



Public  
Prosecution  
Service

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Independent  
Fair  
Effective

**POLICY** FOR  
PROSECUTING  
SEXUAL  
OFFENCES

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# FOREWORD

## Sexual offences are devastating crimes.

Anyone can be a victim of this type of offending and as prosecutors we see the lasting impact sexual offences have on victims, their families and wider society every day.



Sexual offences are among the most complex crimes in the criminal justice system, presenting unique challenges for investigating police and prosecutors.

Victims can be particularly vulnerable and we understand that it takes courage to report a sexual offence to the police. We also know that the criminal justice process is slow and many still find the experience difficult and sometimes confusing.

As prosecutors, we have a duty to be fair and impartial and to take decisions only in line with the Test for Prosecution set out in our Code for Prosecutors. Regardless of the outcome of their case, we want all victims to feel listened to and treated with respect and sensitivity. As the Public Prosecution Service (PPS) Victims' Champion, I lead our efforts to ensure that victims' interests are prioritised.

This PPS Policy for Prosecuting Sexual Offences provides guidance to the public about how we take decisions and the assistance given to victims and witnesses during the prosecution process. We hope this new Policy is a significant step forward in our efforts to better serve victims and their families, while protecting the accused's rights to a fair trial.

We understand that going through the criminal justice system can feel particularly daunting for victims of sexual offences. Most cases involving sexual offences that come to the PPS are handled by a dedicated and experienced team of specialist prosecutors in our Serious Crime Unit who understand the complexities of these cases.

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They are also acutely aware of the impact of trauma on victims. Our team works with the Police Service of Northern Ireland to ensure that victims are treated with sensitivity, fairness, and care.

This policy also outlines how we work closely with all our criminal justice partners and stakeholders, including Victim Support NI, Nexus and the NSPCC, to help ensure that victims are offered support and kept informed about their case so that their experience of the criminal justice system is made as comfortable as possible.

We recognise that sexual violence is not just a criminal justice issue, and we support longer term efforts across wider society including in education and healthcare sectors. Tackling such complex and serious crimes requires a comprehensive and coordinated approach and we in the PPS are committed to playing our part in this.

I want to thank all those groups and individuals with expertise in sexual offences who shared their views on this Policy at consultation stage. Their knowledge, experience and insight has been vital in helping us shape this Policy and assisting us in continually improving how these cases are handled across the criminal justice system.

My final message is directly to anyone who thinks they may be a victim of sexual assault.

It is important to remember that it is not your fault. Sexual violence is a crime, no matter who you are, who has committed it or how it happens.

I ask you to please report the offending to police. You will have the services of dedicated police and prosecution teams and we will treat you with sensitivity and respect at every stage of your criminal justice journey.

### **Marianne O’Kane**

Senior Assistant Director  
PPS Victims’ Champion

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# 1.

# INTRODUCTION

# 1. INTRODUCTION

## The Role of the Public Prosecution Service

- 1.1 The Public Prosecution Service (PPS) is the principal prosecuting authority in Northern Ireland. The PPS has two main statutory functions – (i) to decide whether to prosecute an individual, and (ii) where we decide to prosecute, to bring those cases to court and conduct the prosecution. Where an alleged sexual offence by an identifiable suspect is reported to the Police Service of Northern Ireland (PSNI), the PSNI is responsible for investigating the alleged crime, gathering the evidence and reporting the matter to the PPS. It is then for the PPS to decide whether a prosecution should be commenced by applying what is called the Test for Prosecution.
- 1.2 In more complex cases, prosecutors may also provide prosecutorial advice upon request to police in the course of the investigation, for example around what constitutes a reasonable line of enquiry.
- 1.3 The PPS Serious Crime Unit deals with a range of the most serious offences including murder, manslaughter, rape and other serious sexual offences, modern slavery and related offences. This dedicated team is well placed to understand the issues that cases involving sexual offending present, and to deal sensitively with victims. The Unit is led by an Assistant Director and has a specialist team of Senior Public Prosecutors, Public Prosecutors and a Detective Sergeant from the PSNI who acts as the dedicated PSNI/PPS Liaison Officer for the Unit. The Unit is based in PPS Headquarters in Belfast. Other sexual offences will be handled within the regional offices of the PPS and again will be conducted by experienced prosecutors under the oversight of an Assistant Director.
- 1.4 The PPS may also instruct barristers in independent practice, who are also known as Counsel, to advise and to prosecute cases at court on its behalf. The PPS will ensure that any barrister instructed in a case involving a sexual offence is experienced and skilled in the conduct of these cases and

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every effort will be made for the same barrister to deal with the case throughout the process.

- 1.5 Further information about the PPS, decision-making and how prosecutions are conducted can be found in the [Code for Prosecutors](#).

### The Prosecution of Sexual Offences

- 1.6 Sexual offences, including rape, are amongst the most serious crimes that the criminal justice system has to deal with. The PPS recognises the high level of harm that sexual offences can have on victims, their families and wider society. We acknowledge the courage that it takes for victims to speak out about such offences and make a report to police. We are committed to ensuring that victims are treated with dignity and respect throughout the criminal justice process. We understand that victims are often very deeply traumatised by their experience and are committed to providing a trauma informed service.
- 1.7 This Policy for Prosecuting Sexual Offences provides guidance to the public about how we take these decisions and the assistance available to support victims and witnesses in these cases.
- 1.8 The PPS is committed to dealing with cases involving sexual offences in a fair, effective and compassionate manner, prosecuting offences robustly where the Test for Prosecution is met. While this Policy outlines the general approach taken in cases of this type, every case will be considered individually, having regard to its own facts and circumstances. Every victim will be treated as an individual and we will endeavour to deliver a service that meets their personal needs.

**“ The PPS is committed to dealing with cases involving sexual offences in a fair, effective and compassionate manner, prosecuting offences robustly where the Test for Prosecution is met. ”**

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- 1.9 A decision whether or not to prosecute or to divert an offender from prosecution through an alternative to prosecution is a serious decision that must be taken with the utmost care. It is the duty of prosecution to ensure that the right person is prosecuted for the right offence. Prosecutors must ensure that all decisions are independent, fair, impartial and taken with integrity. It is their duty to ensure that the law is correctly applied, all relevant admissible evidence is presented to the court and a fair trial takes place. This will include ensuring that their duties to safeguard the rights of the defendant are also complied with.
- 1.10 Although each case must be considered individually, there are general principles that apply in every case. Prosecutors must be fair, independent and impartial. They must not allow any personal views about gender, age, disability, religion or belief, ethnic or national origin, political views or sexual orientation of the suspect, victim or a witness to improperly influence their decision. They must not be influenced by improper or undue pressure from any source. Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- 1.11 The PPS will ensure that it complies with the obligations of international laws ratified by the UK together with domestic laws. These commitments apply not just to the rights of victims and witnesses, but to accused persons also.
- 1.12 Prosecutors are required to comply with the provisions of the [Victim Charter](#) which sets out the entitlements and services that victims of crime in Northern Ireland can expect to receive from principal service providers within the criminal justice system. These are further described in Section 28(1) [Justice Act \(NI\) 2015](#).
- 1.13 Prosecutors will also follow legal guidance provided by the Director of Public Prosecutions for Northern Ireland and the Attorney General for Northern Ireland from time to time, including [Human Rights Guidance issued under Section 8 of the Justice \(Northern Ireland\) Act 2004](#).

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# SEXUAL OFFENCES

## 2. SEXUAL OFFENCES

2.1 Most sexual offences are set out in in [The Sexual Offences \(Northern Ireland\) Order 2008](#) (the Order) and include, for example, rape, assault by penetration, sexual assault and causing a person to engage in sexual activity. The Order also covers offences specifically committed against children, including offences involving sexual grooming, situations where offences take place as a result of an abuse of a position of trust and offences which take place within a family. Sexual offending can occur both in person and through contact online. Some of the most common offences can be found at Annex 1.

### Definition of Sexual

2.2 A basic question that needs to be answered in all sexual offence cases is whether the activity is sexual. Article 4 of the Order states in general terms that penetration, touching or any other activity is sexual if a reasonable person would consider that its nature is sexual or because of its nature, it may be sexual and because of its circumstances or the purpose of the perpetrator, or both, it is sexual. A 'reasonable person' is a hypothetical person considered to be of ordinary intelligence and understanding.

### Consent

2.3 Consent is defined in Article 3 of the Order. A person is deemed to consent to an act if he or she agrees by choice and has the freedom and capacity to make that choice. The essence of this definition is the agreement *by choice*. The law does not require the victim to have resisted physically or have communicated a lack of consent verbally or otherwise. Consent to sexual activity may be given to one sort of activity but not another. Consent can be withdrawn at any time during sexual activity.

2.4 Consent is a fundamental issue in rape and sexual assault cases because the prosecution is required to prove beyond reasonable doubt that the victim did not consent and that the suspect did not have a reasonable belief that the victim was consenting.

