



Victims in focus



European and Domestic Perspectives

EIGHTEENTH ANNUAL CONFERENCE

Spencer Hotel, IFSC Dublin 2.

2nd October 2015

CONTENTS

Foreword from the Chairperson <i>Maura Butler, Chairperson, ACJRD Ltd</i>	1
Launch of Conference <i>The Hon. Ms. Justice Mary Ellen Ring</i>	2
The Victims' Rights Directive - Challenges and Expectations <i>Katarzyna Janicka-Pawlowska, Directorate General of Justice, European Commission</i>	5
About Politics and Rights - Restorative Justice in the Victims' Directive <i>Dr. Katrien Lauwaert, Senior Researcher at the Leuven Institute of Criminology (LINC) of the University of Leuven and the European Forum for Restorative Justice</i>	10
Implementing the Victims' Directive: Challenges and Good Practices <i>Stephen Meighan, BSc, LLB, Victim Support Europe & Chair, Victim Support Scotland</i>	14
Dealing with Victims and their Families - the DPP Response to the Forthcoming Legislation <i>Claire Loftus, Director of Public Prosecutions</i>	19
The Implementation of the Victims' Directive into Irish Law <i>Maria McDonald, BL</i>	24
Putting Victims at the Centre of the Garda Service <i>Chief Superintendent Anne Marie McMahon, Director of Training, Garda College</i>	33
WORKSHOP SUMMARIES	
1. Violence against Women <i>Dr. Marsha Scott, Chief Executive, Scottish Women's Aid, and Dr. Eimear Spain, School of Law, University of Limerick</i>	39
2. Victim Information Schemes and Victim Focused Work in Probation Board for Northern Ireland <i>Cheryl Lamont, Acting Director Probation Board for Northern Ireland and Stephanie Weir, Victim Liaison Officer, Probation Board for Northern Ireland</i>	40
3. Offenders as Victims: A Peer-led Support Approach <i>Stephen Doyle, Founder & Director, Care After Prison</i>	43
4. Access to Justice for Deaf and Disabled Victims of Crime: Identifying Challenges and Recognising the Need for Change <i>Dr. Gillian Harold, Postdoctoral Researcher, University College Cork</i>	46
5. Victim Impact Evidence at Sentencing: A Critical Appraisal <i>Tom O'Malley, Senior Lecturer, School of Law, NUI Galway</i>	48
6. The Victims' Directive and Victims of Sex Trafficking: A Frontline Perspective <i>Tara Brown, Volunteer Manager, Ruhama</i>	51
7. Guilty as Charged? The Legal and Ethical Dilemmas Posed by Media Coverage of Criminal Trials <i>Dearbhail Mc Donald, Associate Editor and Legal Editor, The Irish Independent</i>	54
8. The Challenges of Applying the European Directive on Victims' Rights in Cases of Elder Abuse <i>Naomi Feely, Senior Policy Officer, Age Action Ireland</i>	57
CONFERENCE ATTENDEES	60



Foreword from the Chairperson Maura Butler, Chairperson, ACJRD Ltd.

The 2015 Annual ACJRD Conference “Victims in Focus: European & Domestic Perspectives” convened on Friday, 2nd October, 2015. ACJRD was conscious that the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime required transposition by EU Member States into national laws by 16th November, 2015, and that our stakeholders needed familiarity with this fundamental victim-focussed approach to criminal justice practice. The Justice section of the European Commission website states that the Directive ‘... ensures that persons who have fallen victim of crime are recognised, treated with respect and receive proper protection, support and access to justice ... [and] requires that the Member States ensure appropriate training on victims' needs for officials who are likely to come into contact with victims and encourage co-operation between Member States and co-ordination of national services of their actions on victims' rights.’ http://ec.europa.eu/justice/criminal/victims/index_en.htm

ACJRD was very honoured that The Hon. Ms. Justice Mary Ellen Ring launched this one day conference where distinguished speakers from Ireland, including the DPP, were joined by a European Commission representative and speakers from Northern Ireland, Scotland and Belgium.

The conference structure facilitated the presentation of plenary sessions supported by break-out groups, where delegates from the public and private sector shared their views, experiences and expertise. The Conference Plenary speakers included: Katarzyna Janicka-Pawlowska, Directorate General of Justice, European Commission; Dr. Katrien Lauwaert, Senior Researcher at the Leuven Institute of Criminology (LINC) of the University of Leuven and the European Forum for Restorative Justice; Stephen Meighan, BSc, LLB, Victim Support Europe and Chair, Victim Support Scotland; Claire Loftus, Director of Public Prosecutions; Maria McDonald, BL; Chief Superintendent Anne Marie McMahon, Director of Training, Garda College. The conference programme also featured a number of workshop presentations delivered by: Dr Marsha Scott, Chief Executive, Scottish Women’s Aid and Dr Eimear Spain, School of Law, University of Limerick; Cheryl Lamont (Acting) Director, Probation Board for Northern Ireland, with Stephanie Weir, Victim Liaison Officer, Probation Board for Northern Ireland; Stephen Doyle, Founder and Director, Care After Prison; Dr. Gillian Harold, Postdoctoral Researcher, University College Cork; Tom O’Malley, Senior Lecturer, School of Law, National University of Ireland Galway; Tara Brown, Volunteer Manager, Ruhama; Dearbhail McDonald, Associate Editor and Legal Editor of The Irish Independent; Naomi Feely, Senior Policy Officer, Age Action Ireland.

The Chatham House Rule was invoked as necessary, to facilitate free discussion¹.

ACJRD sincerely thanks the expert presenters and all who contributed during discussions to this year’s conference. The ACJRD Council is confident that the papers in this publication will benefit those whose work requires an accommodation for victims of crime.

¹ The Chatham House Rule states: “When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed”.



Launch of Conference

The Hon. Ms. Justice Mary Ellen Ring, Judge of the High Court, Chair, Garda Síochána Ombudsman Commission

The road travelled by the victims of crime and their families and supporters has been a long and often arduous one. Over years, indeed decades now, they have sought to be heard and seen as more than being “brave”, “great”, or someone who has done what others didn’t/couldn’t do. It has taken a lot of work and effort to get to the stage where it is accepted that victims command rights as much as any other group or member of society. Around the world more and more countries are incorporating a rights based approach to people who have been the subject of criminal acts and others directly affected by those criminal acts such as the families of persons killed or maimed for life.

It has not been easy anywhere. Different legal systems have been more or less accommodating of victim rights issues. In many jurisdictions, not least our own, it has taken a long time for the penny (or cent) to drop, that protection of one set of rights does not mean the abandonment or ignoring of another set of rights. In this country with a written Constitution the courts are well used to the conflict or tension that can arise between conflicting or competing rights. Judges have to pronounce in this area on a frequent basis. Hard decisions have to be made. However, in the course of making those decisions due regard is had to both sets of rights in reaching a resolution of the conflicts.

The fact that we have guarantees and rights set out in our laws in relation to people accused of crime - or convicted of crimes - does not mean - and has not meant - that rights belonging to the

victims of those crimes should have been, or should continue to be, ignored. We should not be afraid of the tensions that can arise but rather seek to meet those issues and resolve them having regard to all the parties involved.

One of the most important steps on that road was the adoption of Directive 2012/29/EU by the European Parliament on 25th October, 2012. The Directive is in relation to ‘*establishing minimum standards on the rights, support and protection of victims of crime...*’. This Directive becomes applicable in Ireland on 16th November next. Many organisations and individuals have been aware of the commitments that arise under this Directive. The Criminal Justice (Victims of Crime) Bill 2015 has been published. This of course doesn’t affect the requirements of the Directive from 16th November next onwards.

In the discussions that will follow today - and for weeks to come - sight should not be lost of the title of the Directive - ‘*establishing minimum standards*’ - with regard to victims of crime. It seems that the purpose of the Directive from the title was to be a starting point. Thus if countries just provide what the Directive cites, that would appear to be the minimum standard. We have to ask ourselves is that enough - is that the level we want our own rights based legislation to reach or should we be seeking to move beyond the minimum? Today will start that discussion for the participants but others will ultimately answer the question. It is important that the contribution today to



that answer is aspirational, achievable and practical.

There are obvious challenges for the operation of the Directive and the resulting legislation into the future. The need to educate and train those who are dealing with victims. To be clear who a “victim” is. To be able to provide the necessary information to which victims are entitled and know what that information is. The need to have clear information that is understandable to both the person delivering and the person receiving the information. It is important that those required to put the Directive into operation are supported - they need to know who to go to, to get their own answers. Practical considerations must be considered - what information is required, who provides that information and in what form, and perhaps equally as important the need to be consistent in giving information. Separate interpretations as to the terms of the Directive and later an Act will lead to further unnecessary upset and confusion for victims.

These responsibilities provide practical challenges. What happens when the person giving the information goes on holiday, is ill, takes parental leave, retires - who steps in? How are they briefed? Each group will have to deal with these practical issues.

The Garda Síochána Ombudsman Commission (GSOC) is covered in the Bill into the future but, clearly, as of 16th November next, it too will have to take its own steps to check that its practices are Directive compliant. This involves planning that is already in place. For instance the Directive says in Article 25 under the heading *Training of practitioners* that ‘Member States **shall** ensure that officials

likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.’ In practical terms we are six weeks out from today’s date before the Directive comes into effect. We are cognisant that we may have to put our own planning in place in the absence of more official moves in that regard.

GSOC is a member of the Working Group on the Victims of Crime. That working group is moving towards the 16th November and GSOC is carrying out the necessary review of all procedures relating to taking/receiving complaints insofar as they relate to victims of crime and the provision of information to such complainants. We are preparing information leaflets outlining the information available to victims of crime and their rights in that regard. A review of the documentation that is sent to complainants is to be undertaken to include the rights in relation to information that flows from the requirements of the Directive. Language and procedures will be reviewed in that regard.

It is important to note that already under S. 103 of the Garda Síochána Act 2005, GSOC is mandated to provide ‘*sufficient information to keep them (complainants) informed of the progress and results of an investigation...’*. The responsibility from now on will be to ensure all of our statutory requirements are being met appropriately and in a way that is understandable to all parties.

GSOC’s own statistics show that last year 30% of allegations to the organisation



related to neglect of duty and some of that would have certainly pertained to treatment of victims of alleged crimes by Gardaí. GSOC admitted, investigated and closed 252 allegations of failure to fully investigate alleged criminal behaviour so it is clear that victims already have recognised their right to complain about treatment that was to them less than appropriate. GSOC provides observations to the Garda Commissioner on matters which arise in the course of its own investigations for the purpose of better informing policy development and policing practice. In 2014 following an investigation into allegations that a victim of serious crime was not kept properly informed by investigating Gardaí, GSOC recommended guidance to members via the implementation of a national standard of updating of victims particularly where a criminal investigation becomes lengthy or protracted. This was accompanied by a recommendation for further training for members regarding the needs of victims of crime.

It is important to ensure that the Gardaí are in a position to meet their obligations from the outset. Complaints to GSOC for instance on the lack of information or appropriate updating run the danger of delaying or interfering with the progress of the Garda investigation. Victims should not be afraid to come to GSOC with their complaints but we would rather they did not have cause to complain and that the investigation progressed in the normal way with the appropriate information coming as required.

Today's conference provides an opportunity to look abroad and at home to the steps to be taken and the steps being taken to meet the Directive's provisions and assist in the preparation of legislation at home. We will be looking at issues such as good practice and restorative justice. As a judge I have personal and positive experience of restorative justice but in this country the practice is still in many ways in its late infancy. Particular challenges arising from specific needs such as persons who are disabled or who are older will be dealt with in workshops. The value of such days is the exchange of information and experiences. We are here in advance of 16th November so we have time to review and enhance proposed practices. Equally we should keep the avenues of exchange very open after that day to see what works, and works well, and not be afraid to change to adapt good or even better practices.

There is no one victim of crime. Each is different, their experience is different and the effect of crime is different. We can't apply one practice to meet all the challenges these differences bring. We can, however, seek to achieve, through sharing of good outcomes and learning from what doesn't work, one aim - the vindication of rights long denied to our brother and sister citizens throughout the EU.



The Victims' Rights Directive - Challenges and Expectations

Katarzyna Janicka-Pawlowska, Directorate General of Justice, European Commission

Ladies and gentlemen,

It is a great pleasure and honour for me to be here with you today and to discuss with you the important subject of victims' rights.

Today I will speak about the challenges and expectations that arise from the new EU rules on victims' rights.

The European Parliament and the Council adopted the Victims' Rights Directive¹ in October 2012, after only eighteen months of negotiations. This shows that there was a broad consensus and serious political will to have the new rules in place. Following the adoption, the Member States had three years to implement the EU rules into their domestic legal orders. Correct implementation of the Victims' Rights Directive is however a challenging task. It requires that the Member States take:

- **legal actions** (to ensure transposition of the Directive into the national legal orders by binding measures, including amendments to the national codes of criminal procedure and/or enactments of separate acts dedicated to victims' rights only) and
- **supporting measures** (setting up of victims' support services, organisation of trainings, organisation of individual assessment)

Such complex tasks cannot be achieved in one day. The implementation should be

well-planned. That could be achieved by setting up a national implementation strategy. At the Commission, we have been strongly advising the Member States to establish their own implementation strategies.

The transposition deadline approaches. It is interesting to see where we stand in October 2015 regarding the transposition of the Victims' Rights Directive.

The Commission has already received several notifications from the Member States that informed us that they have transposed the Directive. Three countries have already notified complete transposition. Many more have part of the new rules in place. We are however aware that most Member States are now working hard on adoption of new rules with a view to meeting the transposition deadline of 16th November, 2015.

At the Commission we are also aware that the implementation of the Victims' Rights Directive is particularly challenging. That's why, since the moment of adoption of the Victims' Rights Directive, we have focussed on assisting the Member States. We are applying our implementation strategy aimed at assisting the Member States since 2012. Within this strategy, we have issued a DG Justice Guidance document on implementation of the Directive². It explains every single provision of the Directive and suggests its methods of

¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and

replacing Council Framework Decision 2001/220/JHA

² http://ec.europa.eu/justice/consumer-marketing/files/crd_guidance_en.pdf



implementation. We have organised four implementation workshops, including three workshops in Brussels for all Member States and one regional workshop in Vienna for eight countries from the region. We have been also assisting individual Member States in the implementation and interpretation of particular provisions of the Directive on a bilateral basis and often on the request of the country.

Besides, the Commission is funding projects aimed at facilitating the implementation of the EU rules (under Justice and Daphne programmes)³.

Now when we are talking about the challenges of implementation of the Victims' Rights Directive, the question arises whether some provisions are more challenging than others.

The answer to this question is yes, indeed some provisions prove to be more challenging than others.

Article 2 of the Victims' Rights Directive laying down a **definition of victim** is certainly one of them. One could say that a transposition of definition should be pretty straightforward. This is not the case of a definition of victim of crime. The Victims' Rights Directive provides for a broad definition. It encompasses direct victims (a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence) and indirect victims (family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death). I see that many Member States face

difficulties when transposing the definition. The major problem relates to the fact that family members of deceased victims are not considered as victims of crime. The consequences of such exclusion are very serious. The definition of victim of crime delimits the scope of application of the Directive and the scope of application of victims' rights. The Commission will thus pay a great attention to correct transposition of this crucial provision of the Directive.

Article 4 of the Victims' Rights Directive, laying down the **right to information** is another example of how it can be particularly challenging to implement provision. Indeed, it poses questions as to its practical application; mainly because the extent or detail of information referred in this provision may vary depending on the specific needs and personal circumstances of the victim as well as the type or nature of the crime. The first contact competent authority should be able to provide such information according to the victims' needs.

Also Articles 8 and 9 of the Victims' Rights on the **right to support services** seem to be challenging. They leave a large margin of discretion to the Member States on how to organise the support services in practice.

Also Article 22 of the Directive on the **right to individual assessment of victims' needs** to identify specific protection measures appears to be problematic. Again, this provision leaves a large margin of discretion for the national authorities on how to ensure that victims receive a timely and individual assessment to identify specific protection needs and to determine whether and to what extent they would

³ http://ec.europa.eu/justice/grants1/open-calls/index_en.htm



benefit from special protection measures. The Member States must come up with their own *national procedures* that would achieve the prescribed result and, at the same time, fit best into their domestic legal orders.

As you can see, the challenges related to the implementation of the Victims' Rights Directive are numerous. But now I would like to focus a bit on **expectation that can be drawn from the new EU rules**. I am aware that many of you have high expectations for the new rules.

The Victims' Rights Directive puts in place **binding rights for victims of crime and their family members**. These rights come with clear obligations on the Member States.

If correctly implemented, the Directive has a potential of changing lives of millions of victims in Europe and of making Europe a better place for us all.

