

The Gillen Report

Preliminary report into
the law and procedures
in serious sexual offences
in Northern Ireland

Executive Summary &
Key Recommendations

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Executive summary

The rise in Prosecutions for sexual offences presents one of the most profound challenges for the courts ... in the early 21st century. These cases are almost invariably of the utmost importance because of the direct impact ... on victims and the indirect impact it has on the wellbeing of our society.

Lord Justice Fulford, Senior Presiding Judge for England and Wales, May 2016¹

1. The Criminal Justice Board,² which exists to oversee reform, change and openness in the criminal justice system, commissioned an independent review of arrangements around delivery of justice in serious sexual offences.
2. The Criminal Justice Board commissioned a Review of the law and procedures in Serious Sexual Offences in Northern Ireland in April 2018. The Right Honourable Sir John Gillen, a former Lord Justice of Appeal, leads the Review, supported by an independent advisory panel made up of representatives of victims' groups, the Northern Ireland Human Rights Commission, the judiciary, members of the legal profession, the Police Service of Northern Ireland (PSNI), the Public Prosecution Service (PPS), the National Society for the Protection of Children from Cruelty (NSPCC), those with legislative responsibility for justice and the law, and those with an academic view.
3. The work of the Review team encompasses and is focused on the formal terms of reference.¹
4. Where it is considered in the public interest and it would bring necessary context or add value to the Review, other related topics have also been considered.
5. The scope of the Review includes, but is not limited to, the following areas:
 - support for complainants, victims and witnesses, from the time of the initial complaint through to post-trial support;
 - restrictions on public attendance at court hearings;
 - pre-recorded cross-examination;
 - the impact of social media on the conduct of court hearings;
 - delay in the court system;

1 Rook & Ward on Sexual Offences: Law and Practice.

2 *The Criminal Justice Board is responsible for overseeing and progressing justice-led Programme for Government commitments, agreeing shared priorities across justice, monitoring progress towards achieving them change and openness in the criminal justice system. The Board is currently chaired by the Permanent Secretary of the Department of Justice and comprises the Lord Chief Justice, the Chief Constable, the Director of Public Prosecutions, and senior officials from the Department of Justice.*

- disclosure of evidence;
 - the definition of consent;
 - the arguments for defendant anonymity;
 - the voice of marginalised communities;
 - support for children and vulnerable adults;
 - arguments for jury trials in serious sexual offences;
 - complementary mechanisms to the criminal justice system; and
 - provisions for restrictions on reporting.
6. The Review formally commenced in May 2018 and focuses on the time frame of an offence, beginning when it was committed to its eventual disposal in the justice system.
 7. The work of the Review team has involved direct contact with over 200 organisations and individuals to hear first-hand evidence and accounts from a wide range of interested parties. Contributors included complainants, defendants who were subsequently acquitted, statutory and voluntary organisations, members of the judiciary and those involved in the legal profession. The work has also drawn on the experiences of 15 countries and various jurisdictions across Europe, the US, South Africa, Australia and New Zealand.
 8. It is widely believed that the UK has one of the finest justice systems in the world. However, in relation to serious sexual offences specifically, the essential background to the Review is that there appears to be a lack of public understanding and confidence, and profound professional concern about, the process of the law in investigating, processing and determining these cases.
 9. Public concerns abound. Reaction to recent trials in Northern Ireland and other parts of the UK involving high-profile individuals, the outcry in England over a series of collapsed trials, and issues around disclosure failings that have contributed to miscarriages of justice are just a few examples of those very real concerns. Equally concerning are myths around rape which need to be robustly challenged. We need some radical rethinking of societal attitudes to sexual abuse in the wake of public campaigns. These concerns and others sit against a backdrop of lengthy delays in the court process in Northern Ireland compared with other parts of the UK.
 10. The preliminary report is the result of listening closely to the voices of those involved in the criminal justice system. It attempts to address the flaws that appear to exist in the law and procedures in serious sexual offences.
 11. While within the terms of reference, there is no requirement to publish a preliminary report, it is being made publicly available for consultation purposes, from 20 November 2018 to 15 January 2019.

12. To ensure that final conclusions have been fully informed, anyone with observations, comments or who wishes to make a positive contribution to the work is invited to submit their views directly to the team. Submissions can be made anonymously in the knowledge that all responses will be carefully considered.
13. The preliminary report can be found online at: <https://gillenreview.org>. The closing date is 15 January 2019. Late responses may not be considered.

