Department of Justice

Consultation on Good Character References at Sentencing in Criminal Proceedings

Response from the Commissioner Designate for Victims of Crime for Northern Ireland

November 2026

1. General Comments

1.1 The Commissioner Designate for Victims of Crime warmly welcomes consideration of the issue of Good Character References at Sentencing and the Minister's desire to introduce legislative change in this mandate.

1.2 This response is framed primarily through the lens of victims' interests. Numerous victims have raised this issue with this office over a sustained period and a very small proportion of these have attracted media attention in recent years highlighting concerns.

1.3 When a person convicted of domestic abuse or sexual offending is surrounded by testimonials that speak to their kindness, professionalism, community standing or reputation, the court risks communicating something profoundly damaging; that the offender is still, in some essential sense, a 'good person', and that the experience of their victims must now be balanced against that reputation. For victims, that is not abstract. It is a further injury.

1.4 The use of Good Character References at sentencing tells victims that their truth is being outweighed by someone else's reputation; that their abuse is being reframed as some sort of aberration committed by an otherwise admirable person. This is particularly egregious in cases of domestic and sexual abuse where perpetrators often rely on respectability, status and community trust. The so-called 'good character' is not incidental to the offending. Most frequently, it is the mechanism of it. It is how the offender was believed, protected, promoted, trusted with responsibility, trusted with children. It is how the offender was able in the past to dismiss a victim's account as implausible.

1.5 While these more high-profile cases have related to a range of crime types, the ones that have generated the greatest public concern relate to Domestic Abuse / Sexual Violence cases. It is clear from coverage of cases (for example the SDLP Councillor in the rape case of Kielan Mooney) that at a very basic level change is needed to formalise the process and ensure greater accountability. It is therefore incumbent on legislators to act in this mandate to make improvements where we can.

1.6 Notwithstanding the points above, the Commissioner Designate is concerned that the Consultation proposals are not ambitious enough and do not include the most suitable option to address this issue.

1.7 Permitting the continued use of good character references at sentencing for domestic/sexual abuse cases, even with improved guardrails as proposed in Options 2 and 3, risks reinforcing the very myths and power imbalances that victims are routinely required to overcome.

1.8 This issue is not a technical point of procedure. It cuts to the very heart of whether victims are truly listened to, protected and treated with dignity by the criminal justice system. We must grasp the nettle. If an approach is wrong, we should remove it – not tinker around its edges. The most suitable option to address this issue is to **prohibit the use of such references for domestic and sexual abuse cases at the sentencing stage** and to do so in this mandate**.**

2. Specific Comments on the proposed options

Option 1 – Retain the current legal position.

2.1 Doing nothing is not an option. Change is being demanded by victims, by advocates, by the public and by most sectors of society. It is essential, if we wish to retain any degree of trust and confidence in our criminal justice system, that we make whatever changes we can, now.

2.2 The current approach leaves victims exposed to the same harm, humiliation and minimisation that the consultation document recognises as a problem. Delaying the opportunity to address this issue would amount to an acceptance that the reputational interests of an offender should continue to take precedence over the dignity, safety and wellbeing of the person harmed.

2.3 This option should be rejected.

Option 2 – Require the submission of good character references at sentencing by affidavit.

2.4 Whilst this option would undoubtedly help formalise the process, provide greater clarity for referees as to what they were signing up to and provide stronger avenues for scrutiny, the introduction of an affidavit has the potential to turn an already traumatic process for victims into a more formalised, more prolonged and more traumatic one.

2.5 Whilst some referees may be guilty of misleading the court in some references, the Commissioner Designate does not believe that dishonesty is the main issue here, and when it comes to DA/SV cases, the reality is that the referee may be comfortable at the prospect of being cross-examined on a reference that speaks to the individual's standing in the local community.

2.6 We must not forget that what makes these cases different is that the social standing/public persona is often the shield that abusers build around themselves to silence victims, enable access to victims and dismiss allegations as implausible. We just need to look at the Jimmy Saville example or the Charles Elphicke case to see the mechanics of this type of abuse in action.

2.7 There is also a real risk that those providing references may not do so entirely freely. Family members, friends, colleagues, or people connected to the offender may feel pressure to provide a positive account. Removing the ability to rely on such references would remove such pressure and protect the integrity of the process.