The new EU rules lay down a set of binding rules guaranteeing that all victims of crime are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner.

The Directive gives new rights to victims. For example, family members of deceased victims are put on the same footing as direct victims of crime. All victims of crime have now a right to an individual assessment of their specific protection needs, and they have a right to general and specific support services. The Directive also strengthens the rights victims already had, for instance, the right to better, more accessible and understandable information. In practice, this means:

- a mother or a brother of a deceased victim will have the same rights as direct victims of crime
- a women, who is victim to violence from an intimate partner, will be heard by a well-trained and respectful officer and will be protected in line with her individual needs
- a child victim, will be considered a vulnerable victim and as such may benefit from a set of protection measures, including protection measures specifically dedicated to children. For instance his or her interviews may be video recorded and used as evidence at a trial.

These days we see many vulnerable people arriving in Europe; some of them are victims of crime, others may fall victim to crime in the future. The new EU rules apply if the crime was committed in the European Union or if the proceedings take place in the European Union. Victims' rights apply without discrimination and independently of people's origin and residence status. This means that all victims of crime, including undocumented migrants, should have access to justice - and should get the support and protection they need.

Moreover, many of the new rights laid down in the Victims' Rights Directive are capable of producing a direct effect because they are set out in a sufficiently clear and precise manner. As a result, citizens can invoke these rights directly before the national courts - even if the new rules are not correctly transposed into national law.

Indeed, victims of crime, victims' family members and victims' organisations rightfully expect a lot from the Victims' Rights Directive.



But not only victims and victim support organisations will benefit from the new rules and rights.

National governments will benefit from higher rates of reported crimes, and from a higher level of trust in their judicial systems. Under-reporting is currently a serious problem in all EU countries. Victims do not report crimes because they are afraid of their perpetrators and because they are afraid of going through the criminal proceedings. If we manage to take this fear away, we will achieve a lot for the justice system in Europe.

The citizens and the whole societies will benefit from safer environments and from better inclusion of victims into societies.

The European Union will benefit from a safer and more consistent area of freedom, security and justice, where harmonised standards on victims' rights will increase trust among the national authorities and the trust of the citizens into the European Union and its institutions.

We can and we should have high expectations for the new rules!

But before the rights turn into reality in every Member State, we still have challenges ahead of us.

At the moment, the biggest challenges are on the Member States that must implement the Victims' Rights Directive. But there is also a lot of work for the European Commission.

The Commission is committed to ensuring correct and timely implementation of the EU rules. After 16th November, we will continue our implementation/enforcement strategy. It will be composed of legal and political actions.

The Commission will not hesitate to take steps against those countries that fail to fulfil their obligations on time.

The Commission will also take political actions. We will continue a dialogue with the Member States and with the civil society. In 2016 we plan to keep working closely with the Member States, by organising expert meetings and on a bilateral basis.

But there is also a huge task ahead for the civil society. It is your role to raise awareness about the victims' rights, to support victims and to report back on the situation on the ground. You are best placed to do that. I would like to take this opportunity to invite you to actively participate in the implementation of the Victims' Rights Directive. It is only by joining forces we can realise the full potential of the EU rules on victims' rights.

This is only the beginning of a longer process, a process that can change the lives of millions of victims. It is worth every effort.

Thank you.



Pictured Left:
Katarzyna Janicka - Pawlowska,
*Directorate General
of Justice, European
Commission*



Pictured above: (L-R) **Katarzyna Janicka-Pawlowska**, *Directorate General of Justice, European Commission*, **Dr. Katrien Lauwaert**, *Senior Researcher at the Leuven Institute of Criminology (LINC) of the University of Leuven and the European Forum for Restorative Justice*, **The Hon. Ms. Justice Mary Ellen Ring**, *Judge of the High Court and Chair, Garda Síochána Ombudsman Commission*, **Stephen Meighan**, *BSc, LLB, Victim Support Europe & Chair, Victim Support Scotland* and **Maura Butler**, *Chairperson, ACJRD*.

Pictured Right:
Dr. Katrien Lauwaert, *Senior
Researcher at the Leuven
Institute of Criminology (LINC)
of the University of Leuven
and the European Forum for
Restorative Justice*





About Politics and Rights - Restorative Justice in the Victims' Directive

Dr. Katrien Lauwaert, Senior Researcher at the Leuven Institute of Criminology (LINC) of the University of Leuven and the European Forum for Restorative Justice

The restorative justice (RJ) provision contained in the 2012 Victims' Directive represents at the same time a milestone and a mitigated result of political negotiations.¹

(I) Restorative justice in the Victims' Directive ... a milestone

With the 2012 Victims' Directive restorative justice provision is for the first time included in a binding and enforceable legal instrument at the European level. This is a milestone. Moreover the Directive gives more attention to restorative justice than its predecessor, the Framework decision of 2001², which was binding, but the possibilities to enforce implementation were limited and so it was a weak instrument for bringing about change. The 1999 Council of Europe Recommendation on mediation in penal matters³ provided a more elaborate and robust framework than both the 2012 Directive and the 2001 Framework Decision, but it is not binding legislation.

The 2012 Victims' Directive recognises the benefits of RJ for victims of crime, provides an adequate definition of RJ services and creates an obligation to inform victims

about the availability of RJ. In its article 12 it puts a strong focus on the right to safeguards for victims participating in RJ.

Recognition of the benefits of RJ for victims of crime

Recital 46 states that '*RJ services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim*'. It is politically significant that this phrase confirms very clearly what has been well established in practice and research. In comparison with previous European legislative documents it moreover refers not only to victim-offender mediation, but covers a wide range of RJ practices, which is in line with the international developments.

What kind of benefits is the Directive referring to? Benefits which victims highlight themselves are, amongst others, the following. They appreciate having a say and being able to participate actively in their own case. In the dialogue with the other party, they can obtain information about the facts and get answers to questions that preoccupy their minds. Why, for example, was the offence

¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

For more elaborate comments see Lauwaert, K. (2015). European criminal justice policies on victims and restorative justice. In: Vanfraechem, I.; Bolivar Fernández, D. and Aertsen, I. (eds.), *Victims and Restorative Justice*. Routledge, London and New York, 239-272; Lauwaert, K. (2013). *Restorative justice in the 2012 EU Victims' Directive: a right to*

quality service, but no right to equal access for victims of crime, *Restorative Justice: An International Journal*, 414-425.

² Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA).

³ Recommendation No. R (99)19 of the Committee of Ministers to member states concerning mediation in penal matters.



committed and how exactly did it happen? They can also confront the offender with the consequences of the offence and speak about the future. What will happen when we meet again? What will you do with your life when you leave prison? Will you tackle the problems which caused the criminal behaviour? Receiving and accepting an apology from the offender is also a powerful experience for many victims. Financial reparation is frequently part of the benefits, but most often it is not the top priority for victims. Research has also established a decrease in anxiety and anger and a decrease of symptoms of post-traumatic stress.

It is worthwhile to note that quite some victims have pro-social motivations to participate in RJ. They want to see the offender get back on the right track and it is their wish to contribute to this change. Offender centred research has shown that participation in RJ can indeed support processes of desistance. What is it then in RJ that helps offenders? Different factors come into play such as the communication with the victim, the emotional work done around feelings of shame, guilt or regret, the financial reparation made to the victim and the fact that the mediation allows for positive sides of the offender's identity to be confirmed.

An adequate definition of RJ

The Victims' Directive provides an open definition of RJ: *'RJ means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party'* (article 2.1 (d)). The focus is on the process as well as on the outcome. The definition makes room for direct encounters, but also for indirect forms of

dialogue via the mediator/facilitator, or via video messages or letters for example.

A right to information about RJ

'Member States must ensure that victims are offered information on the available RJ services from the first contact with a competent authority' (article 4.1 (j)). The first competent authority victims are in contact with is usually the police, who receive the complaint at the police station or at the location of the offence. In terms of accessibility this obligation is a major step forward. Only if victims know about the existence of RJ services, will they be able to make use of them. Moreover, this provision makes clear that it is not harmful to inform victims early on about the possibility of RJ. In the past this has been a sensitive issue, especially amongst victim support workers, who tended (and sometimes still tend) to be (overly) protective of their clients, deciding themselves whether a victim is ready or not to be informed about RJ. We currently know that it is needed to inform victims proactively and that receiving the information early on allows for victims to activate this information later, when they feel the need for communication with 'the other side'. The impact of this obligation will much depend on how the information is provided. It is indeed to be expected that an administrative, juridical formulation on the back of a complaint form would have a different impact than someone explaining orally and handing over a flyer with practical information, or a poster in the waiting room of the police station. Preamble 21 insists that *'information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim.'*



Such information and advice should be provided in simple and accessible language’.

Priority to safeguards in the context of RJ services

The main priority of the Directive concerning RJ is to make sure that RJ services are competent and safe in order to protect victims against secondary and repeat victimization, and against intimidation and retaliation. If RJ is implemented, certain safeguards need to be respected. In article 12 a number of key safeguards are mentioned. This can be seen as a concern for good quality, which is laudable. The wording gives however the impression that RJ is something to be cautious about, and one could ask whether this is rather a step back. The 2001 Framework decision asked the member states to stimulate the development of RJ, which set quite a different tone.

Voluntariness is key for good quality practice in RJ. The decision to participate should be free, and based on informed consent following full and unbiased information about the process, potential outcomes and procedures for supervising the implementation of any agreement. Consent can be withdrawn at any time and the agreement should be arrived at voluntarily. (art. 12.1.(a), (b), (d))

Confidentiality as conceived in the Directive means that discussions in RJ processes that are not conducted in public should be confidential and are not subsequently disclosed except with the agreement of the parties; or as required by national law due to an overriding public interest (art. 12.1(e)). Safety (art. 1 (a)) should be considered before and during the process in order to make sure there are no risks of intimidation or retaliation.

RJ should only be possible if the offender has acknowledged the basic facts of the case (art. 12.1 (c)). This leaves enough room to work with different situations, such as the cases in which the offender acknowledges to have been involved in the facts, without necessarily agreeing with the legal qualifications of that involvement.

Finally, we want to highlight the requirement that RJ services should only be used if they are in the interest of the victim (art. 12.1 (a)). It seems quite logical not to use RJ against the interest of the victim, but probably this sentence is inserted to prevent that RJ programmes are conceived in a manner which is too offender oriented. However, recital 46 mentions explicitly that the primary consideration in RJ should be the interests and the needs of the victim. That is worrisome, as RJ has been fundamentally conceived as a balanced approach in the interest of victims and offenders.

Implementation

The member states have until 16th November, 2015, to implement the Directive and make the necessary changes in national laws, regulations and administrative provisions (art. 27.1). By 16th November, 2017, they will have to provide to the Commission available data showing how victims have accessed the rights mentioned.

(II) RJ in the 2012 Victims’ Directive ... a mitigated result of political negotiations

Should we be happy with the RJ related content of the 2012 Victims’ Directive? The picture is mixed. As it is a Victims’ Directive, we cannot expect a full framework for RJ in this legal instrument. We already mentioned a number of



valuable elements. There are nevertheless also missed opportunities. Important issues are not mentioned and so the following challenges will still have to be addressed in the future if we want to make or keep RJ a victim-friendly offer.

First, self-referral should be made possible. In too many countries victim and offender participation in RJ is dependent from an offer made by a prosecutor or a judge in a specific stage of the criminal procedure. This is not logical and it leaves needs unaddressed: because interested people do not receive the offer or because the offer is made at a moment in time when they are not yet ready for it or not interested anymore. This brings me to the second challenge. RJ should be available at any stage of the criminal proceedings, because it should be accessible when victims and offenders need it. Moreover, there is no reason to exclude certain types of crimes, as happens in certain countries for more serious offences, or for specific offences such as domestic violence. Third, RJ should not stay limited to pilot projects implemented here and there. The services should be available nationwide and be for free.

Tracing back the negotiations during the legislative process, it is clear that the RJ objectives were considerably reduced. Initially the proposal was ambitious and access to compensation and reparation was one of the five specific objectives of the draft Directive. The obligation to

establish RJ with high standard safeguards (in line with the UN Basic Principles for RJ programmes) was gradually boiled down to minimum quality standards. RJ proved to be a controversial topic and it would have been a costly affair in quite some member states if generalised availability would have been required by the Directive.

The Victims' Directive is the only EU document containing binding legislation on RJ. If the EU policy on RJ is not further developed this contains the risk that the official image of RJ will become that of a service for victims. Wouldn't that lead to the denaturation of RJ? Many aspects mentioned in the Victims' Directive are equally relevant for offenders participating in RJ, but for them there is no specific binding EU legislation on this matter.

We see signs in national practice and policy that the general message of the Directive has been received. Whether, and when, full implementation will be reached, remains to be seen. Probably the path towards that ambitious goal will still be windy and long.



Implementing the Victims' Directive: Challenges and Good Practices

Stephen Meighan, BSc, LLB, Victim Support Europe and Chair, Victim Support Scotland

Victim Support Europe (VSE) was founded in 1990 by national organisations in Europe working with victims of crime. As the umbrella network, VSE consists of 40 national member organisations, providing support and information services to victims and witnesses of crime in 26 countries, including 21 member states of the European Union. Members have around 3,000 staff and 20,000 volunteers and provide assistance to around two million people affected by crime and disaster each year. The VSE head office is based in Brussels and has three members of staff. The VSE Executive Board represents different victim support organisations and countries across the European Union.

During the development of the Victims' Directive, VSE was one of the key stakeholders and was represented on several working groups and Parliamentary committees.

The key objectives of VSE for 2015 are to

- Assist member states and NGOs to establish effective victim support services, and where already established, to help them improve these services
- Develop minimum standards for victim support services i.e. what services must be offered, who must be able to access services etc., and to provide accreditation of those services
- Improve support in cross-border victimisation cases by establishing networks and providing contacts in different countries, thereby ensuring that victims can be referred to support services in their country of habitual residence

- Develop an EU training programme for victim support practitioners

In 2001, there were two main problems identified for victims in Europe. Firstly, there was inadequate EU legislation and poor implementation of the legislation which existed. Secondly, the needs of victims were not sufficiently addressed by Member states. The 2001 EU Framework Decision on the standing of victims in criminal proceedings was the first time that victims of crime received EU-wide rights. However, the Framework had no sanctions for non-implementation and, in practice, remained fairly unsuccessful in providing victims access to rights. Many member states only implemented one of the rights from the EU Framework Decision, or only developed administrative procedures without giving them statutory standing - this is not uncommon within the EU. The non-prioritisation of victims, whereby criminal justice systems prioritise catching and punishing the accused and do not focus on the needs of the victim, in conjunction with the lack of knowledge of victims' needs were the primary drivers behind the Victims' Directive.

Victims were unable to access their rights and existing rights did not adequately address the challenges which the victims faced. The VSE wanted to make victims' rights an EU priority. To this end, the VSE

- Worked closely with national Victim Support organisations to collect case studies to evidence current challenges
- Lobbied the Justice Commissioner to highlight the importance of making victims' rights an EU priority
- Worked with the member states which were holding the EU Presidency to



ensure they highlighted victims' issues as a priority during their presidency, encouraging them to make it part of their legacy

- Worked with Commission and Parliament on the scope and content of the Directive
- Worked with member states to ensure that they knew that victims' rights were a continued priority and their actions in this area were being observed and acknowledged by the EU as well as organisations working to protect and promote victims' rights

Where is the EU Directive now?

Given that the deadline for implementation is not until November 2016, there are at this stage no formal implementation reports available. It is, therefore, impossible to accurately assess the full implementation.

However, VSE is aware that many member states have the process well under way. Indeed, some states (e.g. Ireland, UK and Malta) have already enacted legislation. The most positive situations are where

- Civil Society is consulted and involved in the process - Civil society refers to the voluntary sector which would include Victim Support voluntary organisations and human rights organisations.
- A multi-agency/holistic approach is being adopted - Member states should not look at one right in isolation, e.g. right to information in which case the member state may, for instance, focus primarily on the information police provide at the initial contact with the victim. A more holistic approach includes looking at all aspects involving information and including WHAT the individual pieces of information say, such as time of trial, changes of

charges, outcome of case, release of offender etc. It also includes HOW information is provided, does the victim understand and is the information delivered by a professional trained to work directly with victims etc. Finally, it's important to look at WHO provides the information, prosecution, court, police, victim support etc. and what follow up is offered to the victim. Different rights are also linked. For instance, following the right to information, victims may want to apply for protection measures to take up an offer of support - these, therefore, come as a direct result of right to information, yet cover other rights and from other agencies than the one providing the original information. Victims' rights cover many different areas that are all interlinked so if you are focussing on them in isolation you will miss any cross-over and link between the different rights. Victim Support for instance provides many rights such as information and support as well as protection.