Responses can be made by telephone, letter or email using the following details:

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Chapter 1 – Background

14. It has not been the intention of this Review to reinvent the wheel. Whilst I am satisfied that much needs to be changed in terms of the law and procedure relating to serious sexual offences, it cannot be ignored that in recent years there have been many improvements made in the law relating to such offences, in the treatment of complainants, in the standards of investigation, in a far more coherent and enlightened approach to prosecutions than before and in improved court processes and procedures. This opening chapter rehearses some of the salient background issues.

Chapter 2 – The voice of complainants

15. This chapter is the result of my listening to complainants and reading the literature about impediments to justice and a fair trial that confront complainants in serious sexual offences. It addresses the challenges they feel they face legally and procedurally. Indeed, one of my recommendations is that this listening process should continue, with complainants being invited to give feedback of their experience after every trial.
16. The chapter investigates why there is gross under-reporting of these crimes, with England and Wales figures for 2016/17 (reported in 2018) suggesting that of those who had experienced rape or assault by penetration (including attempts) since the age of 16, only one in six (17%) had told the police. The level of reporting has increased somewhat in Northern Ireland over the last year but it is still unacceptably low.

17. For those who do complain to police, the path from complaint was harrowing and the attrition rate was high. Of those who venture into the process, around 40% regret it and drop out.³
18. Complainants who follow the whole process through to the end face the reality that conviction rates are very low. This chapter sets out a raft of relevant statistics on the process but two merit brief reference in this summary.
19. First, in cases that are actually heard in the Crown Court involving sexual offences, the overall conviction rate is falling. It was 63.8% in 2017/18 compared with 73.8% in 2016/17.
20. Secondly, in the Crown Court where the charge was rape, 45.0% of defendants were subsequently convicted of at least one offence of some nature. However, only one in six defendants (15.0%) were convicted of an offence of rape. All these figures for sexual offences are in stark contrast to non-sexual offences, where the conviction rate in the Crown Court is 88.2%.
21. Doubtless one explanation for these differences is that in many serious sexual offence cases it is a question of one person's word against another, without any independent objective evidence. Nonetheless, the conviction rate is troublingly low in serious sexual offence cases.
22. All of these concerns are explored and remedies proposed in detail in the succeeding chapters.

Chapter 3 – Restricting access of the public

23. I favour confining access to trials of serious sexual offences to officers of the court, persons directly concerned in the proceedings, bona fide representatives of the press, a parent, relative or friend of the complainant or, where the accused is under 18, of the accused, to remain in court together with such other persons (if any) as judges, or the court, as the case may be may in their discretion permit to remain.
24. In saying this, I fully appreciate that a criminal trial is a public event. The principle of open justice puts the judge and all who participate in the trial under intense scrutiny. The glare of contemporaneous publicity ensures that trials are properly conducted. It is a valuable check on the criminal process.
25. However, open justice is never an absolute concept. In Northern Ireland we exclude the public in family cases and youth justice cases.
26. Members of the public are excluded from attending rape trials and certain other sexual offences in the Irish courts. In New Zealand, New South Wales and, even

³ PPS review of cases in which there was a No Prosecution decision. Includes victim withdrawal and those where a report had been made by a third party to police but the victim did not wish the matter to be investigated. Similar findings by PSNI of 41% from research completed for rape incidents reported during January to July 2017.

more relevantly, Scotland, the public are excluded when the complainant gives evidence.

27. In the context of a small jurisdiction with local courts; public familiarity with the complainant is often present. There is also the risk of jigsaw identification where revelation of disparate matters such as location, addresses, schools, friends and family members of the complainant can all be easily pieced together locally to identify the complainant despite the presence of special measures to protect identification.
28. Moreover, confidence-building measures for complainants who fear the cruel glare of public exposure (particularly in high-profile trials in front of packed public galleries) are now vital.
29. If we are to challenge gross under-reporting, high dropout rates and an unacceptably daunting trial process, I consider the arguments in favour of restricted access measures carry convincing weight.

Chapter 4 – Pre-recorded cross-examination

30. The evidence-in-chief of a complainant is often video recorded shortly after the initial report has been made to police. This often takes place at a police station. The recorded evidence is subsequently made available to be presented at trial in that video format.
31. In addition to evidence-in-chief, I am in favour of the facility of pre-recorded cross-examination, away from the court, being afforded initially to children and vulnerable complainants⁴ and eventually to all complainants.
32. Provided all the relevant documentation had been disclosed to the defence, this cross-examination could take place long before the trial itself and in a location remote from the court setting if necessary. This would take place without public presence, with the defendant observing by a live link and, in the case of children, with questions approved in advance by the judge. The cross-examination would be recorded and shown to the jury in this format, which can be edited to exclude any prejudicial material.
33. This would represent another vital building block in restoring the confidence of complainants in the criminal justice system and procedure. It would potentially reduce or eliminate the need for a complainant to give evidence in person at trial. It would permit them to give evidence remotely in a safe and secure environment away from the court and the defendant.
34. The risks of secondary victimisation and traumatisation for the complainants are thus substantially reduced.

