation, then the ban of the so-called “rough sex defence” must also apply to those new offences.

women's aid

No. 9

Consultation on Consent to Serious Harm for Sexual Gratification: Not a Defence

11th January 2020

Women's Aid Federation Northern Ireland

Website: www.womensaidni.org

women's aid

Women's Aid Information and Statistics

Who We Are

Women's Aid is the lead voluntary organisation in Northern Ireland addressing domestic and sexual violence and providing services for women and children. Women's Aid exists to challenge attitudes and beliefs which perpetuate domestic violence. We work to promote healthy, non-abusive relationships.

Our vision is the elimination of domestic and sexual violence

What We Do

Women's Aid supports all women and children affected by domestic violence. We work to help women and children be safe, to break free from the cycle of violence, and to rebuild their lives. Women's Aid has nine local groups and one regional umbrella body covering the whole of Northern Ireland, and our wraparound services are available across Northern Ireland. Our core work includes:

- Refuge accommodation for women and their children suffering domestic violence.

- Support services to enable women affected by domestic and/or sexual violence to rebuild their lives and the lives of their children.
- Support services for children and young people who have experienced domestic violence.
- Preventative education programmes in schools and other settings.
- Educating and raising awareness among the public, media, police, courts, social services and other agencies of the impact of domestic and sexual violence.
- Advising and supporting other agencies in responding to domestic & sexual violence.
- Working in partnership with other agencies to ensure a joined-up response to domestic and sexual violence.

Throughout this response, the term “Women’s Aid” refers to the overall Women’s Aid movement in Northern Ireland, including our local groups and Women’s Aid Federation.

Domestic & Sexual Violence in 2019-20: a year in numbers

- **561** women and **316** children stayed in a Women’s Aid refuge.
- **36** pregnant women were supported in refuge and **205** pregnant women accessed outreach services.
- **11** babies were born to women in refuge.
- **5,536** women and **5,143** children accessed Women’s Aid outreach services, enabling them to get support while staying in their own homes.
- **1,197** women took part in programmes run by Women’s Aid, including our *Journey to Freedom* and *You and Me, Mum* programmes.
- We trained **168** teachers across **105** primary schools to deliver the *Helping Hands* preventative education programme.

Domestic Violence in Northern Ireland: Trends

- Domestic violence is a violation of Article 5 of the UN Universal Declaration of Human Rights – that “*no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*”.
- The *Stopping Domestic & Sexual Violence and Abuse Strategy* estimates the cost of domestic and sexual violence in Northern Ireland to be **£931 million**.
- UNICEF research released in 2006, showing per capita incidence, indicates that there are up to **32,000 children** and young people living with domestic violence in Northern Ireland.
- **69%** of all domestic abuse crimes were female and **30% were male**. Of all offenders dealt with by police in 2019/20 in connection with domestic abuse crimes that resulted in an outcome, 86% were male and 12% were female.¹¹⁴

¹¹⁴Findings from the PSNI Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 31 March 2020 N.B. “Adult” defined as aged 18 and over

Crime Statistics 2019-20

- Domestic Violence is a crime. Domestic abuse crimes (**18,640**) accounted for **17.5% of all crime** reported to the PSNI.
- Police responded to a domestic incident **every 17 minutes** of every day of the year.
- Between 2019 – 2020 (statistics captured over financial year), there were **5 murders** with a domestic abuse motivation in Northern Ireland and all victims were female.

Submission Response

(i) Retain the Status Quo

This option would involve no change to the current law in Northern Ireland. We would continue to rely on the case law precedent of R v Brown to aid judges and juries determining the outcome of the cases brought before them.

1. Do you think the law in Northern Ireland is sufficient as it stands?

It is our position that the law is not currently sufficient to deal with cases where “rough sex” is being used as a defence. The rough sex defence is being increasingly used in Northern Ireland and throughout the UK in defence of homicide and non-fatal violence against women.

R v Brown is a case which concerns two gay men in engaged in consensual sadomasochism. The judgement outlined that consent is not a defence to more than transient or trifling injury. This decision is rarely cited in decisions where the rough sex defence is being used and has been undermined by decisions such as Slingsby (1995). R v Brown deals with a case involving consensual sex, when viewed through the lens of violence against women and girls it does not deal with violence that isn't consented to. Where surviving women are putting forward evidence in trials outlining that there was no consent, there needs to be specific legislation in place in order to provide recourse. **Legislation must be careful not to criminalise non-conventional, consensual sex so as to avoid being considered an issue of morality.**

60 UK women have been killed in violence that it's claimed they asked for, and the so called "rough sex" defence also used in non-fatal assaults of women, all of whom say they did not consent to this. Strangulation is prosecuted with astonishing lightness, if at all. 2 Million women in the UK women have suffered strangulation assault by sexual partners. The existing law is not working.¹¹⁵ Women's Aid do not think that the law in Northern Ireland as it stands is sufficient and we need change now.

Question 2(a): Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England and Wales?