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Cases involving allegations of sexual offending commonly occur in private, with only the parties present, without witnesses or other independent evidence and with the victim's account being challenged by the suspect.

- 2.5 While the question of whether a victim consented is for a jury in the Crown Court or a Judge in the Magistrates' Court to decide, the prosecutor will take into account evidence of all the circumstances surrounding the offence in deciding whether the Test for Prosecution is met. The Test for Prosecution is described further at paragraph 3.10 below.
- 2.6 Prosecutors will firstly consider whether the victim had capacity to consent, in terms of age and understanding to make a choice about whether or not to take part in the sexual activity at the time and whether or not he or she was in a position to make that choice freely and was not constrained in any way.
- 2.7 If the evidence is that the victim did have the freedom and capacity to consent, the next question is whether the victim agreed to the activity by choice or not.
- 2.8 Where a victim says that he or she did not consent to the activity, and the defendant claims that they believed there *was* consent, the prosecution must prove beyond a reasonable doubt that there *was not* consent and that the defendant did not reasonably believe that there was consent. In deciding whether the belief of the defendant was reasonable, a jury must have regard to all the circumstances, including any steps he or she has taken to ascertain whether the victim has consented.
- 2.9 In certain circumstances, it is presumed that the victim did not consent to sexual activity and the defendant did not reasonably believe that the victim consented, unless he or she can show otherwise. Examples of circumstances where the presumption applies are where the victim was unconscious, drugged, abducted or subject to threats or fear of serious harm.

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2.10 When considering certain offences, such as assaults committed against children, there is no requirement for the prosecution to prove an absence of consent. Where the victim is under the age of 13 years, it is only necessary to prove that the act itself took place and the age of the alleged victim. If the victim is between 13 and 15 years, then the prosecution must also prove that the defendant did not reasonably believe that the victim was 16 or over.

### Sexual Offences Myths and Stereotypes

2.11 Sexual offences are some of the most complex offences the PPS and the wider criminal justice system deals with. Despite many positive changes in society regarding attitudes towards sexual crime and condemnation of offending, we recognise that some misconceptions, myths and stereotypes surrounding sexual offences remain. Our specialist prosecutors are trained to recognise and challenge these myths and stereotypes, which have no place in our decision making.

2.12 We will also robustly challenge such attitudes in the courtroom and in any other place and will ensure our prosecutors and counsel who prosecute these cases at court are aware of the need to do so. Anyone can be a victim of a sexual offence and it can take place in almost any circumstances. Although as a fact, sexual offending is more commonly perpetrated by men against women, it can happen to anyone, irrespective of gender or gender identity, across all communities, and it is acknowledged that victims will react to the offending in different ways.

**“ Anyone can be a victim of a sexual offence and it can take place in almost any circumstances. ”**

2.13 In particular, we will challenge the assumptions about consent and associated ‘victim blaming’ myths and stereotypes and where relevant, highlight the suspect’s behaviour and motives to prove he or she did not have a reasonable belief in consent.

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2.14 Examples of such myths include the following. **These are all false and prosecutors will challenge these misconceptions wherever they arise.**

- Sexual crime is always violent or involves physical force;
- Sexual crime occurs between strangers and cannot occur within a relationship;
- If the victim did not scream, fight or be injured, it was not an offence;
- Sex workers cannot be raped or sexually assaulted;
- A victim cannot be raped or sexually assaulted by their spouse or partner;
- If a victim had previously consented to sexual activity with the accused then the victim must also have consented on this occasion;
- If a particular culture condones the activity then it is not an offence;
- Only gay men rape or sexually assault other men;
- A victim can provoke a sexual offence by their dress or behaviour, such as level of intoxication;
- If the victim sent sexual images or messages prior to meeting the accused, then he or she was also consenting to sexual activity;
- If a victim met the accused on a particular dating application then consent to sexual activity is implied;
- False allegations of sexual crimes are common;
- Victims allege that they have been the victim of a sexual offence when they regret a sexual encounter or want revenge;
- Victims will behave in a certain way if they have been raped or sexually assaulted.

### Domestic Abuse

2.15 The PPS recognises that many sexual offences are committed in a domestic or familial setting and may occur alongside other forms of domestic abuse. The PPS takes cases involving domestic violence and abuse extremely seriously. We work with our partners and stakeholders to continuously improve the way in which these cases are dealt with in the criminal justice system and the experience of victims.

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Where a case involves allegations of serious sexual offences and other linked domestic violence offences, all matters will be dealt by the Serious Crime Unit.

### **Non-Recent Offences**

- 2.16** Offences which took place before the 2008 Order (this came into force on 2 February 2009) are referred to as ‘non-recent’ offences. It is important for victims to know that they have never left it too late to come forward and report a crime.
- 2.17** In some cases received by the PPS, there can be a substantial period of time, often many years, between the date of the alleged offence and the date of the first complaint. This can often arise in cases of child sexual abuse or where the abuse is perpetrated in an institutional or domestic setting, and when many years may elapse before the victim has the confidence to report the offending to police. We understand that there can be many reasons why a victim will delay making a complaint and we have extensive experience of dealing with cases of this nature. Delay is not a reason to avoid reporting the offending to police.
- 2.18** There can sometimes be particular challenges associated with prosecuting non-recent cases owing to the passage of time, such as the loss of potential witnesses, records and other potentially supportive evidence. Whilst the absence of such evidence can in certain circumstances present significant difficulties in establishing that the Test for Prosecution is met, the passage of time does not prevent the effective prosecution of sexual offences and charges under the legislation in force at the relevant time can be brought.
- 2.19** By their very nature, some non-recent cases will involve suspects who are elderly or have become unwell, through physical or mental conditions. As a result, some non-recent cases involve defendants who may not be fit to plead. The question of unfitness to plead in the Crown Court is determined by the Judge. Where a defendant is determined to be unfit to plead, a jury can still be required to determine whether or not the defendant did the act alleged.

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This is not a trial but is referred to as a ‘Finding of Fact’. The Court has more limited sentencing powers in this instance.

### **Young Victims and Offenders**

- 2.20** Sexual offences cases involving children and young people, either as victims or suspects, are often some of the most distressing cases we deal with. They present their own challenges in addition to those that come with other types of sexual offences. Given the age and vulnerability of both young victims and suspects, we have particular duties and responsibilities to all parties.
- 2.21** The PPS also recognises that young people who offend may themselves have been victims of sexual abuse or exploitation.
- 2.22** The 2008 Order protects all children from engaging in sexual activity at an early age. This is irrespective of whether or not a person under 16 may have the necessary maturity and understanding of sexual activity to give what most people may understand to be consent. The public interest, however, may not always require prosecution of children who engage in sexual activity and who are of the same age or similar age and understanding, provided that the activity is by agreement and there are no aggravating features such as coercion, exploitation or threatening activity. In cases of this nature, resolution may be best achieved by providing education for the child and providing them and, where appropriate, their parent or guardian with access to advisory and counselling services.
- 2.23** When sexual crimes are alleged to have been committed by young people, prosecutors are required to balance the strong public interest factors in favour of prosecution of such crimes with our obligations to consider the best interests of the child who has been accused of this type of offending. The Code for Prosecutors uphold the ‘best interests’ principle when considering cases involving children and young people and considers a range of factors when determining whether a prosecution is likely to have an adverse impact on their future prospects that is disproportionate to the seriousness of the offending.

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2.24 Prosecutors are also aware of the increase in the incidence of sexual communication (sometimes called ‘sexting’) and the sharing of sexual images between and among young people. It will not seek to criminalise this behaviour in circumstances where there is agreement to participate on the part of both parties and no aggravating features are present. It may, however, be necessary for prosecutors to work closely with the police to seek relevant information from other agencies before reaching a decision in these cases. Referrals may also be made to the Youth Justice Agency who can provide education and support to young people who have engaged in this activity.

2.25 Further information about the prosecution of young people can be found in our [Guidelines for the Prosecution of Young People](#).

### **Child Sexual Exploitation**

2.26 The PPS recognises a specific form of child sexual abuse known as Child Sexual Exploitation, which occurs when a young person is coerced or forced to take part in sexual activity in exchange for presents, money, food, alcohol or for attention.

2.27 Offenders who engage in this form of offending often groom their victims to gain their trust and it can therefore be some time before a child may become aware that they have been or are being exploited in this way, or before the offending becomes visible to others.

2.28 Prosecutors are aware that Child Sexual Exploitation can happen to children from all backgrounds and communities, to both boys and girls, and that it can happen in person or online.

2.29 The PPS engages with government departments and criminal justice agencies to help to identify children who are at risk or have been subjected to this exploitation and we have a role in discharging our shared obligation to protect children from sexual harm.

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2.30 The PPS is committed to acting with compassion and understanding when considering and prosecuting cases involving Child Sexual Exploitation. We will take this issue into account both from the point of view of an offender and a victim; it will be an aggravating feature in a case where a victim is being subjected to this form of abuse, but it may be a mitigating factor in a case where an accused is or was the victim of the abuse and has then subsequently committed a criminal offence.

