




RAPE CRISIS
NETWORK
IRELAND

Legal Information Pack

for Practitioners Advising
Survivors of Sexual Violence



Legal Information Pack for Practitioners Advising Survivors of Sexual Violence

Rape Crisis Network Ireland is very happy to announce the publication of a specialised information pack for lawyers who are asked to advise survivors of sexual violence. This is a comprehensive, much-needed and useful resource.

The aim of this pack is to equip all legal practitioners advising a survivor of sexual violence with as much specialist information as possible. More importantly, this pack also speaks from the perspective of the survivor facing the legal implications of the crime, from deciding what to do and having to work out how best to cope with their role in the legal system. It is about empowering practitioners, certainly, and it is even more about empowering survivors, by arming their legal advisors with as much information not only on the law, but on support services which are available, insofar as possible.

This pack has incorporated and distilled years of expertise from across the rape crisis centres who are members of the RCNI and support hundreds of survivors of sexual violence every year.

This pack is different because it begins with an overview of sexual violence issues as they impact on survivors, goes on to provide information on the various supports which are available, and then sets out the principal legal issues which a survivor will, or may, encounter on their journey through the criminal justice system. There are also sections on other avenues of redress, such as civil litigation, making an application to the Criminal Injuries Compensation Tribunal, and making a complaint under the Victims' Charter. There is a dedicated reference section on the multiplicity of statutes which can impact on a survivor's case and a table of sexual offences for easy reference. There are also valuable insights on the impacts of sexual violence from the perspective of an experienced Rape Crisis counsellor, and at every turn, there is practical advice for the practitioner.

The legal issues section additionally includes information on community measures to protect children in particular. As we know, the existing Children First Guidance 2011 will soon be put on a statutory footing. However, the new legislation will build very much on the current non-statutory system of reporting child protection concerns to the HSE, so this information will remain relevant into the future.

I would like to thank the authors of this pack, Caroline Counihan BL and Aisling Wall BL, as well as the numerous others who made valuable contributions to it, including Verena Tarpey, Martin Fitzgerald BL, Helen Bartlett and Ruth MacNeely.

This project was undertaken following the recommendation of "Rape and Justice in Ireland"¹ that the need to introduce specialist training for lawyers involved in rape cases, should be considered. It has been made possible by the financial support provided by The Atlantic Philanthropies, to whom we are very grateful.

Fiona Neary
Executive Director
Rape Crisis Network Ireland
May 2012

¹ Healy & Scriver, Rape and Justice in Ireland, Liffey Press (2009).

Rape Crisis Network Ireland

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence with a proven capacity in strategic leadership. The RCNI role includes the development and coordination of national projects such as expert data collection, strategic services development, supporting Rape Crisis Centres (RCCs) to reach best practice standards, using our expertise to influence national policy and social change, and supporting and facilitating multiagency partnerships. We are the representative, umbrella body for our member Rape Crisis Centres who provide free advice, counselling and support for survivors of sexual violence in Ireland.

RCNI provides a range of legal support services to its member Centres. The RCNI organizational structure includes a Legal Policy Director role which provides direct legal advice to Rape Crisis Centres and survivors in addition to drafting and implementing legal policies to meet best practice and statutory requirements. RCNI also organises training for Rape Crisis Centre staff and volunteers in two important areas namely: Court & Garda Accompaniment and Victim Impact Statements. The latter also includes legal updates on important changes in legislative policy and emerging legal issues. Court Accompaniment is a vital front line service where survivors can benefit from having a trained Rape Crisis staff member or volunteer accompany them to court throughout the trial to provide information, guidance and support.

RCNI is represented at national level on governmental initiatives such as the National Steering Committee on Violence against Women (NSC) and RCNI Legal Policy Director currently chairs its Legal Issues Sub Committee. RCNI makes submissions outlining its position on proposed legislation including most recently on the Criminal Justice (Withholding Information) Bill 2012 and the Draft Heads and General Scheme of the Children First Bill 2012. RCNI also regularly appears before Joint Oireachtas Committees to present its submissions and perspectives on important legal developments and proposed new legislation.

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Part I: Facts About Sexual Violence and Survivors

Introduction

Crimes of sexual violence are very common in Ireland and can have devastating and lasting effects on survivors. Sexual offences are also some of the most difficult crimes to investigate and prosecute, often involving a lengthy investigation process, lengthy trial process and in many cases, the accused person will be acquitted. Legal support for survivors of sexual violence is in the public interest and is known to encourage reporting, reduce attrition rates, deter potential offenders and re-offenders, and increase victim recovery. It is important that the lawyer providing advice or representation is sensitive to the social, cultural and legal issues faced by survivors of sexual violence. In many cases both civil and criminal proceedings must be considered in parallel to tackle other collateral impacts of sexual violence such as loss of housing, employment, mental health issues, family breakdowns, or even intimidation by the accused person or their associates. This booklet is aimed at solicitors and barristers who provide statutory legal aid or who are interested in providing legal advice for individual survivors of sexual violence at other stages of the criminal justice process.

In our current criminal justice system, a survivor of sexual violence has the role of witness for the prosecution against the perpetrator and there are some special measures in place to assist the survivor during the trial process. These include anonymity, presence of a friend or family member in court and limited free legal representation and advice. These special measures have been considered in Part III below. Unless the survivor engages a solicitor at an early stage in the legal process or receives such advice on a pro-bono basis, that person is unlikely to have any other legal advice (aside from that which is provided by the Legal Aid Board) or legal support during the investigation, the decision making process by the Director of Public Prosecutions, or when attending at the criminal trial.

Profile of sexual violence in Ireland

In terms of understanding the victim's perspective and interface with the criminal justice system in Ireland, it is important to be familiar with published information about crimes of sexual violence and their prevalence in Irish society. Two significant pieces of research which were published in the last ten years that examined the criminal justice process from the point of view of survivors are the Sexual Abuse and Violence in Ireland Report (SAVI) which was published in 2002 by the Dublin Rape Crisis Centre and Rape & Justice in Ireland: A National Study of Survivor, Prosecutor and Court Responses to Rape (RAJI) which was commissioned by the Rape Crisis Network Ireland in 2009. The Final Report of the Commission to Inquire into Child Abuse (known as the Ryan Report) was published in 2009 and the Commission of Investigation into Dublin Archdiocese Catholic Diocese of Cloyne (known as the Murphy Report) which was published in 2011 have also contributed to the emergence of an accurate picture of the prevalence of sexual violence and the immediate and long-term impact on victims. Furthermore, Rape Crisis Network Ireland produces comprehensive annual statistics detailing the persons who use the services of rape crisis centres.² Together, these documents give some insights into the issues faced by survivors of sexual violence on an on-going basis including those persons who never seek redress through the criminal justice process.

² The national statistics database of the Rape Crisis Network of Ireland contains the most comprehensive data of all statutory and non-statutory agencies involved in the collection of data on sexual violence in Ireland. The annual statistical reports produced from this data are available online at www.rcni.ie

The foregoing research and analysis have comprehensively disproved longstanding myths about sexual violence and have highlighted the many challenges that face survivors of abuse in the criminal justice system. Myths and stereotypes about victims of abuse and perpetrators of abuse are gradually being eroded and a greater understanding of the prevalence and effect of negative attitudes and restrictive moralities is essential to improve access to justice for victims of sexual violence.

The SAVI Report³ which was published in 2002 found that 20.4% of women experience contact sexual abuse in childhood while a further 10% reported non-contact sexual abuse as a child. In 5.6% of all cases, the abuse involved penetrative sex. The figures in relation to males also showed a prevalence of sexual violence. 16.2% of males experienced contact sexual abuse as a child while 7.4% reported non-contact sexual abuse. 2.7% of all cases of contact sexual abuse involved penetrative sex.

42% of women reported some form of sexual abuse or assault in their lifetime with 10% reporting abuse involving penetrative acts. 28% of men reported some form of sexual abuse in their lifetime, while 3% experienced penetrative sexual abuse. Figures from the SAVI Report also indicated significant re-victimisation with 27.7% of women and 19.5% of men abused by different perpetrators both as children and adults. In the case of women, experiencing penetrative sexual abuse in childhood was associated with a sixteen-fold increase in risk of adult penetrative sexual abuse. The figures are the same in respect of men. Childhood sexual abuse is therefore an important marker of increased risk of adult sexual violence.

The prevalence of sexual violence and also the significant likelihood that the survivor may have been re-victimised are both important factors that legal advisors must bear in mind when providing advice for survivors of sexual abuse.

Impact of sexual violence

The RAJI research demonstrated that unsubstantiated myths surrounding sexual violence permeate the criminal justice system and contribute to a high attrition rate and low levels of justice for victims. It is also now known that attrition is linked to lower levels of recovery for the victim from the severe psychological suffering caused by sexual violence. The total impact of a crime of sexual violence and the needs of the victim that arise from this impact must be considered by the criminal justice system. Justice should include victims' redress and reparation as well as ensuring due process for the accused and the protection of the public.

Lawyers should be aware when advising clients who have survived sexual violence that many have suffered multiple incidents of sexual abuse, in some cases as children and also as adults. Lawyers should be aware when advising clients who have survived sexual violence that many have suffered multiple incidents of sexual abuse, in some cases as children and also as adults.

Many more will have cross vulnerabilities such as a lack of family support, mental illness, addiction, prostitution, unwanted pregnancy and domestic violence. RCNI National Statistics for 2010 indicate that almost 10% of survivors of rape who accessed Rape Crisis Centre services became pregnant as a result of sexual violence. 57.4% of those persons went on to give birth to and parent their child, while 13.3% chose to terminate their pregnancy. 4% became pregnant more than once as a result of rape and chose different options with each pregnancy.

³ The SAVI Report measured prevalence of sexual violence in Ireland and was commissioned by the Dublin Rape Crisis Centre and published in 2002. The SAVI study contained two components. The first was a survey of over 3,000 members of the general public about their attitudes and beliefs and their own lifetime experiences of sexual violence. A parallel section considered the particular challenges of preventing and managing sexual violence in marginalized groups.

Lawyers advising clients who are survivors of sexual violence should be mindful of cultural diversities and differing social norms between groups of people in society. For example, of those persons attending Rape Crisis Centres, 6.1% of survivors were refugees or asylum seekers and less than 1% were members of the Traveller community. 98.1% of refugees and asylum seekers disclosed other forms of violence in addition to sexual violence. 5.4% of survivors attending Rape Crisis Centres in 2010 had a disability, with 42.7% of that figure reporting a learning disability and 37.8% reporting impaired mobility. It is important to bear in mind when advising survivors of sexual violence that the impact of the violence can encompass more than physical injury or even psychological trauma, especially where that person is part of a minority group in society.

The SAVI Report found that 25% of women and 16% of men reported having experienced symptoms consistent with a diagnosis of post-traumatic stress disorder (PTSD) at some time in their lives following, and as a consequence of, their experience of sexual violence. The research also found that those who had experienced sexual violence were significantly more likely to have used medication for anxiety or depression or to have been a psychiatric hospital inpatient than those without such experiences.

The most common lasting injury to victims of sexual violence is psychological. Survivors of rape very commonly suffer from a severe form of psychological injury called Post Traumatic Stress Disorder (PTSD). Recovery takes years, with notable improvement usually not until the third or fourth year. A sub-category of PTSD has been defined as Rape Trauma Syndrome (RTS).

Recent studies show that survivors of sexual violence commonly make significant changes to lifestyle during different phases of the trauma syndrome, including acute fear for personal safety, which may lead to avoidance of certain people or places, extra security precautions, retreat and denial of event, anxiety, depression, insomnia, phobias and inter-personal difficulties.

There may be a correlation between positive recovery and obtaining redress through the criminal justice system. In one study, those victims whose case was not prosecuted showed the lowest levels of positive life changes. RAJI found a 93.3% incidence of PTSD among those who did not report to the Gardaí, 88.9% incidence among those where the DPP decided not to prosecute the case, and 83.3% among those whose cases went to trial.

The following is an account of the impact of the criminal justice system on survivors of sexual violence from the perspective of a support agency:

AN EXPERIENCED COUNSELLOR'S PERSPECTIVE:

"For a Victim of sexual violence a case getting to court can be a huge milestone on a long, difficult road. It will be an experience that will be full of emotion, distress, reliving of the incident and despite what they may say there will be a deep hope for justice. Each victim hopes, each victim believes their story; their case, is different and compelling.

Court is intimidating for anyone but for the victims of sexual violence and particularly child sexual abuse, authority figures can present a particular challenge. Legal people can seem very intimidating to the victim. Stress can cause people to behave in different ways. Some clients can be awkward and angry, more will be passive and eager to please. This sometimes means they will not feel free to challenge or ask you questions about something that is important. Often clients assume that if something was important the prosecution team would have noticed.

Sometimes clients withhold information, because they do not see its relevant or because to speak about it would upset them too much. It may equally be on the periphery of their memory; they are not consciously withholding information. Sometimes not speaking about something is protective. **"The "SELF" protects itself by not allowing anything to precipitate a flashback which can cause the victim to feel that the events are happening all over again in the present. This can re-traumatise the victim and can be dangerous."**

Each Victim is different and unique. Some along with their families will have read and observed all the other reported cases that are similar over the preceding time or they will have read nothing.

What is often forgotten is that the feelings and emotions around acts of sexual violence are ones that no human being wants to feel. Feelings such a shame, humiliation, disgust, guilt, terror. The case may bring those up again and the normal response to such an event is to flee it. When someone is in the grip of a feeling, they do not have access to clear thought.

The court case for the legal practitioner can feel like another day doing what is done on a regular weekly or monthly basis. For some victims it will have been thought about over and over again in the preceding months, it will be all they can think about much like the very early days after the assault/s or after the initial disclosures. Or they will have put it out of their mind and come to the trial very unprepared for what is ahead. Most victims are in court because something awful happened to them, most understand the concept that they are witnesses for the state but the reality of that experience will be very hard to take.

Sometimes just being in the witness stand proves too traumatic and the client's ability to make a case is compromised. They effectively disassociate which again is a protective mechanism. A client that you perceive as possibly a good witness, feisty and strong when you meet them can be completely thrown by the reality of court. They may become disassociated in the stand and become unfocused and sometimes childlike.

With an event such as a court case where expectations, emotions and anxiety are heightened, stress and in particular traumatic events alter people's perceptions. Someone with a high level of anxiety does not hear everything, someone who is dealing with difficult emotions, with the possibility of seeing the attacker who has from their viewpoint destroyed their lives, just may not be able to concentrate. Someone in the grip of an emotion is not able to think clearly. Once an emotion is expressed, their thinking will be clearer. Feelings will be part of such an experience so allow them.

So how should you react, whether you are a lawyer advising a survivor before the case comes to Court, OR you are a lawyer appearing for the prosecution? Here are some suggestions:

- It is essential to meet with any client before the case. It will give them a sense of being respected and valued.
- Counselling for a period of time before court as opposed to support can really help someone get ease around their story and the need to disassociate is reduced - it could really help to suggest this, if it is not already happening;
- Abuse takes away choice; it is essential that choice is offered wherever possible to the victim. Particularly with parents and partners. For example, a young woman may not want her parents or her boyfriend in court because she is embarrassed and ashamed and does not want them to hear about the offence. Sometimes this will not have been thought through by the victim, they will have a picture of how the case will be and the reality may be much more upsetting.
- Give ample time to answering questions and emphasise that if they are puzzled by anything to ask and show them clearly how to get your attention in court. Explain over again several times if necessary. You may have to repeat yourself several times and feel frustrated because you have said the same thing over and over.
- Speak in simple clear language and avoid jargon as much as possible. Saying "I understand" can feel fake, you cannot understand what someone has been through, whereas "I am sorry that this has happened to you" sounds more honest.
- It is worthwhile to suggest that clients take breaks and take their time with their evidence despite the feeling of "wanting to get it over with". Most Victims despite logically knowing and being told that you get one chance in the witness box, are truly shocked when they realise this. It is important to emphasise this.
- Whilst a family or partner may be there in court with the Victim, there are often underlying tensions that may not be obvious to others. Don't make any assumptions about family relationships or discuss or ask any questions in front of others unless very explicitly told that it is ok".

Ruth MacNeely

Mayo Rape Crisis Centre, April 2012

Support for survivors of abuse

Expert victim support throughout the criminal justice process has been shown to reduce attrition and to be essential to the psychological well-being of the victim. A variety of victim support services are available, without cost to the victim, a list of which are available in the Appendix to this guide. The earliest possible referral to such services is crucial not only to preserve evidence and assist recovery, but because victims are more likely to engage with and remain with the legal process if they have access to such services.