It is our position that the increasing numbers of men using this defence is a growing concern. Therefore, it is important to have legislation and policies in place that offer recourse to justice for those who are victims of non-fatal harms and for those victims who are murdered as a result. Statistics show that 38% of women in the UK have experienced some form of rough sex

¹¹⁵ [Domestic Abuse Bill \(11th June 2020\) \(parliament.uk\)](#) 1.3

that was unwanted¹¹⁶. The claim that a dead woman consented to violence has been made in 60 UK homicides. Further research shows that of those 60 homicide cases where a rough sex defence was used, 2 were found not guilty, 3 cases were not pursued, 17 cases were convicted as manslaughter, 3 murder convictions where the death was originally decided not to be a crime, 1 murder conviction where the defence had a sentencing benefit and 33 murder convictions¹¹⁷. From this research we can see that only 33 cases out of 60 where this defence was used ended in a murder conviction without mitigations to sentences. Clearly notions of rough sex are benefiting perpetrators of violence in court.

Without change, more men will use this defence, as outlined above and Women's Aid believe that men who use these defences do so because they see them working. Those accused of sexual and sadistic murders have particular incentive to recast sadistic sexual violence as consensual, as these have a 30-year life-sentence starting point. In the last Femicide Census¹¹⁸ there were 8 homicides of women with sadistic conduct: 6 of the men used a rough sex claim in defence.

We Can't Consent to This also reported that women were being seriously injured in what men claim to be consensual sexual violence, stating that it is now commonplace for a woman to be assaulted and abused by men they're dating, with 38% of UK women under the age of 40 reporting being assaulted, choked, slapped, gagged or spat on, as part of otherwise consensual sex. We Can't Consent to This stated this is not just a UK problem but one that occurs worldwide and argued that until it is made clear, in law, that consent is not a defence, defendants would continue to make claims in the pursuit of a lesser criminal charge or sentence, or with a view to being acquitted of any crime.

Therefore, we would argue for the need for legislation to outlaw this defence, ensuring that victims have effective recourse to justice and that "rough sex" cannot be used as an excuse to perpetrate acts of violence against women, nor will it be used by courts as a mitigation to a sentence.

There are too many cases in which sentences do not reflect the crime and the perpetrator has got off because of the current defence available.

Question 2(b): If yes, do you think the offences to which the amendment applies are appropriate?

Any proposed legislation must take into consideration offences relating to strangulation. The campaign group "We Cannot Consent to This" found that strangulation is a feature of most homicides and over half of non-fatal assaults in which "rough sex" has been used as a defence.

We are aware that the Department of Justice has made a commitment to bring forward legislation on fatal and non-fatal strangulation and would encourage the department to consider this as another opportunity to emphasise that "rough sex" is not a defence for harm caused.

¹¹⁶ ['A man tried to choke me during sex without warning' - BBC News](#)

¹¹⁷ [Does claiming a "sex game gone wrong" work? — We Can't Consent To This](#)

¹¹⁸ Femicide Census 2018

We would also note that “We Cannot Consent to This” identified that of 115 non-fatal assault charges in their research, all perpetrators were male and 114 victims were female. All women in these non-fatal assault cases said they did not consent to the violence.

While we understand that legislation in Northern Ireland is gender neutral, we would encourage the department to consider the gendered nature of this crime in any subsequent guidance produced to supplement an offence.

Question 3: Do you consider that a programme of education is needed to:

- **raise awareness of the dangers of rough sex, and the meaning of consent; and**
- **raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?**

It is our position that a programme of education around rough sex and consent is necessary to ensure that wider society is aware of this as a wider issue and tolerance for these types of crimes is eradicated. This is also one of the recommendations of the Gillen Review. It is important to make people aware of what consent is and how rough sex fits into wider concepts of rape and rape myths. We would note that RSE in schools should cover these issues as well. Women’s Aid have long campaigned for statutory healthy relationships programmes to be delivered in schools to promote respect, equality, values and consent within all relationships. We are aware of the work of the Gillen Review Team in relation to this, but as always we have to focus on intimate partner sexual abuse and rape as part of this education programme.

We also support a campaign to raise awareness of this issue across the criminal justice system to ensure that victims are receiving the correct responses when they make complaints, they are able to stay engaged with the criminal justice system and, most importantly, they are not re-victimised by the process. We would note again that this was another recommendation of the Gillen review that is applicable to rough sex defences.

Any awareness raising campaign for either of the above should be intersectional, ensuring that it is not simply representative of the heteronormative experience but shows that sex between other sexual orientations must also be consensual and safe as well. It is always advisable to reach out specialised organisations for advice on how to proceed with awareness raising campaigns in order to ensure that messaging is sensitive and relevant.

Question 4: Do you consider something different is required for Northern Ireland?

In England Clause 65 of the Bill re-states the current law, particularly in relation to the use of the so-called ‘rough sex defence,’ making it clear that a person cannot consent to the infliction of serious harm or, by extension, to their own death, for the purposes of obtaining sexual gratification.

