

CHARLOTTE’S LAW

SUMMARY OF CONSULTATION RESPONSES

AND

WAY FORWARD

The consultation ran from 30 November 2021 until 14 February 2022

September 2024



Department of
Justice

An Roinn Dlí agus Cirt
Máinnstríe O tha Laa

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Introduction

1. During a 2021 debate on the Northern Ireland Assembly motion to introduce legislation similar to Helen's Law¹, inspired by the campaign led by Charlotte Murray's family and supported by missing Bangor woman Lisa Dorrian's family, Minister Long expressed her intention to give careful consideration to the need for change in 'no body' murders, and if change was appropriate, how this could be best tailored for Northern Ireland.
2. A review by the Department sought to identify measures which could encourage disclosure of information leading to the recovery of the victim's remains, or about how the victim's remains were disposed of, at every stage of the criminal justice process, from the earliest point in an investigation right through to the final parole hearing.
3. A range of recommendations were accepted by the Minister, including the administrative implementation of a number of measures, and that there should be public consultation on those which would require new legislation.
4. Those requiring legislation related to three key issues which were the focus of this consultation:
 - How should failure to disclose information about the location of the victim's body be treated at the point of sentence?
 - Should measures to allow a reduction in the prisoner's life sentence tariff be introduced for cases where a significant disclosure is made post sentence?
 - Should legislation similar to Helen's Law be introduced?
5. A total of 75 responses were received from a range of individuals, interested agencies and organisations and from a number of local politicians and political parties, demonstrating significant support across the board for the victims' families and their campaign.
6. The majority of respondents used the questionnaire provided with the consultation document for their answers. A small number responded in general terms supporting the proposals, but without addressing the specific questions posed.
7. The Information Commissioner's Office responded only in terms of the data protection implications of the consultation, confirming there were no major concerns within the proposals at this stage.
8. During the period of suspension of the Northern Ireland Assembly between February 2022 – February 2024 further work was carried out in developing the early findings of the consultation and refining the proposals. Further consultation with key stakeholders and affected families allowed progress to continue, shaping the proposals now put forward to complete the creation of 'Charlotte's Law'.
9. The following is an overview of the responses received to the public consultation and the Department's proposed way forward.

¹ 'Helen's Law' makes provision, in England and Wales, for the failure to disclose the location of victims' remains, or how they were disposed of, to be considered at the prisoner's parole hearing.

Approach to sentencing in ‘no body’ cases

10. Questions 1 and 2 related to the Courts’ approach to setting life sentence ‘tariffs’² in ‘no body’ murder cases.
11. The current tariff-setting model requires the Court to follow a two-stage exercise: Firstly, the Court must select the appropriate ‘starting point’ for the tariff calculation. The ‘normal’ starting point in Northern Ireland is 12 years. For cases involving ‘exceptionally high culpability or a particularly vulnerable victim’, the starting point is 15 or 16 years. There is also a category of ‘very serious murders’ where the starting point may be at least 20 years.
12. Having chosen the appropriate starting point, the Court must then adjust this upwards or downwards, taking into account the effect of all the aggravating and mitigating factors in the case, to arrive at the final tariff.
13. Guidance as to the choice of starting point and what factors may be considered aggravating or mitigating is provided in the NI Court of Appeal case of *McCandless*³. At present, the guidance identifies concealment of the victim’s remains as an aggravating factor.
14. The Murray and Dorrian families had called for the placing of no body murders in the very serious murder category. Their view was that this, combined with the option of a post sentence tariff reduction, would provide the strongest encouragement for pre-sentence and early post sentence significant disclosures.
15. The consultation questions sought to establish which of the following options was preferred:
 - the current system; or
 - a statutory requirement for the Court to treat ongoing concealment of the body as a factor placing such murders into the very serious murder category?

Question 1: *Do you consider that in life sentence tariff setting, concealment of the victim’s body should continue to be treated as an aggravating factor?*

- 45 respondents indicated “yes”.
- 25 respondents indicated “no”.
- 1 respondent discussed the question but did not indicate “yes” or “no”.
- 4 respondents did not address the question.

Question 2: *Do you consider that in life sentence tariff setting, concealment of the victim’s body should place the murder in the very serious murder category?*

² The tariff is the minimum period in a life sentence, set by the Court, which the offender must spend in prison before being eligible to apply for parole.