2.31 This may occur for example in the context of cases of human trafficking. Further information about this is contained in our [Policy for Prosecuting Cases of Modern Slavery and Human Trafficking](#).

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# HOW WE TAKE PROSECUTION DECISIONS

## 3. HOW WE TAKE PROSECUTION DECISIONS

### Role of the Investigator

- 3.1 The police and PPS are independent of each other. It is the responsibility of the police to investigate an allegation that a sexual offence has been committed and to gather evidence in relation to that allegation. When police have obtained evidence that an identifiable individual may have committed an offence, they will send a file to the PPS to decide whether or not a prosecution should take place and if so, for what offence(s).
- 3.2 Though the PPS does not direct the police as to how they should investigate, the PPS may provide prosecutorial advice to police upon request at any stage of an investigation, in order to help build the strongest case.
- 3.3 Investigators may submit files in one of two ways:
- (i) by charging a person, or
  - (ii) by submitting a report on a person.

### Role of the Prosecutor

- 3.4 When an investigation file is received from police, a prosecutor will analyse and evaluate all the evidence and information contained in this file in a thorough and critical manner to decide whether a prosecution should proceed.
- 3.5 The PPS will take all appropriate steps to ensure that all cases submitted for its consideration are properly investigated. If a prosecutor does not have sufficient information to take a prosecution decision, they can identify evidential weaknesses and request that the investigator, where possible, provides additional evidence to enable a fully informed decision to be taken.
- 3.6 In some cases, the prosecutor will wish to consult with the victim before taking a decision or may seek the advice of experienced independent counsel. Usually this will take the form of a meeting in person, or where preferable, by video link.

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- 3.7 Prosecutors will prioritise cases involving sexual offending and will do what is possible to progress the case without unnecessary delay.
- 3.8 It is important to remember that the PPS is not the legal representative of victims of crime nor does it act as their legal advisor; prosecutors are required to act independently and take decisions strictly in accordance with the [Code for Prosecutors](#).
- 3.9 The PPS cannot take a case to court simply ‘to let the court decide’ or ‘to let a victim have their day in court’. Prosecutors must be satisfied the Test for Prosecution is met and if it is not, they must issue a decision of no prosecution, which we appreciate can be disappointing for a victim.

### The Test for Prosecution

- 3.10 A prosecution will proceed if the prosecutor is satisfied that the Test for Prosecution is met. This Test is met if:
- (i) the evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction – the Evidential Test; and
  - (ii) whether prosecution is required in the public interest – the Public Interest Test.
- 3.11 This is a two-stage test and each stage of the Test must be considered separately and passed before a decision to prosecute can be taken. The Evidential Test must be passed first before the Public Interest Test is considered. If this is also passed, the Test for Prosecution is met.

### The Evidential Test

- 3.12 Public Prosecutors determine whether there is sufficient evidence to provide a reasonable prospect of conviction against each defendant on each charge.

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3.13 A reasonable prospect of conviction exists if, in relation to an identifiable suspect, there is credible evidence which the prosecution can present to a court and upon which an impartial jury, properly directed in accordance with the law, could reasonably be expected to find proved beyond reasonable doubt that the suspect committed a criminal offence. This is different to the test which the court will apply, which is deciding whether the offence is proved beyond reasonable doubt i.e. it must be sure that the defendant is guilty before it can convict. It is necessary that each element of this definition is fully examined when considering the evidential test for each particular case. Further details in respect of the terms used in this paragraph are included at Annex 2.

### **Applying the Evidential Test to Sexual Offences**

3.14 In many instances, sexual offences take place in circumstances where the victim is the only person who can provide direct evidence of what took place. Unless the defendant pleads guilty, the victim will usually have to give evidence in court. Where there is conflicting evidence or inconsistencies in evidence, the prosecutor has a duty to consider that material and determine how it may impact on the strength of the case overall and whether it gives rise to a duty of disclosure to the defence, where a case is proceeding. (See Section 5.) As part of this exercise, the prosecutor is required to assess the credibility and reliability of the victim's evidence, in light of any conflicting or inconsistent material.

3.15 This will always be done in a careful and sensitive way and prosecutors understand that victims will not always be able to give a clear, consistent account, particularly where they may have experienced a traumatic event, or where the event may have happened a long time ago.

**“ Prosecutors understand that victims will not always be able to give a clear, consistent account, particularly where they may have experienced a traumatic event, or where the event may have happened a long time ago. ”**

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- 3.16 During their investigation, police will always look for supporting evidence, such as any medical or scientific evidence, but it is not essential and a prosecution can still proceed without it.
- 3.17 A case may not be able to proceed, not because the prosecutor does not believe the victim, but because an assessment of the strength of all the available evidence leads to the conclusion that there is not a reasonable prospect of conviction and, therefore, the Test for Prosecution is not met. A decision not to prosecute or not proceed with a case should not be seen by a victim as a judgement on their truthfulness but as simply the application of the Test.
- 3.18 If a case does not pass the Evidential Test, it cannot proceed, no matter how serious or sensitive it may be.

### **The Public Interest Test**

- 3.19 If a case does pass the Evidential Test, the Public Prosecutor must decide if a prosecution is required in the public interest.
- 3.20 Broadly, the presumption is that the public interest requires prosecution where there has been a contravention of the criminal law. This presumption provides the starting point for consideration in each individual case. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. This may include, for example, incidents involving young victims and offenders.
- 3.21 If the evidential test is passed, whilst each case must be considered on its own merits and particular circumstances, sexual offences are considered to be so serious that prosecution will generally be required in the public interest.

### **The Burden and Standard of Proof**

- 3.22 If a case passes the Test for Prosecution and proceeds to trial, the duty or 'burden of proof' is on the prosecution to prove the case beyond a reasonable doubt (the 'standard of proof').

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This means that the prosecution must satisfy the jury that they are sure, or firmly convinced, of the defendant's guilt. The defendant does not have to give evidence and does not have to 'disprove' his guilt.

- 3.23 This is a very high standard of proof and there are many reasons why a defendant may not be convicted. Victims should not assume that because a defendant has been acquitted, this means their evidence has not been believed.

### **Reasons for Decisions Not to Prosecute**

- 3.24 We understand how disappointing it can be for a victim to be told that after careful consideration, we have taken a decision not to prosecute. We make every effort to ensure that communication with victims and witnesses in cases of sexual violence is timely, sensitive and clear. In every case involving sexual offences, where a decision has been taken not to prosecute, the prosecutor will write to the victim explaining in detail the reasons for their decision. The prosecutor will also offer the opportunity of a meeting or telephone conversation with them for further explanation to be provided, if the victim considers that this would be helpful. We will always try to explain our reasons for a no prosecution decision in a compassionate, sensitive and easily understood manner.

**“ We make every effort to ensure that communication with victims and witnesses in cases of sexual violence is timely, sensitive and clear. ”**

### **Alternatives to Prosecution**

- 3.25 Diversionary disposals are designed to simplify and speed up dealing with less serious offending. They were introduced as a proportionate response to lower level crime. Diversionary options can only be considered once the prosecutor is satisfied that the Evidential Test for prosecution is met.
- 3.26 Once a prosecutor is satisfied that there is sufficient evidence to provide a reasonable prospect of conviction, the next consideration is whether the public interest requires

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prosecution through the courts. It is not an absolute rule that all offences for which there is sufficient evidence must be prosecuted; prosecutors must decide whether a prosecution is required in the public interest. In taking decisions as to prosecution the prosecutor is taking decisions for the benefit of society as a whole.

3.27 While all sexual offences must be regarded as serious matters, there are circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, a court-based outcome is not required in the public interest. Prosecutors should consider the appropriateness of proceeding by way of a diversionary disposal, particularly where the defendant is a young person.

3.28 Further information is available in the [PPS's Guidelines for the Use of Diversionary Disposals](#).

### **Support for Victims**

3.29 While PPS is not the legal advisor of victims of crime, victims may arrange their own independent legal advice and support. They can contact Victim Support NI and through them request assistance from a Sexual Offences Legal Adviser (SOLA). A SOLA is a qualified lawyer, independent of PPS and police, who can offer legal advice and support to adult victims of a serious sexual offence. SOLAs provide advice free of charge. Further information is available via the following link [Sexual Violence - SOLAs \(Sexual Offences Legal Advisers\) - Victim Support NI](#). This service can be accessed directly by emailing [sola@victimsupportni.org.uk](mailto:sola@victimsupportni.org.uk).

**“ A Sexual Offences Legal Advisor is a qualified lawyer, independent of PPS and police, who can offer legal advice and support to adult victims of a serious sexual offence. ”**

3.30 Alternatively, victims can also approach a solicitor of their choice and may be entitled to free legal advice, dependant upon their circumstances.

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# 4.