Women’s Aid supports this position of Clause 65 above but In Northern Ireland, as in England and Wales, further measures should be considered to ensure that this law works in practice, including exclusion of admission of sexual history evidence from trials for violent offences – extending the protection in Article 28 of The Criminal Evidence (Northern Ireland) Order 1999, which covers sexual offences, to violent offences. Where violence is prosecuted as homicide, common assault, or assault occasioning actual or grievous bodily harm, substantial

evidence of previous consent or of her sexual history may be presented in court. In cases which have no sexual assault charge, her name and sexual history can be widely reported in news, and there are no restrictions on this.

The DoJ is currently reviewing the law on non-fatal strangulation and Women's Aid have long campaigned for this change to our legislation (as stated in question 2). Currently the Domestic Abuse Bill going through Westminster has included this within an Amendment to the current Bill which we welcome. The Assembly needs urgently to look at this issue and any proposal on consent to sexual gratification must ensure that non-fatal strangulation assaults are not able to be consented to. If non-fatal strangulation is made a specific offence, then it must be included in the offences listed under any amendment on consent to violence for sexual gratification.

From a study by St Mary's SARC) it showed non-fatal strangulation in adult females reporting sexual assault and rape was common, with 1 in 5 giving a positive history when the alleged assailant was either a partner or ex-partner. The vast majority will give a history of symptoms associated with non-fatal strangulation and have evidence of injuries which may be associated.¹¹⁹

It is also a recommendation by CJINI:

Operational Recommendations: 1

The DoJ should review, with input from relevant stakeholders, how potential inadequacies in current legislation regarding the act of choking or strangulation by defendants could be addressed (paragraph 2.17).¹²⁰

Changes to legislation will give the power to police and the justice system to treat these offences with the seriousness it deserves. Some violence is more dangerous and frightening than others, not just in that it is more likely to cause death or serious injury, but in what it predicts. Strangulation is a very particular form of assault for three reasons:

- 1.It is likely to cause serious injury or death
- 2.It is perceived by the victim as a direct threat to their life
- 3.It is a highly predictive of future homicide

We Can't Consent to This also reported that women were being seriously injured in what men claim to be consensual sexual violence, stating that it is now commonplace for a woman to be assaulted and abused by men they're dating, with 38% of UK women under the age of 40 reporting being assaulted, choked, slapped, gagged or spat on, as part of otherwise consensual sex. We Can't Consent to This stated this is not just a UK problem but one that

¹¹⁹ [Non-fatal strangulation amongst clients attending Saint Mary's SARC](#) White, Majeed-Ariss,, 2018

¹²⁰ CJINI : NO EXCUSE PUBLIC PROTECTION INSPECTION II: A THEMATIC INSPECTION OF THE HANDLING OF DOMESTIC VIOLENCE AND ABUSE CASES BY THE CRIMINAL JUSTICE SYSTEM IN NORTHERN IRELAND, JUNE 2019

occurs worldwide and argued that until it is made clear, in law, that consent is not a defence, defendants would continue to make claims in the pursuit of a lesser criminal charge or sentence, or with a view to being acquitted of any crime.

No 10. Women's Policy Group Response

Women's Policy Group NI

Response to:

Consent to serious harm for sexual gratification – not a defence

11th January 2021

Web: www.wrda.net

The [Women's Policy Group Northern Ireland](http://www.wrda.net) (WPG) is a platform for women working in policy and advocacy roles in different organisations to share their work and speak with a collective voice on key issues. It is made up of women from trade unions, grassroots women's organisations, women's networks, feminist campaigning organisations, NGOs, LGBT+ organisations, support service providers, 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. Several members of the WPG are also submitting responses on behalf of their own organisations to this consultation, including: Raise Your Voice, Here NI, Committee on the Administration of Justice, Transgender NI, Women's Support Network and others.

We welcome investigation into the issue of consent to serious harm for sexual gratification and hope to see our consultation response reflected in the final outcome, particularly given the fact that we have proposed a far-reaching solution to the issues presented.

Introductory remarks:

We believe that this consultation presents an opportunity to examine an alternative approach to that taken in England and Wales, one that will help victims and their families more than the formalisation in legislation of the existing R v Brown case law.

There is no way to prevent defendants claiming that death occurred by accident, which is the essence of the so-called "rough sex defence". The approach taken in England & Wales was attempting to address this, but since the defence amounts to a lack of mens rea for murder and therefore cannot be banned as such. In practice this usually means that the charge becomes one of manslaughter rather than murder, and this is why these cases tend to result in unsatisfactory outcomes, and leaves families feeling like justice has not been delivered.

One example of this issue is seen in the case of the death of Natalie Connolly where the defendant was found guilty of manslaughter and served a short sentence because the mens rea for murder could not be proven. In fact in cases where the defendant has faced charges of murder and been convicted, such as the death of British backpacker Grace Millane, there is always additional

evidence against them, proving a degree of premeditation or extraordinary lengths taken to conceal what has happened. These kinds of cases are less common than the kinds of offences where there is no such damning evidence. These are the cases that this response has in mind and hopes to address.