³ [R v Trevor McCandless, Stephen Anthony Johnston, Paul James Johnston, Samuel Anderson, Kenneth John Scott \(2004 NICA 1\).pdf \(judiciaryni.uk\)](#)

- 55 respondents indicated “yes”.
 - 15 respondents indicated “no”.
 - 1 respondent discussed the question but did not indicate “yes” or “no”.
 - 4 respondents did not address the question.
16. The two options were mutually exclusive of each other, but a number of respondents (36) answered “yes” to both.
 17. One respondent commented that the questions were not easy to understand, but that the current law does not go far enough. Two respondents gave the view that there should be no conviction where there is no body to prove murder, raising concerns around miscarriages of justice.
 18. Some respondents called for ‘no body, no release’; a small number advocated whole life terms; and one called for a minimum 25-year tariff. One respondent considered that concealment should be an additional crime, placing the murder in the very serious murder category.
 19. Some respondents drew a strong distinction between no body murders and those of the Disappeared and cautioned against any dilution of the sensitive Independent Commission for the Location of Victims’ Remains (ICLVR) arrangements.
 20. The Public Prosecution Service NI (PPSNI) made the point that, in terms of comprising part of the act of murder itself, it is difficult to draw a clear line between some of the matters identified in sentencing guidance as attracting the higher starting point and others identified as aggravating factors. Rather it appears that certain aggravating factors have been identified as being so serious as to require consideration of the higher starting points. While concealment has to date not been treated as such a factor, PPSNI did not express a strong view on whether such a change should or should not be made.
 21. Those in support of maintaining the current position included the Northern Ireland Human Rights Commission, the Probation Board for Northern Ireland, Sinn Fein and the Alliance Party. The main arguments advanced were that:
 - whilst bearing in mind the seriousness of this aggravating factor, adding concealment to the factors allowing a murder to be considered in the ‘very serious’ category would be a significant departure from established legal principles;
 - such a change could call in to question the status of other matters identified as aggravating factors, potentially opening the debate on whether any murder with an identified aggravating factor should qualify as a serious murder;
 - where the perpetrator decides not to reveal the location of the victim’s remains, the precise nature of the murder cannot be assumed. Retaining concealment of the victim’s body as an aggravating factor allows the judge to determine the most appropriate tariff on the basis of the individual circumstances of each case, acknowledging there may be

legitimate reasons why the person is unable to identify the location of the victim's body; and

- there are Article 6 ECHR⁴ (right to a fair trial) implications of automatically placing no body murders into the very serious category, particularly since evidence as to the nature of the murder and the reasons for non-disclosure may not be present.

22. Those in support of change included the DUP, the UUP, Victim Support NI, WAVE and Ards and North Down Borough Council. Reasons for their views included that placing no body murders in the very serious category would:

- send a clear message to the public and perpetrators of the seriousness with which the Courts will treat no body murders;
- provide a significant incentive to make an early disclosure;
- recognise the ongoing victimisation and the devastation inflicted on the families where failure to disclose is deliberate;
- acknowledge the strong degree of premeditation and planning required to successfully conceal a body; and
- recognise the sadistic, controlling and degrading attitude of the perpetrator.

Response and Way Forward

23. The Department has given the responses to these questions very careful consideration. The complexity of this area of sentencing law is acknowledged, and the Department appreciates that the questions' focus was on a legally technical and discrete point.

24. It is understandable that some respondents want to see no body cases being placed in the very serious murder category and also to have concealment of the victims' remains treated as an aggravating factor. The key impediment to this dual approach is a legal one, as no factor can be counted twice in the sentencing process. This would represent double punishment which could not be justified and would inevitably be challenged as unlawful.

25. These responses, together with those calling for 'no body no release', a longer tariff or a whole life tariff, collectively demonstrate widespread condemnation of those who deliberately refuse to give up this critically important information, and significant sympathy for victims' families.

Whole life tariffs

26. The 'no body no release' option is discussed in the response to Questions 6 and 7 below. As regards the imposition of a whole life tariff, the current approach dictates that this should be confined to those cases where the facts, considered as a whole, leave the Court in no doubt that the offender must be kept in prison for the rest of their life, and, in accordance with ECHR, that such detention must be justified on legitimate penological grounds.