Rape Crisis Centres nationwide provide specialist front-line services to survivors of sexual violence. They provide phone helplines, individual, group counselling services and general support in addition to specialist services such as accompanying the person to a Sexual Assault and Treatment Unit or other medical or forensic unit. Court accompaniment and Garda accompaniment are also valuable services provided to survivors. Accompaniment to Refugee hearings is also included in the service.

RCNI National Statistics for 2010 indicate an increase in persons seeking support from specialist sexual violence services. 2010 figures show a 9% increase in people taking up counselling and support. The figures also show a significant 65% increase in Rape Crisis Centre time spent providing accompaniment services in 2010, and also show that numbers reporting the crime to the Gardaí are the highest ever at just over 30% overall (adult and child sexual violence together). These figures show a greater engagement by survivors with expert services which was indicated in the RAJI research as a factor that contributes to faster and greater recovery on the part of the survivor.

Understanding sexual violence

It is important to understand the profile of sexual violence in Ireland. The SAVI Report (2002), the RAJI research (2009) and RCNI Annual National Rape Crisis Statistics are essential tools in understanding the prevalence and impact of sexual violence on survivors in Ireland.

Reporting incidents of sexual violence

It is well-known that crimes of sexual violence are under-reported to the authorities. The SAVI Report in 2002 found very low levels of disclosure of abuse and in their study of 3,100 adults, almost 600 people disclosed instances of abuse to the researchers that they had never previously disclosed. Only 6% of adult victims and 8% of child victims reported sexual violence to the Gardaí. The RAJI research directly examined the issue of reporting to the Gardaí in Strand I focusing on 100 adult survivors of rape⁴ where the incident of abuse occurred after 2002. The research indicated that 34% of those who disclosed abuse to a Rape Crisis Centre did not report to the Gardaí. Of the 66% of people who did contact the Gardaí, only 58% of this number actually made a statement while 9% subsequently withdrew their statement. RCNI National Statistics (which measures all forms of sexual violence and includes adult and child survivors) for 2009 indicated an unprecedented high percentage of clients (26.7%) had reported to the Gardaí, while the 2010 statistics show a further increase to 29.5%.

Of course, the above figures only consider those survivors who actually used the services of a Rape Crisis Centre therefore reporting rates among victims who do not approach victim support services are unaccounted for and likely to be significantly lower. RAJI research indicated a correlation between access to local support services (especially to Sexual Assault and Treatment Units) and reporting rates in some parts of Ireland. The SAVI Report

⁴ The RAJI research was confined in the following manner: the victim must have been at least 18 years of age at the time of the incident. Only complaints of rape were examined which included rape under s.2 of the *Criminal Law (Rape) Act 1981* and rape under section 4 of the *Criminal Law (Rape) (Amendment) Act 1990*. The incident complained of must have occurred since 2002.

in 2002 found very low levels of disclosure of abuse. 60% of young men who had experienced child sexual abuse had told no-one prior to the study. The research also found that only 6% of survivors of adult abuse had reported to the Gardaí while the figure was 8% in the case of survivors of child sexual abuse. Increasing levels of disclosure as indicated in the RAJI research and by RCNI National Statistics are a positive development as it would appear that more survivors are willing to come forward and avail of vital support services.

The RAJI research showed that 40% of those people who made a statement to the Gardaí seriously considered withdrawing the complaint upon being encouraged to do so by family, friends and the Gardaí. The research also found that the most common reason for not reporting was that the victim did not want others to find out what had happened, highlighting the importance to victims of confidentiality and anonymity throughout the process. It is important therefore for legal practitioners to remind clients of the strict rules on client confidentiality and legal professional privilege in order to maximise full engagement with client concerns and issues.

Prosecuting sexual violence

In addition to considering low reporting rates for crimes of sexual violence, it is also important to be mindful of the fact that not all reports to the Gardaí will result in a criminal prosecution. The role of the Director of Public Prosecutions is a key one in this context and issues of attrition at this stage were examined in detail in the RAJI research. The research considered 597 files received by the DPP between 2000 and 2004 and found that just under one third of prosecutable cases were actually prosecuted by the DPP. This figure excludes the 25% of complainants who withdrew their complaints at this stage. An important feature of decisions to withdraw was that 25% of those persons had a history of mental illness and in fact of the 78 cases involving a complainant with mental illness, only 2 cases were prosecuted. A further 25% of those who withdrew their complaints at this stage suffered from substance abuse, however the most commonly stated reason for withdrawal was concerns about the trial and appearing in court. Again, these figures emphasise the need to be aware of cross-vulnerabilities when working with survivors of sexual violence.

The trial process

Strand III of the RAJI research focussed on the trial process and examined 173 Central Criminal Court cases between the years 2000 - 2005. A further 35 trial transcripts of fully contested cases was considered in detail revealing valuable information about the trial process and the role of the victim.

RAJI research found that of the cases that went to trial, nearly 60% resulted in a conviction or guilty plea for at least one charge, whether sexual or non-sexual. However, the research also showed that juries were reluctant to convict defendants of rape with only 20 out of 84 that were free to do so, and only 4 out of 29 in cases of rape under section 4 actually convicting the accused person of a rape offence. Strikingly, no female-dominated jury convicted a defendant on a rape charge and male dominated juries were more likely to convict for rape.

The SAVI report indicated much lower conviction rates combined with very low reporting rates. Of the 38 participants who reported child sexual abuse to the Gardaí, only 6 cases resulted in court proceedings with 4 guilty verdicts. Of the 20 people who reported adult sexual abuse, only 2 resulted in court proceedings with one guilty verdict.

The RAJI research found that the average length of a rape case was 33 months from the date of incident to date of final disposition.⁵ It is important for legal advisors to be mindful of the stress and anxiety suffered by survivors of sexual violence while awaiting trial, most especially if there are delays or if trials are adjourned repeatedly.

⁵ Recall that historical sexual abuse cases were excluded from this research.

This waiting time causes significant distress to the survivor, especially in cases where that person has not been kept adequately informed of progress in the case by the Gardaí. It also hinders recovery as many survivors indicate that they cannot start to properly deal with the trauma until the legal process is over.

As to the actual conduct of the trial, the primary defence used by accused persons was consent. Sexual history evidence was introduced in 13 of the 35 cases in which transcripts were examined. However in 10 of those cases, the prosecution asked the complainant about sexual history, though this was usually confined to a single issue. When advising a client about the trial process it is important that guidance should be limited to actual process of trial and never about evidential matters. General advice should be given about the court room, the presence of the jury, the persons likely to be present and their respective roles, the limited role of separate legal representation and the specific legislative rights of the complainant such as Victim Impact Statements.

Gender and age

The vast majority of survivors of sexual violence coming to the attention of RCNI centres are female. RCNI National Statistics for 2010 report that of the 1545 survivors who attended Rape Crisis Centres for counselling and support services, 85% were female while 15% were male. The RAJI research supports this finding with 100% female participants at the reporting stage, 96% female participants at the prosecuting stage while at the trial stage, 97% of complainants were female.

RCNI National Statistics show that 77.1% of survivors who used Rape Crisis Centre support services were aged between 20 and 49 years of age. 13.4% were over 50 years of age while 5.1% were children. However, a different picture emerges when the ages of survivors at the time of the abuse are considered. 41.5% of survivors who used Rape Crisis Centre support services were under 12 years of age at the time the abuse occurred. 12.9% were between 20-29 years of age when the sexual violence occurred. 6.2% of survivors were aged between 30-39, while 2.4% were aged between 40-49 years.

Since child sexual abuse offences were excluded from the RAJI research, its findings relate to adults only. The average age of participants at the reporting stage was 27 years of age. 77.1% of complainants at the prosecution stage were under 35 years of age while the average age of complainants at the trial process was 23 years of age.

RAJI research also collected data on the age and gender of alleged perpetrators of abuse and found at the trial stage that all of the accused persons were male with an average age of 27 years. RCNI National Statistics for 2010 also collected information on the age of perpetrators and found that in the case of adult survivors of a single incident of sexual violence, 40.5% of perpetrators were aged 20-29 years old. 25.6% were aged 30-39 years of age while 19.4% were aged between 40-49 years. 1.3% of perpetrators were under 18 years of age at the time of the perpetration of the sexual violence. The information in relation to child victims of single incidents of sexual abuse indicates that 19.4% of perpetrators were under 18 years of age at the commission of the sexual abuse, 18.4% were aged 20-29 years of age, 20.7% were aged 30-39, 22% were aged 40-49 while 11% were 50 years of age or older. 96.3% of sexual violence reported to rape crisis centres is perpetrated by males either acting alone or with other male abusers.

The reality of sexual violence in Ireland

Statistics are useful tools for measuring society's perceptions against the reality of sexual violence and also debunking cultural misconceptions and stereotypes of victims and perpetrators. The following are facts that have emerged through research about sexual violence in Ireland:

- **Most sexual violence is perpetrated by someone known to the victim:** RCNI National Statistics for 2010 show that 89.6% of perpetrators were known to victims of single incidents of sexual violence. 38.9% of survivors of adult sexual violence were subjected to violence by friends, acquaintances, or neighbours. 27.7% were abused by partners or ex-partners of the victim. In cases of child sexual abuse, 48.8% of perpetrators were family members. The RAJI research supports this statistic and found that only 18% of all cases at the trial stage were stranger rapes. People that the complainant had met within 24 hours of the incident made up 21.43% of perpetrators. The SAVI report in 2002 demonstrated similar figures and found that in 4 out of 5 cases of child sexual abuse, the perpetrator was known to the victim. In the case of adults, that research also found that 23.6% of perpetrators of sexual violence against women as adults were intimate partners or ex-partners.
- **Most sexual violence takes place in a private place, and often in the victim's own home:** RCNI National Statistics for 2010 show that 42.3% of incidents of sexual violence took place in the survivor's home. 22% took place in the perpetrators home while 14.3% took place outdoors. Again, the RAJI research supports this and found at the trial stage that over one third of incidents occurred in a residence occupied by the complainant, the defendant or both. Over one quarter of incidents occurred outdoors.
- **Alcohol consumption does not change the nature of the crime, but does reduce the likelihood of redress for the victim:** In Ireland binge-drinking provides the context for the majority of sexual crime against adults.⁶ The fact that either the victim or the perpetrator is under the influence of alcohol does not change the nature of the crime, but victims who have consumed alcohol are much more vulnerable to attack, less likely to report the crime, and less likely to obtain redress through the legal system. The SAVI report found that alcohol had been consumed in over half of cases of sexual assaults. The RAJI research found at the trial stage that 31% of complainants had consumed between 2 and 6 drinks while 41% had consumed between 7-10 drinks at the time of the incident. 19% had consumed 11-20 drinks. 88% of defendants had engaged in binge drinking at the time of the incident. A complainant's history of alcohol abuse was found to negatively affect the likelihood of prosecution.
- **People with a history of mental illness are more vulnerable to sexual violence and significantly less likely to have their case prosecuted:** RAJI found that of 78 cases involving complainants with a history of mental illness, only two were prosecuted and both reached 'not guilty' verdicts, despite forensic and other evidence. This result is supported in studies from other jurisdictions.
- **There is no empirical evidence that shows that a significant number of rape allegations are false:** The true rate of false allegations in cases of sexual violence is unknown. The RAJI research found that of all files received by the Office of the DPP between 2000 and 2004, only 4% to 6% were found to be likely to be false. In some cases alcohol or mental illness was deemed to have clouded the complainant's memory of the event. Only 1% of these cases were deemed by the Gardaí or DPP to be both false and malicious.
- **The victim is less likely to be believed if the description of the perpetrator and incident does not conform to stereotypes or the victim has not suffered lasting or severe physical injuries:** The 'real rape' myth expects that the attacker will be a stranger, use a weapon, and inflict injury on the victim. Research shows that the majority of rapes are not perpetrated by strangers and that use of weapons is not the norm. The RAJI research found that perpetrators are most likely to use the threat of violence or

⁶ The consumption of 7 units of alcohol or more on a single occasion constitutes a binge.

lower levels of violence as to perpetrate the assault. At the trial stage, physical injuries were common but minor in nature and only a very small percentage reported serious injuries. RCNI National Statistics for 2010 collected data on violence perpetrated against victims, in addition to sexual violence. 74.8% of survivors of single incidents of sexual violence disclosed that they had been subjected to other forms of violence in addition to the sexual violence.

- **A victim who appears to be calm and collected in court is less likely to be believed by the jury:**

Research has shown that juries appear to have fixed ideas of how sexual violence will affect the victim and the credibility of the victim may be assessed by the levels of emotion they display as witnesses. Victims do suffer serious and lasting psychological and emotional effects following the crime, but the manifestation of emotion is not a reliable or objective way to assess credibility. The psychological trauma of rape was the principal feature of Victim Impact Statements provided to the court at the sentencing of the perpetrator. Of the 107 Victim Impact Statements on file at the trial stage, only 34 referred to physical injuries while all but two spoke of the psychological trauma of rape. This indicates that the psychological trauma of the sexual violence had a much greater impact on the survivor.

Advice for legal professionals when working with survivors of sexual violence

Introduction

Survivors of sexual violence may seek professional legal advice at any time and for many reasons. Some may be dissatisfied with the progression of the criminal case against the accused person while some may seek legal advice in advance of making a complaint to the Gardaí. In other cases, the criminal proceedings may be completed or indeed a decision may have been made not to prosecute the accused person and the survivor is seeking other methods of redress. Regardless of the timing or motivation for seeking legal advice, it is important to bear in mind that taking the step of speaking to a professional will be a very difficult one for the survivor. Re-living the abuse by providing details to a legal professional will be a very difficult experience for the survivor and legal advisors should be sensitive to the impact of their reaction to the survivor's account. A key concern for survivors which is borne out in research (RAJ and SAVI) is not being believed and the shame of people knowing what has happened to them. These feelings are often coupled with an element of self-blame or even a belief that what happened to them was not that serious therefore communicating empathy and belief is especially important when initial contact with clients is made.

Interviewing Survivors

It is important to engender trust, minimize re-traumatisation, and manage expectations in the professional relationship with a client. Speaking about details of sexual violence is never easy, for survivors or for professionals, and utmost attention must be paid to establishing trust and confidentiality in a controlled setting. Re-living experiences of sexual violence is very difficult for survivors and it takes great courage and commitment to follow a case from reporting to conviction.

Many survivors of sexual violence perceive the current criminal justice system as a form of re-victimisation. In order to achieve justice, the victim's perspective throughout the process must be understood and balanced with due process for the defendant and the public interest. A victim-centred approach includes proactive contact and communication, minimal delays, and a policy of support and belief in the complaint. The reasons why a survivor decides to withdraw from a case should always be sought and examined for elements of fear or intimidation.

The first meeting between a lawyer and a survivor is very important, and sufficient time must be allowed to ensure that trust and boundaries are established.

- The location must be suitable, mindful of privacy, confidentiality and freedom from interruptions. Ensure that other potential witnesses are not present.
- The role and limitations of both the lawyer and the client must be explained in order to align expectations.
- Future communication routes, safety and confidentiality should be discussed in detail.
- Affirmative language should be used, for example never using the word 'allegation' instead of complaint, account or story.
- Active listening techniques should be used and it is important to remain sympathetic and supportive. Allow time and encourage full answers to difficult questions. Enquire whether a diary or personal journal has been kept.
- Be mindful of physical or emotional pain or post-traumatic stress disorder that the survivor might be experiencing.
- An informal assessment of vulnerability and support systems for the survivor is essential. Ascertain who else the survivor has told and who is supporting them emotionally. Appropriate referrals for professional support may be made or considered and the potential use of professional experts must be considered.
- Consider the safety of the survivor, the safety of other potential victims and any civil law as appropriate for example, safety, barring or protection orders. Where cohabiting couples are involved, the complainant should be informed of the procedure for applying for orders under the *Domestic Violence Act 1996* and the *Civil Partnership and Rights and Duties of Co-habitants Act 2010*.
- Special guidance should be sought when advising children, disabled persons and vulnerable clients.
- Explain the role of the survivor in the criminal justice process, the order and typical length of proceedings, and the role of the survivor in the sentencing process.
- Inform the complainant of the literature available, for example 'The Role of the DPP' and 'Attending Court as a Witness' issued by the Director of Public Prosecutions, and the 'Victims' Charter and guide to the criminal justice system' published by the Department of Justice and Law Reform.
- Be clear about your own availability and professional boundaries. Discuss how contact will be made in future and whether you will acknowledge the survivor in public.