To truly bring justice for these crimes we need a new offence that would capture these reckless and negligent forms of sexual manslaughter and allow for appropriate sentencing in accordance with the culpability of the defendant. We have argued for this and outlined a suggested shape for the kind of offence that we have in mind in our response to Q. 4. We also take the view that education is central to addressing this issue in a way that might prevent further cases and indeed cases of sexual violence more broadly.

Q1 Do you think the law in Northern Ireland is sufficient as it stands?

No.

The law at present lacks the provision to deal with fatal cases where the defendant claims that death resulted accidentally as a result of sexual activity. This is the essence of the so-called “rough sex defence”, but it is vital to consider that the law cannot prevent a defendant from claiming that a death was accidental and not intended, in other words that the defendant lacked the mens rea necessary for a conviction of murder.

This leads to a situation where murder charges are exceptionally difficult to prove, or even to charge, without exceptional evidence of premeditation. Therefore the resulting charge is often a charge of manslaughter, which in itself does not capture the nature of what has happened, since manslaughter implies an entirely accidental death and not one that resulted from conscious actions. This also has knock on effects as manslaughter convictions have sentencing guidelines that are designed to reflect the lesser degree of culpability that this conviction represents. As a result this often leaves victims’ families feeling that justice has not been properly delivered and that the death of their loved one has not been given the weight that it deserves.

This leaves the legal system in a bind that seems to be resolved only by the introduction of a new category of offence. Therefore we will argue that we need to go further in this than England & Wales has, and create a bespoke piece of legislation that will create a specific sexual offence that captures injury or death resulting from negligent and/or reckless sexual activity. This offence would succeed in capturing those cases where there is no evidence of intention to kill but that the recklessness was such that a responsible person should know that it could well result in serious injury or death.

We propose also that this can be done in a way that does not categorise certain sexual behaviours as inherently dangerous, an approach that often leads in practice to the pathologisation of certain sexual behaviours seen as “deviant”. In the past this has tended to lead to the criminalisation of LGBT people and the turning of a societal “blind eye” to alternative practices within heterosexual marriages, as exemplified in the gap between the judgements in R v Brown and that of R v Wilson. To avoid this kind of disparity and to keep people safe from harm regardless of their domestic arrangements or their sex life, we need a robust educational programme alongside the provisions of a new law.

Separately there needs to be a non-fatal strangulation law passed that focuses specifically on non-consensual choking or strangulation. This would need to be framed in a way that includes the use of strangulation within a context of domestic abuse and also its use within sexual

encounters where there may be no pre-existing relationship or domestic relationship between the parties.

Q2 (a) Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England & Wales?

No.

We understand the impetus behind the campaign and are sympathetic to deep concern around the apparent lack of justice delivered in these cases as well as to the unease with the way in which these cases are framed but we believe that this approach is insufficient and cannot result in the outcome that campaigners seek. This is because, as outlined above, a defence amounting to a lack of mens rea for murder against a charge of murder cannot be outlawed.

Cronin et al argue that formalising R v Brown in legislation is insufficient “this will not prevent defendants from claiming they do not satisfy the definition of the offence they have been charged with. To effect any reform, and not waste this golden opportunity, campaigners must therefore shift their focus from the defence of consent to the issue of the substantive offence. If campaigners continue to talk of preventing a defence, they will fail to address the real problem, the lack of an adequate offence with which to charge defendants in these circumstances.”¹²¹

Therefore this approach will not achieve its intended purpose, and so we outline what we believe to be a better approach in response to Q4.

Q2 (b) If yes, do you think the offences to which the amendment applies are appropriate?

n/a

Q3 Do you consider that a programme of education is needed to:

- * raise awareness of the dangers of rough sex, and the meaning of consent; and**
- * raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?**

Yes.

Education is a crucial piece of the puzzle if cases like this are to be prevented, if victims and their families are to be treated appropriately at all stages by the criminal justice system, and if the cases are to be dealt with in an appropriate way when they come before the courts. Having said that, we are careful to stress that we do not want to stray into a situation where any education on this topic is heteronormative, cisnormative, assumes ablebodiedness or indeed is overly moralistic with regards to sexual practices.

This is an area that has been traditionally controversial as the justice system has been reluctant to be excessively paternalistic or to interfere with the right of individuals to make their own lifestyle choices – at least with regards to heterosexual relationships – as exemplified in the decision of R v Wilson.

Work needs to begin with sex and relationships education at its most basic level. At present sex and relationships education in Northern Ireland is woefully insufficient, tending to be strictly heteronormative and to focus on abstinence rather than encouraging open discussions of these topics. Young people have made their views on the present state of sex and relationships education clear in a survey by Belfast Youth Forum where only half of young people think their

¹²¹ <https://www.starsdorset.org/blog/homicide-and-violence-in-sexual-activity-moving-from-defence-to-offence>

right to relationship and sex education is currently not being met. 34% of young people who completed the survey had never received a relationship and sex education lesson in school, and of those young people who did receive lessons, only 10% said the information they received was “very useful.” Only 23 percent of young people felt adults trusted young people to make their own decisions. Also, the older a young person becomes the poorer they think this education becomes. Further, only 1 in 5 receive any information relevant to LGBT+ relationships. The four most common word associations were “basic”, “unhelpful” “useless” and “biased”.¹²²

The result of this gap in education colliding with the digital age has been an increase in young people relying on pornography for their sex education and the reported rise of non-consensual violence in sexual encounters¹²³ seems obviously connected with this situation. If we want to make a meaningful difference to the current state of affairs we must face the reality that the situation will not improve without intervention.