⁴ [European Convention on Human Rights \(coe.int\)](https://www.coe.int)

27. We are not persuaded that every case where the victim's remains have not been located should automatically attract a whole life term. A requirement to impose such a tariff would raise significant concerns, with particular issues around the fettering of judicial discretion and the possibility that a person who cannot provide any information, for whatever reason, would be disproportionately punished. As the Northern Ireland Assembly is not competent to introduce legislation that would breach ECHR, these concerns represent a substantial barrier. In addition, as a whole life tariff precludes any parole hearings, opportunities identified for encouraging disclosure around that stage would be lost.
28. **In light of these concerns the Department considers that there are significant legal and human rights impediments to putting 'no body' cases into the whole life tariff category of murders and so does not propose such a change.**

Very serious murder category

29. As regards placing no body murders into the very serious murder category, the Department has enormous sympathy with victims' families and fully understands their desire for murderers to know without any doubt that their ongoing deliberate failure to disclose details of the location of their victims' remains or how they were disposed of will result in a longer tariff.
30. We acknowledge that placing no body murders in the very serious category would send a clear message of the seriousness with which concealment is regarded and might encourage early disclosure in the hope of a lesser tariff at sentence.
31. As set out in the consultation document, current sentencing guidance identifies murders attracting the higher starting point for tariff calculation as including:
- contract killings;
 - politically motivated killings;
 - killings intended to defeat the ends of justice;
 - those where the victim was providing a public service;
 - where the victim was targeted due to their race, religion or sexual orientation;
 - where there was evidence of significant violence, maltreatment or humiliation of the victim before the killing; and
 - cases of multiple murders.
32. We have significant concerns about changing the manner in which the law treats an established aggravating factor by legislating to make concealment an element automatically placing a murder in the very serious category.
33. Firstly, no assumptions can be made about the nature of the murder in the absence of supporting evidence. As set out in the consultation paper, the Court can only come to decisions where the appropriate standard of proof is met. In criminal cases the standard is proof beyond reasonable doubt.
34. In a similar vein, and of particular significance, is the concern raised by the NI Human Rights Commission (NIHRC), that such a provision would engage Article 6 ECHR. The Commission

highlighted that further consideration would be required to permit judges to take all relevant circumstances into account, and on how guilt “beyond reasonable doubt” would be satisfied when determining the reason for a failure to disclose the whereabouts of a body or details of its disposal.

35. The Department considers that attempts to legislate in this regard in an ECHR compliant way would require significant caveats to the extent that the effect of the legislation would be considerably diluted.
36. Furthermore, it is considered that legislating to place no body murders into the very serious category could stifle Courts’ ability to increase the tariff length to the extent considered appropriate to reflect the aggravating impact of ongoing concealment or to reflect its added impact where another factor present in the case would normally place the murder into that category.
37. The Department, in its 2019/20 Sentencing Policy Review, decided to set starting points in legislation, but to leave the choice of starting point as a decision for the judiciary dependent upon the circumstances of each case⁵. To specify particular starting points for particular circumstances was considered undesirable as it risks creating an inflexible and formulaic approach to tariff setting, significantly diluting the skilled judicial input currently considered key to securing the appropriate tariff taking all the circumstances of the case into account collectively.
38. It is also conceivable that a no-body killing could result in a manslaughter conviction. This possibility brings with it the prospect of a range of potential sentences and different sentencing considerations for the Court. In particular, while a life sentence may be imposed, the ‘very serious murder’ considerations do not apply in manslaughter cases. It is considered important that the proposed arrangements will be capable of application should a manslaughter conviction be made.
39. Continuing to treat concealment as an aggravating factor allows flexibility to apply any new provisions to different types of custodial sentence, and provides scope for a simpler and more transparent arrangement when combined with provision for a sentence reduction, as proposed below, in the event of a later significant disclosure.
- 40. In light of the considerations outlined above, the Department does not propose to legislate for ‘no body’ murders to be placed in the very serious murder category, and instead proposes that ongoing concealment of the victim’s remains, including failure to disclose how they were disposed of, should be treated as an aggravating factor in sentencing.**

Statutory aggravating factor

41. In arriving at this conclusion, the Department considered whether any further options might encourage disclosure before the point of sentence. The consultation paper had noted that the judiciary do not as a matter of course specify the amount by which a sentence or tariff is

⁵ [Sentencing Review Northern Ireland | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/sentencing-review-northern-ireland)

increased or decreased due to individual aggravating and mitigating factors. Rather the tariff finally selected takes all factors into account holistically.