- Legislative changes are implemented alongside the development of strategic policies. Legislation on its own will not mean the rights are accessible in practice. Implementation guidance and further administrative procedures and policies are often required to ensure legislation is translated into practice. For instance, how will the right to support be implemented in practice needs to be clarified with accountable agencies listed.
- Monitoring bodies exist to provide support, information and guidance - this could be anything from a victim support agency, separate government department, or independent agencies such as Victim Commissioner, Human



Rights Commission or something similar.

The implementation of the Directive is most often focussed on procedural rights. The key issues are:

- Definition and role of victim
- Victim Support
- Individual Assessments
- Reporting foreign crimes at home
- Practical implementation - Training and changing attitudes

Definition of a Victim

Recital (19) 2012/29/EU Directive establishing minimum standards on the rights, support and protection of victims of crime states that a person should be considered a victim regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.

It is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive.

Implementation Issues

There are concerns that some definitions in the Directive may still be restrictive. Some member states have different definitions such as who are the injured parties e.g. some countries include family members in their definition of victims and some don't include them. The impact on rights and how this relates to the role of the victim is unclear.

Some countries have implemented measure only for certain types of victims and not all victims of crime as defined by the Directive. Some countries restrict specific rights and services available to certain groups of victims, for instance victims of domestic violence. Victims of unreported crime are not always included. The Directive recognises differing "status" of victim in some countries in proceedings e.g. the status of same-sex spouses is not always recognised in all countries so rights as a family member may be restricted.

However, many rights as a victim continue to apply even where there is no formal status as a victim.

Articles 8 and 9 focus on victim support but there are numerous problems. The Fundamental Rights Agency (FRA) is a European agency focussing on human rights and they have done their own study into the existence and set up of victim support services. "*Victims of crime in the EU – the extent and nature of support to victims*"

www.fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf.

According to their report, eight member states do not have nationally provided victim support services. The report is separate from the Directive and merely provides an overview of the current situation.

Even where victim support exists, it can be

- Localised or supporting small numbers of victims. Some victim support services only cover regions and not the whole country.
- Fragmented - lack of co-ordination geographically or between organisations
- Focussed on specific groups or types of crime or providing limited services.



Some victim support groups only work with specific groups of victims.

- Lacking funding
- Lacking formalised referral systems. In some countries there are no formal referral systems from the police so that victims do not get access to support.
- At risk where support is only provided through government systems. Many victims have no access to services and/or services are inflexible and do not adjust to the needs of victims.

To deliver Support Services, they must

- Be victim focussed and ensure that support is delivered in the best interest of the victim
- Be flexible and individual: timing of service, types of service provided, the way in which the service is provided
- Cover all victims (no hierarchy, no need to report, no need for offender to know)
- Accessible and visible
- Be co-ordinated
- Be available before, during and after proceedings

Cross-border victims of crime

(Article 17)

'the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position: (a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority; (b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls.

Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence. Member States shall ensure

that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.'

Victims should be able to report crime immediately in the country where the crime took place and the police should be able to take a statement from the victim straight away.

This is important, for instance in situations where a person falls victim to crime while on holiday and will return to their home country in the few days following the crime. However, if the victim chooses, they should also be able to report the crime in their own country.

Basically, the victim should be able to choose the country where they report the crime.

With regard to Article 17 there are practical difficulties to resolve implementation. Translation services through video or teleconferences are not often used in most Member States. While contacts between Victim Support organisations exist, there is no formal, qualitative system of cross-border collaboration. Cross-border victims often don't reach victim support services and don't access available information – but good practices do exist. Training is needed to provide victim support to cross-border victims.

Thoughts for the future

In November 2017 the first implementation report is due. Whilst strong new laws are in place, these are not



yet translated into practice. The fulfilment of victims' rights requires change of attitude towards victims. It is important that member states do not lose the EU

focus on victims of crime and that the Victims' Directive becomes implemented in its entirety.



Stephen Meighan, BSc, LLB, Victim Support Europe and Chair, Victim Support Scotland



Dealing with Victims and their Families - the DPP Response to the Forthcoming Legislation

Claire Loftus, Director of Public Prosecutions

Good afternoon Madam Chairman, Members of the Judiciary, ACJRD Council Members, Colleagues, Ladies and Gentlemen.

I would like to thank the Association for Criminal Justice Research and Development (ACJRD) for inviting me to speak on the implementation of the EU directive on establishing minimum standards on the rights, support and protection of victims of crime.

We are today focussing our attention on the victims of crime and the shift occasioned by the first *legislative* initiative, initially by the EU directive and underpinned by legislation, giving rights to victims engaging with the criminal justice system.

What I hope to do in the time available is to outline how the office of the DPP proposes to respond to these initiatives. Firstly, I want to talk about existing measures which already operate within the office and some of which are replicated by the directive. Then I will address insofar as I can those measures which will be new for us under the directive and any legislation.

The question of the standing of victims in criminal proceedings and the mechanisms via which their needs can be

accommodated within our bi-partite, adversarial system has been the subject of a great deal of commentary from the academic community and non-governmental organisations, particularly those operating support services for victims.

A number of reports¹ in recent years, including most especially *'The Needs and Concerns of Victims of Crime in Ireland'* (2010)² by Shane Kilcommins et al highlighted a range of victims' concerns. The authors found that the courtroom environment and court delays can be particularly stressful for victims.

The report also recommended that my Office extend³ the giving of reasons to other categories of victims, in addition to families of deceased victims. It has been my experience and that of my staff over the many years of receiving phone calls and letters as well as speaking to victim support organisations, that, not surprisingly, the lack of information or failure to communicate important information to victims causes great upset.

Before addressing the specifics of how the Victims' Directive will operate in the future, I think it is important to highlight the existing services that we have been providing to victims of crime. Firstly, a victim of crime (or a family member of a

¹ See also : REPORT ON SERVICES AND LEGISLATION PROVIDING SUPPORT FOR VICTIMS OF CRIME Ivana Bacik, Liz Heffernan, Patricia Brazil, Marguerite Woods of Law School, Trinity College Dublin, A Report prepared for

The Commission for the Support for Victims of Crime, December 2007

² Kilcommins S. & Leane M. (2010). Report for the Commission for the Support of Victims.

³ Kilcommins, S & Leane M. (2010) Report on the Commission for the Support of Victims. 179-180



deceased victim) has had the longstanding right to seek a review of the decision not to prosecute. This is in contrast to other jurisdictions, for example England and Wales, where the Victim Right to Review initiative was only introduced in 2013. This right in Ireland is explained in the publication *'The Role of the DPP'* and on our website.

Secondly, the Victims' Charter was first published in 1999 and revised in 2010. This details the services and perhaps more importantly the standards that a victim is entitled to expect from the various state agencies in the criminal justice 'family', including of course the Office of the DPP.

Thirdly, in 2001 we published Prosecutor's Guidelines, formally detailing for the first time how decisions are reached, and importantly The Rights of Victims and Victims' Relatives. A commitment is given in paragraph 12.3 of those guidelines to have regard to views expressed by victims when making decisions whether to prosecute or not, to examine requests for reviews of decisions not to prosecute and to seek to review unduly lenient sentences where it is considered that the sentence is unduly lenient.

Fourthly, the provision of clear, accessible and legally accurate information about the Criminal Justice Process, and a victim's role within it, has been a key responsibility of the Communications Unit of my Office, established in 2001. Two publications in particular *"Going to Court as a Witness"* and *"The Role of the DPP"* (both texts in clear concise language and approved by the National Adult Literacy Agency in clear concise language) contain extensive information, in twelve languages (and are also available in Braille and audio) about a range of issues of concern to victims

including their right to seek a review of the decision not to prosecute, when a victim is entitled to anonymity and on their option to have a pre-trial meeting with the prosecution team. This information hopefully better informs victims or families of victims and helps to prepare them, so far as possible, for what to expect when giving evidence before a Court. We also have a victims' and witnesses' section on our website www.dppireland.ie.

Most recently in 2013, in conjunction with An Garda Síochána and The Victims of Crime Office of the Department of Justice, a guide to preparation of the victim impact statement was also made available to victims. It was published to inform victims of the expanded categories of persons entitled to make a victim impact statement (including the families of deceased victims) and is a good example as it addressed concerns expressed by victims about last minute edits being made to their Victim Impact Statements, the reasons for which they did not understand.

The directive to have direct effect on 16th November, is an important step establishing rights to assist victims who have suffered physically, emotionally and financially as a result of a crime. Regardless of whether the Criminal Justice (Victims of Crime) Bill 2013 is enacted before that implementation deadline, I wish to stress that my Office will give, upon request by the victim, a summary of the reasons for decisions not to prosecute, in all our decisions not to prosecute, subject to some limited exceptions, made on or after the 16th November, 2015, subject to some limited exceptions. This is among other reasons to enable the victim to decide whether to request a review of the decision under Article 11 of the EU Directive.



If, following receipt of the reasons for the decision not to prosecute, a victim remains dissatisfied with the decision not to prosecute, the victim can request that the decision is reviewed. As applies in the current practice of reviews, this review will be conducted by a separate lawyer to the original decision-maker.

I should say that in the context of a prosecution on behalf of the People of Ireland my obligations are not only to the victims of crime but also to the due process rights of suspects or accused persons.

I make this point to acknowledge that decisions in respect of prosecutions brought on behalf of the People of Ireland may not in all circumstances satisfy all the individual emotional, physical, financial or legal needs of individual victims.

In making decisions to prosecute, my legal staff and I can only direct a prosecution where the evidence supports one, where there is sufficient evidence. If the evidence is insufficient or it is not in the public interest to prosecute, a prosecution cannot be directed. An accused is entitled to the presumption of innocence at all times until a guilty plea is entered, verdict returned or conviction recorded.

The right to the presumption of innocence and the right to one's good name are protected both by our Constitution and also by the EU Charter of Fundamental Rights. Article 7 of the EU charter also protects the right to privacy. I also have to ensure that an accused person receives a fair trial in accordance with Article 38 of the Constitution as do the Judiciary in the exercise of their functions. It is within this context that I have to perform my statutory duties.

I have established a new Unit, the Communications and Victims Liaison Unit, to prepare for and address my obligations under the EU directive and the forthcoming Criminal Justice (Victims of Crime) Bill 2015. This unit will write directly to victims who request a summary of reasons or seek a review of a decision made on or after the 16th November, 2015, not to prosecute. It is staffed by two lawyers at present and supported by the Office Communications Unit which has been allocated additional staff for this purpose. This unit builds on the work of the Office Communications Unit, over many years, of providing telephone assistance to, and publishing information for victims.

The Directive and published Bill also provide for greater information and procedural rights during a criminal trial. Those rights include a right to information about the charges brought, the date and location of trial dates, appeals and the outcome of prosecutions.

The Bill recognises that some adult victims can be very vulnerable. The Bill provides that in certain circumstances adult victims may give their evidence in accordance with Part III of the Criminal Evidence Act 1992 as amended. Alternatively, the Judge may exclude all persons (with the exception of those directly involved in the proceedings) from the Court when the victim is giving his or her evidence.

These additional options for vulnerable victims will hopefully reduce the stress which victims often feel when faced with giving evidence before a court. It is important to note that while the prosecutor makes the application to the court the decision on whether to grant the application remains a matter for the Judge.



Criminal procedures can be very difficult concepts for non-lawyers to understand. The provision of independent legal advice to victims is designed to answer other questions that victims may have during the trial, including any possible civil remedies that may be available. These are questions which prosecutors cannot answer for victims.

Lawyers within my Office and State Solicitors will continue to offer pre-trial meetings to victims to explain the trial process and to introduce themselves. Hopefully this alleviates, a little, the stress caused by attending court or giving evidence. The existing restrictions on what can be discussed in such pre-trial meetings will continue. Prosecutors and solicitors can inform victims of what to expect during the process but cannot discuss the evidence in the case.

Legal constraints do not of course relieve prosecutors of their obligation to treat all victims with respect or to clearly communicate to victims about what to expect during the trial.

All frontline staff, including state solicitors, who meet with victims, already receive training on their obligations to victims. The forthcoming annual prosecutors' conference, to be hosted by my Office next week is largely devoted to discussing our obligations under the Victims' Directive. I will be emphasising the continuing need for prosecutors to communicate clearly and sensitively with victims and their families in pre-trial meetings.

In 2014, for example, the Chief Executive of the Dublin Rape Crisis Centre [D.R.C.C.], Ellen O'Malley Dunlop, addressed the Prosecutors' Conference. Their specialised knowledge and experience of dealing with

victims of Rape and Sexual Offences gave an invaluable insight into just how difficult it is for such victims to deal with the criminal justice process.

Further training of my staff, State Solicitors and barristers acting on my behalf is a priority.

The co-ordination between criminal justice agencies is a key component of the EU directive and the Criminal Justice (Victims of Crime) Bill 2015. The information obligations under Head 8 of the Bill remain primarily the duty of An Garda Síochána. This requires communication of important developments following the investigation of a complaint and information on relevant dates and outcomes following a prosecution. As investigators of the complaint, the Gardaí are the first contact that a victim has with the Criminal Justice system.

The Bill does not change this important role played by Gardaí and family liaison officers in keeping victims informed. Rather, the new scheme seeks to build on their experience by creating a roadmap for prosecuting members, family liaison officers and the newly created Victim Services Offices.

It remains my obligation to ensure that Gardaí are advised in a timely fashion of any information that needs to be communicated. My Office will continue to use the Garda information networks to ensure that victims are told of significant developments, court dates, and outcomes.

To conclude, the Victims' Directive seeks to give formal rights and information to victims who through unfortunate and often tragic events have to interface with the criminal justice system where a



prosecution is considered or brought on behalf of the people of Ireland.

I believe that it has the potential to encourage a compassionate and coherent approach to a wide range of issues, vindicating the rights of victims and their families in a criminal justice system that is fair and effective for all.

I am conscious that victims of crime are the reluctant participants in the criminal justice system. The Directive will increase co-operation and cohesion. Most importantly, it will, I hope, go a long way to alleviate the difficulties that many victims encounter as they, through no fault of their own, navigate their way through our criminal justice system.



Claire Loftus, Director of Public Prosecutions



The Implementation of the Victims' Directive into Irish Law

Maria McDonald, BL

(I) Introduction:

On the 16th November, 2015, *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* [Hereafter the Victims' Directive] came into force throughout all EU Member States.¹ On that date Member States were required to inform the EU Commission about the legislative text that they had implemented to transpose the Victims' Directive. On the 27th January, 2016, the European Commission opened infringement proceedings against 16 Member States, including Ireland, for non-communication on the Victims' Directive.² At the writing of this paper only one out of 16 countries has since notified the Commission. Ireland has not implemented any legislation to give effect to the Directive and therefore could potentially face a fine for non-compliance.

It is very disappointing that no victims' legislation has been published to date notwithstanding indications that the Criminal Justice (Victims of Crime) Bill 2015³ would be published in advance of Christmas 2015. In July 2015, Ireland published the Scheme of the Criminal

Justice (Victims of Crime) Bill 2015 but to date has failed to publish a Bill or implement legislation to give effect to the Directive. It should be noted that the Minister for Justice and Equality has engaged with victims' rights organisations, including the Victims' Rights Alliance [VRA], in relation to the draft legislation and she has indicated her clear commitment to implementing the Victims' Directive. However, the failure to publish legislation in advance of the election has the potential to delay this essential Bill further. One can only hope that the forthcoming Minister for Justice and Equality will commit to and prioritise the Criminal Justice (Victims of Crime) Bill 2015 in the new programme for government so that victims have the full protection and supports afforded to them under the law.

(II) About the Victims' Directive

The Victims' Directive provides for minimum rights, supports and protections for all victims of crime regardless of the residential status of the victim.

It is important to note that the Victims' Directive in no way impinges on the rights of an accused to a fair trial. Rather the Victims' Directive results in a re-balancing of rights such that '*victims are recognised*

*All views expressed in this document are the author's own.

¹ *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* [Hereafter the Victims' Directive] available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>

² See http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&r_dossier=&decision_date_from=26%2F01%2F2016&decision_date_to=28%2F01%2F2016&DG=JUST&title=&submit=Search

³ Criminal Justice Victims of Crime Bill 2015, General Scheme, 8th July 2015 See <http://www.justice.ie/en/JELR/CRIMINAL%20JUSTICE%20%28Victims%20of%20Crime%29%20BILL%202015.pdf/Files/CRIMINAL%20JUSTICE%20%28Victims%20of%20Crime%29%20BILL%202015.pdf>



*and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings’.*⁴

This re-balancing has also been considered recently by the European Court of Human Rights [ECtHR] in *Y. v. Slovenia*⁵ where the court held that victim’s rights were breached under Article 3 and Article 8 of the European Convention on Human Rights [ECHR]. The ECtHR held also that the rights of the victim must be balanced with the rights of the accused person.⁶

(III) Definition of a victim

A victim is defined by the Victim’s Directive and the Scheme of the Criminal Justice (Victims of Crime) Bill 2015 as:-

‘(a) A natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence perpetrated against him or her, or

*(b) A family member of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death.’*⁷

The Scheme of the Criminal Justice (Victims of Crime) Bill 2015 provides that someone is a victim for the purpose of the legislation *‘whether or not, in either case, a complaint alleging the commission of an offence has*

been made or any offender has been identified, apprehended, charged or convicted in relation to the offence’. This addition mirrors the wording of the recital to the Victims’ Directive.⁸

The Recital to the Victims’ Directive goes further in defining a victim by making reference to indirect victims of crime. An indirect victim would be for example a child who witnesses domestic abuse. The Recital states:-

‘Family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive. However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive’.