We argue that the focus ought to be on healthy, safe and consensual sex education that relies on communication and has consent as its absolute baseline. Consent must be fully unpacked rather than alluded to without explanation, and any such approach must take into account the prevalence of sexual violence within and outside of sexual relationships, pointing to a general confusion about what consent actually means in practice. This SRE must be inclusive of LGBT relationships and seek not to take a moralistic tone about what may be unconventional sexual practices but which are nonetheless happening, have always happened and will continue to happen. This includes the need to encourage the use of safewords and other means of communicating alongside verbal consent that is freely given, reversible, informed, enthusiastic and specific throughout all sexual encounters.

In response to the Gillen Review into the law and procedures in serious sexual offences in NI, and indeed over a period of decades, numerous womens’ and LGBT+ organisations stressed the need for an urgent re-think as to how sex and relationships education is approached here, in our schools and beyond. It is difficult to combat myths, debunk stereotypes and encourage healthy relationships and a safe approach to sex without centring education and ensuring that this approach is taken from all parties to this education. Despite the recommendations of CEDAW, the commitments made in the Northern Ireland (Executive Formation etc) Act 2019 to introduce compulsory SRE in schools and the evident need for reform in this area, it is evident that there remains an urgent need for thorough reforms.

With regard to the criminal justice system, we reiterate the arguments that women’s organisations including the WPG submitted to the Gillen Report and indeed the findings of the Gillen Report itself; there is an urgent need for educational material that will not only inform the public and juries on the current legal status of various acts but will actively seek to dispel the myths that tend to surround issues like rape and other serious sexual offences. The Gillen Report was clear that education on these issues must be addressed as part of “an extensive public awareness and school education campaign”, specifically recommending “introducing educational material for the benefit of the jury which might include a short video outlining the fallacy of these myths and judicial directions to this effect for the benefit of educating jurors at the very commencement of the trial, together with, if necessary, expert evidence on the subject.”¹²⁴

¹²² <https://www.belfastcity.gov.uk/documents/youth-forum/any-use-report#subjectsrsre>

¹²³ <https://www.theguardian.com/society/2019/jul/25/fatal-hateful-rise-of-choking-during-sex>

¹²⁴ <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf> p.30

This work is absolutely necessary and urgent – not just for cases of the kind covered by this consultation, but for serious sexual offences of all kinds. The Gillen Report focuses on this issue at length and in detail, and there is an important reason for this; the dispelling of rape myths and the widespread acceptance and understanding of a robust concept of consent could be the most important part of the educational puzzle as regards this issue, and the issue of sexual violence more broadly.

Q4. Do you consider something different is required for Northern Ireland?

Yes.

We argue that a new, bespoke law designed with this issue in mind would best deal with the concerns raised around the so-called “rough sex defence”.

Since the legal system cannot prevent defendants claiming that death was the accidental outcome of consensual activity, sexual or otherwise, this new law would provide for these cases. In these cases this argument can be addressed with a new charge – that the sexual activity was reckless or negligent to such a degree that a reasonable person must know that serious injury or death would be the likely outcome, akin to how the offence of causing death by dangerous driving charge creates a specific category of culpable manslaughter for cases where death or serious injury should have been foreseen as a possible outcome of the driver’s conduct.

In our view this moment presents us with an opportunity to set the standard internationally as to how crimes like this can be dealt with in a way that both seeks to prevent them from occurring in the first place and that can deliver meaningful justice for victims.

We propose that this law should be a new category of sexual offence, based partially on the work of Dr Alison Cronin, Dr Jamie Fletcher and Dr Samuel Walker at Bournemouth University, whose work has informed our argument here. In the article *Homicide and Violence in Sexual Activity, Moving from Defence to Offence* they provide a persuasive argument that the legislation that would formalise the findings of R v Brown (1994) cannot actually prevent people from claiming that death caused during sexual activity was accidental, whatever its cause, resulting in the outcome that most of these cases are prosecuted as manslaughter or the defendant pleads guilty to the lesser charge of manslaughter. This cannot be mitigated against by formalising R v Brown, as per the approach in England and Wales; “in order to avoid a major legal pitfall, campaigners need to articulate the problem and their aim more clearly, engage with the current law and adopt the legal terminology that will effectively make their point. It is suggested that this could amount to a momentous change in criminal law that would see justice for victims who die as the result of violent sexual attacks. In order to achieve this, campaigners must move on from their discussion of defendants using a defence, which is not in law technically correct, and towards reform of the offence that the defendant has committed.”¹²⁵

In addition there is precedent for the creation of a specific offence lying between murder and manslaughter in the form of the offence of “causing death by dangerous driving” which captures offences where the driver should have known that their conduct while driving was such that it could have resulted in serious injury or death, even if the intent was not to kill, effectively prosecuting them for the outcome of their recklessness and negligence that could have been avoided with due care and attention.