42. In further consultation with the families and key stakeholders, it was agreed that legislating for a significant minimum aggravation to reflect the harm caused by the ongoing failure to disclose details about the victim's remains would be useful. It would address the considerations put forward by those who supported placing no body murders into the very serious murder category, and would allow victims' families, the public, and defendants to be clear on the impact attributed by the Court to ongoing concealment while at the same time providing a firm and transparent basis for any post sentence reduction of tariff. It would also allow the Court to address failures to disclose in convictions for manslaughter.
43. Such a requirement would be unique to 'no body' killing cases. The Department considers that treating ongoing failure to disclose the location of the victim's remains, or how the remains were disposed of, in this way, as a special category of aggravating factor, and subject to an 'interests of justice' safeguard to ensure fairness, would be justifiable to reflect the significant ongoing distress suffered by victims' families.
- 44. It is proposed that ongoing failure to disclose the location of the victim's remains, or how the remains were disposed of, at the point of sentence should become a statutory aggravating factor, adding a minimum of 30% on to the sentence or life sentence tariff which would otherwise be imposed by the Court, subject to this being in the interests of justice.**

Impact on cases of The Disappeared

45. As was highlighted in the responses, it will be important not to impact on the existing Independent Commission for the Location of Victims' Remains (ICVLR) arrangements. The ICLVR legislation⁶ provides protections for those who make disclosures about the location of the remains of The Disappeared, a special category of victims of the Troubles, so that any disclosure in relation to the location of their remains will not be used in, and so will not prejudice, any criminal proceedings.
46. The Charlotte's Law provisions will provide encouragement to those suspected of, charged with and sentenced for a 'no-body' killing to give details of the location of their victims' remains or how the remains were disposed of. It is considered that Charlotte's Law will co-exist with ICLVR arrangements without any adverse impact.

Post sentence disclosures

47. Questions 3-5 sought views on the introduction of a tariff review process for cases where a prisoner makes a significant disclosure after their sentence has been imposed.
48. It is considered that there may still be opportunities for disclosure of information post sentence. For those who wilfully withhold details about their victims' remains, the possibility

⁶ [Northern Ireland \(Location of Victims' Remains\) Act 1999 \(legislation.gov.uk\)](http://legislation.gov.uk)

of a reduction in sentence or tariff at this stage might encourage prisoners to contemplate and re-assess their position.

Question 3: *Do you consider that a review of tariff for early post sentence disclosure should be introduced?*

- 54 respondents indicated “yes”.
- 13 respondents indicated “no”.
- 3 respondents discussed the question but did not indicate “yes” or “no”.
- 5 respondents did not answer this question.

49. The great majority of respondents agreed that a post sentence review of tariff would be useful. In support of their views respondents mentioned:
- every opportunity and encouragement should be given to the perpetrator to make an early disclosure to reduce the suffering of loved ones;
 - a post-sentence incentive may be effective in cases where the prisoner did not wish to incriminate him/herself during the trial;
 - this mechanism should be fully explained to the perpetrator. Legal advice should be available to ensure full understanding and transparency;
 - the perpetrator must understand that the information must be genuine;
 - the review should not result in a significant reduction in tariff – appropriate punishment is still required; and
 - the possibility of a reduction in tariff and consequent increased chance of release at parole stage may provide a double incentive to disclose.
50. The NIHRC recommended that the Department assess the proposal against Article 7 ECHR which protects against detrimental retrospectivity.
51. A number of respondents raised concerns that the availability of such a review might incentivise defendants to withhold information pre-sentence on the basis they would be able to apply for a post sentence reduction.
52. One respondent was appalled at the suggestion of a reduction in tariff, preferring the addition of extra years if a disclosure was not made within a given time frame.

Question 4: *If yes to Question 3 – should the post sentence period for a disclosure to be considered be (i) 2 months; (ii) 6 months; or (iii) other?*

- 14 respondents indicated (i) 2 months.
- 12 respondents indicated (ii) 6 months.
- 29 respondents indicated (iii) other.

➤ 20 respondents did not answer this question.