⁴ The definition of 'vulnerable' should be extended to include all complainants in serious sexual offences as is the case in Scotland.

35. It lends itself to better-quality evidence as it is given closer to the alleged event and is recalled at a time when the complainants are removed from court stressors.
36. This is particularly relevant in the case of young children and vulnerable complainants whose memories can fade more rapidly than others and who are more prone to guessing when unsure.

Chapter 5 – Separate legal representation

37. Complainants are often shocked, and members of the public surprised, to discover that complainants do not have legal representation. Prosecuting counsel represents the state and complainants are simply witnesses.
38. I consider that a measure of publicly funded provision of legal representation for complainants is essential and would represent yet another confidence-building block for complainants.
39. This concept is neither novel nor uncommon in both inquisitorial and adversarial systems worldwide.
40. The right to have legal representation to oppose cross-examination on previous sexual history and to oppose disclosure of personal medical records seems eminently sensible.
41. I also consider a measure of legal advice to explain the complexities of, and the legal developments occurring in, the legal process should be available from the time the matter is first reported to the police up until the commencement of the trial although not during the trial. This would be time-limited and would avoid the costs of legal attendance during the trial, which in itself might confuse the jury as to the respective roles of counsel. A classic example might be to advise on whether police were unreasonably seeking complainants to declare excessive amounts of personal data under the threat of not proceeding with the case.

Chapter 6 – Myths surrounding serious sexual offences

42. Frustratingly, many people, men and women, still harbour often unspoken views about appropriate behaviour for individuals according to their gender. For example, if a woman has had consensual sexual relations with other men in the past or has consented previously to the man against whom she is now making an allegation of rape, she has gone some considerable way to forfeiting the right of refusal.
43. I am in favour of positive steps being taken to combat the presence of rape myths and stereotypes about sexual offences that are embraced by juries and that may influence their judgement.

44. These myths may include that:
- rape only occurs between strangers;
 - victims provoke rape by the way they dress or act;
 - victims who drink alcohol or use drugs are asking to be raped;
 - rape is a crime of passion;
 - if complainants did not scream, fight or get injured, it was not rape;
 - you can tell if someone 'really' has been raped by the way they act;
 - victims cry rape when they regret having sex or want revenge;
 - only gay men get raped/only gay men rape men;
 - sex workers cannot be raped;
 - a woman cannot be raped by her husband/partner;
 - victims who have remained in an abusive relationship are responsible for any rape that follows;
 - victims will report immediately and give consistent accounts; and
 - false allegations are rife.
45. To combat these myths, we need local research to be commissioned to ascertain their prevalence and extent in Northern Ireland.
46. We should also introduce educational material which could include a short video outlining the fallacy of these matters and judicial directions to this effect for the benefit of educating jurors at the very commencement of the trial, together with, if necessary, expert evidence on the subject.
47. Of equal importance is the need for well-funded public and school campaigns to debunk these myths and address the consequences of serious sexual offences.

Chapter 7 – Social media

48. I am in favour of strong measures to control the current impact that social media is having in trials of serious sexual offences.
49. Use of social media is having an adverse impact to the extent that in some instances it is potentially:
- removing the right to complainant anonymity;
 - destroying the reputations and lifestyles of complainants and innocent accused persons;
 - nullifying the integrity of judicial orders;
 - rendering jury trials unfair; and
 - impairing the administration of justice overall.

50. This is a widespread concern throughout jurisdictions worldwide. We need to avoid piecemeal approaches and instead to push forward a cohesive national framework to meet a problem that is national in nature and potentially strikes at the heart of our criminal justice system.
51. That joint approach needs to be based on empirical evidence rather than broad assumptions often based on anecdotal accounts.
52. There is currently a government inquiry into the whole issue being carried on in England and Wales, and we should be wary of taking unilateral steps in Northern Ireland until that is completed in early 2019.
53. To an extent, we are belatedly addressing it. In dealing with social media, we need to see a mix of persuasion balanced with regulation.
54. Hence we have recommended borrowing from those other jurisdictions a suite of legislative and procedural steps to combat the current menace.
55. These include a raft of measures to:
 - restate and control the status of these social media platforms;
 - enact strong judicial powers to control access to websites in the course of the trial process;
 - create fresh offences aimed specifically at jurors who offend against judicial guidance on this issue;
 - improve attempts to encourage jury understanding of the dangers; and
 - provide a publicly funded public/school education campaign to promote appreciation of the problems social media throws up for the rule of law.