Communicating with survivors of sexual violence

One need that has emerged as common to all survivors is the need for regularly updated information about the progress of the investigation, bail, the trial, and decisions relating to the freedom of the accused post-conviction. Information is a basic right to which the survivor is entitled. Feeling informed also contributes to the survivor's feeling of safety and helps to restore a sense of having some control in life. The survivor is often completely unfamiliar with the criminal justice system and may find the process oblique and frightening and may experience re-victimization. Ongoing communication with the survivor's legal representative about the usual sequence of events, dates, and likely outcomes can reduce fears surrounding a court appearance.

The trial process should be discussed with the survivor. Issues to be mindful of include informing the survivor that the cross examination may disclose information about medical evidence, counselling records, psychological health, sexual history, marital history, property interests, and other private details. Thorough explanation is required of the possible privacy related consequences of proceeding with prosecution, including the circumstances under which records must be disclosed, such as mandatory reporting requirements, court orders, and threat of self harm or harm to others. The survivor should also be informed that they may be asked questions about their sexual history. As previous sexual history is almost always prejudicial and may be irrelevant or based on hearsay, it is important to proactively protect the survivor's rights to privacy.

The expectations of the survivor need to be in line with reality in order to avoid false hopes and to reduce frustration. It may be necessary to explain the limited role of the survivor in the criminal justice process as it may not be immediately obvious to a survivor that their role in the trial is limited to that of witness. Special care should be taken to provide accurate and neutral information in plain English or in a language that the survivor can understand and to double check that the information provided has been understood. Information about the court layout and procedures, legal terminology, the adversarial system and role of the witness in court can be provided by Court Services, Citizens' Information online Service or RCNI Court Accompaniment Volunteers. Increased knowledge of and confidence in the justice system may increase engagement and reduce attrition.

Confidentiality and security

Discretion, confidentiality and protection of identity are of paramount importance to protect the survivor, the survivor's friends and family, other witnesses, and your own safety. An information management strategy must be put in place for all for written and oral information, including at reception and when scheduling appointments or leaving messages. This may include vetting interpreters and other intermediaries for conflict of interest and obtaining signed confidentiality and disclosure agreements. It will be necessary to assess the security of the survivor, especially in small communities.

The location of meeting rooms should be chosen with care and selected on the basis of security and confidentiality. If the survivor is receiving psycho-social support or treatment it may be possible to arrange a meeting in a rape crisis centre or other centre in a room designed for the purpose. The survivor should be given the chance to choose the location where possible to avoid inconvenience, embarrassment or distress. It should be established at the first opportunity how and when the survivor would like to communicate and arrange follow up meetings, and a plan agreed to ensure that confidentiality and safety are maintained. When making a phone-call, ascertain whether you should block your phone number, and always ask if it is safe to talk. The importance of confidentiality and discretion must be discussed with the survivor, preferably at each meeting, to ensure that the survivor does not compromise personal safety or inadvertently prejudice the case.

A rapid response contingency plan should be discussed with the client and put in place for the survivor to reach safety if feeling vulnerable. This should include the contact details of the investigating Garda in the case, appropriate emergency shelter or other psycho-social supports, including, if appropriate emergency contact details for urgent legal advice.

Privacy may also be a concern for the client especially regarding the potential choice between prosecution and privacy. However the survivor may inadvertently waive their right to privacy by disclosing information to support services, medical services, family or friends. Therefore it is important for the lawyer to be aware of and explain the possibility and personal and legal consequences of disclosure to any other person, especially media. Since many survivors of sexual violence attend counselling, whether it is provided by a survivor support service or a private practitioner, that counsellor may take notes of consultations with the survivor. Those notes have been sought to be obtained during the trial process on some occasions in the past and even though a court has no power to order the disclosure of materials controlled by third parties, a survivor may be put under pressure during the criminal process to disclose those notes. Furthermore, survivors may be asked to sign a waiver in respect of such notes at an early stage in the criminal investigation and survivors should be aware of the implications of signing any such waiver. Legal advisors should be aware of very real and serious concerns that survivors may have in this regard.

Providing information for survivors

The RAJI research found that one of the single greatest sources of frustration and anxiety for a survivor of sexual abuse is a lack of information and indeed, lack of explanation of the legal process by state agencies, principally the Gardaí. While An Garda Síochána have taken pro-active steps to deal with this issue in recent years, including a commitment in the The Garda Charter for Victims of Crime (Victims' Charter), and in its Garda Síochána Policy on the Investigation of Sexual Crime,⁷ a vital element of advising a client who has been sexually abused is providing information on the legal process and explaining why delays occur or indeed why the survivor is not entitled to certain information. Pro-active management by the legal advisor is necessary to ensure that the survivor is kept informed in order to reduce anxiety and stress. Provision of information has also been shown to reduce attrition and ensure that survivors remain in the criminal justice process.

During the criminal process, there are three main areas where attrition can occur, as identified in the RAJI research. These are at the reporting stage, at the prosecution stage and at the trial stage. The following is a general guide to the points at which survivors will need particular support:

Reporting to the Gardaí: For those survivors who take the step of reporting the abuse to the Gardaí, the actions taken by the Gardaí to investigate the complaint and any information provided to the survivor by the Gardaí, become a very important part of the recovery process for that person. Many survivors indicate that simply being kept informed of the process and the reasons for delays at particular stages in the investigation makes the experience less stressful and helps them feel like an actual participant in the process, rather than just a witness. Legal professionals should advise survivors about the slow progression of criminal investigations.

The Garda Charter for Victims of Crime contains a number of commitments to ensuring that victims are kept informed of the legal process. Those commitments are reiterated in the Garda Síochána Policy on the Investigation of Sexual Crime. The Charter confirms that the Gardaí will tell the victim the name, telephone number and station of the investigating Garda. Further, the Garda will outline the procedure to the victim and ensure that the victim is kept informed of the progress, including whether a suspect is charged or cautioned. The Gardaí must also tell victims about the services available for victims of crime or a traumatic incident.

The Charter provides that when a suspect is charged the Gardaí will tell the victim:

- whether the accused is in custody or on bail and the conditions attached to the bail;
- the time, date and location of the court hearing of the charges against the accused;
- the prosecution process involved and, if you are likely to be called as a witness, the help available through the Crime Victims' Helpline;
- the circumstances where a Judge may ask for a victim impact statement (sexual and violent offences);
- victim entitlement to court expenses;
- the final outcome of the criminal trial.

The Charter also states that the Gardaí will show special sensitivity in relation to sexual offences and in that respect, the services of a Garda and doctor of the same gender will, as far as possible, be made available. Furthermore, victims will be told about the availability of local specialist agencies dealing with sexual offences.

⁷ This document is available to download at the following link: <http://www.garda.ie/Documents/User/WEB%20Investigation%20of%20Sexual%20Crime%20Crimes%20Against%20Children%20Children%20Welfare.pdf>

Legal professionals should explain the commitments of An Garda Síochána to survivors especially with regard to information provision. Survivors should be informed that they may request a copy of their statement in advance of the trial from the investigating Garda or their local Superintendent but this can be refused for operational reasons. Survivors should be informed about who will be entitled to view their statement namely, the prosecution and the defence legal teams including the accused person.

It is also important to inform the survivor that concerns for their safety should be notified to the Gardaí immediately who can apply to amend or revoke the accused person's bail. Survivors should also be informed of the options available under civil law such as barring orders (in the case that the abuser is a spouse or civil partner), safety order or protection order.

If the survivor is not happy with the manner in which the investigation is or has been conducted, there are some options available to lodge a complaint. Survivors can be advised write to their local Superintendent or make an appointment to speak to him/her personally. Further procedures for making a complaint are contained in the Appendix to this document.

The Prosecution stage: The prosecutorial decision, which is one solely for the Director of Public Prosecutions, is a source of much anxiety for survivors. As indicated in the statistics discussed above and indeed in the DPP's annual reports, there are some cases in which the DPP will make the decision not to prosecute the accused person, despite the very serious nature of the allegation against him. Currently, the DPP does not provide reasons for not prosecuting in sexual offence cases.

Since delay is a significant factor for the survivor, it is important to advise that the DPP may take some time to make the decision to prosecute or not in a particular case. This can take several months in most cases and the DPP may refer back to the Gardaí seeking further investigation of particular matters related to the case. The survivor must also be informed that the office of the DPP will not communicate directly with them and the decision as to whether or not to prosecute will be relayed to them by the Gardaí. However, there is no legal bar on a victim of crime communicating with the office of the DPP and the victim, or a family member may write to the DPP. Where the DPP makes the decision not to prosecute, the survivor can request a review of that decision which must be carried out by another person within the DPP's office (not the original decision maker). This can be done personally by writing to the DPP or the survivor can request that an agency such as a Rape Crisis Centre do this on their behalf. Survivors should be informed that literature from the DPP's office indicates that any change in the decision to prosecute usually only arises where new evidence has come to light. While there is no legal time limit for requesting a review of the decision not to prosecute, a survivor who wants the DPP's Office to review a decision should make the request as soon as possible after they are informed that there is to be no prosecution. In practice a review of the DPP's original decision is likely to take a few months to arrive.

The survivor should be informed that once an accused person is charged with an offence, that person will usually be released on bail unless there are good reasons to the contrary and any personal safety issues that the survivor may have should be communicated to the Gardaí immediately.

If a survivor makes a decision to withdraw their complaint at the prosecutorial stage, legal advisors should be careful to ascertain the reasons for this withdrawal, most especially if there are any indications of undue pressure or influence by outside persons, or even intimidation.

At the trial stage: Survivors will be particularly vulnerable to delays at this stage of the process given that trial dates may have been assigned and then vacated on a few occasions before the matter is actually heard by a judge and jury. Survivors should be informed realistically about what the trial process is going to involve, the likely length of proceedings, the role of various parties and who is entitled to remain in the court room. Survivors should also be informed of the court accompaniment services offered by trained staff and volunteers from Rape Crisis Centres and others. Most especially, the survivor must be informed that they will not have their own legal advisor in court, save for the limited legal representation provided when the complainant is to be examined on sexual experience. Survivors should be informed about the legal position regarding anonymity and their entitlement to waive that anonymity once the accused person has been convicted, if they so wish. However survivors should be warned of the dangers of prejudicing the legal process by sharing information or giving interviews to media outlets in advance of trial and should also be advised of the implications for their privacy and personal safety should they choose to do so after the completion of the legal process.

Survivors should be advised that the delivery of the verdict and the sentencing in every case will take place in public except in the case of children, where the In Camera rule still applies. If the accused person has pleaded guilty, this means that details of the sexual offence will be set out for the court by the investigating Garda. There will often be a delay in some cases, of months, between the delivery of the verdict (or the guilty plea) and the sentencing hearing. In many cases, the accused person will remain on bail during this time. In this context, it is vital that survivor remains informed about the process and where delays are likely to occur.

Role of survivor in sentencing process: The survivor should be advised of their legal right to address the court as to the impact of the sexual violence on them via a Victim Impact Statement. A detailed discussion of Victim Impact Statements is contained at Part III below and advice on compiling such statements is available from the website of Rape Crisis Network Ireland.

Importantly, survivors should be warned of the limitations of the Victim Impact Statement insofar as sentencing is a matter solely within discretion of the judge and it is a decision that is made, having regard to the circumstances of both the offender and the offence. From a survivor perspective, it is likely to be very traumatic to witness a case for leniency being put forward by the defence team on behalf of the convicted person.

There is no general right of appeal from an acquittal by a jury however the DPP can appeal an unduly lenient sentence and can also exercise the new “with prejudice” powers of appeal in limited circumstances set out in the *Criminal Procedure Act 2010* referred to in Part II below.. The survivor has no right to appeal a sentence imposed on a convicted person and this must be explained to a survivor in every case. An accused person can appeal both the conviction and the sentence and if successful, a re-trial may be ordered (or not as the case may be) and a sentence might be reduced or increased by an appeal court.

Post sentence: A survivor may seek advice when the perpetrator of the abuse has been or is about to be released from custody. The Garda Charter for Victims of Crime notes that in cases where a crime has caused serious trauma to a victim or family member, there is an agreement in place with the Irish Prison Service that it will notify that person of the imminent release from custody of the offender. The survivor or family member must write to the Irish Prison Service requesting such a notification. The Charter also states that where necessary, the Gardaí will provide advice on issues of safety and security.

Contact details for the Irish Prison Services are available in the Appendix.

Working with interpreters and other intermediaries

Many legal professionals will be consulted by persons for whom English is not their first language. Interpreters should be used where necessary as it is important that vital facts or statements are not lost or misunderstood by issues of language. The gender of the interpreter should also be a consideration. Generally, interpreters work in two different ways: simultaneously and consecutively. Simultaneous interpreters will interpret while you speak; consecutive interpreters interpret in pieces as you speak. Before engaging an interpreter, legal professionals should check with that person for any potential conflict of interest. If the survivor is using a friend or relative as an interpreter it is important to ensure that that person is not also a witness in the case. Legal advisors should be aware that family dynamics, such as may exist in a case where a family member is acting as interpreter, may impact negatively on the victim's openness or willingness to participate in the legal process.

The survivor should be informed that s/he has a right to an interpreter for the duration of her evidence and cross examination in court. The expense of this will be borne by the State. The survivor should be advised to complain immediately if the interpreter is not fulfilling their assigned role and most especially, during court proceedings, if there is any doubt that the evidence is not being properly relayed to the court and jury.

In cases where the survivor has a disability and requires special assistance, legal advisors should be sensitive to those needs and should adopt pro-active listening techniques and communication methods.

Guidance on advising children

Children are especially vulnerable clients who should be treated with additional care and sensitivity. There are specialist support agencies that provide services for children such as Barnardos and CARI and further advice on dealing with children can be obtained from those agencies. RCNI Rape Crisis Centres provide services to children aged 14 years and older. In the context of providing legal advice, a parent or guardian will often be present and play a very important role in proceedings. In cases where the abuse was carried out by a parent or guardian, the child may be accompanied by care-workers or other persons acting in loco parentis.

The HSE Children First Guidelines provide some guidance on interviewing children. The Guidelines state that the child should be spoken to personally, in a manner appropriate to his or her age and stage of development and that the interview should take place in a location that is comfortable for the child. If the child has a learning disability or sensory impairment, it may be necessary to employ expert assistance to facilitate communication. Legal advisors should use language that the child can understand and explain who they are and why they are there. It is essential to conduct the interview at the child's pace and communicate with him or her in a warm and responsive manner.

If child clients are to be referred on for counselling and specialist support, that agency will make an assessment of whether that child can consent to that counselling or other forms of treatment. Organisations such as CARI and Barnardos provide specialist support for child survivors of sexual violence and contact details for those agencies are provided in the Appendix.

Client referrals

There are many specialist victim support agencies operating free services and counselling to victims of crime. There are a number of services specialising in sexual violence and lawyers should be aware of those services when advising clients. It may be necessary to advise the survivor to seek professional help in order to recover from the trauma of the sexual violence and also for general support, as research has shown that those who engage with support services are more likely to engage with the legal system and remain in the system until the conclusion of the case. A list of those support agencies together with contact details is provided in the appendix to this Guide.

Self-care for lawyers

Vicarious trauma

All professionals who work with trauma victims can suffer forms of secondary trauma that affect their relationship with the client and their ability to handle the case. This applies in particular to lawyers, judges, court staff and interpreters due to high work load, absence of psychological support, and lack of training on how to work with traumatised clients.

Vicarious trauma is one form of secondary trauma and involves the internalisation of the client's trauma, changing perceptions on the world and ability to trust. Other symptoms of secondary trauma include feelings of fear, horror, anger, rage; disturbed sleep and nightmares; concentration and memory changes; detachment and withdrawal; and burnout. The result may be that the lawyer has difficulty concentrating or listening, and has reduced ability to make wise professional decisions, especially concerning boundaries.

All legal professionals who work with emotional or traumatised clients should develop strategies and techniques for interviewing, building trust and defining and maintaining boundaries. Traumatized clients may exhibit a wide range of symptoms that affect the professional relationship, including losing focus when describing the traumatic experience, arriving late or missing appointments, forgetting or confusing important details, or pushing boundaries.

Training in working with survivors of sexual violence is highly recommended to establish effective interview techniques and to avoid secondary trauma. It is an ethical responsibility to recognise the risks and the symptoms and to pay additional attention to self-care and to actively seek peer or professional support while working with traumatised clients.

LawCare provides a service which is a confidential advisory service to help lawyers, their immediate families and their staff to deal with the health issues and related emotional difficulties that can result from a stressful career as a lawyer, or working with lawyers. LawCare provide a service for the Law Society of Ireland and the Bar which consists of a free helpline which is available 365 days a year and also provides other forms of advice and support. Contact details are contained in the Appendix.