53. This question produced a significant diversity of answers. In support of their views respondents said -

In support of 2 months:

- “Ideally 2 months. Consideration should also be given to this taking place at regular intervals during sentence e.g. every 3 years”;
- “This is enough time to disclose without keeping the family waiting and hoping if they try to keep it a secret longer”;
- “Don't know the answer to this. Do 2 months give a murderer time to review his best options? Time to feel guilt? Time to dig in? On the other hand, how long can loved ones hold out hope?”.

In support of 6 months:

- “Even though the murderer may have been locked up on remand, the experience of being sentenced must bring a harsher reality bite and 6 months is enough time for them to get beyond their possible misaligned anger at being found guilty, therefore giving them a period of reflection”;
- “Gives the convicted adequate time to consider their action while deprived of their liberty”;
- “My recommendation would be 6 months / 12 months. The convicted needs sufficient time to assess their options and consider disclosing information. This consideration may take some time and they need to weigh up the incentive to disclose the information vs not disclosing. Spending 6-12 months in prison should be sufficient to reflect on this. It can also be considered alongside any decision to appeal.”.

54. For those who answered ‘other’, a small number of options were put forward, including multiple opportunities, or that rather than an upper time limit a sliding scale of tariff discount relative to the time when a disclosure was made should be in place.

55. The majority of these respondents considered a minimum of 18 months would be needed to allow the prisoner to consider his/her position, and that rehabilitation work should begin with the prisoner during this time.

56. It was also noted that time would be required for searches to be carried out to see whether information provided would in fact lead to the remains being located.

Question 5: *If yes to Q 3 – should the provision apply to (i) all life sentence prisoners; or (ii) just to those convicted of ‘no body’ murders?*

➤ 22 respondents indicated (i) all life sentence prisoners;

➤ 30 respondents indicated (ii) just those convicted of no body murders;

➤ 23 respondents did not answer this question.

57. It was evident that respondents recognised the pain and suffering that no body murder victims’ families continue to endure. The majority indicated that the provision should relate to no body murders with a range of views being put forward, including:
- if this principle was to apply more widely then further consultation would be required;
 - this question appears only relevant to no body murders where there is a tangible piece of evidence to recover, i.e. the body;
 - the refusal to disclose the whereabouts of a body is much more significant than failing to provide other information, with a much more significant impact on victims; and
 - the provision should be used to address the issue of concealment for the sake of families.
58. A range of views were also expressed by respondents in favour of extending the option to all life sentence prisoners including:
- extending this proposal to all life sentence prisoners would maximise its potential benefit and would remove the need for further legislative change if other circumstances were found to merit a post sentence review;
 - concern that those who disclose information in no body cases could be viewed as receiving more favourable treatment than other life sentence prisoners;
 - applying only to no body murders may encourage murderers to hide bodies in the hope of availing of a post sentence reduction in tariff; and
 - in many murder cases the trial judge comments that certain details may never be known. It is unacceptable that prisoners may complete their sentences with questions about the nature of the murder unanswered.

Response and Way Forward

- 59. In accordance with the view of the majority of respondents, the Department proposes the introduction of sentence or tariff reductions where post sentence disclosures leading to the finding of victims’ remains or detailing what happened to the remains are made.**

Post sentence tariff increases

60. In relation to points made in response to the consultation, firstly, where concealment has been factored into the Court’s sentence or tariff calculation at the point of sentence, the possibility of an increase for ongoing failure to disclose information must be discounted. Any further penalty would run into problems of double counting leading to likely successful challenge.

Encouraging defendants to conceal victims’ remains

61. Secondly, it is essential to dispel concerns that this measure might perversely encourage defendants to withhold information on the basis they might get a post sentence for a later disclosure: **A fundamental component of the proposal is that the amount of any reduction in sentence or tariff available for a post sentence disclosure will never exceed**

the aggravation applied at the point of sentence to reflect the failure to make an earlier disclosure.

62. As set out above, the proposal is to legislate for a minimum of 30% aggravation to the sentence or life sentence tariff to reflect the ongoing concealment of the victim's remains.
63. This will ensure absolute clarity over the impact on the sentence of failing to disclose and will establish a clear limit on any reduction that can be obtained, ensuring that no benefit can be gained from withholding information at an earlier stage.