## REVIEW OF DECISIONS

## 4. REVIEW OF DECISIONS

- 4.1 Victims should always be confident that their case has been thoroughly considered even where they do not agree with the decision made. We will listen carefully to victims and witnesses and explain our decision making. Victims can also ask for a review of a decision not to prosecute in appropriate cases. The approach taken in these circumstances is set out fully in the [PPS Code for Prosecutors](#) but is summarised below.
- 4.2 If no additional evidence is provided connected to the request for a review, the case will be considered by a prosecutor other than the prosecutor who initially took the decision now under review. The prosecutor conducting the review will consider the evidence and information reported in the police investigation file and will apply the Test for Prosecution and take a new decision. The rationale for this decision will be recorded in writing. The decision may be to allow the original no prosecution decision to stand or that a prosecution should now be taken (or that the matter is dealt with by way of a diversionary disposal).
- 4.3 If additional evidence is provided in connection with the request for a review of the decision not to prosecute, the case will be reconsidered by the prosecutor who initially took the decision. The prosecutor will consider all the evidence and information now available and will apply the Test for Prosecution and take a new decision. There are two possible outcomes of such a review:
- it is concluded that the Test for Prosecution is now met and criminal proceedings are commenced (or the matter is dealt with by way of a diversionary disposal); or
  - it is concluded that the Test for Prosecution remains not met. In this situation the case will be referred to another Public Prosecutor who will conduct a review of the decision.

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5.

# DISCLOSURE

## 5. DISCLOSURE

### Duty of Disclosure

- 5.1 Disclosure is the name given to the legal duty on the prosecution to provide the defence representatives with material gathered during the police investigation which either undermines the prosecution case or assists the defence case. This is sometimes referred to as the Test for Disclosure.
- 5.2 We understand that this subject can be the cause of uncertainty and concern on the part of victims, and on occasions witnesses, who may feel that their right to privacy is being undermined. The overarching purpose of disclosure is to ensure that any trial is fair to all parties and that where a conviction is secured, that it is on a proper basis.

**“ The overarching purpose of disclosure is to ensure that any trial is fair to all parties and that where a conviction is secured, that it is on a proper basis. ”**

- 5.3 Police are obliged to follow all reasonable lines of enquiry in an investigation and to record, retain and review all relevant material that they obtain. As well as providing the PPS with the evidence to help make a prosecution decision, police will prepare and provide a schedule of all the material that they have gathered, including material not relied upon as evidence against the accused. They will also identify any material they consider might meet the Test for Disclosure. It is then for the prosecutor to review that material and decide whether it meets the Test for Disclosure; i.e. whether it might reasonably be expected to undermine the prosecution case or assist the defence case.

### Why Material May Be Disclosed

- 5.4 The material gathered by police may include information held by third parties such as health professionals or social services and can include medical records and counselling notes.

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Digital data such as mobile telephone messages or social media exchanges may also include material that needs to be disclosed. It is important to note, however, that the police will only seek this material if it is a reasonable line of enquiry in the particular circumstances of the case.

### **Protecting a Victim's Right to Privacy**

5.5 The PPS recognises the importance of each individual's right to privacy. We work closely with police to ensure that access by the prosecutor to any personal information is necessary and that only material which meets the Test for Disclosure is shared with the defence. Prosecutors can assist the police with their consideration of what constitutes a reasonable line of enquiry in respect of such material. Any material obtained by police which does not meet the Test will not be shared with the defence.

5.6 Before accessing an individual's personal information, police must have a lawful basis for doing so. They will seek the views of any person whose information they intend to access and the material should only be sought if it is necessary for their investigation. In the case of sensitive material such as medical records an elevated test of strict necessity applies. The police will use clear parameters to confine their request to what is strictly necessary. The police will also explain to a person whose information they are seeking to access how it will be handled and in what circumstances it may be shared with the defence. Police will also have to satisfy the third party – the body in possession of the information – that they are acting lawfully when seeking the information.

### **The Duty to Keep Disclosure Obligations Under Review**

5.7 After the material is provided to the prosecution and the Test for Disclosure is applied, the material obtained will be kept under review. If the defendant provides a defence statement – a legal document setting out the basis of their defence – the material may need to be considered again to see if any of it falls to be disclosed. If the defence believe that more information should have been disclosed by the prosecution

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they can make an application to the Judge to order further disclosure by the prosecution. At that stage the Judge may need to review the material in order to decide whether further disclosure is required.

### **Material Held by Third Parties**

- 5.8 Where material held by third parties has not been obtained by the police, the defence can apply to the court for an order that it be produced to the court. This is typically records relating to healthcare, counselling, engagement with social services and schools. The prosecution is not involved in this process but should be informed of the application.
- 5.9 Where we are informed we will let the victim know about the application and the victim will have an opportunity to make representations to the court before the court orders the material to be produced. A victim can make these representations themselves or through a lawyer. They can also contact the Sexual Offence Legal Advisors (SOLAs), who are legally qualified advisors employed within Victim Support Northern Ireland.
- 5.10 When a court does make an order for material to be produced to the court, the Judge will consider the material and will only disclose to the defence any material that meets the Test for Disclosure. Further information about the process in the Crown Court is contained at paragraphs 6.4 to 6.20 of [Practice Direction No. 2/2019](#) issued by the Lady Chief Justice's Office. SOLAs are contactable at [sola@victimsupportni.org.uk](mailto:sola@victimsupportni.org.uk).

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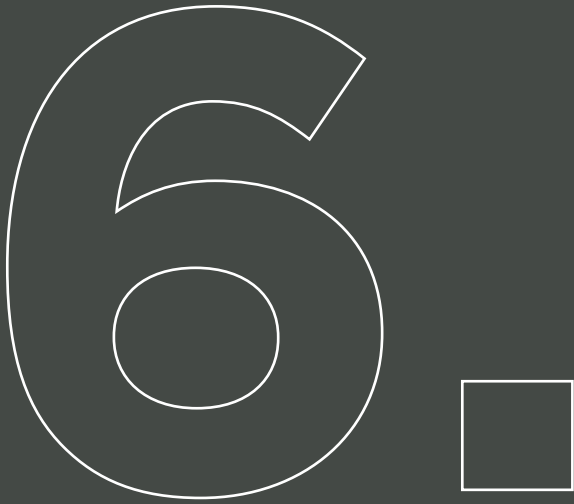
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# ENGAGEMENT WITH VICTIMS

## 6. ENGAGEMENT WITH VICTIMS

- 6.1 As previously stated, prosecutors are required to comply with the provisions of the [Victim Charter](#) which sets out the entitlements and services that victims of crime in Northern Ireland can expect to receive from principal service providers within the criminal justice system.
- 6.2 In very general terms, the Charter provides victims with the following:
- an entitlement to be treated fairly, professionally and with dignity and respect;
  - to be understood and to understand in their first language, if necessary;
  - to be updated at key stages and given relevant information;
  - to have their needs considered by service providers;
  - to be told about available support and the opportunity to bring someone with them to give support;
  - to apply to Compensation Services for compensation if they were a victim of a crime of violence;
  - to ask for a court familiarisation visit and to be kept separate from the accused as much as possible at court;
  - to have the opportunity to tell the court how the crime has harmed them by means of a Victim Personal Statement;
  - to ask to be told how the offender’s sentence will be managed;
  - to let service providers know if they are unhappy with any aspect of the service provided to them.
- 6.3 In some cases involving sexual offences, the prosecutor may wish to consult with the victim before taking a decision. This is a private meeting and can occur in person, via videolink or occasionally by telephone, where circumstances require or where this best meets the victim’s particular needs.

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- 6.4 The consultation will be held, where possible, in a properly equipped consultation room and at a time and venue taking into account the comfort and convenience of the victim or witness. These consultations will be organised and conducted in a professional manner with sensitivity, courtesy and understanding. We will do our utmost to put the victim or witness at ease and ensure that they understand the discussion.
- 6.5 The police Investigating Officer will usually be asked to attend and will be present throughout the consultation.
- 6.6 The prosecutor will consider whether it is appropriate for a parent, carer or guardian to accompany a child witness. This will depend on the circumstances of the case, including an assessment of whether the child is likely to feel supported or inhibited in the presence of the adult and whether the adult is also likely to be a witness in the case. This assessment will be guided by police and/or a Children’s Independent Sexual Violence Advocate where appropriate, taking into account any particular issues the individual child may have.
- 6.7 A victim or witness may wish to have a relative or friend who is not involved in the proceedings present with them for support. This can usually be agreed.
- 6.8 A victim or witness may also request that their own legal advisor or Sexual Offences Legal Advisor (SOLA) is present during the consultation to assist them. Further information in relation to the SOLA Scheme can be found at [Victim Support NI](#).
- 6.9 If possible and where it will not impact on any future evidence a victim or witness may give, the legal or evidential difficulties will be explained to the victim or witness. The prosecutor will inform them that they will be advised in writing as to whether a prosecution will be brought and an indication given as to when this is likely to take place.

