DRCC
Dublin Rape Crisis Centre

Submission to Joint Committee on Justice, Home Affairs & Migration on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025

June 2025

Executive Summary

Dublin Rape Crisis Centre's (DRCC) submission provides commentary on and makes 16 recommendations in relation to, Head 19 and Head 39 of the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025.

Head 19: Amendment of section 19A of Criminal Evidence Act 1992

Our central concern is that, under the current system, the defence may seek access to deeply personal counselling records with inadequate safeguards. We strongly oppose this practice. It undermines victim/survivors' trust in the justice system and has a chilling effect that deters many from seeking support or pursuing justice.

We understand from a reply given by Minister Jim O'Callaghan to a Parliamentary Question put down by Mr. Barry Heneghan T.D. that the Supreme Court has held that *"the prosecution are under a duty to disclose to the defence any material which may be relevant to the case, which could either help the defence or damage the prosecution, and that if there is such material which is in their possession, they are under a constitutional duty to make that available to the defence". Therefore the general rules of disclosure cover the release of counselling notes."*[1]

Our focus in response to this is on changing the law, while ensuring it cannot be challenged on Constitutional grounds, so that there is a statutory presumption *against* disclosure. We note comments from Minister Jim O'Callaghan that it would only be if there was a real risk to an unfair trial, determined by a member of the judiciary, that any part of counselling records would be released to the defence[2]. Furthermore, if the proposed deletion of Sub-Section 17 goes ahead, it must only be the relevant section or sentences that relate to the possibility of an unfair trial, that should be released, bringing an end to the practice of releasing counselling records routinely and in their entirety.

It is critical that the constitutional rights of victims of sexual crimes are not only recognised but truly seen to be balanced against those of the accused in the delivery of justice. What constitutes a fair trial should not exclusively be defined by reference to what is fair, or favourable, to the accused. As summarised by Charleton

[1] https://www.kildarestreet.com/wrans/?id=2025-05-29a.1202
[2] https://www.independent.ie/irish-news/justice-minister-jim-ocallaghan-seeks-to-amend-laws-to-save-rape-victims-the-trauma-of-revealing-counselling-notes-in-trials/a1161454598.html

and Cross in 'Presumption of Victimhood', *"we are some way from recognising any presumption equivalent to that in favour of accused persons in DPP v Woolmington whereby all charged with a crime are legally innocent until proven guilty, as to rights underpinning the status of victims."*[3]

When considering reform of the criminal justice system, attention has traditionally been directed toward the defendant. This is largely because the defendant faces the possibility of losing their freedom and has been considered to have the most at stake. This has resulted in granting certain protections to ensure fairness. Dublin Rape Crisis Centre does not aim to reduce these protections or question the presumption of innocence but we are advocating for the rebalancing of a system where victims have long been side-lined, notwithstanding progress being made under the Third National Strategy on Domestic, Sexual and Gender-Based Violence. The idea of granting explicit rights to crime victims is relatively new within the common law tradition, even though it has now been codified in the Criminal Justice (Victims of Crime) Act 2017.

With respect to the justice system, we need to confront and dismantle the barriers survivors face today. How can we say with any confidence that justice is being truly served if we stand by and accept that just 5% of adult victims of sexual violence who have disclosed their experience to anyone, make a report to the Gardai? This illustrates that most victims of sexual violence do not access the justice system at all. The CSO uncovered that almost six in 10 of those (59%), who experienced sexual violence as an adult and disclosed to someone, but not the police, did not disclose to the police because they thought what happened was not serious enough. One in 4 people didn't think the Gardai could help, 17% didn't think they would be believed and 17% said they didn't want to go to court[4].

[3] 1. Charleton and Cross Presumption of Victimhood.pdf
[4] https://www.cso.ie/en/releasesandpublications/ep/p-svsde/sexualviolencesurvey2022disclosureofexperiences/adultexperiencesdisclosure-police/#:~:text=In%20terms%20of%20those%20who,have%20been%20able%20to%20help.