Indirect or secondary victims are not included in the definition of a victim in the Scheme of the Criminal Justice (Victims of Crime) Bill 2015. There can be no doubt that indirect victims of crime, such as children, should be entitled to protection and victims’ support services pursuant to the Victims’ Directive. Submissions had been made by the VRA to the Department of Justice and the Justice Committee on this issue. On 22nd October, 2015, the Justice Committee reported to the Minister on the General Scheme of the Criminal Justice (Victims of Crime) Bill and the Committee noted that *‘[it] was suggested to the Committee that the draft legislation is amended to substantially*

⁴ Victims’ Directive, Article 1 (1)

⁵ *Y v. Slovenia (no. 41107/10) Chamber Judgment [2015] ECHR 519 (28 May 2015) Final Judgment 28/8/15* available at <http://decisions389.rssing.com/browser.php?indx=16912142&item=2569>

<http://www.google.ie/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCYQFjABahUKEwi1x5v oz8bIAhU>

LchQKHdvVDHQ&url=http%3A%2F%2Fhudoc.echr.

coe.int%2Fapp%2Fconversion%2Fpdf%2F%3Flibrar y%3DEC HR%26id%3D001- 154728%26filename%3D001154728.pdf&usg=AFQ jCNE7tipuoo9_ID4zhhbqVomQ9HJuEQ&sig2=cRiv3 GEWH5BrpUusGpIY1A [Hereafter *Y v Slovenia*]

⁶ *Ibid*, *Y v Slovenia* at para 10 & 106

⁷ Victims’ Directive, Article 2 (1) (a) & (b); Head 2 (1) General Scheme of the Criminal Justice Victims of Crime Bill 2015

⁸ Victims’ Directive, Recital 19



*recognise secondary victims or those who witness a crime, and thus experience harm and trauma as a result.*⁹

It remains to be seen whether indirect or secondary victims will be included in legislation once published.

(IV) The Right to Information

Article 4 of the Directive provides that Member States shall *'ensure that victims are offered the following information without unnecessary delay from their first contact with a competent authority in order to enable them to access the rights set out in this Directive'*. The Directive then goes on to list information from (a) to (k) which should be provided to victims of crime.

The Gardaí are deemed to be a competent authority under Article 4 and therefore must provide information to victims of crime at first contact. However, there are also other bodies, such as the HSE or Tusla which would, in the author's view, be deemed to amount to a *'competent authority'* and must provide information to victims of crime. For example, a victim may never report a crime to the Gardaí. Victims of child sexual abuse and/or domestic abuse/victims of hate crimes/assaults and other criminal acts are often seen in the hospital. They may never make a formal complaint to the Gardaí. On first contact with the HSE victims should be provided with information on how they can access their rights under the Directive, this includes information on how to make a complaint. Without providing this information these victims will not have the information to enable them to access their rights under the Victims' Directive.

Head 4 of the Scheme of the Criminal Justice (Victims of Crime) Bill 2015 provides that certain information must be provided to victims of crime by the Gardaí. This information includes:-

'(a) procedures for making a complaint alleging an offence.

(b) services which provide support for victims of crime.

(c) the role of the victim in the criminal justice process.

(d) protection measures available for victims.

(e) services providing legal advice and legal aid.

(f) The Criminal Injuries Compensational Tribunal and the power of a court to make a compensation order under section (6) of the Criminal Justice Act 1993.

(g) entitlement to interpretation and translation or other linguistic assistance.

(h) procedures for victims who are resident outside the State.

(i) entitlement to expenses arising from participation in the criminal justice process.

(j) entitlement of a victim to inform the court of trial how he or she has been affected by the offence.

(k) the procedure to obtain information from the Irish Prison Service on the release of a prisoner.

(l) available grievance procedures.'

Any legislation published will require that Head 4 be amended to ensure that this information is made available *'without unnecessary delay, from their first contact'* with victims of crime. Furthermore, there should be a requirement that this information also be provided by the HSE/hospitals/Tusla on first contact with victims.

⁹<Justice Committee reports to Minister on General Scheme of the Criminal Justice (Victims of Crime) Bill>| 22nd October 2015 available at

<http://www.oireachtas.ie/parliament/mediazone/pressreleases/2015/name-30065-en.html>



Notwithstanding the implementation of the Victims' Directive on the 16th November, 2015, not all victims of crime are obtaining the information which they are entitled to under the Directive. The Gardaí have prepared a leaflet outlining all of the information which victims are entitled to under the Directive. This leaflet is still not available to the Gardaí on the ground to provide to victims of crime. At the time of writing this document it is understood that the information leaflet is being translated and its publication is imminent. The availability of this leaflet will, I hope, in some way ensure that all victims who engage with the Gardaí receive the information so that they can access their rights under the Directive. A similar information leaflet should also be made available to victims of crime who are seen in hospitals.

(V) The Right to Understand and Be Understood/The Right to Translation

It is all very well providing information to victims but they must be able to understand it. The Directive makes it clear that victims have a right to receive information which they can understand and which is translated.

Article 3 (1) provides that a state *'shall take appropriate measures to assist a victim to understand and be understood from first contact'* and with any other engagement during the course of criminal proceedings. Article 3 (2) of the Directive indicates that any information should be provided in a *'simple and accessible language orally or in writing'* having regard to the *'personal characteristics'* of the victim and any disability which *'may'* affect their ability to understand and be understood. Information provided to victims should be provided in a manner having regard to their ability to understand and be

understood. Head 19 (3) of the Scheme of the Criminal Justice Victims of Crime Bill 2015 provides for the ability of the Minister to make regulations in relation to translation or linguistic assistance, however, it does not provide for a victim's right to interpretation or translation in criminal proceedings.

Article 5 (2) of the Directive provides that when making a complaint victims should be provided with translation free of charge if they do not speak the language. Furthermore Article 5 (3) and Head 7 of the Scheme of the Criminal Justice (Victims of Crime) Bill 2015 provides that victims must be provided with a written acknowledgement that they made a complaint to the Gardaí. The Directive provides that this should be translated; however, Head 7 makes no such reference to translation.

Article 7 (1) of the Directive provides that upon request victims who do not understand or speak the language should be provided with interpretation. The Scheme of the Criminal Justice (Victims of Crime) Bill 2015 does not provide for the right to translation. Head 19 (3) states that the Minister can make regulations for interpretation and translation. However, the Minister cannot make regulations when the right itself is not included in the legislation. This change must be made to comply with the Directive.

(VI) The Right to be Heard

Article 10 of the Victims' Directive provides that victims have a right to be heard during the course of criminal proceedings. Head 9 of the Scheme of the Criminal Justice (Victims of Crime) Bill 2015 implements this right by enabling a victim to be heard at a sentencing hearing via a Victim's Personal Statement. Head 9 states that in



cases other than where a victim impact statement would apply, a victim can provide a written statement to the court called a Victim's Personal Statement and 'a court shall take into account the Victim Personal Statement' 'in determining the sentence to be imposed on a person for an offence to which this section applies'. Although this has not become law I understand that some courts are requesting Victim's Personal Statements from victims in order to comply with Article 10 of the Directive. The use of Victim's Personal Statements will increase the work load of the District Court significantly.

(VII) The Right to Access Victim Support Services Free of Charge

Under Article 8 (1) of the Directive victims have a right to access victims' support services, including counselling and shelters, free of charge for a period before, during and after any criminal investigation. This right is not included in the Scheme of the Criminal Justice (Victims of Crime) Bill 2015.

On the 16th February, 2016, Safe Ireland issued statistics which illustrated that they were unable to meet up to fourteen requests for safe accommodation every day in 2014¹⁰. This amounted to almost 5,000 women being turned away over the course of a year. Furthermore, Adapt Women's Refuge in Tralee indicated that they had to turn away women over 200 times.¹¹

Article 9 (3) of the Victims' Directive makes it very clear that Member States must provide access to specialist support services which:-

- 'shall, as a minimum, develop and provide:
- (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
 - (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling'

The failure of the state to provide access to shelters would be in breach of Ireland's obligations under the Victims' Directive. The Directive will come into force on the 16th November, 2015, so Ireland's obligations in relation to ensuring access to victim support services for all victims will commence on this date. Victims' support services must be adequately funded in order for Ireland to comply with its obligations under the Directive and to ensure that all requests for safe accommodation are met.

Budget 2016 included a welcome increase of 21% in the Victims of Crime Office funding to €1.5 million. An increase of 21% may appear significant; however, this amounts to an increase in approximately €250,000 for 50 victim support organisations. That is approximately an extra €5,000 per organisation.

¹⁰ Safe Ireland, 'National Domestic Violence Service Statistics Report 2014', 16th February 2016 available at <http://www.safeireland.ie/2016/new-domestic-violence-statistics-show-14-requests-for-accommodation-could-not-be-met-every-day/>

¹¹ <Domestic violence services 'crippled'; can't meet needs of women and children> by Evelyn

Ring; Irish Examiner, 17th February 2016 available at <http://www.irishexaminer.com/ireland/domestic-violence-services-crippled-cant-meet-needs-of-women-and-children-382358.html>



Similarly, COSC will provide an extra €500,000 to over 40 organisations, which if all of it is provided to victim support organisations, when broken down is approx. an extra €12,500 per organisation. This money may, however, be allocated in a different manner.

This amount of money is not sufficient to enable victims' organisations to provide all of the services they are required to under the Victims' Directive.

Some of the VRA member organisations are run solely by volunteers. For example AdVIC, SAH, IRVA have no paid staff and rely on volunteers. In fact, most if not all victim support organisations rely on volunteers. There is a sustainability issue with some victim support organisations without the allocation of funding for paid staff. Additional resources will need to be provided to ensure the provision of these services in line with Article 8 of the Directive.

(VIII) Facilitating the Referral of Victims to Victims Support Services

Article 8 (2) of the Directive provides that *'Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.'*

The Gardaí are therefore required to facilitate the referral of victims to victim support services. Head 6(6) of the Scheme of the Criminal Justice (Victims of Crime) Bill 2015 outlines a three step test for when a Garda will refer a victim to a victim support organisation. The Gardaí will only refer a victim if:

- (a) the victim consents

- (b). *'[the] capacity of the complainant to contact a service supporting victims of crime is limited'*
- (c) the victim *'might benefit from contact with such a service'*

These second and third aspects of the test are subjective. A victim has a right to access to victim support services under the Directive and this right should not be limited by a Garda's subjective view as to whether a victim may or may not benefit from victim support services. Consent should, in the author's view, be the only requirement for referring victims of crime to victim support services.

(IX) The Right to Protection

The Directive is clear that victims have a right to protection. Victims must be individually assessed in order to ascertain whether they have special protection needs. Article 22(2) of the Victims' Directive sets out three criteria that must be considered during an individual assessment to ascertain whether a person needs special protection measures namely:

- (a) The personal characteristics of the victim
- (b) The type of nature of the crime, and
- (c) The circumstances of the crime.

Head 6(2) of the Scheme of the Criminal Justice Victims of Crime Bill 2015 adds a number of additional factors which should be considered in identifying whether someone has special protection needs. If a victim is deemed to have special protection needs then they will be provided with additional supports.

Article 23(3)(b) of the Victims' Directive states that measures must be made available *'to avoid unnecessary questioning concerning the victim's private*



life not related to the criminal offence’. Head 16 of the Scheme of the Criminal Justice (Victims of Crime) Bill 2015 outlines what special measures should be made available to protect victims during the course of a trial. However, Head 16 does not provide for a measure which would avoid unnecessary questioning of a person’s private life. The inclusion of this measure is essential in order to prevent re-victimisation of the victim by the criminal justice system. As I understand it, if this measure is not included then it may be due to the fact that there are concerns in relation to its inclusion due to an accused’s right to a fair trial; however, I cannot see any realistic reasons for not including this essential provision in legislation. Firstly, this provision, if drafted correctly, should not impinge on the rights of an accused to a fair trial. Secondly, I draw the reader’s attention to similar legalisation which exists in a more limited version in relation to limiting cross-examination in relation to a victim’s prior sexual history. Limiting cross-examination has been done in the past by Section 3 of the Criminal Justice (Rape) Act 1981 as amended. This section restricts the questioning of victims on their prior sexual experience [prior sexual history]. This is not something new. There are difficulties around the application of Section 3 in practice in that victims are still being cross-examined in circumstances which are not relevant or necessary. This has added to the re-victimisation of victims of rape.

Thirdly, the ECtHR have recently indicated that the right to cross-examination is not an absolute right. In *Y. v. Slovenia* the ECtHR made it clear:-

“that the manner in which the criminal proceedings were conducted in the present

case failed to afford the applicant the necessary protection so as to strike an appropriate balance between her rights and interests protected by Article 8 and X’s defence rights protected by Article 6 of the Convention”¹²....

“Thus, the interests of the defence are to be balanced against those of witnesses or victims called upon to testify... Notably, criminal proceedings concerning sexual offences are often conceived as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. Therefore, in such proceedings certain measures may be taken for the purpose of protecting the victim, provided that they can be reconciled with an adequate and effective exercise of the rights of the defence.”¹³

The court went on to state that *“the Court has also already held that a person’s right to defend himself does not provide for an unlimited right to use any defence argument.... Thus, since a direct confrontation between the defendants charged with criminal offences of sexual violence and their alleged victims involves a risk of further traumatising on the latter’s part, in the Court’s opinion personal cross-examination by the defendant should be subject to a most careful assessment by the national courts, all the more so the more intimate the questions are”¹⁴and ‘the Court considers that cross-examination should not be used as a means of intimidating or humiliating witnesses’¹⁵*

Head 49 of the Criminal Law (Sexual Offences) Bill 2014 proposes to insert a new section 14C in Criminal Evidence Act 1992 which would provide protection for a

¹² *Y v Slovenia* at Para 115, Supra note 5

¹³ *Y v Slovenia* at Para 103, Supra note 5

¹⁴ *Y v Slovenia* at Para 106, Supra note 5

¹⁵ *Y v Slovenia* at Para 108, Supra note 5



victim against cross-examination by an accused. This addresses the issues raised in *Y v Slovenia*.¹⁶

Where there is already legislation and proposed legislation limiting the right to cross-examine a victim, I cannot see why this cannot be extended to include legislation in relation to the prevention of cross-examination in relation to a person's private life not related to the criminal offence, in accordance with the Victims' Directive. In any event EU takes precedence over Irish law and therefore victims have a right not to be cross-examined in relation to their private life not related to the criminal offence if they have special protection needs.

Article 23(3)(c) has actually been applied by the courts in the recent rape case involving a victim who had special protection needs. The victim in that case had a learning disability. The Defence attempted to cross-examine the victim in relation to her prior sexual history. The Prosecution referred to Article 23(3)(c) and the victim's right not to be cross-examined in relation to her private life not related to the offence. Judge Hunt refused to allow the cross-examination. It appears he was critical of the Defence for attempting to cross-examine the victim in such circumstances. Judge Hunt's decision is in line with the Victims' Directive but without legislation on this issue Judges may vary in how they interpret and apply Article 23(3)(c).

Another means by which victims can be assisted through the cross-examination process is via the use of intermediaries in court, which was first permitted under the Criminal Evidence Act 1992. There is no

panel of trained intermediaries in Ireland and therefore they have had to use trained intermediaries from the UK. There are no Guidelines on the use of intermediaries. I understand that they have only been used once or twice in 23 years. The use of intermediaries is also provided for under the Scheme of the Criminal Justice (Victims of Crime) Bill 2015. It is essential that intermediaries can be used in practice and to ensure this happens additional guidelines and measures will need to be implemented.

(X) Conclusion

It is hoped that draft legislation implementing the Victims' Directive will be published in the coming months. Legislation is a necessity if all victims of crime are going to be able to access their rights under the Directive. It is also essential that appropriate training is made available to ensure that people engaging with victims of crime are aware of their obligations to victims under the Victims' Directive.