Seek and take advice from local Rape Crisis Centres, many of whom provide training in self-care to deal with disclosures of sexual violence. These services are provided free of charge.

Local Rape Crisis Centres can also facilitate access to professional counsellors with specialist training in sexual violence issues, with whom the difficulties of receiving disclosures of sexual violence may be discussed in absolute confidence.

Part II: Relevant Criminal Legislation and Legal Issues

Introduction

The term 'sexual violence' encompasses all non-consensual sexual contact between persons. Further complex issues arise where one of the parties is unable to give consent due to age or intellectual disability. The criminal law relating to sexual violence is contained in a variety of pieces of legislation, with the result that the law on sexual offences in this jurisdiction is piecemeal and complex.

Courts of relevant jurisdiction

Sexual Offences can be tried in the District Court, Circuit Criminal Court and the Central Criminal Court. Certain conditions must be met before that offence can be tried by the District Court. The sentencing jurisdiction of the District Court is confined to 12 months for any one offence subject to an overall maximum of 24 months for any number of offences for which sentence is passed at the same time. The Circuit Criminal Court also tries sexual offences and the only limitation on sentencing is as prescribed by statute. The most serious sexual offences namely, rape and aggravated sexual assault can be tried in the Central Criminal Court where the presiding Judge can impose a sentence up to the maximum permitted by statute.

A criminal offence will usually be tried in a court in the jurisdiction in which the offence took place so if the rape took place in Dublin, the trial will usually take place in Dublin. Occasionally, there are special circumstances which require a trial to take place elsewhere for example where specialised court facilities such as video link are only available at another venue. Those offences triable by the Central Criminal Court only will most often be tried in Dublin however the Central Criminal Court occasionally sits outside of Dublin to hear offences.

Appeal

Legal advisors should make survivors aware that the legal process may not necessarily end when the trial or sentencing hearing has concluded. Survivors should be advised of the convicted person's right of appeal in respect of both the sentence handed down by the court and in a case where the matter was fully contested at trial, the conviction at trial. The prosecution on the other hand has some limited rights of appeal, and the complainant has no right of appeal.

The accused person has a full right of appeal by way of a complete re-hearing from the District Court to the Circuit Court, and a right of appeal based on a transcript of the evidence against conviction or sentence from the Circuit Criminal Court, the Special Criminal Court or the Central Criminal Court to the Court of Criminal Appeal. In some cases the accused may further appeal from the Court of Criminal Appeal to the Supreme Court. From the lower courts i.e. the District and the Circuit Courts the accused may also seek a judicial review or seek to have a case stated.

The prosecution has no right of appeal against an acquittal in any court, save for in very limited circumstances. A 'without prejudice' appeal is available on a point of law to the Supreme Court under section 34 of the *Criminal Procedure Act 1967*. Where an offence is processed by the District Court, the options for the DPP are to seek judicial review or request that the District Court 'state a case' by way of consultative case stated on a point of law to the Supreme Court. Under Order 102, rule 15, of the District Court Rules, 1997, a judge of the District Court may not refuse to state a case where the case stated is sought by or under the direction of the Director of Public Prosecutions.

The *Criminal Procedure Act 2010* grants a new power to the DPP in respect of appeals. Section 23 allows for 'with prejudice' appeals to the Supreme Court on a point of law and the Supreme Court may quash the acquittal and order a re-trial or it may affirm the original decision of the trial court or appeal court. However, such an appeal will only lie in limited circumstances namely under section 23(3):

*"(a) a ruling was made by a court during the course of a trial referred to in subsection (1) or the hearing of an appeal referred to in subsection (2), as the case may be, which **erroneously excluded compelling evidence**, or*

(b) a direction was given by a court during the course of a trial referred to in subsection (1), directing the jury in the trial to find the person not guilty where-

(i) the direction was wrong in law, and

(ii) the evidence adduced in the proceedings was evidence upon which a jury might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned."

One of the factors that the court is required to take account of in deciding whether or not to order a re-trial is 'the interest of any victim of the offence concerned'.

Compelling evidence in this regard means evidence which is reliable, is of significant probative value, and is such that when taken together with all the other evidence adduced in the proceedings concerned, a jury might reasonably be satisfied beyond a reasonable doubt of the person's guilt in respect of the offence concerned.

Appeals of sentences imposed

Under section 3 of the *Criminal Justice Act 1993*, the Director of Public Prosecutions may apply to the Court of Criminal Appeal for review of a sentence imposed by a court on conviction of a person following trial on indictment where it appears to the Director that the sentence was unduly lenient. This provision does not apply to convictions in the District Court. The Court of Criminal Appeal can do the following in respect of a sentence imposed by a trial court; increase the sentence, decrease the sentence, amend the sentence so that certain sentences run concurrently rather than consecutively or the court may decide not to interfere with the sentence in any way.

New evidence

The *Criminal Procedure Act 2010* granted the DPP new powers to apply for a re-trial where compelling new evidence has emerged. The application must be made to the Court of Criminal Appeal and must be on notice to the accused person. However, the re-trial can be heard in the absence of the accused person. Section 8 of that Act provides:

"8.- (1) Subject to subsection (7), this section applies where a person-

(a) is, on or after the commencement of this section, sent forward for trial in respect of a relevant offence and is, or

(b) has, before the commencement of this section, been sent forward for trial but has not yet been tried in respect of a relevant offence and is, on or after such commencement,

tried on indictment in respect of the offence, and acquitted of that offence (whether at the trial, on appeal against conviction or on appeal from such a decision on appeal)."

Subsection (3) provides that the Director may apply to the Court for a re-trial order where it appears to him or her where there is new and compelling evidence and it is in the public interest to do so. Subsection (4) provides that only one such application may be made in respect of a person, even if that person is acquitted at the re-trial.

Compelling evidence is defined in section 7 as:

“new and compelling evidence”, in relation to a person, means evidence which-

(a) which was not adduced by the prosecution in the proceedings in respect of which the person was acquitted (nor in any appeal proceedings to which the original proceedings related), and

(b) which could not, with the exercise of due diligence, have been adduced during those proceedings, and

(c) is evidence which-

(i) is reliable,

(ii) is of significant probative value, and

(iii) is such that when taken together with all the other evidence adduced in the proceedings concerned, a jury might reasonably be satisfied beyond a reasonable doubt of the person’s guilt in respect of the offence concerned;

This new legislation applies prospectively only and only in respect of defined relevant offences however, it applies to: rape, aggravated sexual assault, rape under section 4, defilement offence (of child under 15 years) under section 2 of the *Criminal Law (Sexual Offences) Act 2006* and an offence under section 1 of the *Punishment of Incest Act 1908* (incest by males). One of the matters that the court is required to have regard to upon application to it for a re-trial is *“the interests of any victim of the offence concerned”* but also, *“whether or not it is likely that any re-trial could be conducted fairly”* and *“the amount of time that has passed since the act or omission that gave rise to the indictment”*.⁸ In determining whether to order the re-trial, the court may compel the production of documentation and hear evidence, including ordering a compellable person to attend whether or not they attended at the original hearing. This allows for witnesses who failed or refused to come forward at the first hearing to be called to give evidence in order to secure a second hearing.

Legal advisors providing advice to survivors, especially those who have been through the criminal process without a successful outcome, should bear in mind the new procedures and options available to the DPP where new evidence has emerged.

⁸ Section 10(3) *Criminal Procedure Act 2010*.

Relevant criminal law

OFFENCE	LEGISLATION	COURT	MAXIMUM SENTENCE
Sexual Assault	S.2 Criminal Law (Rape) Amendment Act 1990	Circuit Court however District Court can try offence in certain circumstances	10 years imprisonment. If victim under 17 years of age, maximum sentence is 14 years.
Aggravated Sexual Assault	S.3 Criminal Law (Rape) Amendment Act 1990	Central Criminal Court	Life imprisonment.
Defilement of a child under 15 years of age	S.2 Criminal Law (Sexual Offences) Act 2006	Circuit Court	Life imprisonment
Defilement of a child under 17 years of age	S.3 Criminal Law (Sexual Offences) Act 2006	Circuit Court	5 years or 10 years if 'a person in authority'. Subsequent convictions attract 10 years or 15 years if 'person in authority'
Rape	S.2 Criminal Law (Rape) Act 1981	Central Criminal Court	Life imprisonment
'Rape under s.4'	S.4 Criminal Law (Rape) Amendment Act 1990	Central Criminal Court	Life imprisonment
Buggery with persons under 17 years	S. 3 Criminal Law (Sexual Offences) Act 1993 (repealed by Criminal Law (Sexual Offences) Act 2006) AND ss 61 & 62 Offences Against the Person Act 1861 (offences related to animals)	Circuit Court	Life imprisonment if victim is under 15 years. If victim is aged between 15-17 years, 5 years for first conviction and 7 years for subsequent convictions
Gross Indecency with males under 17 years	S. 4 Criminal Law (Sexual Offences) Act 1993 – (repealed by Criminal Law (Sexual Offences) Act 2006)	Circuit Court	2 years
Acts of gross indecency	S. 11 Criminal Law Amendment Act 1885 repealed by Criminal Law (Sexual Offences) Act 1993	Circuit Court	2 years
Sexual intercourse or buggery with a mentally impaired person.	Section 5 Criminal Law (Sexual Offences) 1993	Circuit Court	10 years for completed offence, 3 years for first attempt and 5 years for second attempt.
Incest by a male	S. 1 Punishment of Incest Act 1908	Circuit Court	Life Imprisonment
Incest by a female	S.2 Punishment of Incest Act 1908	Circuit Court	Maximum 7 years
Trafficking of Children (including child pornography)	S.3, 4 & 5 Child Trafficking and Pornography Act 1998	Circuit Court	Life imprisonment
Human Trafficking	S.4 Criminal Law (Human Trafficking) Act 1998	Circuit Court	Life imprisonment
Sex Tourism	Sexual Offences (Jurisdiction) Act 1996	Circuit Court	Determined by the offence committed

General principles:

Consent

The issue of consent is central to all sexual offences. Generally, where consent is present there will be no offence, except in the case of children under 17 years of age and in some other specific circumstances. However, there is no general definition of consent and the statutes relevant to sexual offences do not define consent. The courts have generally accepted that consent must proceed from the will of the person free from any incapacity or impairment. A clear definition of consent is contained in the UK Sexual Offences Act 2003 which states ‘a person consents if he agrees by choice and has the freedom and capacity to make that choice.’ Unlike the law in the UK, there are no evidential presumptions about consent in Irish criminal law and lack of consent is a vital proof in the prosecution of any sexual offence.

Legislative intervention in Ireland via the *Criminal Law (Rape) (Amendment) Act 1990* removed the common law requirement of utmost resistance on the part of the victim. S.9 states:

“It is hereby declared that in relation to an offence that consists of or includes the doing of an act to a person without the consent of that person any failure or omission by that person to offer resistance to the act does not of itself constitute consent to the act.”

This provision applies to all sexual assault offences and not just rape. The above provision clarifies one important point in relation to consent, that is, a failure by the victim to resist or ‘fight off’ the defendant, does not amount to giving consent to the act in question. The courts have also consistently held that consent obtained through threats or force, through fraud or by impersonation is not true consent for the purposes of the law. Where the victim has consumed an intoxicant (whether voluntarily or not) to the extent that that person has lost their capacity to choose, then consent cannot be operative. Consent cannot be said to exist where the following circumstances are proved; that the victim was asleep or unconscious; that the victim did not know the nature of the act that they were consenting to; in cases where consent is obtained through violence or threats; where the accused person has impersonated the husband or sexual partner of the victim; or where the victim is mentally impaired.

Age and consent

The criminal law offers specific protection to children in the context of sexual violence by providing that children cannot consent to most sexual activity. This means that even though the child may have given ‘consent’, the law will disregard that ‘consent’ since a child is incapable of giving consent to certain sexual activities. Both sections 2(5) and 3(5) of the *Criminal Law (Sexual Offences) Act 2006* provide that it is not a defence for the defendant to prove that the child against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted. The general age of consent to a sexual act is 17 years of age for males and females. This includes all penetrative sexual acts. A child under 15 years of age may not consent to acts amounting to sexual assault.

Gender bias

Rape under the *Criminal Law (Rape) Act 1981* may only be perpetrated by a man against a woman. Rape under section 4 of the *Criminal Law (Rape) (Amendment) Act 1990* which essentially amounts to anal or oral rape is gender neutral. Sexual assault and aggravated sexual assault are both gender neutral as is the offence of having (or attempting to have) sexual intercourse with a mentally impaired person. Defilement offences relating to children are also gender neutral insofar as the legal protection is extended to male as well as female children. However a female child under 17 years of age may not be prosecuted for an offence involving sexual intercourse under the relevant legislation. The provision was challenged unsuccessfully in the Supreme Court recently in the case of *M.D. (Minor) v Ireland AG & DPP*⁹ which is considered in detail below. Incest is not gender neutral insofar as the law presumes that the male is the dominant party however both males and females can be prosecuted under the legislation. Convicted males are liable to greater penalties than convicted females.

⁹ [2012] IESC 10.

Further gender issues arise in the context of transsexual individuals who have undergone gender re-assignment surgery. The case of *Foy v An t-Ard Chláraitheoir & Ors*¹⁰ raised such issues before the Irish superior courts. Ms. Foy originally brought a High Court action challenging the refusal of the Registrar of Births, Deaths and Marriages to amend her birth certificate to reflect her new gender which was female, having been born a male. The original case was heard in 2002 but was heard again by the High Court in 2007 after the Supreme Court remitted it for hearing in light of legally significant developments since the original case.¹¹ The High Court ruled in favour of Ms. Foy on this occasion and found that the relevant provisions of the *Civil Registration Act 2004* were incompatible with the European Convention on Human Rights and issued a declaration of incompatibility. The effect of such a declaration is that the legislation in question remains in force until it is amended by the Oireachtas as set out in section 5 of the *European Convention on Human Rights Act, 2003*. The Government has committed to introducing legislation to deal with the ruling this year (2012).

In the context of sexual offences and most especially in the area of rape under the 1981 Act (which can only be carried out by a man on a woman), it will be necessary to ensure that the relevant terms, 'man and woman', are construed to include persons who have undergone gender re-assignment surgery. The UK *Sexual Offences Act 2003* now includes artificially constructed body parts thereby ensuring that transsexual male-to-female persons are included in the definition of rape.

Prosecuting children for sexual offences

At common law, a boy under 14 years of age was conclusively presumed to be incapable of committing a rape. This was based on a presumed physical incapability to commit the act. However, this presumption was abolished by s.6 of the *Criminal Law (Rape) (Amendment) Act 1990*. The *Children Act 2001* changed the age of criminal responsibility for children generally however before the relevant sections were commenced, the *Criminal Justice Act 2006* amended the Act of 2001 by the insertion of section 52(2). This provided that the crimes of rape, rape under section 4, and aggravated sexual assault can be committed by a child aged 10 years and older. For all other sexual offences, the child must be 12 years or over before charges can be brought. However in cases where it is proposed to charge a child under 14 years of age with any offence, the consent of the DPP must be sought.

While a male child can be charged with rape under the 1981 Act, a female cannot since rape under this Act can only be committed by a male on a female. A female under 17 years of age may not be prosecuted for any defilement offence which involves sexual intercourse. However, it seems that a female child could be charged with rape under section 4, or aggravated sexual assault. Furthermore, she could be charged with aiding, abetting, counselling or procuring any of the foregoing offences including the offence of rape, even if she cannot be convicted as a principal offender for the latter offence. A female child under 17 years may be charged with sexual assault.

Finally, while 18 years is the general age of majority, for the purposes of sexual offences, 17 years is the relevant age. Males and females are no longer considered children for the purposes of sexual offences once they attain 17 years of age.

Delay

The issue of delay is highly relevant to the prosecution of crimes of sexual violence since many victims are reluctant to report the crime or come forward for a significant period after the abuse took place. This is particularly relevant where the abuse took place in childhood but the survivor has only disclosed such abuse as an adult. While there is no statute of limitations affecting indictable crimes in this jurisdiction, a lengthy delay between commission of the alleged offence, detection and subsequent prosecution for the offence allows the accused person to make various arguments in order to seek to prevent the trial from going ahead.

¹⁰ [2007] IEHC 470.