¹²⁵ <https://www.starsdorset.org/blog/homicide-and-violence-in-sexual-activity-moving-from-defence-to-offence>

In our preparation for this consultation we have contacted Dr. Alison Cronin and she has further advised us as to the outline of what such a bespoke offence could look like. One key element is that this new offence ought to be classified as a sexual offence.

The importance of categorising this as a sexual offence is as follows:

1. It accords with the principle of “fair labelling” and would allow for the development of fair and proportionate sentencing guidelines for this category of homicide.
2. Categorisation as a sexual offence has the procedural advantage that evidence of the victim’s past sexual history could be restricted by an extension of the Youth Justice and Criminal Evidence Act 1999 ss. 41 and 42 provisions. This would address widespread criticism that the current procedural approach in homicide cases contains no bar to the inclusion of the victim’s past sexual history.
3. Framing the offence in terms of a sexual nature is preferable to the contextualisation as domestic abuse that has occurred in England and Wales. This approach would recognise that sexual relations also occur outside “domestic” relationships and that joint consensual engagement in a dangerous activity does not necessarily amount to “domestic abuse” – to suggest that it would be a denial of the autonomy of both parties and *R v Wilson* has shown a reluctance within the legal system to intrude on the domestic relationship from a paternalistic standpoint.

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

Cronin adds that “The adoption of the existing common law definitions with the addition of the sexual context has a number of benefits:

1. The application of the existing law to the sexual context provides parity with homicides committed in non-sexual circumstances, the sexual element being a matter of fact and serving as an aggravating or mitigating factor as appropriate.
2. There is no need to develop new and uncertain legal principles that may spawn future case law or retrospective appeals.
3. The existing common law definitions are sufficiently broad as to encompass dangerous or grossly negligent sexual conduct of any nature.
4. As the general law of homicide develops, either in common law or statute, the sexual killing offence would develop in step without the need for additional enactment/reform.”

We take the view that the vision of a new, bespoke offence laid out by Cronin and her colleagues could be the remedy to the way these cases play out in the courtroom in Northern Ireland and elsewhere. To clarify, this law would be suitable for other jurisdictions also, but it is especially relevant in Northern Ireland because of our persistent issues with inadequate sex and relationships education, the higher rates of homophobia here and because of the section 5 duty to report any crimes to police, meaning for instance that a person injured during consensual sex may fear seeking medical attention as medical personnel would have a duty to report anything that they believed to be a crime.

For definition and fair labelling, the offence could be called “sexual manslaughter” or some variant, eg. “unlawful and dangerous sex manslaughter”, “sexual gross negligence manslaughter”, “manslaughter in the course of dangerous sexual activity”, “killing by dangerous sexual conduct”.

In addition the full roll out and timely update of sex and relationships education in schools, alongside the public awareness campaigns and education for those working within the legal system that was recommended in the Gillen Report, this approach will help to both to ensure justice for victims as well as to help prevent these kinds of cases from occurring.

No 11. Women's Support Network Response



Response to consultation on:

Consent to serious harm for sexual gratification – not a defence

January 202 Prepared by:

Women's Support Network (WSN)

Introduction

This response has been submitted by the **Women's Support Network (WSN)** in Northern Ireland. The Women's Support Network welcomes the opportunity to respond to this Department of Justice consultation.

Established in 1989 and based in Belfast, WSN is a regional organisation that works across all areas of Northern Ireland. It includes in its membership community-based women's centres, groups and organisations, with a concentration in disadvantaged areas. WSN is a charitable and feminist organisation, which adopts a community development approach.

Our **vision** is of a just and peaceful society devoid of gender discrimination, gender-based violence and women's rights violations, in which women from all backgrounds and communities can experience full equality of opportunity and participation across all spheres of their everyday lives, including: employment, education and training, public and political life, health and the home.

Our **mission** is to advance women's equality and rights by working to influence policy, practice and provision while also regionally supporting and representing the interests, needs and perspectives of women, particularly those in disadvantaged areas.

Women's centres and groups across Northern Ireland provide wrap-a-round services that support not only the woman but the whole family. They are trusted local organisations, mainly

in disadvantaged areas, that provide a range of frontline services for women and families including childcare, training and education, advice and counselling.

WSN makes this submission for and on behalf of its members advocating to achieve social, political and economic justice through the promotion of the autonomous organisation of women.

General Comments

A number of high profile cases in recent years have highlighted the use of the defence ‘consent to serious harm for sexual gratification’, more commonly referred to as the ‘rough sex’ defence following a murder or manslaughter charge. Most notably following the murder of Grace Millane in New Zealand in 2018, Natalie Connolly in England in 2016 and more recently Patrycja Wyrebek in Newry, Northern Ireland last year. As in these three cases, the majority of deaths, sixty out of sixty seven recorded in the UK¹, where the defendant claimed “sex gone wrong”, were women. While we welcome the decision to widen the current review we see this as an opportunity to make a real, actual beneficial change in and for Northern Ireland.