Chapter 8 – Cross-examination on previous sexual history

56. I am committed to invoking measures to enforce the law prohibiting cross-examination about previous sexual history save in the rare circumstances that the law currently admits.
57. It is not difficult to understand how research evidence and witness testimony over decades have raised concerns about the extent to which rape complainants are facing humiliating and traumatic trial processes.
58. Phrases such as ‘second rape’ or ‘judicial rape’ have become common parlance due to the enduring evidence from complainants of their adverse treatment in court.
59. Accordingly, restrictions on sexual history evidence, by limiting evidence and cross-examination to only highly probative material, are justified by the need to reduce the humiliating and distressing nature of cross-examination in rape trials as well as protecting a complainant’s right to privacy.

60. There are too many voices being raised suggesting that our present restrictions on such cross-examination are being ignored and that courts are insufficiently robust in protecting complainants in such matters.
61. This chapter recommends a number of measures to encourage a more robust judicial attitude to restricting cross-examination on previous sexual history including, as earlier set out, the right for the complainant to be legally represented should it arise.

Chapter 9 – Delay

62. The criminal justice system, from the beginning of the process to the end⁵, in Northern Ireland takes twice as long as the system in England and Wales. The delays are increasing year-on-year for serious sexual offences.
63. For adults, the greatest delay is found in rape cases⁶ (based on principal offence disposed). The 943 days average⁷ in 2017/18 for rape cases is 69% longer than the overall Crown Court average (558 days).
64. However, the greatest delay of all is found in serious sexual offences involving children⁸ (based on principal offence disposed), where cases take an average of 986 days to complete.
65. The average time taken for sexual offences excluding rape in the Crown Court (based on principal offence disposed) has increased by 22% since 2015/16 from 687 days to 839 days in 2017/18.
66. Tackling the inordinate delay in the system is one of the cornerstones of this Review. The delay is found in the PSNI investigation, the Public Prosecution Service (PPS) allocation of cases for consideration and in the court process itself. There are far too many adjournments and a failure to mandate early engagement of both defence and prosecution counsel to address the issues in a timely fashion.
67. I sense an air of organised hypocrisy around this issue. Everyone loudly recognises that the delay in processing serious sexual offences is long and yet little or nothing is done to address a feature that is growing and deteriorating year by year.
68. This unending delay makes a major contribution to the reluctance of complainants to engage and places an unacceptable stress on both the complainant and the accused.

5 From offence reported to case dealt with at court.

6 Relate to substantive versions of the offence only.

7 Average is measured as the median number of days taken, i.e. the number of days at which 50% of those cases included under counting rules have been completed.

8 Relates to cases where the principal offence was a sexual offence that specified the victim was a child in the offence description.

69. In this chapter I outline a number of root-and-branch changes, which include:
- the urgent need for the PSNI to be guided in its inordinately drawn-out investigative procedures from the very outset by the PPS;
 - the disclosure process, in itself probably the major cause of delay, to be gripped from day one of the investigation (see chapter 10, below);
 - the PPS to urgently end a system that can allow files to lie unallocated for months on end;
 - the PSNI and the PPS to be properly resourced to achieve these ends;
 - a completely fresh approach to judicial case management, with firm time limits, an end to a culture of unjustified committal proceedings and unmerited adjournments, and early mandatory engagement of defence lawyers in the entire process; and
 - provision of properly coordinated technology so that valuable court and jury time is not wasted by interminable breakdowns in current systems.

Chapter 10 – Disclosure

70. Disclosure is fundamental to a fair trial and involves the obligation on the part of the Public Prosecution Service to disclose relevant material collected by the PSNI in the course of an investigation to the defence. The obligation is to disclose any material found that may undermine the prosecution case or support the defence case. In England and Wales disclosure errors have led to miscarriages of justice and some people have gone to prison as a result.
71. The significant growth in the use of digital technology in society has meant that the way in which crimes are investigated and prosecuted has evolved. This has placed a significant strain on the capacity and capability of those carrying out investigations.
72. It continues to blight our criminal justice system, despite the flaws having been highlighted for some years. The recent history of reform, despite a plethora of reviews and guidelines, in this area discloses a saga of protracted dimensions and continued inertia.
73. The current system is being operated in a completely outmoded, inadequate and inefficient manner, bereft of modern technology and sufficiently skilled operators.
74. If the seemingly immutable problem of disclosure is not addressed in Northern Ireland, delay in the system will remain endemic, innocent people may be convicted and justice will be irreparably damaged.
75. The legislation that governs disclosure, namely the Criminal Procedure and Investigations Act 1996, although predating the enormous expansion in electronic communication and social media, is perfectly adequate to meet

the challenge. The problem has been, and continues to be, the flawed implementation over several years.