Table 5.2 Those who experienced sexual violence as an adult and disclosed to others, but not the police, by the reasons for not disclosing to the police, 2022

Table 5.2 Those who experienced sexual violence[1] as an adult[2] and disclosed[3] to others, but not the police, by the reasons for not disclosing to the police[4], 2022

% of persons aged 18 and older who experienced sexual violence as an adult and disclosed but did not disclose to the police

Sex/Age group[5]	Reasons why person did not disclose to the police										
	Thought that the police would not have been able to help	Afraid of family's reaction	Felt ashamed or embarrassed	Thought that what happened wasn't serious enough[6]	Blamed themself for what happened	Were under the influence of alcohol or drugs when it happened	Didn't think they would be believed	Didn't want the perpetrator(s) to be punished	Didn't want to go to court	Other	Not stated[7]
State	**25**	**12**	**32**	**59**	**24**	**25**	**17**	**10**	**17**	**11**	**3**
Sex											
Male	19	8	22	63	17	22	11	18	15	20	5
Female	26	13	34	58	26	25	18	8	17	9	2
Age group											
18-24	39	22	32	69	31	32	23	14	26	13	1
25-34	34	14	36	73	34	34	25	20	22	9	1
35-44	22	8	24	60	16	29	12	9	12	11	5
45-54	16	10	38	47	21	14	10	1	16	7	6
55-64	12	6	27	41	17	8	7	1	10	17	1
65 years and over	*	*	*	*	*	*	*	*	*	*	*

[1] Experience of sexual violence as an adult refers to those experienced over the age of consent (17 years and over). See Background Notes for further details.

[2] Sexual violence as an adult is defined in this survey as a range of non-consensual experiences from non-consensual sexual touching to non-consensual sexual intercourse. See Background Notes for further details.

[3] Disclosure is defined as the person told one person or many persons or an organisation/group about at least one experience of sexual violence experienced as an adult. Adults may have experienced sexual violence in one sexual violence episode or in many episodes, with a partner and/or non-partner. If there were multiple experiences, the person was asked to share details on the experience that affected them the most.

[4] This refers to the Gardaí or other relevant policing authority as the experience may have occurred in a different policing jurisdiction than Ireland. Please note respondents could select more than one reason why they did not disclose.

[5] The age group category classifies the age the respondent was when they answered the survey.

[6] The full description for this category was 'You thought that what happened wasn't serious enough/was too trivial'. See Background Notes for further details.

[7] This represents the proportion of respondents who did not answer the question. In this survey, respondents could move through the survey and not answer questions when they did not feel comfortable answering the question.

* Sample occurrence too small for estimation.

Open in Excel: Sexual Violence Survey 2022 - Disclosure of Experiences Table 5.2 (XLS 13KB)

.[5]

We need to move beyond the *principle* of access to justice being a right of everyone and ensure that in *practice* all victims of crimes feel that the pathway to justice is genuinely open to them. As it stands, Dublin Rape Crisis Centre hears regularly that survivors of sexual violence are *not* choosing to pursue justice because they feel that the criminal justice system itself, and more specifically the fishing exercise relating to counselling notes, is a barrier to seeking justice.

The criminal justice system must be reformed so that the *right* of access to justice does not become a privilege retained for those who can simply stay the distance, put up with being blamed and shamed and endure their private therapy notes being handed over to the accused. The community of survivors of sexual violence deserve a commitment to real transformation, as well as the expectation that the attitudes of our society move beyond victim-blaming.