We support the need to address and make wide reaching societal changes, including education about consent and safe sexual practices, awareness raising on domestic abuse and healthy relationships, both personal and sexual, and in line with the Gillan Review² recommendations a criminal justice system that victims and survivors have confidence in.

However, we believe that the proposed legislation, and its counterpart in the Domestic Abuse Bill in England Wales, although a step forward does not in fact go far enough. Therefore, we propose a new sexual offence detailed in this submission under question 4.

As members of both the Women’s Policy Group and the Raise your Voice partnership, we also endorse their responses to the consultation.

We acknowledge and appreciate the one-week extension given to the consultation period, however we would like it noted that this included the customary holiday period which this year was dominated by the Covid-19 pandemic its personal impact on women and families. Given current circumstances we would advocate for longer response times in accordance with ‘Women at the Heart of Public Consultation, A guide for Public Authorities and Women’s Organisations’.

¹ [1582147 \(squarespace.com\)](https://www.squarespace.com)

² Gillen Review Recommendations | Department of Justice (justice-ni.gov.uk)

Our views in regard to this consultation is that this is a golden opportunity to do something of great significance that will help victims and their families more than the formalisation in legislation of the existing R v Brown case law, as has happened in England and Wales. This cannot prevent defendants claiming that death occurred by accident, and this is why these cases tend to result in unsatisfactory outcomes. One example is the case of the death of Natalie Connolly where the defendant was found guilty of manslaughter and served a short sentence. Instead, to truly bring justice for these crimes we need a new offence that would capture these reckless and negligent forms of sexual manslaughter and allow for appropriate sentencing in accordance with the culpability of the defendant. We have argued for this and outlined its likely shape in response to Q. 4.

Q1 Do you think the law in Northern Ireland is sufficient as it stands?

NO

We do not believe that the law in Northern Ireland is sufficient as it stands to effectively prosecute those who commit serious harm or death caused by sexual activities. The essence of the so-called “rough sex defence” is that death occurred accidentally as a result of sexual activity and the law at present cannot prevent a defendant from claiming this. Without specific evidence to support a case for premeditation, the outcome will be a charge of manslaughter which may not capture what actually happened and will in turn carry a lesser sentence. We acknowledge the step taken in England and Wales however the steps taken in effect only put in statue what had already existed in common law and do not go far enough leaving room for arguments of accidental death where there is no evidence of premeditation. In addition to this it should be recognised that these offences do not always happen within a domestic violence situation which may complicate the desired outcome further. Therefore, to protect all victims/survivors we in Northern Ireland have an opportunity to go further, to introduce a new piece of bespoke watertight legislation that would address those cases where there is no evidence of intention to kill but that the recklessness was such, that a responsible person should know that it could result in serious injury or death.

Q2 (a) Do you think that consent to serious harm should be outlawed in legislation, similar to the amendment to the Domestic Abuse Bill in England & Wales?

NO

Existing case law against the person already means that no one can consent to their own death. We have an opportunity to strengthen the law further than has been formalised in England and Wales using R v Brown, we need to ensure that defendants do not find a way to claim that they do not satisfy the definition of the offence they have been charged with. Cronin et al argue that, “to effect any reform, and not waste this golden opportunity, campaigners must therefore shift their focus from the defence of consent to the issue of the substantive offence. If campaigners continue to talk of preventing a defence, they will fail to address the real problem, the lack of an adequate offence with which to charge defendants in these circumstances.”³

Q2 (b) If yes, do you think the offences to which the amendment applies are appropriate?

N/A

Q3 Do you consider that a programme of education is needed to:

- * raise awareness of the dangers of rough sex, and the meaning of consent; and**
- * raise awareness within the criminal justice system to recognise and deal appropriately with the issue when a victim makes a complaint?**

YES

We totally advocate for education where awareness of the dangers of rough sex forms an element of a comprehensive programme where the central issue is consent, a key issue that will influence all in terms of personal and sexual relations.

In Northern Ireland we need a comprehensive RSE programme that forms part of the national curriculum that must be delivered in all schools that focuses on consent and safe sexual practice as recommended by CEDAW and Gillan. This programme however needs to be all inclusive and meet the needs of all those it sets out to inform and engage, the worst thing would be to alienate any of our young people.

³ <https://www.starsdorset.org/blog/homicide-and-violence-in-sexual-activity-moving-from-defence-to-offence>

A survey by Belfast Youth Forum found that half of the young people surveyed think their right to relationship and sex education is currently not being met. 34% said that they had never received a relationship and/or sex education lesson in school, and of those young people who did receive lessons, only 10% said the information they received was “very useful.” Only 23% of the young people felt adults trusted young people to make their own decisions. In addition to this, the older a young person becomes the poorer they think this education becomes. Further, only 1 in 5 received any information relevant to LGBT+ relationships. The four most common word associations were “basic”, “unhelpful” “useless” and “biased”.⁴

Young people are reliant on digital access to information and this coupled with the lack of education has led to an increase in young people relying on pornography for their sex education and the reported rise of non-consensual violence in sexual encounters⁵ appears to be connected to this. We need to address this situation to ensure delivery of healthy, safe, inclusive, consensual sex education for all with no moralistic undertones.