2.8 An affidavit does not remove the harm caused by a character reference. It may simply create a further opportunity for the reference to be presented, emphasised and tested in open court. The victim may then be required to endure not just the content of the reference, but also the process of that testimony being examined, challenged and cross-examined.

2.9 This option risks prolonging the sentencing hearing, increasing the emotional burden on the victim and has the potential to turn sentencing into a further contested hearing about the offender's good character.

2.10 This option should be rejected.

Option 3 – Restrict the circumstances in which good character references may have a mitigating effect at sentencing.

2.11 This proposed option does not go far enough from a victim's perspective. While it may limit the form, source or content of some of the most egregious examples of good character references, it fails to address the underlying problem.

2.12 The courts have already recognised, as noted in the consultation document, that personal mitigation will carry limited weight in cases involving serious offending.

Yet in practice, such references continue to be routinely presented to sentencing judges.

2.13 This demonstrates that existing restrictions and judicial guidance are not operating effectively. If the law already accepts that these references have limited relevance in serious cases, then the question must be asked: why are they still be routinely used? Victims should not have to tolerate further harm for the sake of a practice with such recognised limited value.

2.14 Option 3(i) proposes that the restrictions are limited to circumstances where the court may wish to consider the offender's prospects of rehabilitation or risk of reoffending. It is entirely inappropriate however for such assessments to be influenced by the personal opinions of individuals who may be emotionally involved, under pressure or unable to provide an objective view.

2.15 Good character references are not clinical assessments and are not a substitute for professional assessment. Once an offender has been convicted, the court embarks upon an assessment of both the harm caused and the offender's culpability. In assessing harm, the court may have regard to a Victim Personal Statement, which is subject to a clear procedural framework and may be tested where appropriate. Where a more detailed professional assessment of harm is considered necessary, the court may also obtain a specialist victim impact report from a psychologist or psychiatrist.

2.16 Conversely, in assessing the offender's culpability and personal mitigation, the court is routinely presented with a broad range of material, including pre-sentence reports, medical or psychological evidence, and character references from employers, colleagues, friends and family members attesting to the offender's good character and personal circumstances.

2.17 The justice system must recognise that the rights of victims are not secondary to the rights of the offender. Where a court needs to understand dangerousness, risk, culpability, rehabilitation needs beyond that available in a pre-sentence report, it should equally rely on properly qualified professional judgement.

2.18 Option 3(ii) of the consultation document proposes continued use where '*the court considers that it would be in the interests of justice to take the reference into account in mitigation'.* Such a restriction is way too broad and could likely be argued to apply in every case. If the purpose of this consultation is to make

improvements in our system regarding GCRs, adopting such an approach will not shift the dial on this issue.

2.19 The Department of Justice's consultation notes the weight attached to character evidence diminishes where there is a strong need for deterrence, public protection, or where the offence involves a serious breach of trust.

2.20 Our own Court of Appeal has repeatedly stressed that personal mitigations such as good character references "will carry limited weight where a deterrent sentence is required".

2.21 Such references do not reliably reduce sentences in serious cases. They **do not** provide information the court cannot obtain elsewhere. Pre-sentence reports, prosecution and defence submissions, evidence about remorse, victim empathy, previous convictions, employment, health and family circumstances can all be determined from other sources.

2.22 They are an established practice, with very lax processes surrounding their submission that cause unnecessary harm with little, if any value to the court. They are, quite frankly, not worth the paper they are written on.

2.23 A restriction on the circumstances in which good character references can be sought does not prevent the harm caused to the victim having to listen to the offender's reputation being advanced as mitigation in the very case where their offences have just been adjudicated.

2.24 This option should be rejected.

3 There is another way.

The Commissioner Designate welcomes the fact that the Minister is minded to take a first step towards reform of this practice within this mandate and wishes to propose a fourth option for consideration as the way forward for the use of good character references at sentencing in criminal proceedings for Northern Ireland:

Option 4 – to prohibit the use of GCR in DA/SV cases at sentencing with a narrow exception for Judicial discretion.

3.1 Removing good character references at sentencing for other crimes is certainly worth exploring in the wider sentencing review but may well need more consideration and more time than exists in this mandate.

3.2 What is achievable however is for the Department to legislate to prohibit the use of good character references from non-objective parties – family members, friends, colleagues, religious or community figures – in sentencing for domestic and sexual abuse offences.

3.3 This is not a proposal to abolish consideration of good character per se. The courts will still have access to pre-sentence reports, prior convictions, risk assessments, medical reports etc, all of which can help inform thinking around the individual culpability, rehabilitation and dangerousness.