¹¹ Since the 2002 case, the *European Convention on Human Rights Act 2003* had been incorporated into Irish law. The European Court of Human Rights also ruled in favour of the applicant in *Goodwin v UK* [2002] 35 EHRR 447 and found a breach of Article 8 of the Convention (right to family and private life) by the refusal of the UK authorities to acknowledge her new gender. The *Civil Registration Act 2004* had also been enacted into Irish law.

It is a long-standing principle of Irish Constitutional law that the accused person has a right to trial with reasonable expedition since delays tend to impact significantly on the ability to secure a fair trial for the accused person. This right also exists under Article 6 of the European Convention on Human Rights. While there are no set periods after which an accused person cannot be prosecuted, each case will be examined on its own merits by the courts in order to establish if the accused's rights have been prejudiced by the delay.

When advising a survivor of sexual violence who has delayed in reporting the crime, there are a number of factors which can be highlighted as reasons which might cause the DPP not to prosecute a case or indeed which may halt proceedings where the decision to prosecute has been made. These include: that vital witnesses may no longer be available or the accuracy of memories can no longer be relied on, the scene of the crime may be altered or destroyed, records may no longer be available, and almost certainly, there will be no forensic evidence.

Dominion

The test as developed by the Supreme Court in the case of *B v DPP*¹² is whether there is a real risk that the accused person, by reason of the delay, would not obtain a fair trial. This has been understood to mean that the accused person must be able to show actual prejudice (rather than general perceived prejudice) before the court will halt proceedings on the grounds of delay. The court set out a list of factors to be taken into account when determining the issue of delay and these include; the length of the delay and reasons for it, the accused's actions in relation to the events in issue, actual prejudice to the accused, length of pre-trial anxiety of the accused person, any limitations or impairment of the defence and the community's right to have the offence prosecuted.

The Supreme Court also referred to a special category of cases namely allegations of abuse of children where the concept of 'dominion' has evolved. That concept involves a recognition that in some cases, the victim may have been under the control of the accused person, or in fear of them, such to the extent that they were physically or most often, psychologically incapable of reporting the abuse to the authorities until many years later. In some cases, the capacity to speak about the abuse may only arise as a result of counselling and therapy. In this way, the reason for the delay is said to arise from the accused person's own actions and therefore is a highly relevant factor for the court in determining whether the delay will deprive the accused of a right to trial in due course of law. Murray J in the case of *P O'C v DPP*¹³ expressed the reasoning of the court very well:

"Expert evidence...has demonstrated that young or very young victims of sexual abuse are often very reluctant or find it impossible to come forward and disclose the abuse to others or in particular, to complain to the Gardaí until many years later (if at all). In fact this has been so clearly demonstrated in a succession of cases that the Court would probably be entitled to take judicial notice of the fact that this is an inherent element in the nature of such offences."

Impact of delay on prosecution of case

The court in the case of *H v DPP*¹⁴ accepted that factors such as dominion were no longer new reasons in delay cases. The court restated that the test is 'whether there is a real or serious risk that the applicant, by reason of the delay, would not obtain a fair trial or that the trial would be unfair as a consequence of the delay.'

It is important to bear in mind the significance of delayed reporting when advising a survivor of abuse. Survivors should also be advised that there are likely to be legal challenges to the prosecution in cases where there has been a significant delay between the reporting of the abuse and the prosecution leading to delays in the overall progress of the case and in some cases, leading to a ruling that the case cannot proceed any further. Survivors should be aware that appeals to the Supreme Court on a point of law can take an average of three years to be ruled on by that court and legal advisors should be aware of the negative impact that such delays may have on the survivor's mental health and recovery.

¹² *B v DPP* [1997] 3 IR 140. See also *J O'C v DPP* [2000] 3 IR 478.

¹³ *P O'C v DPP* [2000] 3 IR 87.

¹⁴ *H v DPP* [2006] IESC 55.

General Evidential Issues

Child witnesses

It is the practice of the Gardaí to record interviews with children who are the victims of violent or sexual crimes. This is not the case with adult victims of sexual offences and their account is obtained via a statement to the Gardaí. The recorded interview of the child can be accepted as evidence in criminal proceedings however, the child can be asked questions about the account given in the interview and this would usually be done via a live television link so that the child does not have to come into the courtroom. The court has discretion not to accept the recorded interview if it would be unjust to the accused person to do so. Section 16 of the *Criminal Evidence Act 1992* governs this area. The court may also allow such a recording to be used in evidence however it may give directions as to the weight to be attached to such evidence. However, only children under 14 years and vulnerable adults, by virtue of Section 19 of the same Act, are interviewed in this way although an application to give evidence via link television link can be made in respect of any witness, including an adult witness.

Corroboration

At common law, a judge in a sexual offence trial was required to give a 'corroboration warning'. Corroboration evidence is independent evidence that tends to link the accused person to the crime. For example, evidence of the traumatized appearance of the victim, whether by demeanour or physical appearance may constitute corroboration, although this is considered weak corroboration. The effect of the mandatory warning was that the judge was obliged to warn the jury of the dangers of convicting a person based on the uncorroborated account of another person. This rule developed to the extent that such a warning had to be given even if there was evidence which would legally amount to corroboration. Since most sexual offences take place when only the victim and the perpetrator are present, the corroboration warning was given in the vast majority of trials of sexual offences. Legislative intervention by way of s.7 of the *Criminal Law (Rape) (Amendment) Act 1990* removed the requirement for a corroboration warning in each case and instead provided that the warning was a matter of discretion for each trial judge. The provision applies to all offences of a sexual nature.

Recent complaint

The doctrine of recent complaint or fresh complaint is one that is unique to sexual offences. General rules of evidence provide that statements made to other persons that are consistent with the account of the victim are inadmissible at trial. An exception to this rule has developed that allows for the admission of evidence that the victim made a voluntary complaint to a third party at the first reasonable opportunity after the offence¹⁵, the purpose of which is to establish the consistency of the witness rather than corroborate the victim's account. The words used by the victim in making the immediate complaint may also be given in evidence since it is not just the fact of the making of the complaint that is relevant. In order for such a statement to be admissible, it must have been made as soon as reasonably possible after the incident however there is no strict deadline on this. Much of the legal argument surrounding fresh complaint concerns the issue of when a complaint is 'recent' and ultimately, it will be a matter for the trial judge to determine whether such evidence is admissible or not.

Other sexual experience

Section 3 of the *Criminal Law (Rape) Act 1981* introduced a limitation regarding the matters that could be adduced at trial related to the complainant's other sexual experience. The original provision permitted the complainant to be questioned about prior sexual experience with any other person but not the accused, save with the leave of the court¹⁶. An application was required to be made to the trial judge to adduce such evidence

¹⁵ See the leading case of *The People (DPP) v Brophy* [1992], ILRM 709, cited at pages 237-240 of "Sexual Offences Law, Policy and Punishment" by Thomas O'Malley (1996), Round Hall.

¹⁶ This was amended by the *Criminal Law (Rape)(Amendment) Act 1990* to include sexual experience with the accused.

and the judge may only grant such leave:

“if, and only if, he is satisfied that it would be unfair to the accused person to refuse to allow the evidence to be adduced or the question to be asked, that is to say, if he is satisfied that, on the assumption that if the evidence or question was not allowed the jury might reasonably be satisfied beyond reasonable doubt that the accused person is guilty, the effect of allowing the evidence or question might reasonably be that they would not be so satisfied.”

Section 3(3) gives the judge further power to restrain questioning even where leave has been granted if that question is not within the terms of the leave that was sought. This section originally provided that the limitation only operated in a trial for a rape offence however, the *Criminal Law (Rape) (Amendment) Act 1990* extended this to trials of an offence of sexual assault. It was further extended by the *Criminal Law (Sexual Offences) (Amendment) Act 2007* to include offences under the *Criminal Law (Sexual Offences) Act 2006* (defilement of children).

The *Sex Offenders Act 2001* further amended this area by allowing, for the first time, separate legal representation for the complainant where it is intended to make an application for leave under Section 3 of the 1981 Act to adduce evidence related to sexual experience at trial. Section 34 provides for legal representation for the complainant for the purpose of being legally represented during the hearing of the application. This legal representation is provided free of charge by the Legal Aid Board and the complainant will be represented by a solicitor and barrister at the hearing of the application (some judges have interpreted the section as permitting the legal representation to remain in Court for both direct and cross-examination, however objections to the line of questioning are often made by the prosecutor or the presiding judge). There is no bar on the defence making an application to adduce such evidence mid-trial however the complainant must still be offered an opportunity to have separate legal representation for the Section 3 application.

Sexual offences

Sexual assault (also referred to as indecent assault)

The offence of sexual assault is referred to in s.2 of the *Criminal Law (Rape) (Amendment) Act 1990* and it provides:

“2(1) The offence of indecent assault upon any male person and the offence of indecent assault upon any female person shall be known as sexual assault.”

This refers to the fact that until the enactment of the 1990 Act, sexual assault was known as indecent assault which was a common law offence. Since the 1990 Act, the offence of sexual assault remains a common law offence however the penalty is provided by statute. This was confirmed by the Supreme Court in *S O’C v Governor of Arbour Hill Prison*¹⁷ where the court underlined that the 1990 Act changed the name of the offence but its nature remained unaltered. In the case of *SM v Ireland*¹⁸, the High Court found that the distinction between the sentencing structure for indecent assault offences upon males and females as laid down by section 62 of the *Offences Against the Person Act 1861* which applies to offences committed against males prior to 1990, was unconstitutional on the basis that it offended against the principle of equality before the law contained in Article 40.1 of the Constitution. This decision means that no statutory penalty exists for indecent assault on males committed prior to 18th January 1991 (the date on which the 1990 Act became operative) and common law sentencing principles apply in those cases. No powers of arrest or detention exist of the Gardaí in cases where the offence was committed prior to that date.

¹⁷ Unreported, SC 13th July, 2001.

¹⁸ Unreported, High Court 12th July 2007.

Sexual assault encompasses every type of non-consensual sexual contact falling short of rape therefore the same offence can be used to charge varying levels of seriousness in sexual violence. There are two elements to the offence; assault (any non-consensual touching or a reasonable apprehension of touching) in circumstances of indecency. The penalty on conviction on indictment was originally imprisonment for a term not exceeding 5 years provided for in section 2(2) however this penalty was amended by section 37 of the *Sex Offenders Act 2001* where the penalties were increased to 14 years if the assault was committed on a child (meaning under 17 years of age) or to 10 years in any other case.

Consent is a key issue in relation to sexual assault. If there is consent, then no assault can take place regardless of the circumstances. This is subject to two caveats however. Section 14 of the *Criminal Law Amendment Act 1935* provides:

"14 - It shall not be a defence to a charge of indecent assault upon a person under the age of fifteen years to prove that such person consented to the act alleged to constitute such indecent assault."

Therefore a child under 15 years of age cannot consent to acts amounting to sexual assault however a child aged 15 or 16 years may consent to such activities.

The second caveat is that it may not be possible to give consent to any assault where serious harm is caused. While there is no superior court ruling to this effect in Ireland, it is the case that absence of consent is not an element of the offence of 'causing serious harm' under section 4 of the *Non-fatal Offences Against the Person Act 1997*.¹⁹ Furthermore, the decision of the House of Lords in *R v Brown*²⁰, upheld by the European Court of Human Rights in *Laskey v UK*²¹, found that a person may not consent to activities which involve the infliction of physical harm.

Sexual assault is an indictable offence however it may be tried in the District Court by reason of the fact that the offence of indecent assault is contained in paragraph 6 of the First Schedule to the *Criminal Justice Act 1952*, as amended by section 8 of the *Criminal Law (Miscellaneous Provisions) Act 1997*. Section 8 offences are indictable offences which may be tried summarily by the District Court subject to three requirements:

- (i) the Court is of opinion that the facts proved or alleged constitute a minor offence fit to be so tried,
- (ii) the accused, on being informed by the Court of his right to be tried with a jury, does not object to being tried summarily, and
- (iii) the Director of Public Prosecutions consents to the accused being tried summarily for such offence.

Aggravated sexual assault

The offence of aggravated sexual assault was created by section 3 of the *Criminal Law (Rape) (Amendment) Act 1990* and it is one of the most serious sexual offences known to criminal law attracting a penalty of up to life imprisonment. Only the Central Criminal Court can try a charge of aggravated sexual assault and this includes attempts, aiding, abetting, counselling or procuring or conspiracy to commit the offence as provided for in section 10 of the 1990 Act.

Aggravated sexual assault is defined in section 3 as:

"a sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted."

In order to establish aggravated sexual assault it must be proved that there is non-consensual touching in circumstances of indecency with serious violence or threats of serious violence or grave injury, humiliation or degradation. Whether these aggravating factors exist will be a matter of fact for the jury to decide.

¹⁹ The Supreme Court case of *MJELF v Donly* [2009] IESC 48 recently found that a lack of consent on the part of the victim is not a constituent element of an offence of assault causing harm under section 3 of the 1997 Act.

²⁰ [1993] 2 All ER 75.

²¹ (1997) 24 EHRR 39.

Offences against children: defilement

The offence of defilement of children is commonly known as ‘statutory rape’. The offence was originally provided for in the *Criminal Law Amendment Act 1935* which only protected young girls. The Act differentiated between girls under 15 years of age and girls under 17 years of age by providing for greater penalties for persons convicted of offences in respect of girls under 15 years of age. The offences contained in sections 1 and 2 provided that it was unlawful to have carnal knowledge of a girl aged less than 15 years and a girl aged less than 17 years, respectively. Carnal knowledge was understood to refer to natural sexual intercourse only and proof of penetration was sufficient.

A further unique feature of this legislation was that it was a strict liability offence insofar as no defence could be offered by the accused person once it was proved that sexual intercourse had taken place with a female child under 17 years of age. This feature of the legislation went unchallenged until 2006 when in the case of *CC v Ireland*²², the applicant successfully argued that section 1(1) of the Act was unconstitutional insofar as it did not permit a defence of reasonable mistake as to age and was therefore, an offence of strict liability. The Supreme Court agreed and ruled that the section was unconstitutional since a strict liability offence which attracted a term of up to life imprisonment and which could be considered one of the most serious offences known to law, amounted to a breach of personal rights as guaranteed by Article 40 of the Constitution. The key issue for the court was that a conviction could be secured under section 1(1) without any reference to the mental guilt of the accused.

The *CC* case therefore required a fundamental change in the law on the sexual exploitation of children. However, before any new legislation was placed before the Houses of the Oireachtas, the case of *A v Governor of Arbour Hill Prison*²³ was heard in the High Court which demonstrated clearly, the impact of the Supreme Court’s decision in *CC*. A had been convicted under the same section that was successfully struck down in *CC* and he now claimed before the High Court that his detention in Arbour Hill prison was unlawful since the provision under which he was being held no longer existed in law. The crux of the issue was the effect of a finding of unconstitutionality on other persons affected by legislation that was later deemed unconstitutional.

The High Court found that the effect of a finding of unconstitutionality was that the legislation in question was void ab initio, that is, never took effect. In the case of the 1935 Act, it ceased to have effect once the Constitution of 1937 came into force. The consequence of the High Court decision was of course that every person convicted in the State under the 1935 Act would be entitled to be released. The State immediately appealed the High Court decision to the Supreme Court, which granted the appeal and immediately ordered the re-arrest of A. The Supreme Court reasoned that full retrospective effect of a finding of unconstitutionality must be tempered by considerations of the common good and public order. Denham J (as she was then) indicated that a principle of full retrospective effect would bring disorder in society disproportionate to the benefit to be achieved. The court ruled therefore that the only person entitled to retrospective benefit from the finding of unconstitutionality was the person who successfully challenged the legislation, in this case *CC*.

Criminal Law (Sexual Offences) Act 2006

The *Criminal Law (Sexual Offences) Act 2006* was enacted to fill the void left by section 1(1) of the 1935 Act. The new Act repealed section 1(2) and section 2 of the 1935 and replaced those sections with similar offences under sections 2 and 3 of the 2006 Act. The 2006 Act broadened the scope of the offences by including acts other than sexual intercourse. The 2006 Act refers to a ‘sexual act’ which is defined to include sexual intercourse, buggery, aggravated sexual assault and rape under section 4, all of which are prohibited with children under 17 years of age.

²² [2006] IESC 33.

²³ [2006] 4 IR 88.