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6.10 If a prosecution decision is taken and the case is to be contested at court, the court prosecutor will normally consult with the victim or witness before the trial. Where possible, and particularly in Crown Court cases, this will take place before the day of trial. While every effort will be made to take time with a victim or witness, on occasions the pressure of court business means that the available time may be limited. If a victim or witness has particular questions or concerns about a forthcoming trial, they may contact their Case Officer in the PPS Victim and Witness Care Unit and assistance will be provided (see section 7.5 for more details on the Victim and Witness Care Unit).

**“ If a victim or witness has particular questions or concerns about a forthcoming trial, they may contact their Case Officer in the PPS Victim and Witness Care Unit and assistance will be provided. ”**

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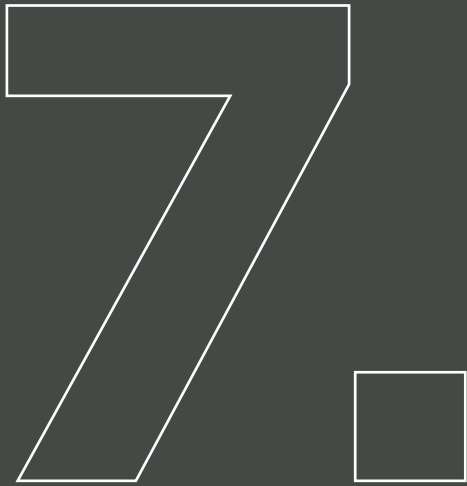
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# THE VIEWS AND INTERESTS OF THE VICTIM

## 7. THE VIEWS AND INTERESTS OF THE VICTIM

- 7.1 Sexual offending can have a very significant impact on a victim and we are committed to ensuring that the interests of victims are considered at every stage of the criminal process. This commitment, and the support available, is set out in detail in our [Victim and Witness Policy](#) which includes information about how the law treats victims who are vulnerable.
- 7.2 The PPS prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, the public prosecutor will always give careful consideration to the views and interests of the victim when deciding where the public interest lies.
- 7.3 The views and interests of the victim are very important but they must be considered along with the interests of wider society, including the risks the offender presents to other individuals, when taking a decision as to prosecution. The victim's views are not the deciding factor on whether a case proceeds or not; that decision is one solely for the prosecutor.
- 7.4 Sometimes a victim will ask the police not to proceed any further with the case or will ask to withdraw the complaint or, where he/she has made a statement, indicate that they no longer wish to give evidence. We understand there can be many reasons why a victim may not wish a prosecution to proceed. The PPS, together with the PSNI, will explore these reasons with the victim and consider whether there are any measures or arrangements available (see section 10) which would encourage the victim to remain engaged in the process and to give evidence. In circumstances where the victim does not wish to give evidence, it may be possible to proceed with the case in their absence. In other exceptional cases it may be appropriate to request a witness summons to require the attendance of a victim at the trial.

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## Support for Victims

- 7.5 The Victim and Witness Care Unit (VWCU) aims to improve the experience of victims and witnesses during the prosecution process. It provides victims and witnesses with a single point of contact from when an investigation or charge file is submitted to the PPS, through the decision stage and up to the outcome of any court proceedings.
- 7.6 The VWCU will contact a victim once their case is received by the PPS and will keep them informed at key stages as the case progresses. These may include the following matters:
- if a defendant is granted bail or their bail conditions are substantially changed;
  - when a prosecutor takes a decision in their case;
  - notifying or updating a victim about key court hearings;
  - notifying the victim of the result of the case and any sentence imposed on the defendant;
  - notifying the victim if there is an appeal and the outcome of the appeal;
  - providing a victim with information about making a Victim Personal Statement.
- 7.7 The VWCU can also refer victims to specialist organisations for additional support. Referrals can be made to Victim Support NI including the Sexual Offences Legal Advisors (SOLAs), ASSIST NI or NSPCC as appropriate. These organisations can provide emotional and practical support and information. More detail about SOLAs [Victim Support NI](#) can be accessed via this link.
- 7.8 ASSIST NI is a new advocacy support service for victims of domestic or sexual abuse and is funded by the Department of Justice, in partnership with the police. ASSIST NI provides support, information and a single point of contact for victims. More details about the services of [ASSIST NI](#) can be accessed via this link.

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7.9 When a case reaches Court stage, you will be offered the support of Victim Support NI’s [Witness Service](#) or for children and young people, the NSPCC’s [Young Witness Service](#).

7.10 After a case concludes, you can access support from the following services:

[Victim Support](#)

[Assist NI](#)

[NSPCC](#)

**“ Sexual offending can have a very significant impact on a victim and we are committed to ensuring that the interests of victims are considered at every stage of the criminal process. ”**

7.11 Contact details for these and other Northern Ireland support/advice organisations can also be found at Annex 4.

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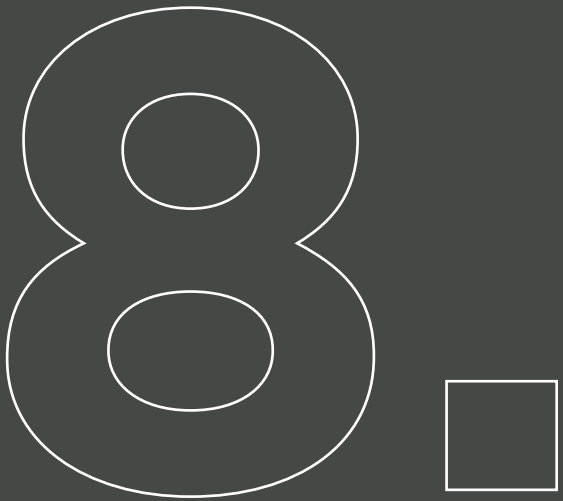
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# PRIORITISING YOUR CASE

## 8. PRIORITISING YOUR CASE

- 8.1 The time it takes for criminal cases, and in particular serious sexual offences, to travel through the system is of concern to all criminal justice organisations. We are aware of the impact that avoidable delay can have on victims and we are committed to continually working with our partners to improve the progress of cases through the criminal justice system.
- 8.2 Cases involving serious sexual offences will generally be prosecuted in the Crown Court. They will begin in the Magistrates' Court and then be transferred to the Crown Court by a process referred to as committal. Where a defendant pleads not guilty to the offences alleged, which they are entitled to do and which often occurs in serious sexual offences, the case will then have to be listed for trial. The victim and any witnesses will then be invited to attend the hearing.
- 8.3 Where possible, the PPS will make sure that cases involving sexual offences are not delayed without good reason and we will do our best to ensure that the victim is kept informed of the reason for any significant delay in the proceedings. All cases involving a young person will be prioritised and dealt with as quickly as possible, to minimise avoidable delay throughout the process. However the nature of serious sexual offences is such that building a sufficiently strong case, reviewing sometimes extensive evidence and preparing the papers for court to the required high standard takes time.
- 8.4 There is a special Protocol in place to expedite cases involving serious sexual offences against children under the age of 13. This Protocol is currently in place in Belfast and Antrim Crown Courts and further expansion of this protocol is under review. Even in cases where the Protocol arrangements do not currently apply, the prosecutor will prioritise the case and may treat the case 'in the spirit' of the protocol.
- 8.5 Often decisions about the progress of a case may be taken at court. Victims will be informed about those decisions by the

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prosecutor when they are at court. If they are not at court, they will be informed as soon as possible afterwards either by the prosecutor, police or VWCU.

- 8.6 A case proceeding to trial may be adjourned for a variety of reasons, including the unavailability of a prosecution witness. Even where there has been a guilty plea to the offence(s), the court may require reports, such as a medical report or a pre-sentence report prepared by the Probation Board for Northern Ireland, to help it sentence the offender appropriately.
- 8.7 Adjournments may also be sought by the defence for a variety of reasons including the unavailability of their witnesses or for further time to prepare their case. Obtaining expert reports can be particularly time consuming and these are often features of serious sexual offences. Whilst prosecutors may raise objections to adjournment requests, the decision on any adjournment is ultimately a matter solely for the District Judge (Magistrates' Courts) or Judge (Crown Court) who will seek to be fair to all parties when making decisions about adjournments.
- 8.8 The PPS appreciates that delay in decisions as to prosecution or in cases proceeding at court can add to the distress of a victim and their family. We want to ensure that all victims understand the reasons for any delay and are fully informed and supported to participate in the trial process. We would encourage any victim with concerns about progress in their case to make this known, either directly to PPS, to the police Investigating Officer or via your advocate or any support organisation you may be engaging with.

**“ We would encourage any victim with concerns about progress in their case to make this known, either directly to PPS, to the police Investigating Officer or via your advocate or any support organisation you may be engaging with. ”**

- 8.9 We would ask any victim or witness who has concerns about the case proceeding to engage with PPS and discuss any issues, before deciding to withdraw support for a prosecution.