With regard to the criminal justice system, we reiterate the arguments that women’s organisations submitted to the Gillen Report and indeed the findings of the Gillen Report itself. The Gillen Report was clear that education on these issues must be addressed as part of “an extensive public awareness and school education campaign”, specifically recommending a “introducing educational material for the benefit of the jury which might include a short video outlining the fallacy of these myths and judicial directions to this effect for the benefit of educating jurors at the very commencement of the trial, together with, if necessary, expert evidence on the subject.”⁶ The Gillen Report focuses on this issue at length and there is an important reason for this; the dispelling of rape myths and the widespread acceptance and understanding of a robust concept of consent

⁴ <https://www.belfastcity.gov.uk/documents/youth-forum/any-use-report#subjectsrse>

⁵ <https://www.theguardian.com/society/2019/jul/25/fatal-hateful-rise-of-choking-during-sex>

⁶ <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/gillen-report-may-2019.pdf> p.30

Q4. Do you consider something different is required for Northern Ireland?

YES

We propose that a new law would deal with the concerns raised around the so-called “rough sex defence” and the loopholes that still exist. A defendant will still be able to claim that a death was the accidental outcome of consensual activity, however this new law would provide for cases where this defence can be met with a new charge – that the sexual activity was reckless or negligent to such a degree that a reasonable person would know/be aware that serious injury or death could/would be the likely outcome.

We propose that this law should be a new category of sexual offence, based partially on the work of Dr Alison Cronin, Dr Jamie Fletcher and Dr Samuel Walker at Bournemouth University, whose work has informed our argument here. In the article *Homicide and Violence in Sexual Activity, Moving from Defence to Offence* they provide a persuasive argument that the legislation that would formalise the findings of R. V Brown (1994) would not actually prevent people from claiming that death caused during sexual activity was accidental, whatever its cause, resulting in the outcome that most of these cases are prosecuted as manslaughter or the defendant pleads guilty to the lesser charge of manslaughter. This cannot be avoided by formalising R. V Brown, as the legislation proposed would do; “in order to avoid a major legal pitfall, campaigners need to articulate the problem and their aim more clearly, engage with the current law and adopt the legal terminology that will effectively make their point. It is suggested that this could amount to a momentous change in criminal law that would see justice for victims who die as the result of violent sexual attacks. In order to achieve this, campaigners must move on from their discussion of defendants using a defence, which is not in law technically correct, and towards reform of the offence that the defendant has committed.”⁷

In addition there is precedent for the creation of a specific offence lying between murder and manslaughter in the form of the offence of “causing death by dangerous driving” which captures offences where the driver should have known that their conduct while driving was such that it could have resulted in serious injury or death, even if the intent was not to kill, effectively prosecuting them for the outcome of their recklessness and negligence that could have been avoided with due care and attention.

⁷<https://www.starsdorset.org/blog/homicide-and-violence-in-sexual-activity-moving-from-defence-to-offence>

Having read as much as possible around this issue, our argument is supported by and we draw on the work of Dr. Alison Cronin et al. at Bournemouth University who are working on the same assumption that this needs to be a bespoke offence and also advocate the need for this to be classified as a stand-alone sexual offence. The importance of this being as follows:

1. It accords with the principle of “fair labelling” and would allow for the development of fair and proportionate sentencing guidelines for this category of homicide.
2. Categorisation as a sexual offence has the procedural advantage that evidence of the victim’s past sexual history could be restricted by an extension of the Youth Justice and Criminal Evidence Act 1999 ss. 41 and 42 provisions. This would address widespread criticism that the current procedural approach in homicide cases contains no bar to the inclusion of the victim’s past sexual history.
3. Framing the offence in terms of a sexual nature is preferable to the contextualisation as domestic abuse that has occurred in England and Wales. This would recognise that sexual relations occur outside “domestic” relationships and that joint consensual engagement in a dangerous activity does not necessarily amount to “domestic abuse” – to suggest that it is would be a denial of the autonomy of both parties and could potentially also contradict case law as established in *R v Wilson*⁸.

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

⁸<http://www.e-lawresources.co.uk/cases/R-v-Wilson.php>

Cronin adds that “The adoption of the existing common law definitions with the addition of the sexual context has a number of benefits:

1. The application of the existing law to the sexual context provides parity with homicides committed in non-sexual circumstances, the sexual element being a matter of fact and serving as an aggravating or mitigating factor as appropriate.
2. There is no need to develop new and uncertain legal principles that may spawn future

case law or retrospective appeals.

3. The existing common law definitions are sufficiently broad as to encompass dangerous or grossly negligent sexual conduct of any nature.
4. As the general law of homicide develops, either in common law or statute, the sexual killing offence would develop in step without the need for additional enactment/reform.”

We believe that Northern Ireland can be at the forefront of delivering this new sexual offence that will address the gaps that currently exist, ensure victims/survivors are best represented and in turn reduce the actual occurrence through information and education for all on the potential outcome