In a world where outside court, truth is being willingly manipulated and misrepresented to create chaos and confusion, where it seems to have increasingly less value to a growing number of people, and society's ability to determine what is true and not true is often frustrated, efforts to uncover it in court for victims of sexual

[5] https://www.cso.ie/en/releasesandpublications/ep/p-svsde/sexualviolencesurvey2022disclosureofexperiences/adultexperiencesdisclosure-police/#:~:text=In%20terms%20of%20those%20who,have%20been%20able%20to%20help.

violence must be redoubled and to do that, victims must believe that the justice system is more balanced towards the 'presumption of victimhood'. As Charleton and Cross explain, *"This does not mean that, as a matter of law, the accused person is guilty of the offence or that the jury must accept the victim's account…. Presuming victimhood simply ensures that anyone coming to court making such an allegation is treated in a sensitive manner, appropriate to the difficult and sometimes traumatising experience they have had."*[6]

Dublin Rape Crisis Centre acknowledges that this rebalancing is challenging but fundamentally we believe that reform across the justice system is necessary to encourage more survivors of sexual violence to make an initial report to Gardai and increase the number of perpetrators who are held accountable for their crime in court. Amending the law on the defence's access to counselling notes is one of the changes that are needed to achieve this reform, and in this submission we respond to the Government's proposal to remove sub-section 17. Below are some of the issues that need to be considered ahead of the changes Government proposes:

1. Delays in the courts
    a. Requiring all requests for counselling notes to go to a Disclosure Hearing could add to already lengthy trial delays. If delays were to get worse, this could have the potential to deter survivors from reporting at all. Removing the waiver means that there is no choice but to accept the delays and it removes the survivor's agency to release their notes;
    b. We know that some survivors put-off counselling until after the conclusion of the trial because they don't want the perpetrator to see their notes. Indirectly adding further delays to counselling (because of trial delays) could set them back therapeutically / from healing;
    c. We urge the development of a fully resourced plan outlining how the deletion of sub-section 17 will not lead to further delays in the justice system. This should include the appointment of additional specialist judges as in the Programme for Government: *"Establish specialised judges to handle domestic, sexual, and gender-based violence cases and invest in training for Gardaí and the DPP to better support victims."* [7] We also want to ensure an early review of the legislation is built in so that there can be certainty it is having the intended positive effect.

2. Widening focus to personal records

[6] https://www.ijsj.ie/assets/uploads/2021%20edition%202/1.%20Charleton%20and%20Cross%20Presumption%20of%20Victimhood.pdf p.3
[7] https://assets.gov.ie/static/documents/programme-for-government-securing-irelands-future.pdf p.121

a. Focusing singularly on counselling notes ignores the wider issue of disclosure of all personal records;
b. People's personal records include medical, education, employment, social services records, journals, diaries etc. and there is currently no protection of any of these;
c. We urge a commitment to legislate for limiting defence counsel's access to all personal records.

3. Disclosure hearings will not make the experience of the justice system easier for survivors
    a. A disclosure hearing is a difficult experience for victim-survivors because they can be disempowering and stressful;
    b. Counsellors & therapists already spend countless hours preparing and attending disclosure hearings. It is a stressful experience for them too and this proposal would add to their already heavy workload;
    c. We would like consideration to be given to how to make disclosure hearings more survivor-centred.

In summary, we urge that if the reform Government proposes goes ahead, it must be accompanied by proper resourcing, including the appointment of specialist judges, sufficient court capacity to ensure no delays and a survivor-centred approach to disclosure hearings. The process of reviewing counselling records is not simply procedural, it is highly sensitive and must be handled with care to avoid causing further harm or trauma.

DRCC makes the following 11 recommendations in relation to Head 19:

1. A statutory presumption of privacy for counselling records;
2. A strict threshold for disclosure, based on a genuine risk of an unfair trial, determined by the judiciary;
3. Sufficient judicial resourcing to prevent trial delays;
4. Ensuring the disclosure process is properly resourced;
5. Extension of protections to all personal records, not just counselling notes;
6. Access to independent legal representation for victim/survivors;
7. Ensuring clear, timely information is provided to victim/survivors;
8. Requirement for written decisions outlining the rationale for any disclosure;
9. Training for legal professionals on trauma and counselling practice;
10. Data collection and oversight to monitor disclosure trends; and
11. Consideration of the impact on counselling professionals and services.