Proposal for post sentence reductions

64. **The proposal, reflecting the express wishes of the families after further consideration and discussion, is that a disclosure of information leading to the recovery of a victim's remains or detailing how they were disposed of will automatically entitle the prisoner to a reduction in their sentence or life sentence tariff calculated as a proportion of the aggravation applied at the time of sentence, and reducing on a sliding scale as time goes on. There will be no need to return to Court for a review hearing.**
65. It is considered that an ongoing option to obtain a sentence or tariff reduction which constantly reduces over time provides the best opportunity to secure a disclosure at the earliest moment.
66. It is proposed that the option to avail of a reduction following a disclosure will be subject to a time limit to allow any searches to be carried out and a realisable reduction to be applied.
67. In cases where the Parole Commissioners have a role, any disclosure of information by the prisoner after this point will be amongst the matters taken into account by the Commissioners in their risk assessment of the prisoner, ensuring that, in those cases, encouragement to make a disclosure continues until the end of the prisoner's custodial period.

Application to existing cases

68. While Article 7 of the European Convention on Human Rights ('ECHR'), which ensures no punishment without law, must be taken into account, we do not consider that making these arrangements available to existing 'no body' sentenced prisoners would introduce any retrospective detrimental impact on those prisoners in terms of their sentence. Rather this approach aligns with the principle of retrospective application of more favourable criminal law.
69. ECHR considerations will continue to be factored into the development of this measure and appropriate further consultation with NIHRC will be undertaken.
70. **To achieve maximum benefit, it is proposed that those prisoners sentenced in 'no body' cases before Charlotte's Law comes into effect should be able to avail of the new arrangements.**

Application to other life sentence prisoners

71. As regards the categories of life prisoners to whom a review process should be available, while there was a genuine sense of wanting to help families in similar situations, none of the respondents provided specific examples of where this could be useful beyond no body cases. It is hard to imagine other information the withholding of which would lead to a life sentence tariff being aggravated, and the disclosure of which would merit a reduction in tariff.
- 72. The Department is persuaded by the arguments in favour of restricting such a provision to no body killings.**

Helen's Law

73. Questions 6 and 7 asked about whether provision similar to 'Helen's Law' should be introduced in Northern Ireland. Recognising the limitations of Helen's Law, the consultation sought views on creating an additional duty for the Parole Commissioners, by requiring them to specifically address prisoners' failure to disclose details about victims' remains in their decisions.

Question 6: *Do you consider that a provision equivalent to Helen's Law should be introduced?*

- 61 respondents indicated "yes".
 - 7 respondents indicated "no".
 - 1 respondent discussed this question but did not indicate "yes" or "no".
 - 6 respondents did not answer this question.
74. The overwhelming majority of respondents support the introduction of legislation similar to Helen's Law. In support of their views respondents mentioned:
- the prisoner's lack of remorse and the continuing intention to control the victim's family;
 - lack of rehabilitation; and
 - the need for clarity for victims' families.
75. A large number of calls were received for a 'no body, no parole' approach; however, NIHRC cautioned against any changes resulting in a *de facto* no release situation.
76. Those who did not support the introduction of a similar law in Northern Ireland were concerned about the potential impact on the period of detention in prison for anyone wrongfully convicted.

Question 7: *Do you consider that the Parole Commissioners should specifically address prisoners' failure to disclose details about victims' remains in their decisions?*

- 65 respondents indicated “yes”.
- 2 respondents indicated “no”.
- 1 respondent discussed this question but did not indicate “yes” or “no”.
- 7 respondents did not answer this question.

77. In support of a requirement for the Parole Commissioners to specifically address the ongoing failure to disclose, respondents noted:

- failing to disclose demonstrates lack of remorse and rehabilitation which needs to be addressed;
- refusal to disclose demonstrates ongoing control; re-traumatizes family and friends; and is relevant to risk;
- addressing the failure to disclose would provide a measure of transparency, clearer understanding of decisions taken, and weight afforded to non-disclosure, and would be comforting for loved ones;
- failure to disclose should be factored into the release decision and the prisoner should be made aware of this; and
- knowing that this will be a factor in the release decision may encourage disclosure.

78. Some issues were raised about the parole process more generally. Victims' families were concerned that once released there will be no more levers to encourage disclosure. To address this concern, they called for the Parole Commissioners to lean towards the continued detention of prisoners, and to be required to provide a detailed and accessible report, clearly justifying release decisions.