Moreover, it is imperative that an appropriate quick and straightforward complaints procedure is put in place for victims of crime. Head 30 of the Scheme of the Criminal Justice (Victims of Crime Bill) 2015 provides for the development of grievance procedures by the Gardaí, the Courts Service, the DPP and the Irish Prison Service such that they '*shall establish... a procedure by which any person who is dissatisfied with any act or omission*' which should have been carried under the Criminal Justice (Victims of Crime) Bill 2015.

Head 30 doesn't go far enough as there is a real need for an independent body such as

¹⁶ Supra note 5

a Victims of Crime Ombudsman or a Victims' Commission, who would be able to deal with victims' complaints and who would monitor the implementation of the Victims' Directive and any legislation. If costs are an issue then a Victims of Crime Ombudsman could form part of a pre-existing Ombudsman's office. If there is no straightforward complaints procedure then victims will be forced to the courts to enforce their rights under the Victims' Directive. This would be unfair and unreasonable and would result in further

trauma and re-victimisation for victims of crime.

The Victims' Directive has the potential to change the way that victims of crime are treated in Ireland but only if legislation is implemented in compliance with the Victims' Directive. Ireland will need to implement legislation in the coming months if it does not want to face infringement proceedings from the EU Commission for failure to comply with the Directive.



Pictured L-R: **Maria McDonald, BL**, Chief Superintendent **Anne Marie McMahon**, Director of Training, Garda College and **Claire Loftus**, Director of Public Prosecutions



Putting Victims at the Centre of the Garda Service

Chief Superintendent Anne Marie McMahon, Director of Training, Garda College

Ladies and Gentlemen, distinguished guests. Good afternoon.

It is a pleasure and indeed an honour for me to address this conference on behalf of the Garda Commissioner and to have the opportunity to share with you our vision for dealing with victims of crime and to outline to you the practical steps we are taking to improve our practices and processes which will ensure that An Garda Síochána is well placed to implement, support and embrace the forthcoming Victims' Rights Legislation.

I believe it is fair to say that the adversarial nature of the Irish criminal justice system disadvantages the victim in many respects. In fact one could reasonably assert that, heretofore, the interests of the victim were incidental and the role of the victim secondary in criminal proceedings.

The transposition of the EU Directive on Minimum Standards for Victims of Crime into Irish law places an onus and a responsibility on An Garda Síochána and indeed the criminal justice family as a whole, to uphold the rights of the victim as part of our everyday work. We are moving from a service based approach to a rights based approach. This represents a new era in terms of how we deal with victims and serves as a significant driver for cultural change in the context of, our service, our response and our engagement with victims.

Reflecting on Garda Inspectorate reports and reports from other oversight bodies, in addition to feedback from victim support organisations, it is clear that our response to victims of crime has not always been

what it should be. In some cases victims of crime complained that they were not respected or listened to. Once their case was reported they did not hear from An Garda Síochána again, and while some of these cases were investigated, others were not. There was also a failure to inform victims of crime about the support services which exist to support them through their ordeal. This is simply not good enough and my commitment to you here today is that An Garda Síochána will place victims at the centre of the Garda Service. We will aim to provide a respectful, reassuring, responsive and reliable service addressing the needs and expectations of all the victims.

I recently read a book written by Susan Herman entitled "*Parallel Justice for Victims of Crime*". There were a couple of opening paragraphs which I will share with you because they really resonated with me in the context of victims.

'Surely justice requires more than holding offenders accountable. Yet we minimize victims' pain and suffering, and pretend that criminal convictions are a sufficient balm.....'

'Our criminal justice process can be viewed as a communal response to the offender that says, if you violate the law, we will hold you accountable, punish you if appropriate, isolate you if needed and offer you services to help reintegrate you into the community..... however,'

'For victims of crime, there is no comparable communal response. There is no acknowledgement that says, 'what happened to you was wrong' there is no



obligation to say 'we will help you rebuild your life' 'in short there is no societal commitment to achieve justice for victims.'

When I reflect on how An Garda Síochána traditionally dealt with victims of crime I can see that our main focus was the investigation in the context of gathering evidence and apprehending the culprit and when we caught the culprit there were very robust processes, procedures, regulations underpinned by domestic legislation and international human rights standards to protect the rights of the culprit. Of course I absolutely acknowledge the necessity for all of these protections for the offender but the question I ask myself is, how did our service and interactions with the victim measure up? Was it responsive? Was it reassuring? Was it reliable?

In some cases there is no doubt we provide an excellent service however, there are many instances where our service falls far short and in some cases our response has led to secondary victimisation.

My vision for our service provision to victims of crime is that it will be Respectful, Reassuring and Reliable on a consistent basis.

And I have the word consistent underlined here, because that is what our service to victims must be, no ifs, ands, buts or excuses.

In many respects the Garda as the first responder, represents the criminal justice system and we know that long after the crime has occurred, it is the manner, the sensitivity, the compassion, the attitude and the general approach of the responding Garda that remains in the minds of the victim. We meet victims at a

time when they are most vulnerable, at times when they have lost a loved one, at times when they may have experienced great pain, physical injury or indeed shame. It is imperative that each and every member of An Garda Síochána treats each victim of crime in the same way as they would wish their own mother, father, brother or sister to be treated.

How will we achieve this?

There are a number of tangible developments that have already taken place that will enhance and support our service to victims; these include the roll out of the Garda Victim Service Offices (GVSOs) and the imminent release of enhancements to the PULSE system.

Many of you will have already heard about the GVSO, so, briefly:

- The Garda Victim Service Offices (GVSO) are already up and running in each of our 28 Garda Divisions. These offices will augment the existing service provided to victims of crime by all Gardaí in line with An Garda Síochána Victims' Charter and imminent domestic legislation.
- Each GVSO has two members of staff and will be open during business hours Monday to Friday.
- The GVSO staff will enhance the information flow between An Garda Síochána and victims. The staff will be responsible for communicating with all victims of crime and trauma and consistently prioritising their needs.

This service is in addition to the service provide by all operational Gardaí who are responsible for ensuring the delivery of an Honest, Accountable, Respectful and Professional Garda service to all victims of crime in accordance with legislation and Garda Policy regardless of their



background or social status. Gardaí will be conscious of the protection needs of victims at all times, particularly vulnerable victims.

The enhancement of the PULSE system will allow us to capture and record additional information:

- Victim assessment screen - where information such as, nationality, tourist, requirement for translation services, any request for Garda/doctor of particular gender, details of visual/hearing/mobility/protection or other requirements, motive, contact requests will be captured
- A new victim engagement screen to record all victim interactions where services such as, deployment of FLO/liaison Garda or ELO
- Enhanced functionality in relation to the printing of letters to victims of crime including two additional letters
- This information captured on PULSE will be considered by the District Officer who will ensure that an appropriate response is provided

Training is ongoing currently throughout the organisation in relation to this PULSE release.

One of the significant considerations here is the whole area of protection. The Criminal Justice (Victims of Crime) Bill 2015 refers to protection in the context of *'personal safety, protection of property, availability of protection or barring orders, seeking to remand an offender in custody or seeking conditions on bail, if granted to prevent contact with the victim or any other measure to prevent secondary*

victimisation'. It also includes special measures that may be provided to victims during the interview process in an investigation or where giving evidence during a trial.

These areas will be considered as part of overall response to victims of crime

So what else is new?

We have rolled out a new training programme for our trainee Gardaí. This programme is accredited by the University of Limerick and represents a significant shift in our approach to training and learning. We use a problem based learning methodology which involves trainees working in teams dealing with scenarios that are reflective of real life situations. They engage in role plays, this allows us to embed and evaluate the learning transfer.

In the past week we were assessing a role play where trainees were dealing with a missing person report. A number of them failed the assessment due to lack of empathy.

So the question you may ask, what's new about that?

Well, there are two significant changes here.

Firstly we were able to identify the deficiency because of role play and assessment.

In the traditional exam assessment this failure would not have been identified. Secondly, how we responded to the failure is also different. Our new approach is centred on outcomes, it isn't just about passing an assessment, it's about making sure that the trainee has the skills



necessary to deal with, in this instance, the family of a missing person.

We put a development plan in place which will ensure that the trainee receives additional coaching, guidance and instruction prior to further assessment.

Building on Existing structures

We will build on our existing structures and processes to further support victims of crime, for example our community policing ethos, our ethnic liaison officers' policy, specialist Garda interviewers and our family liaison officers network.

Community policing

As an organisation, An Garda Síochána has a long established tradition of fostering and developing close relationships within the communities we serve. The trust which has been built up between An Garda Síochána and the public is largely due to our proactive community engagement strategies. Building and sustaining positive partnerships with all of our community stakeholders is the lifeblood of effective policing. In this regard, I believe that the concept of 'Community Policing' offers excellent potential for An Garda Síochána to optimise its delivery of an accountable and professional service to victims of crime and we will shortly be launching revised Community policing guidelines.

The Garda Racial Intercultural and Diversity Office (GRIDO) established in 2000 continues to promote Garda policies which serve to integrate minority ethnic groups in Ireland, and which promote social inclusion, equality and diversity. This is done through initiatives such as regular consultation by Garda management with minority community representatives at local level; the appointment of ELOs within every Garda division and the Garda station

'Open Days' and many other local initiatives.

Ethnic Liaison Officers (ELOs)

An Garda Síochána must be sensitive to the reality of the impact of racially motivated crimes on individual victims in the greater community. We must treat it with the seriousness it deserves, investigate it thoroughly and encourage victims of such crimes to report them to us and ensure that the conditions are such that victims feel comfortable and confident in coming forward.

An Garda Síochána's network of Ethnic Liaison Officers (ELO) was established to provide a sensitive and reassuring service to members of minority communities based on the understanding of their needs and fears as potential victims of racism and hate crime, and most importantly in relation to their subsequent contact with the Gardaí. ELOs are appointed in each Garda division and their main role is to initiate and maintain contact with local community groups and employ innovative means to break down barriers in assisting the more marginalised in our society to gain access to Garda services.

We realise the necessity for maintaining constant consultation with groups in order to be acquainted with any developments that require Garda attention. I hope that our ELOs can assist minority individuals to report crime, racially motivated or otherwise to An Garda Síochána.

Specialist Interviewing Service

There are Specialist interviewers trained in each Garda Division. Their role is to video record interviews with a victim who has been the subject of a sexual assault. The rationale behind the use of this service is to prevent the injured party having to be in



the same courtroom as the accused during the trial. It applies to victims who are under 14 years of age and persons with intellectual disabilities. It also applies to sexual offences, offences involving violence or the threat of violence and sexual exploitation of any person under the age of 18 years of age. Specialist interviewers undergo a two year training programme.

In this context best international practice dictates that interviews with victims should not be conducted in Garda Stations. Special interview suites are located in the following locations throughout the country: Letterkenny, Sligo, Limerick, Cork, Waterford, and two in Dublin.

Family Liaison Officers (FLOs)

FLOs are appointed to liaise with victims and or victims' families in cases of murder, manslaughter, loss of life as a result of road traffic collision or any other case where the District officer deems it appropriate.

The FLO provides accurate and timely information to the victims' family and advises of support services available.

FLO co-ordinators are now appointed in each division, their role includes making sure that there are sufficient numbers of trained FLOs in each division and making sure that only trained FLOs are assigned in each case.

How are we doing?

Garda Síochána Analyst Service - Attitudinal Survey

The Garda Síochána Analyst Service will be carrying out attitudinal surveys with members of the public including victims of crime providing opportunities for An Garda Síochána to continue learning, honing and

adapting our service to meet the needs of all the victims of crime.

Some of the areas that will be covered in the surveys include:

- Perceptions and experience of crime
- Victimisation
- Reporting levels
- Handling of most recent incident if reported to AGS

Perceptions of An Garda Síochána

- Overall trust and satisfaction
- Views on AGS as an organisation

This will ensure that feedback from the customers is continually coming back into the organisation, facilitating a continuous learning approach and supporting the delivery of a professional service to all victims of crime.

Victim Support Organisations - Partnerships - National Crime Victims Fora

Partnerships are essential to our collaborative response to victims of crime. The primary objective is to minimise re-victimisation whilst actively combating criminality. Continued consultation is a priority for An Garda Síochána and the Victim Support Organisations have been generous with their feedback about how An Garda Síochána can improve on providing a professional response to all victims of crime. The Garda National Crime Victim's Forum provides a collaborative model of communication helping everyone involved to understand the different but complementary services we all provide to victims of crime.

Crime prevention

In addition to our obligations under section 7 of the Garda Síochána Act, the Garda Inspectorate in their Crime Investigation



state that *'The number one priority for any police service must be the prevention of crime.'*

Over the past number of months the Garda Commissioner has been working on a Crime Prevention strategy for the Garda Organisation which will be launched shortly.

Crime and the fear of crime are a significant concern for all people. Its prevention, therefore, must be a high priority for An Garda Síochána, the Government and citizens in general. Quite often, crime prevention is perceived in terms of the criminal justice system – the police, courts and the prisons. Much of the work of the justice system is reactive, dealing with the problem after the event. It follows therefore that a proactive approach aimed at preventing crime from happening in the first instance is a much preferable option to pursue.

Crime and the fear of crime negatively affect the quality of life of many within the community and An Garda Síochána recognises that, in order to effectively combat crime and the fear of crime, comprehensive crime prevention and reduction strategies will be put in place so that the number of victims will be reduced in the first instance and those who become victims will receive a professional service that is respectful, reassuring and reliable.

Conclusion

As I have outlined, the Garda response to victims of crime has many facets, these include a number of new initiatives such as the establishment of the GVSOs and

enhancements to our pulse system and I have no doubt that as victims' rights legislation becomes a reality there will be many more changes and developments required. We are up for the challenge and willing to make those changes.

There will be a renewed focus and emphasis on our existing structures, such as our FLOs, ELOs, Garda specialist interviewers, our community policing ethos and structures and our approach to crime prevention.

We will continue with our quarterly attitudinal survey, the results of which will ensure that we keep our 'fingers on the pulse' in terms of how our service is measuring up for victims.

Our new Problem Based Learning approach for trainee Gardaí will ensure better learning outcomes for the organisation generally and victims specifically.

The 16th November, 2015, is a very significant day; it marks the beginning of a new era for victims, and the service we provide to victims. I very much welcome the victims' rights legislation and I see it as a critical driver for cultural change in the Garda organisation in terms of how we deal with victims. But everything won't be perfect on the 16th November, 2015; there is a lot of learning to be done, a lot of processes to be developed with our partners in the justice family and a lot of bedding in to be endured. For our part AGS are fully committed to putting victims at the centre of everything we do.



1. Violence Against Women

Presenters: Dr. Marsha Scott, Chief Executive, Scottish Women's Aid, and Dr. Eimear Spain, School of Law, University of Limerick

Chairperson: Dr. Susan Leahy

Rapporteur: Jade Lydon

Trauma by Dr. Eimear Spain

Trauma renders victims helpless and disrupts their sense of control. There are many physical and mental illnesses associated with trauma such as depression, substance abuse, higher rates of stress related cancers and conditions such as irritable bowel syndrome. It is important to know that many people who come to the attention of the criminal justice system are likely to have been victims of violence themselves. 75% of women who took part in a survey in Irish prisons have been abused or subject to violence before incarceration. Women who have been subject to trauma tend to be more fearful and suspicious of support services and engaging in these services can often be re-traumatising. Children can also experience trauma even if they have not been abused themselves but have witnessed it. Childhood trauma results from anything that affects a child's sense of safety and security. This is often the case in domestic violence cases and situations which require Gardaí or social services.

The traditional approach to trauma is to ignore, minimise or medicalise it as post-traumatic stress disorder, but not all victims fall into that category and therefore it should be recognised as a normal reaction to a very abnormal situation. The norm is to treat the person as a victim who needs treatment or needs to be fixed rather than someone who needs support to build themselves back up

and gain empowerment. The ideal is a trauma informed service with core values that look at physical and emotional safety, building trust, allowing and understanding the person's choices, recognising their need to be involved and finally empowerment.

Small changes in language that service providers can use have shown to have a dramatic effect on how victims of trauma react and participate in services, such as "How can we work together to help with your situation?" opposed to "What can I do to fix your problem?" It is important for all service providers, inside and outside of the criminal justice system, to be able to recognise signs of trauma and have specific training on how to deal with victims. Signs of trauma include shock, denial, anger, guilt, shame and even emotional numbness. It is important to realise that everyone reacts differently and often victims of trauma can seem emotionless or distant. This does not mean that their trauma is any less significant only that they may be in shock, become numb to their situation or have learned to block out their emotions. Everyone has their own coping mechanism and service providers should never belittle someone's experience or assume their trauma was not damaging or harmful enough just because they do not evoke the stereotypical response.