76. This chapter makes a large number of detailed recommendations to address these flaws. These include:
- challenges to the PSNI culture, which too often fails to see disclosure of third-party material/schedules of unused material as at the very core of the investigative process and the imperative of timely decision-making;
 - that disclosure is currently seen merely as an add-on at the end of investigations, which then adds enormous delay to the whole matter; that has to change;
 - the need for specially trained designated police Disclosure Officers, working with PPS guidance, in all serious sexual offence cases where disclosure is an obvious issue;
 - early positive and enthusiastic meetings between, and the engagement of, the defence and the Public Prosecution Service to exchange disclosure schedules is another vital ingredient;
 - firm judicial case management, with judges setting time limits for disclosure schedules to shape expectations and allow for measurement and evaluation of progress, is also pivotal; and
 - finally resources have to be invested in training skilled disclosure operators and technological advances to hasten the process.

Chapter 11 – Consent

77. Consent is often the crucial issue in serious sexual offences, and yet it is a very complex and difficult legal area.
78. It is defined under The Sexual Offences (Northern Ireland) Order 2008 (the 2008 Order) as follows: ‘A person consents if he agrees by choice, and has the freedom and capacity to make that choice.’ It was designed to centre sexual offence law upon respect for individual sexual autonomy and freedom of choice.
79. The difficulty is that the definition is vague, with the result that juries may bring sexual stereotypes into play in determining whether there was consent.
80. Moreover, requiring the defendant, as the law does, to ensure he has a reasonable belief that consent has been given does not clearly define or suggest what should and should not be considered reasonable, again leaving the door open for stereotypes to determine assessments of reasonableness.
81. I believe there should be a discernible shift towards a requirement for some measure of affirmative or participative expression of consent and away from a focus on resistance as a means to prove the absence of consent.

82. Accordingly, we have proposed amendments to the 2008 Order as follows:
- to follow the example in New Zealand and to provide that a failure to say or do anything when submitting to a sexual act, or to protest or offer resistance to it, does not of itself constitute consent;
 - to expand the range of circumstances as to when there is an absence of consent to include, for example (i) where the complainant submits to the act because of a threat or fear of violence or other serious detriment to the complainant or to others; (ii) where the only expression of consent or agreement to the act comes from a third party; and (iii) where the complainant is overcome, voluntarily or not, by the effect of alcohol or drugs; and
 - to add that, in determining whether there was a reasonable belief in consent, the jury should take account of a failure to take any steps to ascertain whether the complainant consented.
83. Separately, I have considered introducing the concept of gross negligence rape, as in Sweden. This would apply if the accused genuinely believed there had been consent but had no reasonable grounds for so believing as they had failed to take reasonable steps to ascertain consent. I have rejected it as it might risk undermining the egregious nature of the offence and establish an unwelcome hierarchy of rape.

Chapter 12 – The voice of the accused

84. Currently, the complainant in serious sexual offence cases is anonymised because otherwise complainants would be unlikely to come forward. The accused is not anonymised unless there would be a risk to their life or to do so would cause the complainant to be identified.
85. I do believe that the accused should be anonymised pre charge. I do not favour a change in the current law to anonymise the identity of the accused after they have been charged.
86. This matter generated more controversy and division of opinion than any other issue in this Review.
87. Despite the severe consequences, both physical and mental, often suffered by accused persons (and their close family members) who have been acquitted of serious sexual offences, together with the public opprobrium often visited on them (and their families), I currently consider there are two key reasons for maintaining the status quo.
88. First, a crucial advantage of the publication of the name of the accused post charge — and I emphasise post charge — is that there is clear evidence in Northern Ireland and elsewhere that it serves to bring forward other complainants — for example, in institutional abuse or serial offender cases.

89. Such additional witnesses can be vital in a genre of crime where it is often a case of one person's word against another with little further evidence, where currently approximately 83% of complainants are not reporting to the police and where acquittal rates are already very high.
90. Secondly, it is extremely difficult to justify the identity of an accused being anonymised in serious sexual offences and not in other heinous offences such as murder, crimes of unspeakable cruelty to children and other offences of non-sexual extreme violence etc.
91. It is not without significance that Ireland is the only common law country that we know of that grants anonymity as a matter of course to accused persons post charge, and even this is limited to only certain sexual offences and not all, albeit that many follow the same path that we currently adopt in Northern Ireland of granting anonymity where otherwise the identity of the complainant would be revealed and in cases where a threat to life etc. can be established.
92. The principle of publication post charge should therefore remain. It is noted that teachers should have the same statutory protection as in England and Wales.
93. Publication of a person's identity pre charge clearly falls on the other side of the line and I recommend that this be prohibited save in the rare instance where it can be established it is in the public interest not to do so when, for example, an accused has taken to flight.