Head 39: Amendment of Criminal Justice (Sexual Offence) Act 2017 (Prohibition of Advertising or Importuning Sex for Rent)

We welcome the introduction of a new offence to criminalise exploitative "sex for rent" arrangements. This is an important step in recognising and addressing a form of sexual exploitation that disproportionately affects people in vulnerable housing situation. However, the effectiveness of this legislation will depend on robust implementation and targeted supports for those most at risk.

DRCC makes the following 5 recommendations in relation to Head 39:

1. Extending tenancy protections to those in informal or licensee housing arrangements;
2. Strengthening regulation and moderation by online platforms hosting rental advertisements;
3. Clarifying the rights and supports available to licensees;
4. Rolling out a targeted public information campaign to raise awareness; and
5. Monitoring implementation through published data on investigations and outcomes.

Together, these reforms have the potential to meaningfully improve victim/survivors' experiences of the justice system and reduce the risk of further harm or exploitation. To be effective however, they must be properly resourced**,** trauma-informed and victim-centred from the outset.

About Dublin Rape Crisis Centre

- The mission of Dublin Rape Crisis Centre (DRCC) is to prevent the harm and heal the trauma of all forms of sexual violence in Ireland.[8] DRCC has been at the forefront of the Irish response to sexual violence for more than 45 years. That response includes:
- Running the National 24-Hour Helpline and associated services;
- Providing individual advocacy, counselling and other support;
- Accompaniment and support services for those attending the Sexual Assault Treatment Unit (SATU), reporting to AGS or attending court or other such settings;
- Education and training for a wide range of professionals and support workers engaging with victims of sexual violence;
- Data collection and analysis on trends and issue relating to sexual violence; and
- Challenging the tolerance of sexual violence through education, awareness raising, advocacy and policy analysis.

About the submission

- Through our work in DRCC, we see first-hand the life-long consequences of the trauma and harm caused by sexual violence of all kinds. Our submission is grounded in a victim-centred perspective, informed in two key ways:
  - Through our ongoing engagement with victim/survivors via our support services, we hear the recurring issues that cause concern for those callers, clients and service users who engage with the criminal justice system; and
  - Through our collective professional experience as therapists, counsellors, supporters, and researchers, we have an insight into how engagement with the criminal justice system can either support recovery or lead to further trauma.

We welcome the opportunity to comment on the General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025. As a frontline service supporting victims and survivors of sexual violence, we recognise the importance of legislative reform to promote justice, protection and the dignity for those affected by crime, particularly sexual offences. We offer the following observations and recommendations on Heads 19 and 39 of the Bill, with a view to enhancing victim/survivor protections and ensuring trauma-informed legal processes.

[8] For more information see Dublin Rape Crisis Centre website at: https://www.drcc.ie/about/

Head 19: Amendment of Criminal Evidence Act 1992

Background

- Section 19A of the Criminal Evidence Act 1992 (as amended) was introduced to provide a legislative framework through which the disclosure of counselling records in criminal trials could be sought and, in some cases, permitted. While the intention may have been to strike a balance between the rights of the accused and the rights of the complainant, in practice this provision has had a disproportionately chilling effect on victim/survivors.
- Subsection (17) provides that the protections afforded by the section, including a judicial examination and a disclosure hearing are bypassed if the victim/survivor waives their right and consents to the release of the records.
- Therapists in DRCC have worked with clients who have delayed or avoided therapeutic support because they fear their counselling records would be made available to the defence. They have worked with clients who have waived their rights, without adequate explanation of alternatives and in the absence of any legal advice, concerned that their case would not progress otherwise. Both outcomes undermine the integrity of both counselling and justice.
- Counselling is an intensely private process in which victim/survivors disclose their traumatic experiences and painful often overwhelming memories associated with them. This process is essential to their healing and the confidentiality of the therapeutic relationship is central to creating a safe space for that recovery.
- The words of Dr. Niamh Ní Dhomhnaill, clinical psychologist and survivor of rape, speak to the therapeutic complexity of trauma recovery, which therapists of DRCC would attest to:

  "Therapy offers a way to explore and make sense of our experiences… What might be said in one session may be presented very differently in the next — and this is not a contradiction."[9]
- In many cases, the content of these records is not factual but emotional: they are not contemporaneous notes of events but reflections of a victim/survivor's state of mind, their understanding of trauma and the complex ways in which memory and disclosure function in the aftermath of sexual violence. The assertion that such records may contain "*inconsistencies*" that can be used to challenge the credibility of the victim/survivor fails to appreciate how trauma affects memory and how the therapeutic process unfolds over time.

[9] Irish Examiner 21 February 2025 Available at: https://www.irishexaminer.com/opinion/commentanalysis/arid-41578399.html

- The possibility that such sensitive material could be disclosed fundamentally alters the nature of the therapeutic relationship. It transforms a space of healing into one where victim/survivors may feel unable to speak freely for fear that their words may later be used against them. This not only compromises the therapeutic value of counselling and the survivor's right to dignity and privacy.
- Section 19(a) was introduced to limit access to counselling notes but is not working as intended. The deletion of subsection (17) is the option being considered by the Department of Justice and which Dublin Rape Crisis Centre has been asked to consider in this submission as part of the Pre-Legislative Scrutiny undertaken by the Joint Oireachtas Committee on Justice, Home Affairs and Migration. The essence of the proposed deletion of sub-section 17, is that it would force all requests for counselling notes from the defence to be brought before the trial judge.
- It is our understanding that the release of any record or part-record, would only be granted where there was a real risk of an unfair trial. We have been led to understand that this narrow definition of when specific portions of counselling records could be released would mean they were shared in only truly exceptional circumstances.
- It is Dublin Rape Crisis Centre's position that we abhor the current access the defence has to survivor's counselling records and that the law must be changed to reflect a presumption *against* disclosure.
- Mr. Justice Maurice Collins stated in delivering a judgement of the Supreme Court on May 2nd, 2025 that there are a number of problems with the current system:

  "Complainants should not be asked to consent to the disclosure of counselling records to the defence without first being afforded an opportunity of reviewing the records and obtaining advice. [...] Consent should be the last stage of the disclosure process, rather than, as here, the first stage." [10]
- This judgment explicitly confirms that informed consent cannot meaningfully occur unless the complainant has had the opportunity to: understand the nature and content of the records; seek independent legal advice; and be fully informed about the court process that would otherwise apply. These minimum safeguards are rarely in place when subsection (17) is relied upon.
- Mr. Justice Collins also reaffirmed that victims of crime are rights-holders, with interests protected under the Constitution, EU law, the ECHR, statute and the common law:

  "The compelled disclosure of such intensely private material directly and significantly intrudes upon the dignity of victims as well as their personal integrity, privacy and associated rights."[11]

[10] DPP & AM [2025] IESC 16. Available at para 6, pg. 85: https://www.courts.ie/acc/alfresco/fbcc5175-3962-4ad9-b9cd-9630adb6aadb/2025_IESC_16_Judgment.pdf/pdf#view=fitH

[11] Ibid para 50, pg. 30

- He further emphasised that disclosure must meet a high threshold, more than "*mere relevance*"[12] and must demonstrate real forensic value to the defence. This aligns with best international practice and underscores that s.19A was always intended to limit unnecessary or speculative disclosures.
- Mr. Justice Peter Charleton, in his Supreme Court judgment of October 24th, 2024, was even more direct:

  "To turn therapy records that have come into existence in circumstances of addressing trauma into apparent facts in a courtroom setting may be a misrepresentation. Of course, the traverse of supposedly prior inconsistent statements has been the stock-in-trade of cross-examination over decades. Among the secondary effects of cross-examination along these lines is the likely contribution to high rates of attrition in the reporting and prosecution of sexual violence; Law Reform Commission, Report on Disclosure and Discovery in Criminal Cases (2014)."[13]
- He further highlighted Article 21 of the Victims Directive (Right to Protection of Privacy)[14] and the need for proper procedural safeguards before any waiver of rights is sought.[15]
- A recurring barrier to informed decision-making for victim/survivors is the absence of legal representation. As both Justices Collins and Charleton point out, this is not acceptable in a context where rights are being waived. Rights do not vanish upon making a complaint.
- The right of an accused to a fair trial is fundamental. However, it must be balanced against the right to privacy, dignity and effective participation of victim/survivors of sexual offences. International human rights standards, including those arising from the Istanbul Convention[16], require States to ensure that victims are protected from secondary victimisation during criminal proceedings.
- Increasingly we are seeing a high level of unease from all quarters of society that counselling notes are being weaponised against the person who was so wronged in the first place. Notes that were created to help a person heal after sexual violence are now being used to discredit, to blame, to shame and to undermine the person who so bravely sought justice. This practice is now so commonplace that Dublin Rape Crisis Centre hears regularly of the binary choice victim-survivors feel they face: court vs. counselling.

[12] Ibid para 52, pg. 31
[13] WC & DPP [2024] IESC 48 Available at para 72, pg. 25: https://www.courts.ie/acc/alfresco/da11ccb6-d8d5-4e4d-bc79-fda4d23c53b0/%5b2024%5d_IESC_48_.pdf/pdf#view=fitH
[14] The Victims' Rights Directive – Directive 2012/29/EU Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029
[15] Ibid para 36, pg. 14
[16] Article 56 Available at: https://rm.coe.int/168008482e

- The criminal justice system must uphold the rights of both accused persons and complainants. S.19A, as it stands, does not strike a fair balance. It leaves victim/survivors open to intrusion, re-traumatisation and a loss of faith in both the justice and support systems that are supposed to protect them.
- And, while DRCC recognises the new amendment is one way to change to the law, Dublin Rape Crisis Centre believes that caution is needed before legislating. The future system must be better than the one in place now and provisions need to be in place to address our concerns before any change is introduced. As well as this, a review period must be agreed so that the effect of the legislation can be determined.

Recommendations

1. **Statutory presumption against disclosure**: Introduce a statutory presumption that counselling records are private and protected unless there are exceptional circumstances where there is a real risk to a fair trial and that this risk be established by the trial judge. Counselling notes or any portion of counselling notes should not be provided for any other reason than this, which strikes to the heart of the Constitution;
2. **Threshold for disclosure**: The legislation should establish clear and strict criteria that must be met before disclosure is considered. Applications should require evidence that the records contain material of substantial probative value relating to a fair trial. We believe that unless there would be an irremediable injustice caused to a defendant of such gravity that it would be fundamentally unjust and cause an unfair trial, counselling notes should never be disclosed to the defence. This exceptionally high threshold, determined by the trial judge against the statutory presumption against disclosure, should mean that only in exceptional and incredibly rare circumstances would any part of a counselling record ever be disclosed;
3. **Address delays:** DRCC is concerned that the deletion of sub-section 17 could result in further delays within the criminal justice system, particularly where disclosure hearings become more frequent or complex. We know from our frontline experience that delays in the justice system already deter people from making a complaint to the Gardai. Some survivors observe the already unacceptable delay to trials and take the decision not to seek justice for the crime committed against them – the justice system itself therefore becomes a barrier to justice. We have real concerns that without adequate resourcing, funding and planning for the anticipated increase in judicial time required to deal with the review of counselling records by the judiciary, that even fewer numbers of survivors will seek justice. Reporting rates are already extremely low. The Central Statistics Office (CSO) 2022 Sexual Violence Survey found

that just 5% of adults who experienced sexual violence reported it to An Garda Síochána, with similar rates for men and women[17]. It would be an intolerable consequence if legislation intended to support victim/survivors and improve access to justice became a deterrent. This must be addressed before any legislation is passed. There is a commitment in the Programme for Government to appoint specialised judges in the area of Domestic, Sexual and Gender Based Violence – it is these judges who should be assessing counselling notes and adequate numbers of new appointments should be made to mitigate against the risk that additional Disclosure Hearings lead to trial delays;