Similar to the 1935 Act, the 2006 legislation provided for differing penalties for offences in respect of those under 15 years and those less than 17 years and for the first time, extended the same legal protection to male children as well as female children. The Act also provided for harsher penalties for 'persons in authority' which was defined in section 1 as:

"1 - "person in authority" means-

(a) a parent, step-parent, guardian, grandparent, uncle or aunt of the victim,

(b) any person who is, for the time being, in loco parentis to the victim, or

(c) any person who is, for the time being, responsible for the education, supervision or welfare of the victim;"

The key difference in the 2006 Act was the inclusion of a defence of mistake as to age under both sections. Sections 2(3) and 3(5) provide for the defence of mistake as to age:

"It shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15/17 years."

However, both sections 2(4) and 3(6) temper this defence with elements of reasonableness:

"Where, in proceedings for an offence under this section, it falls to the court to consider whether the defendant honestly believed that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 15/17 years, the court shall have regard to the presence or absence of reasonable grounds for the defendant's so believing and all other relevant circumstances."

While this defence is often referred to as the defence of 'reasonable mistake', the standard is in fact subjective, meaning that if the court/jury accepts that the defendant honestly believed that the child was of a certain age, then that person must be acquitted. The reasonable element of the defence only operates to allow the court or the jury to take into account the presence or absence of reasonable grounds for the claimed mistaken belief in deciding whether or not the defendant honestly believed that the child was older than he or she actually was.

Although the 2006 Act applies to both male and female children, it included special protection for young girls by providing in section 5 that a female child under 17 years of age is not guilty of an offence under the Act by reason of her engaging in an act of sexual intercourse. Other sexual acts prohibited by this Act are not covered by section 5. This provision was unsuccessfully challenged before the Supreme Court in *M.D. (Minor) v Ireland AG & DPP*²⁴ where the applicant argued that the section breached the equality provisions of Article 40 of the Constitution. He argued that the legislation discriminated against him on the basis of his sex however the Supreme Court found that the danger of pregnancy for the teenage girl was an objective which the Oireachtas was entitled to regard as relating to "differences of capacity, physical and moral and of social function", as provided for in Article 40.1 of the Constitution. The legislation was not therefore unconstitutional.

In relation to an offence under section 3 (children under 17 years), section 3(9) provides that no proceedings for such an offence against a child under the age of 17 years shall be brought without the consent of the Director of Public Prosecutions. Section 3(10) also provides that a person convicted of an offence under that section will not be subject to the provisions of the *Sex Offenders Act 2001* if that person is not more than 24 months older than the victim.

An attempt to commit an offence under the Act in relation to a child under 15 or 17 years can be tried summarily in the District Court provided the court is satisfied that the facts disclose a minor offence, the DPP consents to the case being tried summarily and the accused person also consents. The maximum sentence that can be imposed is 12 months imprisonment. This is provided for in section 4 of the 2006 Act. Defilement offences are tried by the Circuit Court.

²⁴ [2012] IESC 10.

Rape

Rape is a common law offence which is now governed by the *Criminal Law (Rape) Act 1981*. Rape under the 1981 Act is not gender neutral since it can only be carried out by a male on a female. Rape in this context refers to natural intercourse only as referred to in section 1(2) of the 1981 Act which also clarifies that rape is complete on proof of penetration only. Section 2(1) of the Act outlines the offence of rape:

"2.-(1) A man commits rape if-

(a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, and

(b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she does or does not consent to it"

The crime of rape is committed therefore when a male has sexual intercourse with a female when she does not consent to it and he either knows she does not consent, or is reckless as to whether or not she consents to it. Consent is the key concept in the offence of rape although it remains undefined in Irish legislation. However, two basic principles have developed in the context of consent namely, the consent must flow from the will of the person and secondly, the woman in question must know what it is she is consenting to. In order for consent to flow from the will of the person, they must freely choose to engage in the sexual intercourse free from any threats or fear and must not be under the influence of an intoxicant (whether consumed voluntarily or not) such to the extent that she is unable to give or refuse consent. She must also have the capacity to consent insofar as she is not asleep, unconscious and she must be at least 17 years of age. Issues arise in this context where the woman has an intellectual disability and this will be further considered in below.

A man for the purposes of this Act means a male person aged 10 years or upwards since the removal of the conclusive presumption that a male under 14 years was incapable of committing the act of rape. The age of criminal responsibility has been considered above. Until the *Criminal Law (Rape) (Amendment) Act 1990*, the term 'man' was subject to another exception namely, that a husband could not be convicted of raping his wife. This was based on a common law presumption that consent to the marriage contract included consent to sexual intercourse. Section 5 of the *Criminal Law (Rape) (Amendment) Act 1990* abolished the 'marital' exemption:

"5.-(1) Any rule of law by virtue of which a husband cannot be guilty of the rape of his wife is hereby abolished.

(2) Criminal proceedings against a man in respect of the rape by him of his wife shall not be instituted except by or with the consent of the Director of Public Prosecutions."

There has only been one successful prosecution of a husband for raping his wife in Ireland. Issues surrounding transsexual persons have been discussed in detail at above.

The issue of the necessary mental guilt of the male in the crime of rape has been the subject of controversy for many years. Section 2(1) of the *Criminal Law (Rape) Act 1981* requires that at the time of the unlawful sexual intercourse, the man must either know or be reckless as to whether or not the woman consents to the sexual intercourse. "Reckless" in this context is defined subjectively which means that he must have consciously chosen to disregard the risk that the woman was not consenting. Subjective tests are based on honestly held belief. Therefore, if the male can show that he honestly believed that the woman was consenting, he cannot have the necessary mental guilt for the crime of rape. This is so even if a reasonable person would not have thought that the woman was consenting in the same circumstances. This was confirmed by the House of Lords in the UK in the controversial case of *DPP v Morgan*²⁵. However, the Heilbronn Committee in the UK which was set up to examine the issue agreed that the decision of the House of Lords was the correct one but also recommended that a safeguard be incorporated into the legislation. This was done in the UK and the *Criminal Law (Rape) Act 1981* created the same limited safeguard. Section 2(2) provides:

²⁵ [1975] 2 All ER 347.

"It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed."

The effect of this section is that if a man claims that he honestly believed that the woman was consenting, the jury is entitled to look at the presence or absence of reasonable grounds for that belief in determining whether in fact he held that belief. It does not change the position that if a man honestly believes that a woman is consenting to the sexual intercourse, he is not guilty of rape.

Rape can attract a maximum sentence of life imprisonment and it is one of the offences which must be tried by the Central Criminal Court.

Rape under section 4

Section 4 of the *Criminal Law (Rape) (Amendment) Act 1990* created a new category of rape separate and distinct from natural intercourse between a man and a woman as required by 1981 Act. Section 4 states:

"4.-(1) In this Act "rape under section 4" means a sexual assault that includes-

(a) penetration (however slight) of the anus or mouth by the penis, or

(b) penetration (however slight) of the vagina by any object held or manipulated by another person."

The offence therefore is one of sexual assault meaning non-consensual touching in circumstances of indecency involving the penetration of the anus or mouth by a penis or the penetration of the vagina by any hand held object. The offence referred to in paragraph (b) can be carried out by a male or a female. However as many commentators have highlighted, there is a gap in the legislation insofar as it does not deal with penetration of the anus by an object held or manipulated by another person. The Law Reform Commission had recommended the inclusion of an offence of this nature in its Report on Rape and Allied Offences (24-1988). Rape under section 4 attracts a maximum sentence of life imprisonment and since it is considered a 'rape offence', it is one of those offences which must be tried in the Central Criminal Court. Under the *Criminal Law (Sexual Offences) Act 2006*, the age of consent to acts which could amount to rape under section 4 is 17 years for both males and females. Issues of consent between adults arise in the same way as for sexual assaults generally as set out above.

Buggery and gross indecency offences

Sections 61 and 62 of the *Offences Against the Person Act 1861* set out the penalties for the common law offence of buggery committed with a human or an animal and provided for a maximum sentence of penal servitude for life. Section 11 of the *Criminal Law Amendment Act 1885* created the offence of gross indecency between males which was punishable by a maximum of 2 years imprisonment.

The *Criminal Law (Sexual Offences) Act 1993* abolished the crime of buggery between consenting adults after the successful application of *Norris v Ireland* before the European Court of Human Rights in 1988.²⁶ The offences under section 61 and 62 of the *Offences Against the Person Act 1861* were repealed save for the offences related to animals. The offence of gross indecency between males under the 1885 Act was repealed by section 4 of the *Criminal Law (Sexual Offences) Act 1993*.

An offence of buggery with persons under 17 years of age was created by section 3 of the 1993 Act, with differing penalties upon conviction depending on whether the child was under 17 years or under 15 years, the latter attracting a maximum sentence of life imprisonment. A further offence of gross indecency between males under 17 years of age, which attracted a maximum sentence of 2 years imprisonment, was also created by this legislation. However section 8 of the *Criminal Law (Sexual Offences) Act 2006* repealed both of these provisions.

²⁶ *Norris v Ireland* (1991) 13 EHRR 186.

A recent ruling of the Supreme Court has impacted on the future prosecution of buggery offences. In the case of *DPP v Judge Mary Devins and M O'M* ²⁷, the Supreme Court found that buggery between persons was a common law offence which was repealed without saver by section 2 of the *Criminal Law (Sexual Offences) Act 1993*.²⁸ The court found that the *Interpretation (Amendment) Act 1997* which created a general saving provision for abolished common law offences could not be retrospectively applied to the offence of buggery between persons which was abolished three years earlier in 1993. The result of this finding is that buggery offences committed prior to 1993 can no longer be prosecuted as such.

Protection of mentally impaired persons

Persons with intellectual disabilities are protected from sexual exploitation under the *Criminal Law (Sexual Offences) Act 1993*. That legislation refers to 'mentally impaired' person which is defined in section 5(5) to mean:

*"...suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation."*²⁹

Section 5(1) of the Act provides that a person who has or attempts to have sexual intercourse or an act of buggery with a mentally impaired person shall be guilty of an offence. This does not apply in cases where the parties are married or believe with reasonable cause that they are married. Section 5(2) creates the offence of gross indecency by a male person with another male who is mentally impaired. Offences under section 5(1) are gender neutral therefore a female person can be convicted of having sexual intercourse with a male person who is mentally impaired. An offence under section 5(2) can only be committed by a male.

A general defence arises in section 5(3) which states that it shall be a defence for the accused person to show that he did not know and had no reason to suspect that the person was mentally impaired.

Penalties for a completed offence under section 5(1) are imprisonment for a term not exceeding 10 years while attempts attract a maximum sentence of 3 years imprisonment for a first conviction and 5 years for any subsequent convictions. An offence under section 5(2) attracts a maximum penalty of 2 years imprisonment. Offences under this section are tried by the Circuit Court. No person may be charged with an offence under this section save with the consent of the Director of Public Prosecutions.

Incest

The criminal offence of incest is committed when a male person has sexual intercourse with a defined blood relative as provided for by section 1 of the *Punishment of Incest Act 1908* as amended by the *Criminal Law (Incest Proceedings) Act 1995*. These include: mother, sister, daughter or granddaughter. Half-brothers and sisters are also included in this definition. A key ingredient of the offence of incest is knowledge of the blood relationship and it is necessary for the prosecution to prove that the accused person knew that he was having sexual intercourse with a blood relative. Consent is irrelevant in the case of incest since a party cannot consent to sexual intercourse with a defined blood relative. This is borne out in the offence of incest by a female which provides that no woman over 17 years of age can give her consent to sexual intercourse with a male who is her father, grandfather, brother or son. This offence is contained in section 2 of the 1908 Act and it is an essential element of the offence that the female 'with her consent did permit' the male relative to have sexual intercourse with her. The law therefore views the male as the dominant party in cases of incest but females who are willing participants also commit an offence.

²⁷ [2012] IESC 7.

²⁸ Section 2 of the *Criminal Law (Sexual Offences) Act 1993* provides: "Subject to sections 3 and 5 of this Act, any rule of law by virtue of which buggery between persons is an offence is hereby abolished."

²⁹ The definition of 'mentally impaired' has been criticised by the Law Reform Commission in its Consultation Paper on Vulnerable Adults and the Law (2005) where it considered that the correct test should be one of ability to guard against sexual exploitation rather than ability to live an independent life.

The age of the parties is also largely irrelevant since no person can consent to sexual intercourse with a defined blood relative regardless of their age. However, if the female is under 17 years of age, the male relative may also be charged with a defilement offence and in cases where the female is not a willing participant, the male relative could be charged with rape. The offence of incest only applies to sexual intercourse which is understood to mean vaginal intercourse. Acts constituting 'buggery' or 'rape under section 4' cannot be charged as incest but will amount to criminal offences if consent is absent.

A male person convicted of incest is liable on conviction on indictment to imprisonment for life³⁰ while the maximum sentence for a convicted female is 7 years imprisonment. However, a female under 17 years of age may not be prosecuted for the offence of incest. Incest offences are tried in the Circuit Court.

Child trafficking and pornography

The *Child Trafficking and Pornography Act 1998*, as amended by *Criminal Law (Sexual Offences) Amendment Act 2007* and the *Criminal Law (Human Trafficking) Act 2008* are the relevant legislation in this area of child exploitation. The 1998 Act created a number of new offences in Irish law to deal with an increasing international problem of trafficking in human beings and also the dissemination of pornographic images of children.

A child for the purposes of the 1998 Act is a person under 17 years of age. Section 3 creates two separate offences: subsection (1) creates an offence of facilitating the entry into, transit through or exit of a child from the State for the purposes of sexual exploitation or providing accommodation for such child within the State and this attracts a maximum sentence of life imprisonment. The second offence in (2) is one of detaining or restricting the personal liberty of a child for sexual exploitation purposes or using that child for such purposes. The offence also includes knowingly facilitating or organizing the restraining of such child. A person convicted under this section is liable to 14 years imprisonment.

'Sexual exploitation' is defined in section 3(3) as amended:

- (a) inviting, inducing or coercing the child to engage in prostitution or the production of child pornography,
- (b) using the child for prostitution or the production of child pornography,
- (c) inviting, inducing or coercing the child to participate in any sexual activity which is an offence under any enactment,
- (d) the commission of any such offence against the child, or
- (e) inviting, inducing or coercing the child to participate in or observe any activity of a sexual or indecent nature."

The *Criminal Law (Sexual Offences)(Amendment) Act 2007* inserted a new offence of meeting and/or travelling to meet, a child for the purposes of sexual exploitation into section 3 of the 1998 Act. Section 3(2A) now provides that any person who meets or travels with the intention of meeting a child, having communicated with that child on two or more occasions and does so for the purpose of doing anything that could constitute sexual exploitation is guilty of an offence and liable to a sentence of 14 years imprisonment. Section 3(2B) creates the same offence for a person who travels outside of the State for the same purposes and a person found guilty is liable to 14 years imprisonment.

Section 4(1) of the 1998 Act states that a person who has custody, charge or care of a child and allows him or her to be used for the production of child pornography is guilty of an offence and liable to imprisonment for a term not exceeding 14 years. Section 5 proscribes the production, distribution or publication of child pornography which can attract a penalty on summary conviction of up to 12 months imprisonment and 14 years imprisonment in cases of conviction on indictment. Section 6 creates the offence of knowingly possessing such child pornography with a penalty on summary conviction of 12 months and a maximum sentence of 5 years on conviction on indictment.

³⁰ The *Punishment of Incest Act 1908* provided a maximum sentence of for a convicted male where the female was under 15 years of age was penal servitude for life. Where the female was aged 15 years or older, the maximum sentence was 7 years. This was amended by the *Criminal Law (Incest Proceedings) Act 1995* which increased the penalty to life imprisonment.

Human trafficking

A lacuna existed in Irish legislation until the introduction of the *Criminal Law (Human Trafficking) Act 2008* to deal with the trafficking of human beings for exploitative purposes. Section 4 of the Act refers to adults who are trafficked for exploitative purposes and provides that it shall not be a defence for the defendant to show that the trafficked person consented. This section provides for a maximum sentence of life imprisonment. Section 5 specifically refers to trafficking for sexually exploitative purposes, namely prostitution and provides that it is an offence to solicit or importune a trafficked person for the purposes of prostitution. It is also an offence to accept payment or benefit from such activity. A person found guilty under this section is liable on summary conviction to a term of imprisonment not exceeding 12 months and on conviction on indictment to a term not exceeding 5 years.

Matters for legal advisors to be aware of when advising persons who have been trafficked or exploited are: that such persons may often have cross-vulnerabilities such as mental illness, language barriers and a lack of family support. Many also have made immigration or asylum applications so may be subject to additional stress and anxiety and/or need to be referred on for specialist legal advice and other support in that regard. In some cases, a trafficked person may be unable to return to their home country if their family or peers become aware that they have been involved in prostitution due to a real and serious threat to their life or well-being. Threats or intimidation from the person or organisation involved in their trafficking in the first instance may also be a source of real concern for a victim of such crimes. Legal advisors should be aware of these additional vulnerabilities when providing advice to such persons.