Chapter 13 – The voice of marginalised communities

94. If the law and procedures in serious sexual offences are to be fairly applied to all our citizens, it must include those in marginalised communities, minority black, Asian and ethnic minorities, those with physical and learning disabilities, those with mental health problems, LGBT+, older people, Traveller communities, sex workers and purely in the context of serious sexual offences, males, who, for a number of reasons, may be even more reluctant than others to report these crimes and come within the criminal justice system.
95. We must reach out to these groups. We desperately need empirical research commissioned by government to learn the prevalence, extent, nature and experiences of serious sexual offences among these groups, with a consideration of what laws, procedures and mechanisms, including specialist sexual violence services, alone or in combination with the conventional law and procedures in the legal system, may establish a construct of victim justice for them.

Chapter 14 – The voice of the child

96. The issue of child serious sexual abuse is a topic in its own right.
97. In Northern Ireland in 2011/12, there were 985 sexual offences recorded in relation to children. In 2017/18 this had almost doubled to 1,936. Sexual

offences against children make up the majority of reported sexual crime to the PSNI. As already indicated, these cases generate the longest delay.

98. However, the under-reporting and attrition rate of sexual crime against children and young people is enormous. The Children's Commissioner for England found that only one in eight children who are sexually abused were identified by professionals.
99. Our concern, therefore, has been to create signposts for those in authority in this field as part of a wider response of the community to this particularly invasive and traumatic aspect of serious sexual offences.
100. I do not consider the interests of children as complainants or as accused requires legislative change.
101. The fact of the matter is that there is overwhelming evidence that the law as it stands is not being employed consistently or, in some cases, at all as it was intended.
102. The failures include:
 - lack of awareness of the nature of child trauma amongst professional lawyers/judges/police;
 - refusal to adequately address special measures at court for them;
 - excessive and damaging waiting times;
 - rare use of registered intermediaries;
 - chaotic achieving best evidence (ABE) interviews at an early stage with technical failures; and
 - failure on the part of the Department of Justice to adequately introduce reforms suggested some ago by the Independent Inquiry into Child Sexual Exploitation.
103. These are but some of the problems besetting the treatment of children in these cases, which require new and creative procedures. We have addressed each of these problems in a specific set of recommendations.
104. In particular, we have recommended a fresh culture of cross-examination, where defence must produce written questions in advance for judicial approval, certain facts should be agreed in advance and questions must accommodate the age and frailties of a child's memory with simple language, without additional comment. Moreover, we have recommended a greater emphasis on the training of all involved in the criminal justice system and a much firmer case management process with a strong emphasis on protecting children from being re-traumatised by the very process that is meant to protect their rights.
105. Finally, I have urged that informed and creative consideration be given by the Department of Justice to the Barnahus scheme in Iceland and its offshoot, now being piloted in Child Houses in England and contemplated in Scotland. The

Barnahus model seeks to embed the justice process within child protection disclosure procedures by ensuring legal, social care and medical professionals work collectively and aims to provide a comprehensive service for children in serious sexual offences.

Chapter 15 – Training

106. I share the concerns of a number of complainants who perceive there to be a continuing lack of understanding throughout the process about the impact that a trauma can have on a victim and how they respond to the trauma.
107. Training on the prevalence and changing character of serious sexual offences should be undertaken on a regular basis, regularly refreshed and include an assessment of those identified as most vulnerable (for example, people with disabilities, older people, ethnic minorities and those with insecure immigration status).
108. Thus all publicly funded advocates should have to undergo specialist training on working with vulnerable victims and witnesses before being allowed to take on serious sexual offences. It is noteworthy that legally aided family practitioners are on an approved list.
109. Issues surrounding appropriate procedures do not operate in isolation but rather interact with and compound one another. Successful measures of training should engage multiple stakeholders simultaneously, including not only key service providers but also community leaders, non-governmental organisations and peer groups among others.
110. Training of participants in the criminal justice system surrounding serious sexual offences requires a coordinated approach in which common practice threads are included by each different discipline. The Department of Justice, I suggest, is best placed to take the lead in coordinating such a training strategy.