4. **Significant increase in resourcing the disclosure process:** The proposed amendment must be accompanied by adequate funding and resourcing, including the provision of independent legal representation for victim/survivors and sufficient judicial and court capacity, to prevent delays and minimise the risk that fewer survivors seek justice through the courts. Disclosure hearings are not simply legal or procedural steps, they are moments where highly sensitive personal information may be scrutinised. Without proper safeguards, these hearings risk compounding trauma for victim/survivors;
5. **Extend the legislation to cover all personal records**: Another important reform to consider is the extension of the amendment to the legislation to go beyond counselling records. The O'Malley Report[18] suggested that consideration should be given to whether the disclosure of medical records should be made subject to a statutory disclosure regime because they give rise to a similar expectation of privacy.[19] We want the legislation to go further and we recommend that the disclosure regime be extended to apply to all '*personal records'*, as defined by section 278 of the Canadian Criminal Code, on which the Irish regime on counselling records is closely modelled. For the purposes of the Canadian regime, a '*record*' is defined as:

   '...any form of record that contains personal information for which there is a reasonable expectation of privacy and includes medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records, personal journals and diaries, and records containing personal information the production or disclosure of which is protected by any other Act of Parliament or a provincial legislature, but does not include records made by persons responsible for the investigation

[17]Central Statistics Office (CSO) Sexual Violence Survey 2022 – Disclosure of Experiences. Available at: https://www.cso.ie/en/releasesandpublications/ep/p-svsde/sexualviolencesurvey2022disclosureofexperiences/keyfindings/

[18] Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences (2020) pg. 84 Available at: https://assets.gov.ie/static/documents/review-of-protections-for-vulnerable-witnesses-in-the-investigation-and-prosecution-of.pdf

[19] Ibid. Para 6.42

or prosecution of the offence.'[20]

The scope of the amendment should be broadened to include all personal records, as defined above. This approach will better protect victim/survivors' privacy rights and minimise the potential for intrusive questioning on evidence which is not directly relevant to the case.

6. **Independent legal representation for complainants**: Complainants should be entitled to independent legal representation at all stages of the disclosure process to ensure their rights and interests are fully protected. Consideration must be given as to how the Legal Aid Board would be able to resource this;
7. **Information for victim/survivors:** To meaningfully support victim/survivors, in addition to having access to independent legal representation at all disclosure hearings that they are provided with clear, timely and accessible information about the nature of the process, their rights within it and what to expect. Their legal representation helps to ensure that their privacy and therapeutic interests are properly advocated for, in proceedings that otherwise centre on the interests of the State and the defence.
8. **Written judicial decisions**: Disclosure decisions must be accompanied by written reasons demonstrating how competing rights have been balanced.
9. It should also be considered that **'disclosure by narrative'** be used in instances where a partial record is being released on grounds non-disclosure could lead to an unfair trial. This would mean that the defence never sees the actual counselling record itself. Provision of a narrative is something which can occur in the context of privileged material, wherein documents are not disclosed, but the general nature of the document may be described to the defence;
10. **Education and training for legal professionals**: Judges, barristers and solicitors must be provided with training on the impact of trauma and the purpose and content of counselling records.
11. **Monitoring and oversight**: Data should be collected on the frequency, ground and outcomes of disclosure applications. This will help identify trends and ensure oversight and accountability in the use of this provision.
12. **Consideration of the impact on counsellors**: The process must also take account of the impact on counsellors and therapists, who are often required to attend disclosure hearings in relation to their clients' notes. These professionals already spend considerable time preparing for and participating in such hearings, which are both stressful and time-consuming. This not only affects them directly but has an opportunity cost for other clients who must forego sessions while hearings are attended or prepared for. If disclosure hearings become the default in every case, there will be a measurable reduction in the availability of counselling hours, potentially delaying or interrupting critical therapeutic support for

[20] Section 278.1.

other victim/survivors.