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# DEALING WITH THE CASE AT COURT

## 9. DEALING WITH THE CASE AT COURT

9.1 We understand that when a case comes to court it can be a particularly anxious period for a victim, especially with the prospect of giving evidence. Courts are unfamiliar environments, many people will not have been involved in legal proceedings before and it is entirely normal to feel this way. We have measures in place to make this a more comfortable process. The PPS is committed to ensuring prosecutors have the right skills to prosecute sexual offences cases effectively, including the ability to deal sensitively with victims and witnesses.

### Cases Where an Offender is Charged

9.2 If a suspect has been charged by police with a sexual offence, the police will take the decision as to whether it is appropriate to release the suspect on police bail to attend a court hearing within a short period of time. Police may also, however, decide to keep the defendant in custody so that he/she may appear at the next available Magistrates Court, (usually the next day), for a remand hearing. At the hearing the defendant is entitled to make an application to be released from custody on bail.

9.3 The District Judge (Magistrates' Court) will decide whether bail is appropriate after he/she has heard representations from both the prosecution and the defence. To enable the prosecutor to make representations to the court, police will have provided relevant evidence and information to the prosecutor.

9.4 You will be informed by your Case Officer in the VWCU as to whether bail has been granted and any conditions imposed.

9.5 Where a prosecutor considers that bail should not have been granted, perhaps because of a high risk of the offender re-offending or absconding, the prosecution can appeal the decision of the District Judge. Again, you will be informed of the outcome.

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**When a Case is Listed for Trial**

- 9.6 In most trials where the defendant pleads not guilty, the defendant's legal team will challenge the victim's account of the allegations. This is normal and is allowed in law. The defence have a duty to act in the best interests of their client and to challenge the victim about his or her account.
- 9.7 Victims and witnesses are often concerned about cross-examination. This is questioning by the defendant's legal team, where the account given by the victim in direct examination is tested and challenged. There are rules about cross-examination, particularly about questioning a victim regarding his or her previous sexual conduct or behaviour. Further information can be found at paragraph 10.9 below.
- 9.8 Victims and witnesses are entitled to be treated with dignity and respect at all times in court, including during cross-examination. The prosecutor will object to allegations about matters concerning the victim which are irrelevant to the issues in the case. Both the Judge and prosecuting counsel will intervene if any questioning is considered to be inappropriate. It is however permissible for a victim to be accused of not being truthful if this is done within the rules of cross-examination.

**“ Victims and witnesses are entitled to be treated with dignity and respect at all times in court, including during cross-examination. ”**

**Offers by the Defence to Enter Pleas of Guilty**

- 9.9 The defence may on occasion approach the PPS with an offer to plead guilty to only some of the charges that they are facing, or to a lesser charge or charges, with the remaining charges not to be proceeded with. Whilst 'plea bargaining' has no place in the practice or procedures of the PPS, in some cases the prosecutor may consider accepting a guilty plea from the defendant to a different charge to that prosecuted. This might arise, for example, because the victim no longer wishes to proceed, or because new evidence has come to light. However, the general principle is that the decision to

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prosecute, and the offences to be prosecuted, should not be altered unless there is proper reason to do so which is consistent with the evidence and the information available at the time and meets the public interest.

- 9.10 Except in the most exceptional circumstances, the acceptance of alternative pleas should be transparent with the prosecution able to explain their reasons for accepting the pleas in open court.
- 9.11 When considering whether to accept a plea of guilty to a different, and possibly less serious charge, the PPS will seek to consult with the victim and take the proper interests of the victim into account as required under the Victim Charter. Further information on this topic is contained at paragraphs 5.9-5.16 of the [PPS Code for Prosecutors](#).

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**HELPING VICTIMS  
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## 10. HELPING VICTIMS AND WITNESSES TO GIVE THEIR BEST EVIDENCE

### Special Measures

10.1 Giving evidence can be a challenging experience for victims of sexual offending. Some victims, quite understandably, find it difficult to give evidence in the view of the defendant. The PPS can apply for Special Measures to make the experience more comfortable and to support the victim in giving their best evidence. Examples of special measures include:

- Giving evidence in chief by a pre-recorded video interview. In cases involving sexual crime a victim's evidence will often be video-recorded in accordance with the [Achieving Best Evidence in Criminal Proceedings Guidance](#) and this will automatically be played in court unless the court considers that it is not in the interests of justice for this to be done.
- Giving evidence by live video link from a separate room to the main courtroom;
- Screening the victim from the defendant;
- Giving evidence in private, with the court cleared of the public and;
- In some cases victims and witnesses of sexual offences may be able to provide their evidence from a Remote Evidence Centre (see paragraph 10.25 below).

10.2 There are also special measures available to assist vulnerable witnesses, such as the use of aids to communication, and to assist witnesses with communication needs such as Registered Intermediaries. Further information about Registered Intermediaries can be found here - [Registered Intermediaries](#).

10.3 A victim of sexual offences is automatically presumed to be eligible to apply for the assistance of special measures unless the court is informed that he or she does not require this. The judge makes the decision about whether special measures will be allowed. The court will only allow a special measure

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where it considers that the measure would be likely to improve the quality of evidence given by the victim/witness.

10.4 The PPS will discuss with police what special measures might assist the victim or witnesses to give evidence in court, and then, if appropriate, make an application to the court to grant these. The views of the victim and witnesses are taken into account. Ideally, early decisions should be taken about special measures to assist victims and witnesses. However, circumstances might change and it is always possible to apply at any stage of the proceedings. If necessary, a meeting can be arranged with the victim or witnesses to discuss what special measures would be appropriate.

10.5 The PPS will ensure that victims and witnesses are made aware that they can change their minds about whether to continue with the benefit of special measures. In some cases, victims may initially state that they do not require special measures but when the trial approaches, they may decide that they do. In these circumstances it will be for the court to decide if special measures should be granted.

10.6 You can read more about [special measures](#), and [services for vulnerable or intimidated witnesses](#) on the PPS website.

### **Protection from Cross-Examination by the Accused in Person**

10.7 The law provides that a defendant may not cross-examine, in person, a *victim* of a sexual offence. The questions will be asked by a lawyer instructed by the defendant, or other person approved by the Judge.

10.8 In appropriate cases the prosecution may also make an application to the court requesting that the court give a direction prohibiting the defendant from cross-examining a *witness* in person.

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### Cross Examination on Previous Sexual History

- 10.9 There are legal rules about cross-examination, particularly about questioning a victim regarding his or her previous sexual conduct or behaviour. This type of evidence can only be admitted with the permission of the Judge in accordance with [Article 28 of the Criminal Evidence \(Northern Ireland\) Order 1999](#). The PPS will ensure that such evidence is not introduced unless it is permitted to be by law and the prosecutor at court will be proactive in objecting to improper questions should the evidence be admitted. If the defence seeks to introduce such evidence or questioning and the Judge considers that its real purpose is to upset or undermine the victim, then it will not be allowed.

### Anonymity

- 10.10 Many victims and witnesses are concerned about their safety and fear that personal details or information about them might become public knowledge and place them at risk of further attack or harassment. Other victims simply want their personal details and details of what has happened to them to remain private.
- 10.11 Generally, it is a fundamental principle of our criminal justice system that those accused of crimes are entitled to know the name of their accuser. Most criminal proceedings are held in public, and information about the identity of the witness will become a matter of public record.
- 10.12 All victims of sexual offences are, however, entitled as a matter of law to anonymity for life and for 25 years after their death even if their name has been given in court. This applies from the moment they make an allegation that they are the victim of a sexual offence. Anonymity may also be granted to a defendant for the protection of a victim where, for example in a familial case, a victim's identity might be revealed by publication of the defendant's name together with the charges against him/her.
- 10.13 Addresses of witnesses are not disclosed to the defendant and, unless already known or if required for evidential purposes, will not be mentioned in the court proceedings.

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- 10.14 Only in certain exceptional circumstances may a court allow witnesses not to give their name in open court.
- 10.15 If, however, a victim wishes to waive their anonymity, sometimes in order to bring public attention to the case, they are entitled to do so. The granting of anonymity is to protect the victim, not the defendant.
- 10.16 Often, there will be representatives of the media or journalists present in Court. They are also bound by strict rules in order to protect the anonymity of victims.

### Interpreter Provision

- 10.17 We recognise there will be victims and witnesses for whom English is not their first language. In these cases, the PPS will seek advice from police as to the victim's and witness's ability to give and understand oral evidence in English or whether the witness requires the use of an interpreter. The PPS will try to ensure that the interpreter engaged is familiar with the particular dialect or regional variation of the foreign language which the witness uses.
- 10.18 The PPS will arrange for the provision of sign-language interpreters for witnesses who are deaf or hard of hearing.