Chapter 16 – The jury system

111. A growing number of credible voices are asking whether the jury system remains fit for purpose in serious sexual offences in the wake of low convictions, the apparent polluting effect of rape myths and stereotypical characterisation and the menace of social media intrusion. Abolition of juries in these cases would solve the problem of jury myths and social media intrusion, and provide reasoned judicial decisions for both complainants and accused persons instead of what some see at times as imponderable jury verdicts.
112. Whilst increasingly I see the strength of the arguments in favour of a judge-alone or 'judge with two assessors' remedy (and a growing number of legal professionals and laypeople have strongly pressed me on this latter suggestion),

I am not persuaded at this time that there is an evidential basis for such a fundamental change to our long-standing commitment to jury trial.

113. The jury system in criminal trials is based on the principle that the determination of guilt or innocence of an accused should be undertaken by members of the community in Northern Ireland who can be relied on to follow judicial direction in order to guarantee a fair trial. Our whole system is based on faith in juries to be loyal to their oath and to follow judicial directions.
114. Moreover, in the troubled context of Northern Ireland, it is important to have citizens actively engaging in the administration of justice.
115. In any event, juries of 12 coming fresh to the task arguably are quintessentially better suited than battle-hardened judges, who have 'heard it all before', to determine truth or fiction in cases where often it is a pure question of credibility.
116. However, I believe legislation should make broad provision for those rare cases where the judge, 'in the interests of justice' or 'the effective administration of the law' accedes to an application by either of the parties for a judge-alone trial.
117. This should occur only where the defence consents and makes the application in the first place. A classic example might be where a high-profile case had received such widespread publicity that it would be difficult for any jury to form a view untainted by the publicity to which it had inevitably been exposed.
118. I found no basis either for the Scottish concept of not proven verdicts as it might only introduce further uncertainty and doubt about jury verdicts; or a gender quota for juries without evidence-based research favouring it.

Chapter 17 – Measures complementing the criminal justice system

119. One of the key themes of this Review is the need to increase the sense of autonomy and free choice of complainants. The fact of the matter is that there is massive under-reporting of serious sexual offences and, of those who do come forward, an unacceptable number then drop out.
120. For many reasons the criminal justice system is not meeting the needs of such complainants. If we are to address this problem, we need to balance seemingly contradictory imperatives: individual autonomy versus collective good; and adherence to rules versus common-sense flexibility.
121. Hence this chapter recommends that the Department of Justice consider the concept of restorative practice and alternative provision of facilitator services as an additional aspect within the criminal justice system for serious sexual offences, whilst canvassing the possibility of alternative solutions outside the system for those complainants who find it currently unacceptable.
122. Such an approach must be completely victim-led. By victim-led, I mean the victim alone must be able to exercise their choice to explore this avenue in a

totally unpressurised and open fashion. It is only by adopting this approach that we will avoid the risk of re-traumatising complainants. It should only be invoked in those cases where complainants have specifically requested to engage this process and, of course, where the perpetrator not only agrees but has admitted guilt. Absent the express wish of the victim and the unequivocal admission of the perpetrator, it cannot and should not be used.

123. There will clearly be circumstances where it cannot be permitted. These would include, for example, where the use of extreme physical violence had been used, multiple perpetrators, use of a weapon, where there was obvious evidence of abuse of power and manipulation during the process, and, of course, child sexual abuse.
124. To aid this process and to provide further avenues of autonomy and control to complainants, I recommend repealing section 5 of the Criminal Law Act (Northern Ireland) 1967 to permit doctors, nurses, social workers and counsellors to discuss the complainant's account with them, without the legal obligation to report the matter to police save where children and vulnerable adults were involved.

Chapter 18 – Resources

125. The state and policymakers have two fundamental and unbreakable obligations: first, to those who have suffered unspeakable sexual crimes that strike at their human dignity and bodily integrity, with life-changing consequences in many cases; and, secondly, to those who are accused of these offences so as to ensure a fair trial and the innocent are not convicted.
126. Resources necessary to implement this Review have to be seen in the context of the cost of sexual violence to victims and the community at large. It is staggering in its dimensions.
127. The estimated cost of domestic violence and abuse in Northern Ireland for 2011/12 was calculated by the then Department of Health, Social Services and Public Safety as £674.3 million.
128. The costs for sexual violence occurring outside of the partner setting and excluding child victims of rape and sexual assault was calculated to be £257.3 million for 2011/12.
129. These Northern Ireland figures are unsurprising in light of a report from the Home Office in July 2018, *The Economic and Social Costs of Crime*, which recorded the annual cost of rape in 2015 /16 prices was £4.8 billion (for an estimated 121,750 rapes) and for other sexual offences (an estimated 1,137,320 cases) £7.4 billion.
130. In this report, I have made a series of recommendations, both strategic and operational. All of these seek to deliver both short-term and long-term

improvements to our current arrangements for delivering justice in serious sexual offence cases, many with potentially far-reaching benefits. They have the potential to have a powerful physical and mental impact on both complainants and accused.