Head 39: Amendment of Criminal Justice (Sexual Offences) Act 2017 (Prohibition of Advertising or Importuning Sex for Rent)

Background

- A recent report by the National Women's Council, highlights that women in Ireland's private rental sector face growing housing insecurity, with marginalised groups particularly at risk of exploitation. One of the most harmful and gendered forms is the practice of "sex-for-rent", where landlords offer accommodation in exchange for sex activity.[21]
- The report builds on extensive investigative work done by journalists, most notably Ann Murphy[22] and the RTE Investigates: "Sex for Rent": Undercover Renter[23] which brought national attention to the prevalence and harm of this practice.
- Criminalising "sex-for-rent" arrangements is a vital step in recognising and tackling a coercive and highly gendered form of exploitation that disproportionately affects women and those in vulnerable circumstances.
- This provision strengthens the existing understanding of sexual consent under Irish law, as set out in the Criminal Law (Sexual Offences) Act 2017. Sex given in exchange for basic shelter, under threat of homelessness or economic pressure is not freely or voluntarily given. These transactions involve coercion, abuse of power and often exploitation of legal and economic vulnerabilities.
- The explicit inclusion of licensee agreements in the proposed provision, recognises the increasing prevalence of informal "rent-a-room" or shared accommodation arrangements where tenants often lack the protections afforded under formal tenancy agreements.
- These licensee arrangements are particularly vulnerable to abuse, with fewer legal safeguards and are frequently used by individuals in precarious housing situations. By ensuring that both tenancy and licensee arrangements fall within the scope of the new offence, acknowledges the many and diverse ways in which people access housing and the need to protect them from sexual coercion and exploitation.

[21] NWC. (2024). *Sex for rent: An NWC report on sexual exploitation and sexual harassment in the rental housing market.*

[22] Irish Examiner 20 December 2021 Available at: https://www.irishexaminer.com/opinion/commentanalysis/arid-40769502.html

[23] RTE Investigates 17 September 2024 Available at: https://www.rte.ie/video/id/7058/

- If licensee arrangements are to be covered under this legislation, then greater oversight and clearer regulation of such arrangements are essential. While the Residential Tenancies Board (RTB) plays a key role in regulating formal rental agreements, informal housing situations, such as licensee arrangements often fall outside its remit. Strengthening regulation in this area is crucial to ensure that individuals in precarious living situations are not left without protection.
- While it is reasonable to include a defence for those who genuinely had no knowledge of the nature of an advertisement, it is equally important that they are not fully absolved of responsibility.
- Given their central role in hosting and promoting accommodation listings, online platforms must be subject to clear obligations to monitor, report and take action on suspicious content to ensure they do not inadvertently facilitate ongoing exploitation.

Recommendations

1. **Extend Regulatory Oversight to Licensee Arrangements**: Stronger regulation is needed to ensure that people living in informal or licensee arrangements are not excluded from existing tenant protections. The remit of the RTB should be expanded to cover these situations.
2. **Strengthen Platform Responsibility and Moderation**: Platforms that host or promote accommodation listings should provide training for staff and moderators to recognise signs of coercion or exploitation. They should have internal systems in place for reporting suspicious content and accessible means by which users can flag harmful material.
3. **Clarify Licensee Rights and Protections:** Clear, accessible information should be provided about the rights of licensees including what protections are in place and how to access support if those rights are violated.
4. **Inform the Public Through Awareness Campaigns**: A targeted public information campaign to raise awareness about the new offence, individual's rights and available supports is essential to ensure those affected understand the protections now in place.
5. **Monitor Implementation and Publish Data:** Ongoing monitoring of the implementation of the law, including the publication of anonymised data on investigations, prosecutions and outcomes will enable policymakers and service providers to identify trends, assess the effectiveness of the offence and determine where further protections or reforms may be needed.

ENDS.