Istanbul Convention by Dr. Marsha Scott

Understanding the causes and consequences of trauma helps to understand how best to deal with a situation. This is why the Istanbul Convention (Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence) is so important as it not only deals with domestic violence but all forms of violence against women. Violence against women



is a violation of human rights as well as a form of gender based discrimination and is a serious global problem. The objectives of the Istanbul Convention are to prevent and eliminate violence against women, protect victims and to see that perpetrators of acts of violence are prosecuted. Although the convention has a focus on violence against women, Member States are encouraged to apply its provisions on domestic violence to men also. The Council of Europe approved the establishment of the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) in December 2008. Following two years of negotiation and drafting the Istanbul Convention was agreed in January 2011. The European Observatory on Violence Against Women made a signing, ratification and implementation of the Istanbul Convention its priority for 2014.

Ireland supports, in principle, the aims and terms of the Istanbul Convention but as of yet has not signed the Convention. The detailed provisions of the Convention and the legislative and administrative arrangements that would be necessary to allow signature and ratification by Ireland are being examined in conjunction with the government commitment to consolidate and reform domestic violence legislation. Article 52 on emergency barring orders presents a particular difficulty in relation to property rights under the Irish constitution.

The Istanbul Convention is a ground breaking piece of policy and mirrors the changing approach of violence against women that focuses not only on domestic violence but also includes female genital mutilation, forced marriage and rape and sexual assault. The Convention stresses that violence can never be justified on the

grounds of culture, customs, religion or honour. The most important thing about the convention is that the cause and consequence of violence against women, is women's inequality. It is critical to understand what causes it in order to understand what an effective intervention is. When a State signs up to the Istanbul Convention it obliges the State to fully address violence against women in all its forms and it provides a set of comprehensive concrete standards that they must abide by. The main provisions are about prevention, protection, prosecuting and monitoring, which some Irish legislation already provides for but there is no one piece of policy or legislation that provides for all forms of violence against women and that also recognises that the cause is due to women's inequality. By recognising the cause is inequality, it allows a State to make appropriate interventions and focus on prevention rather than just dealing with the aftermath of violence against women.

2. Victim Information Schemes and Victim Focused Work in Probation Board for Northern Ireland (PBNI)

Presenter: Cheryl Lamont, Acting Director, Probation Board for Northern Ireland and Stephanie Weir, Victim Liaison Officer, Probation Board for Northern Ireland

Chairperson: Pádraig Mawe

Cheryl outlined the approach to the session, setting out that it would cover the strategic content as well as the operational delivery.

PBNI, established since 1982 in statute, is a non-departmental public body with the Department of Justice. Its core work is providing professional assessment reports to Sentencers at the pre-sentence stage



and also Parole Commissioners when they are making a determination on Recall.

Overall, PBNI has 4,500 offenders with whom they supervise on court orders or on post-custody licences. 90% of those under supervision are male and less than 2% are under the age of 18.

Of those offenders under supervision, 72% have a drugs/substance problem and 37% have mental health issues.

In terms of changing behaviour, PBNI has a range of programmes and interventions to engage with offenders across the continuum of risk from low, medium, high and risk of serious harm. These include general offending programmes to domestic violence, and sexual offending programmes. There is also a range of interventions through collaborative working and partnerships that tackle the issues of drugs and alcohol as well as unemployment and accommodation.

PBNI is fully involved in the statutory Public Protection Arrangements for Northern Ireland which work in partnership with police, prisons and health trusts in managing sexual and violent offenders. The PBNI is also a designated partner in the Policing and Community Safety Partnerships.

In terms of victim focussed work, Cheryl outlined how PBNI is involved and/or leading work in the areas of assessment and supervision through a range of interventions including community service where victims can identify work to be completed by offenders.

In regard to Restorative Practice, PBNI is piloting casework with Community Restorative Justice providers and

contributing to and informing on the Department of Justice's Strategy on Restorative Justice.

In terms of practice, PBNI's approach to delivery of their Victim Information Scheme which was established in 2005 was commended by the Criminal Justice Inspectorate's Reports in 2011 and 2015 which recommended that PBNI take the lead on its own Scheme as well as Victim Information Schemes on behalf of the Northern Ireland Prison Service and the Department of Justice.

Cheryl introduced Stephanie Weir, Victim Liaison Officer, who works within the Victim Information Scheme. Stephanie presented as follows:

In Northern Ireland the **Victim Information Scheme** is administered by the Probation Board for Northern Ireland. It consists of three statutory schemes namely:

- Prisoner Release Victim Information Scheme (PRVIS) (2003)
- PBNI Victim Information Scheme (2005)
- DOJ Mentally Disordered Victim Information Scheme (2008)

The three schemes provide post sentence information to victims of crime, or their representative, when the case has resulted in:

- A prison sentence of 6 months or more received by an adult of 18 years or over
- Any sentence supervised by the Probation Board for Northern Ireland
- A Hospital Order with a Restriction Order (Transfer Direction from Prison to Hospital with Restricted Direction)

The **PRVIS Scheme** provides written information to the victim, or their representative, concerning a prisoner's



temporary release from prison, including any imposed conditions of release. They also advise the victim of the prisoner's final discharge (month and year). During the custodial phase victims may submit in writing any concerns they have in relation to the prisoner. These may be taken into consideration at times of temporary release and when deciding the final Licence conditions. Whilst registered with PRVIS the victim's registration is not confidential.

The **PBNI Victim Information Scheme** is available to any person, or agreed representative, who has been the direct victim of a criminal offence for which the adult offender received a Probation Supervised Sentence. When an offender is sentenced to both custody and community supervision the PBNI Victim Information Scheme will work in partnership with the PRVIS Victim Information Scheme.

Registration with this scheme is confidential unless the victim wishes for this information to be disclosed to the offender. The supervising Probation Officer is always advised of the victim registration as this allows the opportunity for relevant information to be passed that may contribute to the risk management of the offender.

The work of the PBNI Victim Information Officer (VLO) may be divided into three main areas:

- Provision of sentence information to victims, or their representative
- Victim Report writing for the Parole Commissioners
- Restorative interventions

Sentence Information: The VLO makes initial contact with the registered victim usually by telephone, unless otherwise requested. An offer is made to meet the

victim, or their representative, face to face at a venue of their choosing. At all times the victims will receive the sentence information in writing. Information is provided about the Licence conditions, or the supervision requirements, and how the order is managed by PBNI. The victims have the opportunity to pass on any concerns that they may have about the offender in the knowledge that this process is confidential and used to manage the risk of the offender. The victims may also be made aware of any changes to the Probation Supervised Order due to breach, amendment or recall. Information signposting the victim to various support services is also made available.

In relation to Public Protection sentences the offender is unlikely to be released from custody into the community until the Parole Commissioners consider that their level of risk may be managed safely in the community. In these cases the PBNI Victim Unit endeavours to make contact with the victim, or their representative, in order to offer them the opportunity to participate in a **Victim Report**. These reports allow the victim to express any concerns that they may have concerning the offender and the risks that they may pose. The information is taken into consideration when planning temporary releases and final licence conditions.

Restorative Intervention is a developing area of work for the PBNI Victim Unit. This process provides the opportunity for the victim to be involved in direct or indirect restorative contact with the offender if this would help to address issues resulting from the offence.

DOJ Mentally Disordered Victim Information Scheme. Victims in these cases are offered the same service as those



who register for the PRVIS and PBNI Victim Information Scheme. To date there are a small number of registered victims in this Scheme.

When contact is made with a victim it is clear that fear, anxiety and anger can be strong emotive factors. Some victims are annoyed by what they consider is a lenient sentence. On many occasions victims feel that the Criminal Justice system was unsupportive and that their voice was not heard, especially if the seriousness of the offence may be reduced. Most victims however have a basic sense of fear and a need to feel safe. The majority want to know where the offender is living and what happens should they meet. Unfortunately the legislative restrictions on the level of information that may be shared can be frustrating for the victim. It is not unusual for the victim to consider that the offender has all the rights and that they are still impacting upon their lives. An example of this is the preparation of Victim Reports, or the submission of the victim's written representations to the PRVIS Scheme. Victims are often annoyed that the offender will be able to read their information but they are not allowed to have access to that of the offender. They view this as unfair. On occasion it impacts on the victim's willingness to participate in this part of the process and the level which they are prepared to engage.

Restorative interventions can be a way of addressing some of the anxieties that a victim has in relation to an offender. There are various ways to pursue this so that victims may get answers or reassurances to their questions. All the participants are advised that this is a voluntary process which must not create further harm to anyone. Letters of apology or mediating between the victim and offender can be a

very effective method of engaging them in restorative work. However, on occasion the face to face meeting has a powerful positive effect for all concerned.

The work of the PBNI Information Unit is continuously developing and adapting. It is hoped that through time they will be able to gain direct access to victims and that it will be "Opt out" Scheme as opposed to the current "Opt in". Regular consultation and discussions take place between various Victim Groups via the PBNI Victims Reference Group all with an aim of developing and enhancing the services that may be offered to victims.

3. Offenders as Victims: A Peer-Led Support Approach

Presenter: Stephen Doyle, Founder and Director, Care After Prison

Chairperson: Gerry McNally

Rapporteur: Aoife Doherty

Care After Prison (CAP) was founded by Stephen Doyle in 2011 and exists today to support offenders, ex-offenders, their families and victims of crime. From his life experience and work with Care After Prison, Stephen provides a valuable insight into life in prison and shows us how an offender can indeed be a victim of crime themselves.

Stephen's Life Story

Stephen Doyle began his presentation by talking through his life story. At the age of 22 he was convicted of murder and sentenced to life imprisonment. At the time he entered custody, a newspaper article prompted Stephen to begin to question who he was and what had happened. The article described him as 'evil' and a 'murderer', two words he didn't



associate with himself or his crime. Murder, he thought, implied an intention, which was something that was not, in his view, a part of his crime.

As he began to reflect and develop an awareness of who he was and what he did, Stephen decided to write a letter to the family of the victim. His purpose in this letter was to apologise to the family and to explain that what happened was not a true reflection of him as a person. He described this process as one of great difficulty for him as offenders were not allowed normally to make contact with the family of the victim while in prison.

Stephen Doyle came to the realisation that the crime and its impact extended far beyond the offender and the victim. The victim's family were also profoundly affected. The family accepted the letter and sent a message back to Stephen. They forgave him, but on three conditions; he would forgive himself, he would use his time in custody to get an education and he would use his time in custody to better himself. The day after receiving this message Stephen enrolled in school in the prison and attended every day for the duration of his sentence.

One of the major things that Stephen Doyle noticed throughout his time in custody was the great number of people who re-offended. He describes the 'revolving door' effect whereby he would witness the same people coming in and out of custody. He also realised that his fellow prisoners were much more likely to open up and talk freely to a peer rather than a professional.

Stephen identified a need for a peer-led service for ex-offenders which then became his goal. In 2011 Stephen Doyle founded Care After Prison (CAP), the first

peer-led charity of its kind in Ireland, with the aim of reducing re-offending among those leaving custody.

What is a Victim?

This has proven to be a very difficult concept to explain.

In addition to the common understanding and perceptions of who victims in our communities are there are also victims among offenders and prisoners.

Many of those who offend have had a difficult upbringing or have had some very challenging experiences in life. Therefore, an offender can also be a victim. Unfortunately, once they become an offender, the fact that they may also be a victim of crime themselves can be forgotten or overlooked.

An offender may have been a victim of their home and local environment, where there was a history of crime in the family and crime was seen as part of everyday life. They may be a victim of domestic violence, sexual abuse or physical abuse as children.

Offenders can also become a victim of their past. The labels and reputations of a previous life of crime can be hard to shake off or escape from. They may have been a victim of themselves, of a repetitive cycle of bad life choices and experiences. While in custody and before, offenders can fall victim to bullying, which can range from verbal abuse to very violent physical abuse.

What does Care After Prison do?

Care After Prison (CAP) offers a place for these ex-offenders and victims of crime to come and get support from those who understand crime and the harm it can do and the criminal justice system, including prisons.



Four of CAP's staff members have first-hand experience of being in prison and thus, can offer a unique understanding and support service for ex-offenders. CAP staff use their experiences along with their education to help service users to stay away from crime, establish new lifestyles and to reintegrate fully into society. The support workers work one-to-one with clients to identify needs, to help them make a plan for their future and to put it into practice in the real world.

CAP also works with victims of crime and the families of offenders who may be going through the prison system. CAP can offer victims and families information on sentencing, life in prison and what to expect, referral to counselling services, information on visiting hours and procedures and information on release dates and parole. CAP staff are very conscious of confidentiality and of what information can and cannot be shared.

CAP staff also make off-site visits, in a neutral location, for those involved in gangs and who are looking to change and move on. CAP helps these people to re-settle in a neutral area where they are removed from their old lives and to establish new lives and positive careers.

Questions and Discussion

After Stephen Doyle's brief presentation there followed a lively discussion and exchange with much audience participation. Points raised included the following:

An offender may also become a victim of the community once they leave prison. They may feel isolated and excluded and in this way, prison life and the sense of community that exists in prison could be seen as attractive. The routine, food,

shelter, warmth and the 'safety net' effect of life in prison can be seen as quite attractive to someone who does not have this support outside. CAP links in with the ex-offender as they leave prison as they are beginning the transition period back into society to help in this difficult transition. Leaving custody can be just as much of a challenge as going in and it is a point that people need the most support.

Forgiveness can be healing for both the victim and the offender but it can also be very challenging and painful where forgiveness is withheld. It was asked if there was a way of stimulating young people to look for and gain forgiveness in helping them to desist from repeat offending? Answers acknowledged that it can be very difficult as there are many personal, social and environmental factors contributing to why the young person may re-offend. Sometimes it takes the penny a long time to drop with young offenders and in many cases support workers need to persist and repeatedly contextualise the situation for them. For example, asking 'Do you want to travel?' - yes, well you won't be able to if you keep going the way you are. 'Do you play your PlayStation a lot?' - yes, you will lose that privilege once you go into prison. You need to bring it down to their level and use a language and examples they will understand.

There was an appreciation that as well as being wrongdoers, offenders can also be victims. Acknowledging and addressing their issues as victims, as well as challenging and changing offending behaviour, can be a valuable step in changing that behaviour and helping ex-offenders become good citizens.

The workshop concluded with warm applause for Stephen Doyle in appreciation



of his personal story and his commitment as well as the important contribution that Care After Prison (CAP) is making as a peer-led project benefitting ex-offenders, victims and communities.

4. Access to Justice for Deaf and Disabled Victims of Crime: Identifying Challenges and Recognising the Need for Change

Presenter: Dr. Gillian Harold, Postdoctoral Researcher, University College Cork

Chairperson: Dr. Vicky Conway

Rapporteur: Annita Harty

Equality in the Criminal Justice System

It has been said that within the criminal justice system there has been a lack of equal treatment towards disabled people.

'The access to the criminal justice system is a matter of fundamental importance in a democratic society and is recognised in the Irish constitution. However, there are many barriers standing in the way of full access to the law and the legal system for people with disabilities in Ireland' (Commission on the Status of People with Disabilities, 1996). There have been significant developments in disability policy in Ireland over the last number of years; one such notable was the publication of "A Strategy for Equality" in 1996 by the Commission on the Status of People with Disabilities.

International Context

There has been an increasing concern with crimes, including abuse, perpetrated against disabled people within different communities. There is discussion in the literature of situations where police have failed to take disabled people's reports

seriously and where the competence and reliability of disabled witnesses has been called into question. This has contributed to the under-reporting of such crimes and is a factor in understanding the high attrition rates between reporting and prosecution. Literature reviews in this area have found that there is a lack of transparency and understanding in criminal justice procedures. There are also attitudinal barriers of those involved in the criminal justice system. People often do not understand the disability in question. Barriers in the built environment are an issue, along with those pertaining to information and communication. There is an automatic assumption that a disabled victim is a vulnerable victim, but this is not necessarily the case when provisions in the system appropriately respond to the rights of diverse victims.

Irish Context

With colleagues Dr. Claire Edwards and Prof. Shane Kilcommins, Dr. Harold conducted research funded by the National Disability Authority over a six-month period in 2011 to engage with disability organisations, victim support agencies and the criminal justice system. The research showed that there was a lack of strategic identification of people with disabilities as a specific group and a lack of data collection. There were a variety of definitions of 'disability' across different agencies. There were different attitudes displayed by legal professionals and variable evidence of disability awareness training. A key issue identified was that the Victim's Charter 2010 was not legally binding. The judicial system can be seen as a barrier in itself as one has to be literate to understand it and it is not built for vulnerable people. The criminal justice system and those working within it have tended to regard the victim constituency



as a homogenous category and have consequently failed to consider individuals' specific requirements, thus marginalising victims in the system.