Sex tourism

The *Sexual Offences (Jurisdiction) Act 1996* was introduced to take account of the potential dangers posed by persons who travel to other jurisdictions to take advantage of more lax regulation or policing of sexual exploitation of children in that other jurisdiction. The Act applies to children only, defined as a person under the age of 17. Section 2 of the Act provides that a citizen of this State or a person ordinarily resident in this State (defined as having principal residence in this State for 12 months) who travels abroad and does an act in respect of a child that is both an offence in that jurisdiction and would be an offence if it had been carried out in this jurisdiction, is guilty of the offence as if it has been committed in this State. The applicable penalty is that which exists in relation to the offence in question in this jurisdiction.

Section 3 creates further offences of knowingly transporting a person abroad for the purpose of enabling that person to commit an offence. Section 4 creates an offence in respect of the publication of information which is likely to promote, advocate or incite the commission of an offence. Penalties for offences under sections 3 and 4 are punishable on indictment by a maximum term of imprisonment of 5 years or summarily by a maximum term of imprisonment of 12 months.

Child and Community Protection Measures

HSE Children First National Guidance for the Protection and Welfare of Children

The HSE Children First Guidance (National Guidance for the Protection and Welfare of Children) were first introduced in 1999 and were updated in 2011. The Guidance is a series of instructions and best practice guides for all organisations that provide services for children. The Guidance sets out the actions that are required to be taken where any child protection issues arise and are designed to prevent abuse and also to investigate instances of abuse that have taken place in the past. In 2011, it was indicated that the Guidance was to be placed on a statutory footing and legislation is being drafted currently (May 2012)³¹.

³¹ At time of print, the Children First Draft Heads of Bill have been published by the Department of Children and Youth Affairs which can be accessed via the following link http://www.dcyh.gov.ie/documents/publications/CF_Heads_and_General_Scheme.pdf
Legislation creating criminal offences for withholding information in respect of the sexual abuse of children or vulnerable person has also been published and draft Heads of Bill are available at the following link
<http://www.oireachtas.ie/parliament/media/michelle/Report-on-hearings-in-relation-to-the-Scheme-of-the.pdf>
The National Vetting Bureau Bill is due for publication in June 2012 which will address the issues surrounding the collection and sharing of identified 'soft information' and set out vetting obligations of organisations, both of which are vital parts of child protection.

Every organisation, both public and private, that provides services for children or that is in regular direct contact with children is bound by the Children First Guidance. This means that such organisations must have child protection procedures in place, including appointing a designated liaison officer to whom all concerns about child abuse must be reported, training staff in the detection of child abuse and implementing best practice in the protection of children. It is the duty of the designated liaison officer to notify the HSE where there are reasonable grounds for concern that a child may have been, is being or is at risk of being abused or neglected. This is so even if a third party reports the suspected abuse. A concern about a potential risk to children posed by a specific person, even if the children are unidentifiable, must also be communicated to the HSE Children and Family Services. This is known as a 'Child Protection Report'. HSE Children and Family Services must then record the report and must inform the Gardaí if the report indicates that physical or sexual abuse or willful neglect has taken place. In emergency circumstances or where the HSE Children and Family Services cannot be reached, a report must be made directly to the Gardaí who have powers to act in respect of children in danger under the *Child Care Act 1991*.

The Children First Guidance applies to all types of child abuse and are certainly not confined to sexual abuse. Child abuse as defined by the Guidance includes: emotional abuse, sexual abuse, physical abuse and neglect. A 'child' for the purpose of the Guidance is somebody who is under 18 years of age who is not or has not been married. However, the obligation to report in cases where there is a risk to unidentifiable children contained in paragraph 3.2.4 means that where an adult reports abuse that took place when that person was a child and there are still ongoing concerns about the perpetrator of that abuse, a report is to be made in that instance also. The Child Protection Notification System is a HSE record of every child about whom the HSE is satisfied that there are unresolved child protection issues.

The *Protections for Persons Reporting Child Abuse Act 1998* makes provision for the protection from civil liability of persons who have communicated child abuse 'reasonably and in good faith' to designated officers of the HSE or to any member of An Garda Síochána.

'Reckless endangerment of children'

The offence of 'reckless endangerment of children' under s.176 of the *Criminal Justice Act 2006* can also be described as a child protection measure. This provision makes it a criminal offence for a person, having authority or control over a child or an abuser to intentionally or recklessly endanger a child by:

- (a) causing or permitting any child to be placed or left in a situation which creates a substantial risk to the child of being a victim of serious harm or sexual abuse, or
- (b) failing to take reasonable steps to protect a child from such a risk while knowing that the child is in such a situation,

'Sexual abuse' in that context refers to those set out in the Schedule to the *Sex Offenders Act 2001* however it specifically excludes offences under sections 5 and 6 of the *Child Trafficking and Pornography Act 1998*. These offences are respectively producing, distributing, etc., child pornography and possession of child pornography. This means that such offences are not 'sexual abuse' for the purposes of s.176.

The penalty for an offence under s.176, which is prosecuted on indictment, is an unlimited fine and/or imprisonment for a maximum of 10 years.

Sex Offenders Act 2001

The *Sex Offenders Act 2001* which came into effect in the same year was aimed at preventing re-offending and sought to offer better protection to the community. The principal features of the legislation are that it allows for the monitoring and supervision of sex offenders post-release. Section 7(1) of the Act states that a person will be subject to the requirements of the Act if he or she is convicted of a sexual offence.

The Schedule to the Act contains a list of those sexual offences to which the Act applies which is set out in the Table below. The notification requirement begins on the date of conviction. Section 7(2) further states that a person will be subject to the Act if, at the commencement of the Act, the sentence to be imposed on that person in respect of the offence has yet to be determined or the sentence has been imposed on the person and the person is serving the sentence in prison, or the sentence is still in force or current. This provision was unsuccessfully challenged in *Enright v Ireland*³² where it was argued that the 2001 Act amounted to the imposition to a retrospective criminal sanction which is not permitted by reason of Article 15, paragraph 5 of the Constitution. The court ruled that the provisions of the Act did not amount to criminal sanction and were instead a consequence of conviction designed to protect public safety.

Offences to which the *Sex Offenders Act 2001* applies

Section 3 of the Act sets out certain exceptions whereby individuals convicted of sexual offences in certain circumstances will not be subject to the registration requirements of the Act and these are set out in the table below and can be found in the Schedule to the *Sex Offenders Act 2001*, as amended. These exemptions arise in cases where the convicted person was not more than a specified number of years older than the victim and in some cases, where the victim was not under 17 years of age. There are also some exemptions if a non-custodial sentence was imposed on the convicted person.

OFFENCE	SUBJECT TO PROVISIONS OF ACT
Rape	Yes
Rape under s.4	Yes
Sexual Assault (including indecent assault)	Yes unless the victim was 17 years or older at the date of the commission of the offence AND the convicted person was not sentenced to a punishment involving deprivation of liberty (S.3(2) Sex Offenders Act 2001)
Aggravated sexual assault	Yes
Incest by males and incest by females	Yes unless the victim was 17 years or older at the date of the commission of the offence AND the convicted person was not sentenced to a punishment involving deprivation of liberty (S.3(2) Sex Offenders Act 2001)
An offence under the Criminal Law (Sexual Offences) Act 2006 (defilement)	Yes unless the convicted person has been convicted of an offence related to children under 17 years (section 3, Criminal Law (Sexual Offences) Act 2006) AND that convicted person is not more than 24 months older than the victim. All persons convicted of offences related to children under 15 years must comply with requirements of Act.
Buggery or attempts to commit buggery under 1861 Act (now repealed save for offences related to animals)	Yes
Buggery of persons under 17 years (1993 Act) (now repealed)	Yes unless the victim was aged 15 years or older but less than 17 years at the date of the commission of the offence AND the convicted person was not more than 3 years older than the victim at the date of the offence
Gross indecency with males under 17 years (1993 Act) (now repealed)	Yes

³² [2003] 2 IR 321.

OFFENCE	SUBJECT TO PROVISIONS OF ACT
Acts of gross indecency (under 1885 Act)(now repealed)	Yes
Protection of mentally impaired persons under the Criminal Law (Sexual Offences) Act 1993	Yes
Defilement of mentally impaired females (1935 Act) (now repealed)	Yes
Certain offences under the Child Pornography and Trafficking Act 1998	Yes
Sexual offences committed outside the State (under Sexual Offences (Jurisdiction) Act 1996	Yes
Soliciting or importuning for the purposes of the commission of a sexual offence under s.6 of the Criminal Law (Sexual Offences) Act 1993 as inserted by s.2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007	Yes
Offences under sections 3, 4, 5 & of the Child Trafficking and Pornography Act 1998	Yes
Human Trafficking for the purposes of sexual exploitation under Criminal Law (Human Trafficking) Act 2008	Yes
‘Sex Tourism’ under section 2 of the Sexual Offences (Jurisdiction) Act 1996	Yes
Attempts to commit any of the above offences	Yes unless the offence is one outlined above as attracting an exemption from the provisions of the Act
Aiding, abetting, counselling or procuring the commission of any of the above offences	Yes unless the offence is one outlined above as attracting an exemption from the provisions of the Act
Conspiracy to commit any of the above offences	Yes unless the offence is one outlined above as attracting an exemption from the provisions of the Act

Registration requirements

Part 2 of the Act created the Sex Offenders Register and requires that persons convicted of certain sexual offences register their details with the Gardaí for a specified period of time. This is known as the notification requirement. Section 10 of the Act sets out the details that the convicted person is required to supply to the Gardaí, namely their name, date of birth and place of address within 7 days of release (or imposition of sentence if the sentence is non-custodial). The convicted person must notify the Gardaí if there is a change of address and if they intend to be outside of the jurisdiction for a period of 7 days or more. Failure to comply with these requirements is a criminal offence under section 12 of the Act with summary conviction attracting a maximum penalty of 12 months imprisonment or a fine of €1,500 or both.

Section 8(3) of the 2001 Act requires sex offenders to comply with the notification obligation for differing periods of time according to the sentence imposed for the offence. These periods are set out in Table below. Lesser periods apply to convicted persons who were under 18 years of age at time of the commission of the offence.

SENTENCE IMPOSED	NOTIFICATION REQUIREMENT
Adult Offenders	
2 years – Life imprisonment	Indefinite notification requirement
6 months – 2 years	10 year notification requirement
Less than 6 months	7 year notification requirement
Suspended or non-custodial sentence	5 year notification requirement
Child Offenders	
6 months to 2 years	5 year notification requirement
Less than 6 months	3 ½ year notification requirement
Suspended or non-custodial sentence	2 ½ year notification requirement

Post-release supervision

Part 5 of the Act created Post-Release Supervision Orders. The sentencing judge is required to consider whether post-release supervision is required bearing in mind the need to protect the public, to prevent the commission of further offences and the need to rehabilitate the offender. The court is entitled to receive evidence or submissions in order to reach such a decision. There is no obligation on the court to impose such an order – only an obligation to consider whether such order is necessary. If the court believes that post release supervision is necessary, that supervision is carried out by the Probation Service. The court may impose any term of supervision that it deems necessary subject to the overall limitation contained in section 29(2) of the Act that the period of the sentence, together with the period of supervision cannot exceed the maximum sentence applicable to the offence for which the person was convicted. Other conditions may be attached to the post-release supervision including prohibiting that person from doing certain things that the court considers necessary for the protection of the public from serious harm and also requiring that person to undergo any treatment that the court considers necessary including psychological counselling or other appropriate treatment.

Sex Offender Orders

A further innovation in the 2001 Act was the Sex Offenders Order which may be granted upon application by a Chief Superintendent to the Circuit Court. An application under section 16 of the Act can be made where the convicted person has acted on one or more occasions “in such a way as to give reasonable grounds for believing that an order under this section is necessary to protect the public from serious harm from him or her.” Such an application can also be made if the person in question was convicted of an offence in another jurisdiction that would also constitute an offence in this jurisdiction. The order continues in force for 5 years or for such longer period as the court specifies and can prevent the convicted person from doing certain things or frequenting certain areas. Breach of a Sex Offenders Order is an offence which attracts a penalty on 12 months’ imprisonment (and/or €1500 fine) on summary conviction or up to 5 years imprisonment when convicted on indictment.

Section 26 of the Act requires a convicted person to inform their employer of the conviction for sexual offences, if their employment consists of regular and necessary unsupervised contact with children or mentally impaired persons. Failure to inform the employer of same is a criminal offence. Section 26 also created an offence of applying for such employment once convicted of a sexual offence. A defence exists where it can be shown that the applicant was not aware and could not have reasonably been aware that the employment involved unsupervised access to children or mentally impaired persons. A person guilty of an offence under section 26 is liable on summary conviction to 12 months imprisonment (and/or €1500 fine) or to conviction in indictment to 5 years imprisonment or a fine of €10,000.

Bail

The provision of bail allows a person who is charged with an offence to be released from custody pending trial. Bail flows from the presumption of innocence insofar as the accused person is presumed to be innocent until proven guilty, therefore, usually, that person should not be held in custody. It is presumed that bail will be granted unless there are good reasons to the contrary and bail can only be refused on 3 grounds:

- that the defendant will not appear for trial (abscond)
- that the defendant will try to interfere with witnesses, jurors or evidence in the case
- that the defendant is charged with a serious offence and refusal of bail is reasonably necessary to prevent the commission of further serious offences.

Bail usually involves the accused person (or independent persons) providing sureties or sums of money which are forfeit if the accused absconds and does not stand trial. The law does not prescribe a minimum amount of bail to be set but the amount cannot be set so high as to amount to a denial of bail. Further conditions are usually attached to bail such as a requirement that the defendant surrender any passport and sign on at regular intervals at a local Garda Station. Whilst on bail, the accused person is not permitted to have contact with the complainant since this would amount to interfering with a witness in the trial. A complainant who has any concerns in this regard should inform the prosecuting Garda who can apply to court to revoke or amend the bail conditions of the accused person. The Gardaí can also apply to the court to revoke bail where a condition of the bail has been breached.

Electronic tagging of persons on bail is provided for in section 11 of the *Criminal Justice Act 2007* which inserts a new section 6B into the *Bail Act 1997*. This section provides that a recognisance for a person charged with a serious offence may be made subject to the electronic monitoring of the accused's movements on bail however this section has not been commenced to date. The section also does not apply to accused persons under 18 years of age.

Part III: Special measures for Survivors

Introduction

Survivors of sexual violence who choose to engage with the legal process often do so with the expectation that it will be a traumatic process. However, there are a number of special legal measures in place for survivors that they should be aware of during the criminal legal process. Referrals to specialist services should be made, where appropriate. A full list of those services and their contact details are contained in the Appendix to this Guide.

Sexual Assault and Treatment Units

Sexual Assault and Treatment Units are available at a number of locations around the country and each offers a specialised service for survivors of sexual violence. These units are specially equipped to gather evidence after a sexual assault has occurred using a sexual offences examination kit by specially trained staff. The evidence obtained at a SATU is vital in the prosecution of many sexual offences. In addition to evidence-gathering, the aim of the SATU service is to provide an easily accessible, holistic service for victims of sexual crime by addressing medical, psychological and emotional needs. SATU's operate a referral service to other specialised services for survivors of sexual abuse including counselling and support and other medical treatment, where necessary. Rape Crisis Centres provide an accompaniment service for survivors who attend at SATU's.

A SATU service may not be useful in all cases, especially where significant time has elapsed since the sexual offence was committed. However, as forensic evidence is capable of being obtained after increasingly longer periods it is important to bear in mind that such specialised services are available when advising a survivor. Where the victim is a child, SATU services can be especially important as medical examination, even if it takes place some time after the event, can determine whether penetrative sexual acts took place which is often vital evidence for the prosecution.

SATU services are available at the following locations: Limerick, Mullingar, Rotunda Hospital, Dublin, Galway, Letterkenny and Waterford. Contact details for each Unit are contained in the Appendix.

The RAJI research found a correlation between higher reporting rates for sexual offences and the presence nearby of SATU services.³³

Victims' Charter

The Victims' Charter and Guide to the Criminal Justice System is a combination of the Victims' Charters of a number of organisations that provide services for the victims of crime. It was published in 2010 by the Victims of Crime Office of the Department of Justice and Law Reform. The Charter is a vital resource for survivors of sexual violence as the Charter sets out the commitments of key agencies in the criminal justice system to victims of crime even though it does not create any new legal rights for victims. It cannot be relied on as a legal document, however its assistance to victims in understanding the legal system cannot be underestimated.