79. Where a release decision is made, the victims' families request that the Parole Commissioners be required to provide detailed reasons, including the impact any co-operation and the ongoing non-disclosure has had on the decision.

80. In contrast, one respondent cautioned that it would be unusual to create an explicit requirement to address just one aspect of the case, and that to do so might detract from the fact-sensitive nature of the decision-making process.

81. Those who answered ‘no’ repeated their concerns around possible wrongful conviction. They questioned why a prisoner would withhold information, concluding that it was likely such a prisoner had no information to give, and so it would be wrong to inflict further punishment on them by extending their prison term.

Response and Way Forward

82. The Department recognises that the introduction of provisions similar to Helen's Law would provide welcome transparency in the Parole Commissioners' decisions in cases where they

have a role, and would provide additional certainty and understanding for the victims' families and prisoners alike.

83. A requirement for the Parole Commissioners to provide a detailed report addressing the issue of non-disclosure in no body cases would strengthen the existing general requirement to provide a summary of decisions.
84. It is considered reasonable to require the Parole Commissioners to assess the ongoing risk implications of refusal to disclose significant information about the index offence in their deliberations, and to require them to provide detailed reasons for their decisions, particularly where a prisoner is to be released.
85. In light of the strong level of support, **it is proposed that:**
- **provision similar to Helen's Law should be introduced in Northern Ireland;**
 - **the Parole Commissioners should be required to address ongoing failure to disclose information about the location of the victim's remains or how they were disposed of in their decisions; and**
 - **the Parole Commissioners should be required to provide a report setting out their reasons and detailing any co-operation the prisoner has provided, which will be accessible to victims' families.**

No body, no parole

86. The Department understands the calls for 'no body, no parole', but is conscious that such a change could effectively mean a whole life tariff for some prisoners and would remove the role of the Parole Commissioners in these cases.
87. Setting non-disclosure of information about the victim's remains as opposed to risk to the public as a mandatory bar to release would significantly change the nature of parole and would see 'no body' killers being treated differently from others, raising human rights issues and potentially making such provision unlawful.

Concerns over wrongful convictions

88. The Department recognises concerns about wrongful convictions. While the focus of much of our work is to ensure that all those who come into contact with the law are treated fairly, it would be wrong to believe that the criminal justice system is flawless. However, once all avenues of appeal and review are concluded, we must proceed on the basis that the procedures in place have been properly followed and that decisions are reliable.
89. On that basis it is considered that an ongoing failure to disclose information about the victim's remains, even where the prisoner continues to protest their innocence, should feature in the Parole Commissioners' decisions.

Final questions

90. Questions 8 and 9 asked for any further comments or ideas, and whether the consultation raised any equality issues.

Question 8: *Do you consider any further changes are required or that a different approach might achieve disclosure from an offender?*

- 34 respondents indicated “yes”.
- 29 respondents indicated “no”.
- 12 respondents did not answer this question.

91. The strength of support for the affected families was clear from the responses to this question. A number of those who answered “yes” gave no indication of what else might be done to encourage disclosure. Some of those who offered thoughts supported the administrative measures outlined in our earlier report. Further suggestions included:

- victim impact statements should be heard by the defendant at court;
- there should be a statutory requirement for early rehabilitation engagement with prisoners convicted of no body murders;
- the prisoner should be made to talk to the victim’s family and friends to hear the impact of their actions;
- facilitation of meeting or exchange of letters between the prisoner and victim’s family should be provided;
- there should be early engagement with prisoners and/or a truth recovery procedure, learning from the Independent Commission for the Location of Victims’ Remains model;
- the prisoner’s close family and religious leader should be asked to encourage disclosure;
- there should be a focus on others who may be able to provide relevant information;
- denial of prisoner privileges, visitation rights, isolation for as long as non-disclosure continued;
- trial without jury was suggested by one respondent who expressed concern about wrongful convictions by jurors who have no legal training; and
- where a disclosure still has not been made, opportunities to continue to work with the prisoner post-release should be considered.

Response and Way Forward

92. In considering these suggestions, the Department notes a strong focus on families’ desire to be heard throughout the process and on a restorative approach to unlocking information that would lead to recovery of victims’ bodies. The Department fully endorses this approach which aligns with its victim and witness work and its adult restorative justice practice strategy, which runs from 2022-27. Each of those suggestions will be given due consideration in the context of the administrative measures previously announced.