### Witness Service and Young Witness Service

- 10.19 There are two witness support schemes available in courthouses in Northern Ireland: one for adult witnesses (the Witness Service) provided by Victim Support Northern Ireland; and one for younger witnesses under the age of 18 (the Young Witness Service), provided by NSPCC. Victim Support Northern Ireland and the NSPCC aim to support victims and prosecution witnesses before, during and after the experience of attending court to give evidence.
- 10.20 The aim of the Witness Service is to support victims and prosecution witnesses, along with their families and friends, to deal with attending court and giving evidence. The Witness Service normally contact the victim or witness before the court hearing to offer its services. Trained volunteers offer

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confidential services free of charge. For further information about witness services available please refer to [The Partnership Protocol: NICTS, VSNI and NSPCC](#).

- 10.21 Further information about meetings with vulnerable or intimidated witnesses and services provided to victims and witnesses at court is also contained in the PPS [Victim and Witness Policy](#).

### **Additional Support for Victims During a Trial**

- 10.22 The PPS recognises that some victims will find it very difficult to give evidence and may need further practical and emotional support.
- 10.23 If a victim would find it helpful to bring a friend or other trusted person with them for moral support at each stage of the process then they are very much encouraged to do so. However, nobody known to the victim is allowed to be present during the recording of an interview, or in the live link room if they are also giving evidence during the trial.
- 10.24 Specialist agencies can also provide support and advice at any stage of the victim's experience. Contact details for some support agencies are given at Annex 4.

### **Remote Evidence Centres**

- 10.25 Remote Evidence Centres are available at two locations (in Belfast and Craigavon), to allow victims and witnesses to give their evidence away from the court building to reduce the risk of meeting the defendant or his or her supporters and reduce the anxiety of giving evidence.

### **Remote Evidence from Other Locations**

- 10.26 As a result of special provisions which were made to ensure social distancing during the coronavirus pandemic, The Coronavirus Act 2020 allowed for the extension of the use of live links in criminal proceedings and this has led to an increase in the use of remote and hybrid hearings. These provisions remain in place at present and where particular conditions are met and the interests of justice permits, it may be possible

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for victims and witnesses to give their evidence remotely. In such circumstances, although the witnesses would be giving their evidence from a remote location, the normal duties owed to the court will apply. Every remote location attended by the witness in a hearing is an extension of the court and those participating remotely should behave as they would be expected to if physically in court.

### **During and After Court Support**

10.27 Sometimes victims find that counselling is particularly helpful to them as they seek to move forward in their lives following their experience. If a victim feels that they would benefit from counselling then they are encouraged to engage with a trained counsellor at whatever time they need this assistance. We understand that victims can be reluctant to have counselling during the criminal process due to concerns that their notes and records may be requested by defence representatives by way of the disclosure process. Whilst these notes and records may be requested and extracts *may* be disclosed to the defence in compliance with legal disclosure duties, this should not deter victims from attending counselling if they feel that it is of benefit to them.

### **Other Services**

10.28 A range of other services are available to provide information and support. Details can be found at Annex 4.

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11.

# SENTENCING

## 11. SENTENCING

- 11.1 If the defendant is convicted of a sexual offence or pleads guilty, the judge will decide the sentence.
- 11.2 The Judge is entirely independent of PPS. The prosecution lawyer has a duty to assist the judge with the law and guidelines on sentencing, including any ancillary orders that may be available to the court. The sentence imposed is a decision taken by the Judge alone.
- 11.3 Legislation sets a maximum sentence for every type of offence, and there are guidelines issued by the Court of Appeal to help judges when sentencing defendants convicted of sexual offences.<sup>1</sup> Commonly used sentencing options include community sentences and imprisonment.
- 11.4 The PPS will make sure that the court has all the information it needs to sentence appropriately, including any relevant information contained in a Victim Personal Statement or Victim Impact Report which may have been requested by the Court. A Victim Personal Statement is a statement made by a victim, setting out in their own words the effect that the crime has had on them. If a victim needs assistance or support in preparing a Victim Personal Statement, then they can make contact with an approved organisation such as Victim Support Northern Ireland or Rape Crisis NI who can help. A Victim Impact Report is a report prepared by a professional, such as psychiatrist or psychologist, at the request of the Court.
- 11.5 Upon conviction or following a guilty plea, the defendant is entitled to enter what is known as ‘a plea in mitigation’. This may include information about previous good character or other factors the defendant wishes to be considered before a sentence is imposed. Ultimately these issues are for the Judge to consider as part of his/her decision on sentencing. The prosecutor will however be alert to mitigation that attempts to minimise the impact of the offending and will challenge anything misleading, untrue or unfair.

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11.6 In addition to imposing a sentence, where the court is satisfied that it is necessary for the purpose of protecting the public or any particular members of the public from serious harm by the offender, the Judge may also impose an order or orders on the defendant. These are referred to as ancillary orders. In cases involving sexual crime, the PPS may apply to the court for an ancillary order such as a Sexual Offences Prevention Order, a Serious Crime Prevention Order and/or a Restraining Order which aim to protect the victim and to prevent future re-offending by the defendant. A Compensation Order may also be made to offer some restitution to the victim.

11.7 Where a defendant has been convicted of a certain sexual offence or offences, he or she will also automatically be required to notify police about personal information such as a change of address, plans for foreign travel or where they may be residing in a property where children are also resident. Because police hold details of those convicted of a relevant sexual offence in a database for the protection of the public, these notification requirements are sometimes referred to as ‘signing the Sex Offenders Register’. This information is not generally available to the public.

### **Unduly Lenient Sentences**

11.8 [The Criminal Justice Act 1988](#) (as amended) gives the Director of Public Prosecutions the power, in relation to certain serious sexual offences prosecuted in the Crown Court, to seek leave to refer a sentence to the Court of Appeal for review if he considers it to be unduly lenient. An unduly lenient sentence is one which falls outside the range of sentences that a judge, taking into account all relevant facts, including guidance on sentencing from the Court of Appeal, could reasonably consider to be appropriate. It is only if the sentence falls entirely outside the range of sentences that could reasonably be considered appropriate that it can be considered unduly lenient. A sentence can only be referred within 28 days of being handed down at Court.

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- 11.9 While counsel and the prosecutor will make their own assessment regarding the level of sentence imposed, it is important that if a victim or their representative considers there is basis for an unduly lenient sentence to be considered that this is brought to the attention of the PPS at the earliest opportunity.
- 11.10 The Court of Appeal decides whether the sentence is unduly lenient and, if it is, whether to increase or otherwise vary the sentence.
- 11.11 The VWCU will keep victims informed of any appeals by the defence against conviction and/or sentence.

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12.

# CONCLUSION

## 12. CONCLUSION

- 12.1 We want victims to have the confidence to report any offending to police and engage with the criminal justice system, and we continually work to improve our approach to these cases. We are committed to prosecuting sexual offences robustly and fairly where the Test for Prosecution is met, and to work with our criminal justice partners and stakeholders to improve the experience of victims as cases move through the system.
- 12.2 The PPS recognises and welcomes the valuable advice, emotional support and practical help and information that may be offered to victims and witnesses by support agencies and victims' representative groups. We will continue to work closely with the voluntary and community sectors to help develop best practice and ensure victims are supported.
- 12.3 The PPS will also continue to work with its colleagues in the criminal justice system to ensure that services are delivered in a timely manner and to an acceptable standard.
- 12.4 The PPS has published this document to help victims of sexual offences, their families and the wider public to understand the work of the PPS, how decisions are made and the different stages of the prosecution process.
- 12.5 The PPS will review this policy regularly so that it reflects current law and practice.
- 12.6 The PPS welcomes any comments and observations that help us to do this.

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# ANNEX

# FREQUENTLY DIRECTED OFFENCES

## ANNEX 1: FREQUENTLY DIRECTED OFFENCES

**Please note that this section contains reference to sexual offences and descriptions of intimate conduct that may be sensitive for some readers**

A sample of offences contained in [The Sexual Offences \(Northern Ireland\) Order 2008](#) is summarised below:

Article 5 – Rape. A person (A) commits an offence if he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis in circumstances in which B does not consent to the penetration and A does not reasonably believe that B consents.

Article 6 – Assault by penetration. A person (A) commits an offence if he intentionally penetrates the vagina or anus of another person (B) with a part of his body or anything else, the penetration is sexual, B does not consent to the penetration, and A does not reasonably believe that B consents.

Article 7 – Sexual assault. A person (A) commits an offence if he intentionally touches another person (B), the touching is sexual, B does not consent to the touching, and A does not reasonably believe that B consents.

Article 8 – Causing a person to engage in sexual activity without consent. A person (A) commits an offence if he intentionally causes another person (B) to engage in an activity, the activity is sexual, B does not consent to engaging in the activity, and A does not reasonably believe that B consents.

Article 12 – Rape of a child under 13.

Article 13 – Assault of a child under 13 by penetration.

Article 14 – Sexual assault of a child under 13.

Article 23 – Abuse of position of trust: sexual activity with a child.

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Article 24 - Abuse of position of trust: causing or inciting a child to engage in sexual activity.