Deaf Community in Ireland

There are approximately 5,000 culturally deaf people in Ireland. The majority do not see themselves as vulnerable or disabled. Their first language is Irish Sign Language, (ISL) which is not officially recognised in the Republic of Ireland. Deaf people use a visual language to communicate. Research in the Norwegian context has shown that there is a lack of deaf judges and legal professionals to represent victim. The presence of an interpreter can change the dynamic of the legal system. It can have an effect on the outcomes of interviews and court proceedings. There have been problems with communication within the system as it is heavily dependent on oral communication. The Irish legal system is phonocentric, where there is a belief that the spoken word is the ultimate communication (Corker, 1998). The legal system can contribute to secondary victimisation when it comes to victims with disabilities. The first interaction between the Gardaí and the victim is the most important because it can determine whether the victim will assist with an investigation or not.

Victims' Rights Directive

Under the Victims' Rights Directive victims will have the right to receive certain information about their case. The information should be given in a simple manner which the victim can understand. It states that if a victim does not speak the language then this information should be translated into a language which they understand. This is an issue because not all people speak a language. Deaf people communicate in sign language and it can

be difficult to locate an appropriately-qualified interpreter in certain incidences and interpretations can be inadequate. Due to lack of awareness, a deaf victim may potentially be mistaken for the offender because they may appear distraught and unable to communicate. Aggravation occurs when parties' hands are handcuffed which impedes the ability to use sign language. There may also be inappropriate sentencing due to a communication breakdown in the courtroom.

Communication

Many victims find it difficult to communicate with Gardaí when reporting a crime. Everyone experiences trauma in his or her own way, in many cases people may forget important pieces of information or it may be misinterpreted. There are challenges which arise for deaf victims because in many incidences victims are reliant on people who can communicate through speaking English. When a crime is being reported, the Gardaí are more inclined to talk to a person who can hear and who may have accompanied a deaf person, regardless of the fact that the person may not have been present during the crime. Gardaí are more inclined to talk around the victim instead of directly to the victim. This can cause misinterpretations to occur and leave the victim feeling more upset and frustrated.

Moving Forward

In order to make justice more accessible to disabled victims there needs to be some changes within the system.

Firstly, addressing data gaps is important for regarding the needs of people with disabilities. Resource cut backs have affected the data cut backs. Secondly, looking at international learning could be



useful for the Irish context. Thirdly, it is important to encourage communication between criminal justice agencies. Providing individualised support to people with disabilities at all stages of their encounter with the justice system is also important. Finally, however, the most important way to make the justice system more accessible is through disability awareness training for different professional groups in the justice system.

Conclusion

An Garda Síochána has introduced an Emergency SMS that can be used in cases of emergency. There are however some downsides to this service, one being that you have to register for the service before a crime has occurred in order to use it. Another is that the SMS message can potentially be a non-real-time service and therefore there is no guarantee that the SMS will be delivered. Most victims' helplines have email addresses and utilise text message technology that can be used instead of making a phone call. There needs to be more funding for the provision of qualified, accredited Sign Language interpreters for deaf victims of crime. Training is one of the most important aspects for dealing with individuals who have specific needs. Deaf-aware services are currently limited and this is problematic. The Victims' Rights Directive has recognised disabled victims. However, more needs to be done in terms of its effective implementation in Ireland.

Discussion

- There is a need to explore the emphasis on written communication in police interaction, particularly its implications when sign language, a visuo-gestural language, is being used by the witness. How are statements being recorded and in what form are they accepted as

evidence in court? Close consideration needs to be given to the issue of sign language interpretation in the justice system, an issue which is being comprehensively explored in the JUSTISIGNS project, currently being conducted in a collaborative initiative which includes Prof. Lorraine Leeson and her colleagues at Centre for Deaf Studies Trinity College Dublin.

- The importance of appreciating an individual's perspective cannot be over-stated; it is important that, while necessarily working within the procedural framework of the criminal justice system, we take the time to start where the witness is at and to consider what needs to be done to ensure that the rights of every individual to full access are met. The issue of training in this regard is especially pertinent for all those who engage with and provide support to victims.

5. Victim Impact Evidence at Sentencing: A Critical Appraisal

Presenter: Tom O'Malley, Senior Lecturer, School of Law, National University of Ireland Galway

Chairperson: Doncha O'Sullivan

Rapporteur: Sam Elliott

Introduction

Proportionality is the most fundamental principle of Irish sentencing law. A sentence must be proportionate, not only to the gravity of the offence, but also to the personal circumstances of the offender. This means that consistency of outcome is difficult to achieve because of the wide diversity of offence and offender circumstances. However, it is possible to aim for consistency of approach, which



would ensure that the same principles are applied in every case. The Criminal Justice Act 1993 (the 1993 Act) introduced a requirement that the criminal courts take account of victim impact at sentencing. To this effect a court may receive evidence as to the impact of the offence on the person against whom it was committed. The 1993 Act did not specify the extent to which victim impact should influence the sentence to be imposed in any case.

Victim Impact Statements (VISs) were expanded in scope by the Criminal Procedure Act 2010 (the 2010 Act) to cover any offence under the Non-Fatal Offences Against the Person Act 1997, in addition to all violent and sexual offences, as already provided for in the original 1993 Act. It also introduced what may be termed “family impact evidence” so as to allow close relatives of homicide victims to give evidence as to how the deceased person’s death has affected them. A third party may also give evidence where the immediate victim is a child or a disabled person. Even before the 2010 Act formally provided for family impact evidence, courts often permitted close relatives of homicide victims to give impact evidence. The right of such persons to give evidence has now been formalised under the 2010 Act.

Possible Extension of Victim Impact Evidence

There is a case to be made for formally extending victim impact statements to other cases where there is an identifiable victim and where the offence is one that may have caused some tangible loss – material, financial, physical or emotional – to the victim. It is well recognised that residential burglary, for example, can have a significant emotional and psychological impact on victims, even where the value of the property taken, if any, was slight. The

same can apply to breaches of health and safety law which result in death or personal injury.

In England and Wales, victims are informed by police, at the time at which a crime is reported that they may make a statement as to how the crime affected them. This is known as a victim personal statement. In Ireland, victim impact evidence is heard at the sentencing stage of the trial, but not before that. Under the Victim of Crimes Bill, which is being introduced to give effect to the European Union Directive on the rights of crime victims, it is proposed to introduce a bifurcated approach towards VISs. Under the draft bill, violent, sexual, and homicide offences will continue to be governed by the Criminal Justice Act 1993 (as amended). For others, it is proposed to have victim personal statements similar to those used in England and Wales. At first sight, it seems less than satisfactory that there should be two different systems for obtaining victim impact evidence, depending on the nature of the offence. However, international experience has shown that the wider the range of offences for which victim impact statements of whatever kind may be given, the lower the take-up rate tends to be. Therefore, it probably makes sense to ensure that there is a more robust system in place for violent offences (fatal or otherwise) and sexual offences.

Victim Impact Statements (VISs): A policy perspective)

As a matter of law, VISs have a clear role. They inform the Court of the effect of the offence on the victim. Extraneous material should not be included, and this is restated in the new legislation. If prejudicial material is contained (e.g. as in *People (DPP) v O’Donoghue* [2006] IECCA 134) the Court may order it not be published or



broadcast. This is right and proper. VISs are not about ventilating grudges. Under no circumstances should a victim, whether in a statement or otherwise, try to influence the court as to the sentence to be imposed. A victim may recommend leniency, but a court is never bound to act on such a recommendation. The extent to which victim impact evidence influences sentence outcomes is very difficult to measure. Research in other jurisdictions suggests that they have had little influence on sentence. In Ireland, sentences for serious sexual offences and other violent crimes have undoubtedly become more severe during the past 25 years or so. However, in the absence of more detailed empirical information, we cannot estimate the extent to which this is attributable to the introduction of victim impact statements.

The Purpose of Victim Impact Statements

VISs have value insofar as they provide a formal and structured mechanism for informing a court about the impact of the offence on the particular victim. Leading scholars in the field such as Roberts Julian V. and, Erez Edna "Communication in sentencing: Exploring the Expressive Function of Victim Impact Statements" *Hearing the Victim: Adversarial Justice, Crime Victims and the State* eds. Bottoms and Roberts, Routledge (2010) have argued that the main value of victim impact evidence is that it provides an opportunity for victims to give expression to the suffering they have endured as a result of the offence. This can be particularly important in cases of childhood sexual abuse, where the trial and sentencing may not take place until many years after the cessation of the offending. This is often the first time that the victim is truly given a voice, and often the first time he or she is in a position to

address the offender directly on an equal footing, instead of being under his control or domination.

Victim Impact Statements in Homicide Cases

There has been some disagreement over whether victim impact evidence should be allowed in homicide cases. If sentence is to depend, to some extent at least, on victim impact, is it right that the sentences imposed for manslaughter (which, unlike murder, carries a discretionary sentence) should depend on the extent to which the deceased is missed by surviving relatives. If every human life is of equal value, it should ordinarily follow that the sentence should not depend on the impact of the deceased person's death on others. Professor Paul Rock analysed homicide trials in the Old Bailey in London. (Rock, Paul. "Hearing Victims of Crime: The Delivery of Impact Statements as Ritual Behaviour in Four London Trials for Murder and Manslaughter". *Victims in the Criminal Justice System* (2010) 200-231). He argues that part of the role of the family today is to memorialise their dead, and they are often seeking an opportunity to do this at the sentencing stage of a homicide trial. Contrary to common perceptions, homicide trials are not always contests between pure good and pure evil – the victim will not always have been a person of untarnished character and, indeed, the killer may not always be a person of otherwise bad character. In such circumstances, the victim's family members often experience a special need to emphasise the victim's good qualities, while accepting that he or she had faults as well.

Moral Luck

Should a sentence depend on the attitude, resilience, forgiveness (or lack thereof) of



the particular victim? Assuming that victim impact evidence may influence sentence, is it right that the sentence should depend on the attitude of the victim's subjective attitude or response? After all, the essence of a crime is that it is wrong against society as well as a wrong against a particular victim (in many instances at least) and the function of the criminal process is to provide an objective, rational and dispassionate system for the trial of accused persons and the punishment of those convicted. The capacity of victim impact evidence to operate unfairly and prejudicially is evident from certain leading decisions of the United States Supreme Court involving capital cases where juries were charged with deciding if the death penalty should be imposed. The problem is not so acute in Ireland or other common-law countries where sentencing is exclusively a judicial task. However, the sentence in every case should be determined primarily by the inherent gravity of the crime, irrespective of impact, and the offender's personal circumstances.

Benefit to Victims

As noted earlier, victim impact evidence may have a valuable expressive or communicative role, and that can definitely be of benefit to victims. As for victims' interaction with the criminal justice system more generally, there are frequent references to the sense of closure or catharsis which a criminal conviction or a heavy sentence imposed on the offender can provide for victims. However, these are concepts about which, frankly, little is known and about which a great deal more research needs to be done. One thing research has consistently shown is that what victims most desire from the criminal justice system is information – being kept informed about the progress of the investigation and trial.

6. The Victims' Directive and Victims of Sex Trafficking: A Frontline Perspective

Presenter: Tara Brown, Volunteer Manager, Ruhama

Chairperson: Patricia Flynn

Rapporteur: Annita Harty

Ruhama as Service Providers

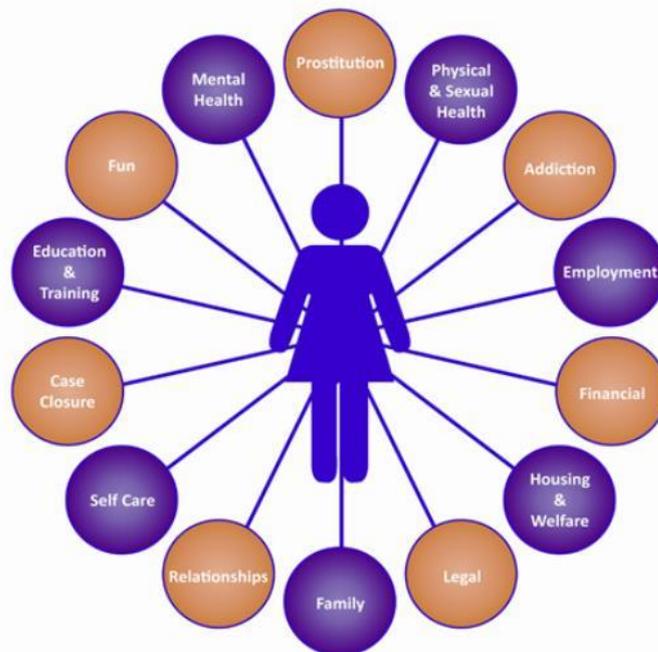
This workshop was delivered by Tara Brown, a representative from Ruhama. Ruhama is a Dublin-based Non-Government Organisation, which works on a national level with women who are affected by prostitution. They provide support services that adapt to meet the needs of every individual. One of Ruhama's missions is to work to change public attitudes, practices and policies regarding trafficking and prostitution. Ruhama also provide many other services such as,

- Crisis accommodation
- Assessment and referrals
- Addiction support
- Education and training
- Emotional and psychological assistance
- Support with independent living

There are four people working on Ruhama's case work team, a further eight staff and approximately fifty volunteers who are involved in supporting women affected by prostitution.

Ruhama uses a care planning tool to assist conversation around the needs and goals of those involved in prostitution and victims of trafficking.

Care Planning Tool to assist conversation around needs and goals



Women using the Service

Ruhama works with women who have been affected by prostitution. Women represent approximately 95% of identified victims of trafficking for sexual exploitation into the EU. Ruhama's client groups includes women who are currently involved in prostitution, those who are endeavouring to leave prostitution, those with a history of prostitution and victims of trafficking mainly for sexual exploitation.

Over the last few years the numbers using Ruhama's services have increased from

258 women in 2012 to 304 in 2014. Women using the services provided have come from thirty-seven different countries in 2014. Usually the women who work with Ruhama are provided with a broad support until they have fostered independence.

European and Irish Context

Ireland is a destination country for women in the sex trade. Migrant women are usually found indoors in apartments, hotels and massage parlours. Many women find themselves in a situation where the brothel becomes their home. It becomes difficult to leave this situation because they feel they have nowhere else to go and they do not know who to trust. Women are moved constantly to a wide range of locations, not just to big cities but also small villages, where they suffer a high degree of isolation. Criminal gangs control a large portion of the sex trade in Europe. They use mobile technology to organise this multi-million euro trade. Many women who leave their countries are promised a better life. The majority of victims of sex trafficking who Ruhama works with are Nigerian. Research indicates there are up to 1,000 women for sale in Ireland every day. Many of these women have not come to the attention of the Gardaí.



Irish Legislation

In Ireland the Criminal Justice (Human Trafficking) Act, 2008 criminalises the trafficking of humans for the purpose of sexual or labour exploitation or the removal of organs. It includes heavy penalties for traffickers and penalties for buyers who knowingly pay for sexual services from victims of trafficking. However, unsurprisingly nobody in Ireland has been prosecuted for the buying of sex under this legislation given the difficulty in proving that they knew or ought to have known they were purchasing a victim of trafficking.

Victims of trafficking are entitled to a six-month period for reflection and recovery after coming forward to the Gardaí. After this they can be issued with temporary residency however, this is not always given particularly if they already submitted an asylum application.

Case Study Number One

An African woman was trafficked as a child for labour exploitation and was later sexually exploited. She used illegal documentation to get from Ireland to the UK. However she was brought back to Ireland under the Dublin Convention (now the Dublin Regulation) and imprisoned. A solicitor recognised trafficking indicators and notified the Gardaí and Ruhama. She was placed in asylum accommodation but it took a further nine months before she was referred by the Gardaí to the Department of Justice and during this time she could not access state services such as legal support or after-care. It was a further two years before she was recognised as a victim of trafficking. Ruhama does not feel that Reception and Integration Agency hostels are an appropriate housing option for victims of trafficking and that appropriate safe and secure

accommodation needs to be provided to prevent victims from being re-exploited.

Case Study Number Two

Another African woman was picked up on brothel keeping charges after a Garda raid on the premises. In these situations it can look like the women are organising prostitution rather than being viewed as victims of a crime. The woman identified herself to Gardaí as a victim of trafficking and was formally recognised as such after just one month. The woman was placed in Irish Reception and Integration Agency (RIA) accommodation. However even with the benefit of being quickly granted the administrative arrangements as an identified victim of trafficking she must still have this status reviewed every six months. Any denial or delay in this process can result in the stoppage of social welfare payments and in this woman's case she lost a job as she was not entitled to work until it was renewed.

The challenge for Ruhama as a frontline organisation is that it is unclear why identification was granted quickly in one case and not in the other. The identification process requires greater clarity and transparency in order to better support women through it. Victims of trafficking can only be formally recognised as such by a senior member of the Gardaí. Victims of trafficking have experienced a great degree of trauma and it is normal that memories can change or are inaccurate or that victims have been groomed into distrusting any authority figures. The victim may not have any documentation with them or only possess false documentation. Therefore it can be problematic for Gardaí to be tasked with sole responsibility of identifying victims of trafficking and, if deported, victims of



trafficking may be at risk of being re-trafficked and re-exploited.

