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To: COM - Customer Care Counter <info@sdblincoco.ie>

Subject: Ref: DJE-MO-01668-2026

Minister's Reference: DJE-MO-01668-2026

Dear Ms. Shannon,

Thank you for your correspondence on behalf of South Dublin County Council, dated 10 February, to the Minister for Justice, Home Affairs and Migration, Jim O'Callaghan.

I am responding on behalf of the Minister and please accept my apologies for the delay.

I want to acknowledge receipt of the Council's motion in relation to implementing a ban on the use of counselling notes in domestic, sexual and gender-based violence (DSGBV) trials.

The Minister recognises the significant impact that criminal trial proceedings can have on victims and survivors of DSGBV and fully agrees that robust protections must apply to the handling of victims' counselling notes in this context.

The Government is committed to ensuring that legislative provisions balance the victim's constitutional right to personal privacy, the important role of counselling in their recovery, but also the accused person's constitutional right to a fair trial.

Survivors, international organisations such as CEDAW and Council of Europe's GREVIO, as well as the Joint Oireachtas Committee on Justice, Home Affairs and Migration in its PLS recommendation have called for a complete ban on the use of counselling records in sexual offence trials.

However, the Attorney General's Office has advised that a blanket ban on the disclosure of counselling records is not compatible with the Constitution. A ban would raise constitutional issues and likely lead to legal challenges, with convictions potentially being quashed as a result.

The law in this area was substantially reformed in 2017 by the insertion of section 19A of the Criminal Evidence Act 1992, which created a new process whereby the trial judge decides whether the records should be released, having taken into account the aforementioned rights. However, in practice this provision has not operated as intended.

Accordingly, section 13 of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026 provides for the amendment of the existing legislation by requiring that a disclosure hearing take place in all cases, removing the provision that allows for this to be waived by the victim. This amendment will ensure that the original intention of the legislation will apply, mandating courts to assess the relevance of any counselling records through a judicial process.

On 4 February 2026, the Minister secured Government approval to make further amendments to section 19A in order to restrict the disclosure of counselling notes to the maximum extent permissible under the Constitution. These include a presumption of non-disclosure, which creates a form of statutory privilege so that the default position is that counselling notes are not to be disclosed, unless there is a risk of an unfair trial.

This sends a strong signal to victims that their records are protected from intrusion and provides reassurance that unwarranted requests will be rejected by the court. Additionally, it is intended to extend the protections of section 19A to other categories of records which have a high expectation of privacy, including medical records, psychiatric records, therapeutic records, child protection records and social service records.

These amendments will provide increased protections and greater reassurance to victims of sexual offences in relation to the use of personal records in criminal trials.

Once enacted, the operation of the legislation will be kept under review, as is the case with all criminal legislation, to ensure that it is achieving its intended purpose.

I hope this information is of assistance.

Yours sincerely,

Ellen Byrne
Private Secretary to the
Minister for Justice, Home Affairs and Migration