Removal of prisoners’ privileges

93. The call for the removal of prisoner privileges for ongoing concealment is not something that can be accommodated.

94. It is important to recognise the difference between sanctions available to the prisons and those imposed by the Court, which represent the penalty for the offence, taking all the

circumstances of the offence, including all aggravating and mitigating factors, into account. Removal of privileges once in custody is a tool designed for use as a disciplinary sanction to deal with behavioural issues in prison. To apply disciplinary sanctions in respect of the failure to disclose would represent double punishment. While the Department understands the desire to utilise every available measure which might encourage a disclosure, double punishment cannot be justified.

Trial by jury

95. Trial by jury is the main mode of trial in the Crown Court. Jurors are randomly selected to hear and consider cases and to reach a verdict on the basis of the evidence, arguments and directions given in Court. The purpose of a jury trial is to provide an unbiased and fair verdict. The fact that jurors are not legally trained is a feature of the system.
96. As with other elements of the criminal trial process, there are safeguards to ensure the fairness of jury trials: jurors can be prevented from taking part in a trial if there is a reason to challenge them; once empanelled the jury is not allowed to be influenced by any external contact; the Judge gives directions on points of law and ensures the correct procedures are followed; and, in the event that a verdict is considered wrong, the defendant can appeal the conviction.
97. **In light of the arrangements currently in place jury trial is considered fair, and review of its use is not an issue for consideration at this time.**

Continued work with prisoners post release

98. The Department agrees that efforts should not stop at the point of a prisoner's release from custody on licence. As well as appreciating the ongoing impact non-disclosure has on the victim's family, it is also important for the licensee to gain an understanding of the impact of the case on the community, and consequent potential personal security implications.
99. **The Department proposes that, in due course, consideration be given to possible opportunities for ongoing work with post-release prisoners in 'no body' cases.**

Question 9. *Do you consider that there are any equality issues raised by this consultation which could have a significant and disproportionate impact on any of the Section 75 groups?*

- 3 respondents indicated "yes".
 - 57 respondents indicated "no".
 - 15 respondents did not answer this question.
100. Of the 3 respondents who answered yes to this question, one gave no further comment; one was concerned that the proposals would impact on innocent people who have been wrongly convicted in no body cases; while the other raised concerns about the consultation not involving prisoners and their support groups.

Response and Way Forward

101. Section 75 of the Northern Ireland Act 1998 places a statutory duty on public bodies to have due regard to the need to promote quality of opportunity:
- between person of different religious belief, political opinion, racial group,
 - age, marital status or sexual orientation;
 - between men and women generally;
 - between persons with a disability and persons without; and,
 - between persons with dependants and persons without.
102. Without prejudice to those obligations, the Department is also required to:
- have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group; and
 - meet legislative obligations under the Disability Discrimination Act 1995.
103. The Department is satisfied that the EQIA screening carried out on this consultation revealed no adverse impact on any of the groups identified under section 75. It is also satisfied that the Rural Screening conducted for this consultation did not reveal adverse impacts.
104. The Equality Screening and Rural Screening documents can be seen at <https://www.justice-ni.gov.uk/consultations/consultation-charlottes-law>
105. In relation to the concern that the consultation did not include prisoners or their support groups, the Department can confirm that the consultation was published and publicised online and was accessible to all.
106. In addition, notice of its launch was sent to a range of key stake holders who provide support to prisoners and their families, including NIACRO, Extern, PBNI, Prisoner Ombudsman, Families Outside, Barnardo's, and Family Support NI all of whom were encouraged to participate. As noted earlier in this document, further post consultation engagement has also taken place with key stakeholders.
- 107. In light of the above the Department is satisfied it consulted appropriately and that no revision of the equality or rural screening is required at present. Further screening will be carried out on the legislative provisions developed in response to the consultation at the appropriate time.**

Next steps

108. The Department plans to bring forward the legislative measures set out in this report in a Sentencing Bill. It is intended that the Bill will be brought forward during the remainder of the 2022-2027 Northern Ireland Assembly mandate and that the provisions will be implemented as soon as is practicable upon or following Royal Assent of the Bill.