Failure to Identify Victims of Trafficking

In 2014 Ruhama worked with twenty-seven new victims of trafficking, however only four have been formally recognised by the State.

In April 2015 the P Case marked an important judgement in relation to trafficking and the identification process in Ireland. P, a Vietnamese woman who had been trafficked into Ireland to work in an illegal grow house, was arrested after a Garda raid. She was then imprisoned for two and a half years after the Gardaí failed to find evidence of trafficking despite the grow house having been locked from the outside.

Ms. Justice Iseult O'Malley stated that *"this case demonstrates a number of fundamental difficulties with the mechanism [for identifying victims of trafficking] in place in this State..."*

Victims' Directive

The main aim of the Victims' Directive is to establish minimum standards on the rights, support and protection of victims of crime. Ruhama strongly welcomes a number of elements in the directive, in particular:

- The application of the directive where the offence or proceedings take place within the EU which ensures most victims of trafficking in the EU will fall within its remit
- The victim has the right to receive information from first point of contact, which will normally be the police, hopefully ensuring greater consistency
- Victims have the right to receive information about their case which does not currently always happen

- Victims have the right to access victim support services
- Victims will be entitled to reasons for the decision not to prosecute cases
- There will be a right to a decision on compensation during criminal proceedings

There will be a general right to protection and individual assessment for specific protection needs. On a small number of occasions Ruhama clients have been visited by Crime Protection Officers for assessment but this can as much as one month after being initially interviewed by Gardaí. One of the primary concerns for Ruhama in relation to the application of the Victims' Directive is to the extent it will be applied to victims of trafficking if they have not been formally identified.

Conclusion

Ruhama believes it is important to give recognition to victims of trafficking as victims of crime rather than through the lens of their residency status and that there should be cognisance of the reports of multi-disciplinary teams in the identification process. Quick referral to appropriate support services is vital as well as ensuring a well-resourced police force to carry out investigations. It is necessary to keep the victims informed about their cases in order for them to feel supported. Greater transparency and consistency is required within the system generally.



7. Guilty as Charged? The Legal and Ethical Dilemmas posed by Media Coverage of Criminal Trials

Presenters: Dearbhail McDonald, Associate Editor and Legal Editor, The Irish Independent

Chairperson: Robert Olson

Rapporteur: Lauren O'Connell

There has always been a fascination with criminal trials. Justice must be administered in public and this facilitates a high level of voyeurism, prurience and media coverage, which could be considered as State-sanctioned. The fascination with criminal trials can peak when there is a strong juxtaposition between the perpetrator and the victim. Often the cases garnering amplified interest involve a typically middle-class perpetrator who has committed a particularly violent crime, such as homicide, while the victim is a vulnerable member of society. The interest reaches a zenith when there is an unusual element to the case, such as sex or gratuitous violence. Where all these criteria are met in a case, it can culminate in a media frenzy. Examples of such cases can be seen in that of Graham Dwyer, Eamon Lillis, Joe O'Reilly and Catherine Nevin.

There are issues with the media reporting on criminal trials, as the coverage is often standardised, formulaic and restrained. The crimes which affect people the most, such as those covered in both District and Circuit Courts, are often reported and analysed the least. In contrast, murder, manslaughter and rape are covered the most by the media. This has the potential to distort the public's understanding of the criminal law, as the prevalence of crime and the public's perception of the administration of justice is viewed and

assessed through a narrow lens of very high profile trials.

Public Service & Safeguards

Nonetheless the media, in its reporting of criminal trials, carries out a vital public service. It reinforces transparency in the criminal justice system. Reporters have to be fair and accurate, and must acknowledge that press freedom to cover legal proceedings is not absolute. For example, there are special laws which govern reporting on proceedings involving minors and family law. Rape trial victims are also entitled to anonymity. Adverse pre-trial publicity can even constitute an attack on the presumption of innocence. Reporters must abide by the rules due to the threat of contempt of court, which, if found guilty, can result in imprisonment, severe financial penalties and sequestration of a newspaper or broadcaster's assets. As a result, court reporters perform their duties in accordance with law.

Media as a Service for Victims?

As any story progresses through the criminal justice system, the media itself faces a difficult question: while constructing the narrative, is the reporter choosing a side? Even with the procedural safeguards and staying within contemporaneous reporting, is there the risk that instinctively the media support the grieving families?

Could it be possible that the media have a role to play in alleviating the suffering of victims? Victims can use the media to their advantage. Victims of crime were previously ignored by the criminal justice system, and were often only treated as witnesses. Some victims are highly aware of getting the media onside, so much so that they will nominate a person to



represent the family. There can be the view that there is trial by criminal justice and also by media, with both battles needing to be won.

In recent times there has been sterling work done to lobby for improvements within the system in this regard. The media gave voice to this cause and aided in championing reform in this area. The media interview victims with their consent and highlight the victim impact statements. This campaign to recognise the role of victims has morphed into a campaign to recalibrate the scales of justice in favour of victims. The creation of groups such as PARC and ADVIC are testament to this.

This movement is not without cause for concern however, as a 'cult of victimhood' or 'hierarchy of victimhood' may be created. There are other negative outcomes also, with families becoming distressed by being 'doorstepped.' This is because there is no escaping the sensationalist and entertainment value of certain cases. Victims can be burnt out by the media coverage by the time the case reaches trial. However it may be the case that the criminal justice process cannot offer more extensive protection for victims and vulnerable witnesses without eroding the constitutionally enshrined principle of holding trials in public.

Discussion

The discussion in the workshop group focussed on how victims could 'handle' the media intervention in their lives. The issue of witnesses also was discussed, as they can also be traumatised by both the criminal justice process and the media scrutiny. It was questioned whether the media create the supply and demand for the interest in criminal cases in the first

place. Similarly, it was also discussed whether the media utilise scare tactics in relation to certain crimes, such as those in rural Ireland.

There was a general consensus that the media do not treat victims favourably, as reporters 'cold-knock' on victim's doors at a time when their emotions are often unhinged. There was some discussion as to whether this constituted a violation of victim's rights. A ban on door-knocking was not deemed to be practical or feasible. A common suggestion to tackle the 'cold-knock' was for a family to nominate a person to 'deal with' the media. This would involve the person simply having one line to say and one photo to give to the media. This acts a buffer of sorts between the victims and the media.

Another strong criticism was aimed at photographers, who wait outside the courthouse when victims and their families enter and leave in the morning, evening and for lunch. There was discussion as to whether this constituted intimidation or harassment of victims, along with invading their privacy. A solution which was mooted was that victims and witnesses should have special entrances and exits to and from the courtroom - although this too may have implications for the public administration of justice.

Lastly, it was questioned whether the media themselves consider themselves to be doing a public good by the manner in which they report on criminal trials. It was considered whether the media think of 'further down the line' and the repercussions of reporting, and not just having the story now. For example, when a story is revived years later for some reason, it has the potential to re-victimise those who were previously involved.



8. The Challenges of Applying the European Directive on Victims' Rights in Cases of Elder Abuse

Presenter: Naomi Feely, Senior Policy Officer, Age Action Ireland

Chairperson: Michelle Shannon

Age Action was established in 1992 as the national non-governmental organisation concerned with ageing and older people, acting as a network of organisations and individuals including older people and carers of older people and as a development agency promoting better policies and services for older people. Age Action works with, and on behalf of, older people.

All of their activities are geared to supporting older people to speak and act for themselves in bringing about the fundamental changes they want in order to live full lives. The core objectives of Age Action are:

- To mobilise and empower older people to advocate on behalf of themselves, their families and their communities
- To change attitudes towards ageing and older people in Irish society
- To effect changes in legislation and policies by influencing Government, state agencies and the Social Partners
- To secure the right of older people to comprehensive high quality services and where necessary to initiate selected services
- To focus on the needs of the most disadvantaged older people

The vision of the organisation is that *'Ireland becomes the best country in which to grow older'* and that Ireland would be the first country to apply fully the United Nations Principles for Older Persons into

the national way of life, in order to improve the quality of life of all older people, and to transform all our attitudes towards ageing and older people. The UN principles are.

- **Independence** - Older persons should have access to the full range of services for their basic needs, to work as long as they wish with access to educational and training programmes, to live in safe and adaptable environments so that they can live at home for as long as they wish.
- **Participation** - Older persons should remain integrated in society, participate actively in the development of policies and services provided for them and act as volunteers in their communities with younger generations.
- **Care** - Older persons should have access to the full range of care and support services that fully respect their beliefs, needs and privacy and their right to make decisions about their care and the quality of their lives.
- **Self-fulfilment** - Older persons should be enabled to achieve their full potential by access to the educational, cultural, spiritual and recreational resources.
- **Dignity** - Older persons should be able to live in dignity and security and be free of exploitation, abuse and discrimination.

In Age Action's Strategic Plan (2013-2015) the organisation committed to raising awareness of elder abuse through research and training and in particular through the development of preventative and empowerment approaches. Work to date in this area has included raising awareness amongst a wide range of stakeholders including financial institutions, intergenerational workshops and



collaborative work with European partners.

Elder abuse is *'a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person or violates their human and civil rights'*

(Protecting our Future, Report of the Working Group on Elder Abuse 2002, p. 25). Types of abuse include verbal, physical, financial, psychological and sexual abuse, neglect and discrimination.

Older people's understanding of elder abuse may be different to the unrelated outsider who is looking at the situation. This is evident from Age Action's research with older people on the issue:

"People think of it...not as abuse and it actually is....there is this idea that it's their [family] right in some of their minds, it's going to be mine anyway why not give it to me now, there is all of these connotations"

"But you see this is it some old people don't look on it as bullying because like me... if one of mine asked me for something, I'd leave myself short to give it to them"

"a lot of the elder abuse occurs within the family framework and I think you're vulnerable because you are going to love your family, an older person is going to love their children and their grandchildren and they are less able and more vulnerable to that type of abuse"

(O'Brien, M. et al (2011) A Total Indifference to our Dignity – Older People's Understanding of Elder Abuse – available at

https://www.ageaction.ie/sites/default/files/attachments/a_total_indifference_to_our_dignity_-

[older peoples understandings of elder abuse june 2011.pdf](#))

In 2007 the HSE set up an Elder Abuse Service. There are 31 Senior Case Workers and three dedicated Elder Abuse Officers. The HSE has a wide ranging role which includes media and public awareness. In 2014 there were over 2,500 referrals of alleged cases of elder abuse to the agency. Perpetrators are predominantly adult male children, often living with the victim. The abuse predominantly takes place in the victim's own home.

The response by the HSE to allegations of elder abuse is impacted by the relationship of the perpetrator to the victim. Interventions include home support, counselling support, long term care, advocacy and conflict mediation. Although the HSE service is generally non-adversarial, in 2013, 113 allegations resulted in legal action by the HSE (HSE, 2014). At present in Ireland there is no statutory recognition of elder abuse. Reliance is made on general laws such as the Domestic Violence Act 1996 and the Criminal Law (Sexual Offences) Act 1993.

The complexity of cases of elder abuse in terms of the victim's relationship and often dependency on the perpetrator can present challenges for the application of the full provisions of the directive. For example, how will it impact on the future relationship of the individuals? Furthermore, with the response to elder abuse predominantly taking place within the social services sector, it is imperative that discussions about the implementation of the directive are inclusive of non-adversarial solutions to abuse also.



A short video about elder abuse was played, showing the helplessness of a victim who is being abused by his son.

A lively conversation followed the presentation. How to apply the provisions of the directive to elder abuse cases and how elements of the directive could be incorporated into the social services response to elder abuse, were discussed.

Suspected cases of elder abuse can be reported to the HSE information line at 1850 24 1850.



CONFERENCE ATTENDEES

NAME

Emma Barry
 Emma Barry
 Tara Brown
 Maura Butler
 Dara Byrne
 Irene Campbell
 Eoin Carroll
 Ingrid Colvin
 Dr. Vicky Conway
 Barry Coonan
 Eugene Corcoran
 John Corr
 Tim Coughlan
 Mick Crimmins
 Helen Cullen
 Mary Curtin
 Katherine Daly
 Aoife Doherty
 Isolde Doyle
 Stephen Doyle
 Sam Elliott
 Naomi Feely
 Aoife Fennelly
 Patricia Flynn
 Conor Gallagher
 Vivian Geiran
 Danelle Hannan
 Dr. Gillian Harold
 Annita Harty
 Deirdre Healy
 Dermot Hearne
 Greg Heylin
 Lorna Hicks
 Dr. Nicola Hughes
 Judge Gillian Hussey
 Carmen Iordache
 Katarzyna Janicka-Pawlowska
 Stephen Kealy
 Leanne Keely
 Aoife Kelly
 Sharon Kennedy
 Deirdre Kenny
 Helena Kiely

ORGANISATION

Tivoli Training Centre
 Student
 Ruhama
 ACJRD Chairperson
 Office of the DPP
 An Garda Síochána
 Jesuit Centre for Faith and Justice
 PACE
 ACJRD Council
 An Garda Síochána
 ACJRD Council
 PACE
 Facing Forward
 Tivoli Training Centre
 Office of the DPP
 Facing Forward
 ACJRD Staff
 Care After Prison
 Office of the DPP
 Care After Prison
 ACJRD Volunteer
 Age Action Ireland
 Trinity College Dublin
 ACJRD Council
 CCC.nuacht
 The Probation Service
 ACJRD Manager
 University College Cork
 ACJRD Volunteer
 University College Dublin
 Irish Prison Service
 Victims of Crime Office
 ACJRD Volunteer
 Dublin Institute of Technology
 Victims of Crime Helpline
 Depaul
 European Commission
 Clinical Psychologist
 Le Chéile Mentoring Project

 The Probation Service
 One in Four
 Office of the DPP



Cheryl Lamont	Probation Board of Northern Ireland
Dr. Katrien Lauwaert	Leuven Institute of Criminology (LINC) of the University of Leuven and the European Forum for Restorative Justice
Susan Leahy	ACJRD Council
Professor Lorraine Leeson	Trinity College Dublin
Claire Loftus	Director of Public Prosecutions
Niall Lombard	Office of the DPP
Jade Lydon	ACJRD Volunteer
Mary Maher	Department of Justice and Equality
Deirdre Malone	Irish Penal Reform Trust
Shauna Markey	SAFE Ireland
Pádraig Mawe	ACJRD Council
David Mayne	An Garda Síochána
Sunniva McDonagh	
Dearbhail McDonald	Irish Independent
Maria McDonald	Barrister at Law
Karl McGrath	Jesuit Centre for Faith and Justice
Tom McLoughlin	State Solicitor
C/Supt. Anne Marie McMahon	An Garda Síochána
Gerry McNally	ACJRD Council
Stephen Meighan	Victims Support Europe and Chair, Victim Support Scotland
Jim Mitchell	ACJRD Council
Caroline Moran	Office of the DPP
Kate Mulkerrins	Office of the DPP
Lynda Mullin	Office of the DPP
Danny Murphy	Treo Portláirge
Elaine Murphy	The Probation Service
Fiona Murphy	Irish Criminal Justice and Disability Network
Rebecca Murphy	Judicial Assistant to President of the District Court
Eithne Ní Mhurchadha	Etherapy
Trevor Noonan	Department of Justice and Equality
Lauren O'Connell	ACJRD Volunteer
Kieran O'Dwyer	KC Consulting
Liam O'Flaherty	National University of Ireland Galway
Robert Olson	ACJRD Council
Tom O'Malley	National University of Ireland Galway
Margaret O'Quigley	Facing Forward
Aifric O'Reilly	University College Dublin
Doncha O'Sullivan	ACJRD Council
Richard Phillips	Tivoli Training Centre
Finbarr Philpott	National University of Ireland Galway
The Hon. Ms. Justice Mary Ellen Ring	Garda Síochána Ombudsman Commission



Sinéad Ring
Brian Rowntree
Clíona Saidléar
Dr. Marsha Scott
Shirley Scott
Michelle Shannon
Dr. Eimear Spain
Lorraine Stack
Robert Stapleton
Séamus Treacy
Marion Walsh
John Warren
Stephanie Weir
David Wheelahan
Ellen Whelan
Tessa White

University of Kent
The Northern Ireland Civil Service
Rape Crisis Network Ireland
Scottish Women's Aid
Dublin Rape Crisis Centre
ACJRD Council
University of Limerick
Garda Victim Liaison Office
An Garda Síochána
An Garda Síochána
Victims of Crime Office
Extern Northern Ireland
Probation Board for Northern Ireland
Office of the Revenue Commissioners
Trinity College Dublin
Barrister at Law

END OF REPORT