Article 32 - Sexual activity with a child family member where the accused is over 18 and the activity involves penetration.

Article 43 - Sexual activity with a person with a mental disorder impeding choice where the activity involves penetration.

Article 44 - Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity where the activity involves penetration.

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# ANNEX

# 2

## EXPLANATION OF TERMS USED IN RESPECT OF THE EVIDENTIAL TEST FOR PROSECUTION

## ANNEX 2: EXPLANATION OF TERMS USED IN RESPECT OF THE EVIDENTIAL TEST FOR PROSECUTION

### *Identifiable individual*

There will often be cases where it is clear that an offence has been committed but there is difficulty identifying who has committed it. Prosecution can only take place where the evidence sufficiently identifies a particular person responsible. Where no such person can be identified, there can be no prosecution.

### *Credible evidence*

This means evidence which is capable of belief. It may be necessary to consult with a witness before coming to a decision as to whether the evidence of that witness is credible. It may be that a witness is likely to be so discredited that no court could safely act on his/her evidence. In such a case it may be concluded that there is no reasonable prospect of obtaining a conviction. If, however, it is judged that a court in all the circumstances of the case could reasonably act on the evidence of a witness, notwithstanding any particular difficulties, then such evidence is credible and must be taken into account.

Public Prosecutors must therefore make an assessment of the quality of the evidence. Where there are substantial concerns as to the credibility of essential evidence, criminal proceedings may not be proper as the Evidential Test may not be capable of being met. There will be many cases in which the evidence does not give any cause for concern. There will also be cases in which the evidence may not be as cogent as it first appears.

### *Evidence which the prosecution can adduce*

Only evidence which is available and legally admissible can be taken into account in reaching a prosecution decision.

There are technical legal rules concerning whether or not particular types and pieces of evidence are admissible in court.

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For example, a court may refuse to admit evidence that has been obtained improperly, irregularly or unlawfully. If evidence is inadmissible then that evidence cannot be weighed in determining whether there is a reasonable prospect of a conviction.

Public Prosecutors must therefore seek to anticipate whether it likely that evidence will be admitted or excluded by the court. For example, is it likely that the evidence will be excluded because of the way in which it was gathered? If so, Public Prosecutors must consider whether there is sufficient other evidence for a reasonable prospect of conviction.

### ***An impartial jury (or other tribunal)***

The test is not whether a particular jury or a particular judge or magistrate will convict. If such a test was adopted then prosecution might depend upon an assessment of how different juries in different parts of the country reacted or different judges reacted. This would be wrong. The test must be how an impartial jury or judge is likely to conclude.

### ***May reasonably expect to find***

It is impossible to know with absolute certainty whether or not a conviction will be obtained in a particular case. What is required by the evidential test is that there is a reasonable prospect of a conviction on the evidence. The weighing of evidence is not a mathematical science but rather a matter of judgement for the prosecutor.

### ***Beyond reasonable doubt***

The evidence available to the prosecutor must be sufficient to reach the high standard required by the criminal courts. It is necessary for the prosecution to establish its case beyond reasonable doubt.

### ***Commission of a criminal offence***

This requires that regard is had to the law in order to identify what offence or offences may have been committed and to consider the evidence against each of the ingredients which establish the particular offence.

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# PPS CONTACT DETAILS

## ANNEX 3: PPS CONTACT DETAILS

### PPS Offices

Belfast Chambers  
93 Chichester Street  
Belfast BT1 3JR

**Telephone:** 02890 264690

**Deaf/Hard of Hearing (SMS):** 078 2511 8389

**Email:** [vwcubelfast@ppsni.gov.uk](mailto:vwcubelfast@ppsni.gov.uk)

### PPS Offices

#### Belfast & Eastern Region/Headquarters Sections/Serious Crime Unit

Belfast Chambers  
93 Chichester Street  
Belfast BT1 3JR

**Telephone:** 028 9054 2444

**Deaf/ Hard of Hearing (SMS):** 077 9567 3927

#### Western & Southern Region

Foyle Chambers  
35 Limavady Road  
Londonderry BT47 6LP

**Telephone:** 028 7134 0648

**Deaf/Hard of Hearing (SMS):** 077 9567 5338

Omagh Chambers  
2 Townhall Square  
High Street  
Omagh BT78 1BL

**Telephone:** 028 8224 4319

**Deaf/Hard of Hearing (SMS):** 077 9583 1188

Newry Chambers  
1 Downshire Close  
Newry BT34 1FD

**Telephone:** 028 3083 2500

**Deaf/Hard of Hearing (SMS):** 077 9581 0114

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**Victim and Witness Care Unit**

Belfast Office (Belfast Region, Eastern Region and Headquarters)

**Telephone:** 028 9026 4690

**Deaf/Hard of Hearing (SMS):** 078 2511 8389

Foyle Office (Western & Southern Region)

**Telephone:** 028 7134 0632

**Deaf/Hard of Hearing (SMS):** 078 2511 8416

**Victim and Witness Care Unit - Foyle**

Foyle Chambers

35 Limavady Road

Londonderry BT47 6LP

**Telephone:** 02871 340632

**SMS (Deaf/Hard of Hearing):** 078 2511 8416

**Email:** [vwcufoyle@ppsni.gov.uk](mailto:vwcufoyle@ppsni.gov.uk)

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**4**

**SUPPORT SERVICES  
AVAILABLE FOR  
VICTIMS**

# ANNEX 4: SUPPORT SERVICES AVAILABLE FOR VICTIMS

## Assist NI - Domestic and Sexual Abuse Advocacy Support Service

[www.assistni.org.uk](http://www.assistni.org.uk)

[info@assistni.org.uk](mailto:info@assistni.org.uk)

## British Deaf Association

[www.bda.org.uk](http://www.bda.org.uk)

[bda@bda.org.uk](mailto:bda@bda.org.uk)

## Commissioner for Older People for Northern Ireland

**Tel:** 028 9089 0892

[www.copni.org](http://www.copni.org)

[info@copni.org](mailto:info@copni.org)

## Disability Action

**Tel:** 028 9029 7880

[www.disabilityaction.org](http://www.disabilityaction.org)

[hq@disabilityaction.org](mailto:hq@disabilityaction.org)

## Men's Advisory Project

**Belfast:** 028 9024 1929

**Foyle:** 028 7116 0001

[www.mapni.co.uk](http://www.mapni.co.uk)

[Info@mapni.co.uk](mailto:Info@mapni.co.uk)

## Mencap

**Tel:** 0808 808 1111

[www.northernireland.mencap.org.uk](http://www.northernireland.mencap.org.uk)

[helpline.ni@mencap.org.uk](mailto:helpline.ni@mencap.org.uk)

## Migrant Centre NI

**Tel:** 0330 088 0464

[www.migrantcentreni.org](http://www.migrantcentreni.org)

[admin@migrantcentreni.org](mailto:admin@migrantcentreni.org)

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**Mindwise**

[www.mindwisenv.org](http://www.mindwisenv.org)

**Nexus**

**Tel:** 028 9032 6803

[nexusni.org](http://nexusni.org)

[info@nexusni.org](mailto:info@nexusni.org)

**NSPCC**

**Helpline:** 0808 800 5000

**Young Witness Service (Northern Ireland)**

Tel: 028 9344 1947

[www.nspcc.org.uk/about-us/what-we-do/northern-ireland](http://www.nspcc.org.uk/about-us/what-we-do/northern-ireland)

[help@NSPCC.org.uk](mailto:help@NSPCC.org.uk)

**The Rainbow Project**

**Belfast:** 028 9031 9030

**Foyle:** 028 7128 3030

[www.rainbow-project.org](http://www.rainbow-project.org)

**Victim Support NI**

**Belfast Hub:** 028 9024 3133

**Foyle Hub:** 02871 370086

[www.victimsupportni.com](http://www.victimsupportni.com)

[belfast@victimsupportni.org.uk](mailto:belfast@victimsupportni.org.uk)

[foyle@victimsupportni.org.uk](mailto:foyle@victimsupportni.org.uk)

**Sexual Offence Legal Advisors**

**Belfast Hub:** 028 9024 3133

**Foyle Hub:** 028 7137 0086

[www.victimsupportni.com/help-for-victims/solas](http://www.victimsupportni.com/help-for-victims/solas)

[sola@victimsupportni.org.uk](mailto:sola@victimsupportni.org.uk)

**VOYPIC – Voice of Young People In Care**

**Tel:** 028 9024 4888

[www.voypic.org](http://www.voypic.org)

[Info@voypic.org](mailto:Info@voypic.org)

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## Women's Aid

[www.womensaidni.org](http://www.womensaidni.org)

(for details of support across Northern Ireland)

## Wave Trauma Centre

[www.wavetraumacentre.org.uk](http://www.wavetraumacentre.org.uk)

The [PPS website](#) provides more detailed information about the Service including reports, policy documents and information for victims and witnesses. It also contains links to other criminal justice agency websites.

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