131. Resourcing, to a large extent, lies at the heart of our system's ability to deliver many of these improvements. It is not a case of doing more with less or simply working smarter, but of properly identifying where additional resource is required to deliver my recommendations and ensuring that it is in place as soon as possible. Without this investment, at least some of the recommendations cannot be successfully implemented, and if efforts are made to do so in the absence of adequate resourcing, they are liable to fail in their aspiration.
132. The relevant statutory agencies need to conduct a comprehensive resource impact assessment, with the assistance of affected stakeholders, into my recommendations, individually and cumulatively. This should include both the direct costs arising — for example, from deployment of additional PSNI and PPS resources — and indirect/consequential costs — for example, revisions required to the legal aid regime to support any enhanced services from counsel and solicitors at court.

Key recommendations

This report contains a large array of individual recommendations, all of them important and relevant, and together they create a pattern of coordinated reform.

Sixteen key recommendations have emerged, around which the others revolve:

1. There is a clear need for increased awareness of the existence of and reasons for the vast under-reporting of serious sexual offences and the high dropout rate of those entering the criminal justice system.
2. Access of the public to trials involving serious sexual offences to be confined to close family members of the complainant and the defendant. Access for the press should be maintained.
3. Provision should be put in place to allow for early pre-recorded cross-examination, initially of vulnerable people, to be conducted away from the court setting. This provision should eventually be extended to include all complainants in serious sexual offences.
4. A measure of publicly funded legal representation should be offered to complainants from the outset.
5. Measures should be introduced at the outset of the trial to combat rape myths. This may involve presenting to the jury educational material, a short video, judicial directions and, where appropriate, supported by expert evidence. In the wider context there is a need for an extensive public awareness and school education campaign.
6. New legislation should be developed and introduced to manage the dangers created by social media. There is a need to increase jury awareness of the risks social media create, specifically in serious sexual offence trials.
7. A more robust judicial attitude and case management approach to prevent improper cross-examination about previous sexual history.
8. Steps need to be taken to combat excessive delay in the justice system. A wholly new mind-set is required, which will involve front-loading the legal system with an early-time-limited and case managed system that has at its core early joint engagement by both prosecution and defence representatives.
9. To introduce into the disclosure process greater and earlier trained Police Service of Northern Ireland (PSNI) specialists, with guidance from the Public Prosecution Service (PPS) from the outset, firm time-limited and early judicial management, and resource-led development of relevant digital technology.

10. The identity of the accused should be anonymised pre charge and the accused should have the right to apply for a judge-alone trial in the rare circumstances where the judge considers it to be in the interests of justice. I do not consider the identity of the accused should be routinely anonymised post charge.
11. The Department of Justice should take steps to commission individual research projects to gather knowledge and data in Northern Ireland on the prevalence, extent, nature and experiences of serious sexual offences. This should be aimed to identify how current law and procedures impact on black, Asian and minority ethnic groups, immigrants, LGBT+, Traveller communities, sex workers, older people and those people with a physical or learning disability or those with a mental health condition.
12. Introduction of a radical departure from the traditional style of advocacy when dealing with children and vulnerable adults is needed. The potential traumatising of children and vulnerable adults must be prioritised. New advocacy skills are required by the legal professions to match this new culture.
13. The Judicial Studies Board, the Bar Council and the Law Society should afford a higher priority to training and awareness from outside agencies on such matters as the trauma suffered by victims, rape mythology, jury misconceptions and jury guidance. Training should also include topics such as under-reporting and the reasons around withdrawal of complainants from the process of sexual offences, and how best to approach the cross-examination of children and vulnerable witnesses.
14. All serious sexual offences should continue to be tried in the Crown Court with a jury, without the need for a gender quota or a not proven verdict.
15. Alternative mechanisms, including an entirely victim-led concept of restorative practice, should be considered both inside the criminal justice system and parallel to it.
16. The appropriate statutory agencies should deliver a comprehensive resource impact assessment, with the assistance of affected stakeholders, into my recommendations, individually and cumulatively. This should include both the direct costs arising — for example, from the deployment of additional PSNI and PPS resources — and also indirect and consequential costs — for example, revisions required to the legal aid regime to support any enhanced services from counsel and solicitors at court.