3.4 It is instead a targeted reform to prevent the sentencing exercise from being distorted by untested, subjective and often repetitive assertions of general personal worth.

3.5 It is not a call for us to abandon judicial discretion. The Commissioner Designate advocates removing good character references at sentencing in domestic and sexual abuse cases, subject to a narrow, transparent exception.

3.6 Where the defence considers that there are genuinely exceptional circumstances, it should be required to make an application to the court. The prosecution should be able to respond and challenge, and if the court permits the material, it should explain its reasons. Victims should have the opportunity to see such references if they wish to before the sentence hearing. That preserves fairness to the offender while preventing the routine, untested recital of reputation that victims currently have to endure.

3.7 The limited value of GCRs needs to be weighed against the obvious harm victims and others are telling us they are causing and the subsequent damage to public confidence. Victims throughout our process have to endure further trauma/harm on the basis that the Article 6 rights of the accused outweigh this harm.

3.8 The Commissioner Designate does not consider Article 6 to provide a compelling justification for shying away from the prohibition of GCRs in domestic violence and sexual violence cases. While it is beyond dispute that defendants must be afforded a fair opportunity to place relevant mitigating material before the

sentencing court, we are unaware of any jurisprudence under Article 6 of the European Convention on Human Rights (ECHR) that requires the admission of good character references as a distinct feature of the sentencing process. The case law appears largely silent on any positive obligation to permit such material.

3.9 By contrast, the ECHR is not silent in relation to the rights of victims of gender-based violence. The European Court has repeatedly emphasised the positive obligations placed upon states under Articles 3 and 8 to provide effective protection, recognition and responses to violence against women and girls. These obligations are an important consideration when assessing whether existing sentencing practices remain appropriate in cases involving domestic abuse and sexual offending.

3.10 It is recognised that Article 6 considerations may require more detailed examination in relation to the treatment of good character evidence during the trial process, where issues of fairness and the conduct of proceedings are engaged more directly. However, those considerations must not be used as a basis for resisting reform at the sentencing stage without a clear evidential or legal foundation. In the Commissioner Designate's view, reliance on Article 6 in this context risks overstating the Convention implications and diverting attention from real life concerns about the impact that character references have on victims in domestic violence and sexual violence cases.

3.11 The question for policymakers is therefore not whether reform is compatible with Article 6, but whether there is a sufficiently strong justification for preserving a practice that undermines confidence in the sentencing process. Given the absence of clear authority demonstrating that good character references are a necessary component of a fair sentencing hearing, we do not consider Article 6, of itself, to be a reason for delaying or avoiding the necessary reform as detailed in this option.

3.12 The Commissioner Designate acknowledges and appreciates the point made in the consultation document regarding concerns about domestic abuse victims who find themselves in front of the courts as an offender who has struck back at their abuser.

3.13 The Commissioner Designate believes, however, that arguments regarding mitigation in such cases will have firstly come up during the trial itself (so a Judge will be aware) and will also be able to be considered via pre-sentence reports,

health reports, prior convictions etc. There is also the narrow exception in the proposed change which could be called upon if defence believes it meets the test for being an exceptional case. On balance, the harm caused to victims of domestic violence and abuse in cases where GCR are being employed outweighs the potential risk regarding this point and that risk can be overcome.

4. Conclusion

4.1 The Commissioner Designate urges the Minister to be ambitious in her response to this issue. Incremental adjustments may make the system marginally less harmful but they do not address its central flaw.

4.2 Victims of domestic and sexual abuse already endure profound additional harm within our justice system, often in the name of Article 6 fair-trial rights. They are required to overcome the barriers of reporting, face invasions into their privacy, relive deeply traumatic experiences, face intense cross-examination and scrutiny of their behaviours, often following years of delay. Many of these burdens are presented as necessary features of our justice system.

4.3 At the point of conviction for such heinous crimes, it is wholly unacceptable to ask them to endure further harm through the presentation of such references. In the time remaining in this mandate there is an opportunity to act on our stated commitment to victims of crime and eradicate this practice, rather than merely regulating it.

4.4 For victims of crime, this is not a technical point of procedure. It is about whether the criminal justice system, at the final moment of accountability, sees them – or instead sees the respectable mask of the person who abused them.

That mask must be removed from the sentencing process.

If you would like to discuss any of these points in further detail, please contact the office via:

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