³³ Rape & Justice in Ireland, 2009, Liffey Press: Executive Summary.

The Charter is divided into 11 sections with the Charter of various organisations contained in each section. The following are the key points of each of the Charters for survivors of sexual violence:

The **Garda Charter for Victims of Crime** commits to ensuring that victims are kept informed of the legal process including the progress of the case and whether the accused person is in custody or on bail. The Gardaí must also tell victims about the services available for victims of crime or a traumatic incident. The Charter also states that the Gardaí will show special sensitivity in relation to sexual offences and in that respect, the services of a Garda and doctor of the same gender will, as far as possible, be made available. Furthermore, victims will be told about the availability of local specialist agencies dealing with sexual offences. A complaints procedure exists where a victim is dissatisfied with the service provided by An Garda Síochána. Contact details for the making of a complaint are provided in the Appendix.

The **Office of the Director of Public Prosecutions Victims' Charter** provides that a victim can ask the DPP to take victim views into account when deciding whether to prosecute and look again at a DPP decision with which the victim does not agree, such as a decision not to prosecute. As a witness to a crime, the Charter states that the Office of the DPP will treat victims with respect, taking account of their personal situation. It will also work with the Gardaí to make sure that victims are kept up to date on their case, especially if it is a violent or sexual offence. It also provides however that where a decision is made not to prosecute in a case, it will only communicate reasons to the investigating Garda and not to the complainant directly. .

The Charter states that it will arrange for the witness (victim) to talk to the prosecution solicitor and barrister before the court case begins if that person so wishes. In a case where a sentence is imposed by the court, the DPP may seek a review of the sentence if the Office of the DPP considers that sentence to be too lenient. A complaints procedure is in place for persons who are dissatisfied with the service offered by the DPP and contact details are provided in the Appendix.

The **Courts Service Victims' Charter** undertakes to provide victim waiting areas in almost all courthouses, especially those recently re-furnished. It also indicates that a dedicated victim suite with four rooms and a reception area is available in the Courts of Criminal Justice in Dublin, where a large number of sexual violence cases are heard. The Charter also states that video-link facilities are available in a number of courthouses but that a hearing may be moved to a location that has such facilities if the court grants leave to hear such evidence in that way. Customer liaison officers can arrange access to victim rooms where available, and organise advance visits to courthouses by the victim. Their role is also to give contact details of voluntary organisations that offer support to crime victims. The Courts Service also organise an interpretation service where the witness does speak English. The Courts Service has also produced a document called 'Going to Court' which is available to download from their website and it provides a useful guide to the court system for victims of crime. A complaints procedure is in place for persons who are dissatisfied with the service provided by the Courts Service and the contact details are provided in the Appendix.

The **Probation Service Victims' Charter** states that it will assist a victim in preparing a Victim Impact Statement if directed by the court to do so. This Charter also provides that in their work with offenders, the Probation Service will strongly encourage offenders to take responsibility for the hurt, damage and suffering they may have caused to victims; make sure that offenders continue to address any lifestyle issue or attitude that has played a part in their offences; refer to the likely impact on victims when they prepare reports on offenders for the courts; and also make sure that any community-based programmes are sensitive to victim concerns and aim to prevent re-offending. Contact details for the Probation Service are contained in the Appendix.

The **Prison Service Victims' Charter** provides that it will try to rehabilitate all offenders sentenced to prison so that other people will not become victims of their crimes; make sure that in all cases of temporary release, they will take into account any possible risk to the victim; make every effort to prevent an offender in prison from causing further upset to victims; tell the Garda Síochána about the release of all sex offenders; tell victims

when the offender is to be released from prison whether on temporary release or at the end of their sentence (if requested to do so). The Prison Service will also tell victims about other relevant developments regarding the prisoner's sentence if requested – such as transfers between prisons or parole board hearings (for prisoners sentenced to eight years or more).

Victims of crime (or a family member) may write to the Prison Service to request that they be kept informed of any proposed release or any other important developments in the offender's detention. Contact details are contained in the Appendix.

The **Victims' Charter of the Crime Victims Helpline** guarantees confidentiality for those people who call the helpline in addition to providing referral services and to specialist services in the case of victims of sexual offences. This service can also assist victims in contacting the Gardaí and provide information on obtaining compensation, where applicable.

The **Criminal Injuries Compensation Tribunal Victims' Charter** states that it will deal directly with victims or with a victim support organisation when making an application for compensation. The Charter states that the tribunal will deal with applications in a polite and professional way, it will issue written decisions and pay compensation as quickly as possible. The Tribunal will also assist victims in claiming compensation for criminal injuries inflicted in other EU Member States from that State.

Free legal advice for survivors

Civil legal aid is available for survivors of sexual violence in two circumstances. These services are provided by the Legal Aid Board and locally by individual Law Centres the locations of which can be accessed by visiting www.legalaid.ie or by contacting the Legal Aid Board on Locall: 1890 615 2000. The Legal Aid Board has also produced a Victims' Charter which forms part of the larger Victims' Charter of the Department of Justice and Law Reform.

Legal advice is available to the complainant in the prosecution of the following offences:

- A rape offence
- Aggravated sexual assault under section 3 of the *Criminal Law Rape (Amendment) Act 1990*
- Defilement of a child under sections 2 and 3 of the *Criminal Law (Sexual Offences) Act 2006*
- Incest under sections 1 and 2 of the *Punishment of Incest Act 1908*.

A survivor seeking legal advice in such cases is not required to undergo a means test and will not be placed on a waiting list. The Legal Aid Board is committed to providing this legal advice as soon as is reasonably possible. A survivor will receive advice from a solicitor and in some cases, a barrister. This service is only available when a prosecution has begun and is not available where the decision has been made not to prosecute or in cases where that decision is still pending.

A survivor of sexual violence is not entitled to be legally represented at the trial of the accused person for the offence, in general. However, where the accused person intends to raise issues about the complainant's sexual history, then the complainant is entitled to separate legal representation which is provided by the Legal Aid Board. A solicitor and barrister will be provided to the complainant in order to protect the complainant's interests when s/he is being cross examined about her other sexual experience. A complainant in the prosecution of one of the following offences is entitled to that representation:

- A rape offence (including rape under section 4)
- Sexual assault/Aggravated sexual assault

- Defilement offences under the *Criminal Law (Sexual Offences) Act 2006*
- Attempts, aiding, abetting, counselling or procuring and conspiring to commit any of the above.

A person who avails of this service is not required to undergo a means test and will not be placed on a waiting list.

Protection for survivors from threats or intimidation

Some survivors of sexual abuse and particularly, in cases where the perpetrator is known to the victim will express anxiety about their personal safety. This is especially so in cases of intimate partner abuse. It may be necessary therefore to advise that person of the options available to them to protect themselves and their family from intimidation by the accused person or their associates.

Criminal law

In the first instance, the Gardai should be immediately informed of any such anxiety so that additional terms and conditions can be added to the accused person's bail conditions. However, if the perpetrator has not been charged with the offence or a decision has been made not to prosecute that person, the options are more limited. Section 10 of the *Non Fatal Offences Against the Person Act 1997* created the offence of harassment which provides that

"Any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with him or her, shall be guilty of an offence."

'Harasses' in this context means that a person, by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other, and the acts are such that a reasonable person would realise that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to the other. Section 10(3) permits a court to order that the accused person ceases all communication with the victim, whether or not there has been a conviction, and provides that failure to abide by such an order is a criminal offence. The offence of harassment attracts a maximum sentence of 12 months imprisonment in the District Court and on indictment for 7 years.

Civil law

Family law legislation is especially relevant in cases where the survivor and the perpetrator are known to each other. Barring, safety and protection order are available against spouses, partners, former partners, adult children and persons in other non-contractual type relationship under the *Domestic Violence Act 1996* as amended by the *Domestic Violence (Amendment) Act 2002* and the *Civil Law (Miscellaneous Provisions) Act 2011*.

A barring order can be obtained to remove a person from the home and require that person to remain away from the home for a lengthy period. An application for a barring order can be made by: a spouse (and civil partner); a cohabitee who has lived with the respondent in an intimate and committed relationship for a period of at least six months in aggregate during the period of nine months immediately prior to the application; a parent of the respondent where the respondent is of full age and not dependent. A barring order is not available against a person who has a greater legal interest in the property in question than the person applying for the order. Interim barring orders are also available in emergency circumstances.

A protection order may be granted by a court pending the making of an application for a safety or barring order. Its purpose is to serve as a warning to the perpetrator that the court has power to act to prevent violence or threatened violence or abuse. A safety order on the other hand, is a full order requiring that the perpetrator not use violence or threaten to use violence against the applicant. The persons entitled to apply for a safety order

are: a spouse (including civil partner and former civil partner); a co-habitee who has lived with the respondent lived with the respondent in an “intimate and committed relationship”; parent of a respondent who is of full age and not dependent: a person of full age residing with the respondent in a relationship the basis of which is not primarily contractual. The range of potential applicants under this last category includes brothers and sisters residing together, an adult relative of the applicant or the respondent, an adult child living with a parent and persons living in same sex relationships). *Civil Law (Miscellaneous Provisions) Act 2011* also allows persons who have a child in common but who have never lived together to apply for safety orders. Such persons cannot however apply for barring orders.

The Court may make a safety order or barring order under sections 2 and 3 of the 1996 Act when ‘it is of the opinion that there are reasonable grounds for believing that the safety or welfare of the applicant or any dependent person so requires’. ‘Welfare’ is defined in section 1 to include ‘the physical and psychological welfare of the person in question’. It is not necessary for the applicant to prove actual violence or cruelty before an application can be made under the 1996 Act.

Applications under this Act can be made to the District Court and legal aid is available for persons who qualify by way of a means test. There are criminal penalties available for breach of protection, safety or barring orders and Gardaí have various powers of arrest under this legislation.

Protection for the survivor – special measures at trial

Vulnerable witness evidence

Part III of the *Criminal Evidence Act 1992* introduced a series of measures designed to protect vulnerable victims in the context of trials for sexual offences or other violent crimes against the person. Section 13 of that Act allows for evidence to be given via live television link where the person is under 17 years of age (unless the court determines that there are good reasons to the contrary) and in any other case, with the leave of the court. In the context of sexual violence and adult victims, this section means that an application must be made to the court on behalf of the victim in order to give evidence in this way. However, section 13 does not just apply to the complainant and any witness in the case, aside from the accused person, can apply to the court to give evidence via live television link. Where the court grants leave to give evidence in this way, neither the judge nor the barristers in the case are permitted to wear wigs and gowns for the duration of that evidence. This is especially important in the case of child or vulnerable witnesses who may be frightened and intimidated by the formality of proceedings.

Section 14 allows evidence to be given via an intermediary where a person under 17 years of age is giving evidence via live television link. Section 16(1)(b) of the *Criminal Evidence Act 1992* states that the video recording of statements by children under 14 years during an interview with a member of An Garda Síochána or other competent person shall be admissible as evidence in court. Section 19 of the *Criminal Evidence Act 1992* applies these special measure provisions to “a person with a mental handicap who has reached the age concerned”. Special facilities for the holding of such interviews have been developed, together with training for social workers and Gardaí undertaking such interviews.

Separate legal representation

The survivor is not entitled to be legally represented at the trial of the accused person. This is because the prosecution is taken by the DPP on behalf of the people of Ireland rather than on behalf of the individual victim. In this regard, the victim has a very limited role in the criminal process as he or she is a mere witness, albeit a vital witness for the prosecution. However, as outlined above, the Office of the DPP has undertaken certain commitments to keep the victim informed of significant developments in a case including allowing the victim to meet with the solicitor and barrister in advance of the trial in order to familiarize themselves with the process.

The legal procedure surrounding a survivor being questioned on his or her other sexual experience has been considered in Part II above and this is the only part of the criminal process at which the survivor is entitled to legal representation. This is provided free of charge to survivors in respect of certain sexual offences only by the Legal Aid Board (as set out above). A solicitor and barrister are provided to the survivor to represent his or her interests in the application by the defence to raise issues of sexual history in its cross-examination of the complainant. If the court accedes to the application to include this evidence, the complainant's representative may be present in Court throughout the direct examination and cross-examination of the complainant if the judge so allows. Objections to the line of questioning and indeed, the type and nature of questions asked may if the judge allows it, be raised by counsel selected to represent the complainant. .

Exclusion of public from hearings

Article 34 of the Constitution of Ireland, 1937 requires that justice shall be administered in public save in such special and limited cases as may be prescribed by law. Many sexual offences fall into that category of 'special and limited cases' mainly due to the subject matter at issue and also to safeguard the dignity of the complainant and protect that person from further victimization. Further special considerations apply where the complainant is a child and such hearings will be held *in camera*, or otherwise than in public. Section 20 of the *Criminal Justice Act 1951* empowers a court to exclude the general public from any criminal proceedings for an offence which is of an indecent or obscene nature. Bona fide members of the press and other necessary persons are entitled to remain in court.

Section 6 of the *Criminal Law (Rape) Act 1981* as amended by section 11 of the *Criminal Law (Rape) (Amendment) Act 1990* provides that the judge shall exclude from the court, all persons except officers of the court, persons directly concerned with proceedings, bona fide members of the press and such other people as the court may, in its discretion, permit to remain. This provision applies to any proceedings for a rape offence or aggravated sexual assault. Section 6(3) states that the provisions regarding excluding persons from court are without prejudice to the right of a parent, relative or friend of the complainant to remain in court. Where the accused is not of full age, the same provision applies. However, the verdict and sentence (if any) shall be announced in public as set out in section 6(4).

There is no direct provision excluding members of the public from other sexual offences such as buggery or sexual assault however the option to apply under section 20 of the 1951 Act remains open.

Anonymity

Section 7 of the *Criminal Law (Rape) Act 1981* as amended by section 17(2) of the *Criminal Law (Rape) (Amendment) Act 1990* makes it a criminal offence to publish or broadcast any information that is likely to lead a member of the public to identify the complainant in a rape trial unless the court specifically authorises such publication. The 1990 Act extended the protection to sexual assault offences and also to male complainants. The offence is punishable on indictment by 3 years imprisonment or fine and it can also be prosecuted summarily where the maximum penalty is 12 months imprisonment and/or a fine. Section 7 allows the accused person (or any other person against whom the complainant will give evidence) to apply, in advance of trial to the Circuit Court or the High Court for a direction will allows the publication of the complainant's identity. The applicant must satisfy the court:

- (i) That the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial and
- (ii) That the conduct of the applicant's defence at the trial is likely to be adversely affected if the direction is not given.

Both elements must be satisfied before the court is entitled to give such a direction. A similar application can be made during the trial however the applicant is then required to satisfy the court of the matters referred to in (a) and (b) above and that there was a good reason for not making the application before the commencement of the trial.

Section 7(4) grants the court significant discretion to remove or relax reporting restrictions where it is satisfied that the effect of the restriction set out in subsection (1) ‘impose a substantial and unreasonable restriction on the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction...’. The subsection continues however: ‘...but a direction shall not be given in pursuance of this subsection by reason only of an acquittal of an accused person at trial.’ This offers some level of assurance for the complainant whose identity can be protected even if the accused person is acquitted.

Similar reporting restrictions apply to the identification of the accused person under section 8 of the *Criminal Law (Rape) Act 1981* whose identity cannot be revealed until conviction or unless the court lifts the restriction under that section. The accused person may apply to have the restriction lifted at the commencement of the trial or even during the trial and must satisfy the same tests set out under section 7 above. The court is also entitled under section 8(5) to remove or relax the reporting restrictions in the same manner as under section 7(4) above.

The complainant may decide to abandon her anonymity once the trial has concluded however the accused person may only be named if convicted at trial, unless the court has already granted directions under section 7(8) and S8(6). Section 3 of the *Criminal Law (Incest Proceedings) Act 1995* provides for the anonymity of both the complainant and the accused person for an offence under the *Punishment of Incest Act 1908*. Section 5 of the *Punishment of Incest Act 1908* provided that:

“All proceedings under this Act are to be held in camera.”

In camera in this context is understood to mean a closed court room (or even a Judge’s chambers) from which all persons other than those directly involved in the case are excluded. It had been understood that the media was free to report the verdict and sentence in such cases even though they were excluded from the hearing. However, a decision of Carney J in *People (DPP) v WM*³⁴ indicated that the meaning of section 5 was that the outcome and sentence could not be reported on by the media. The *Criminal Law (Incest Proceedings) Act 1995* was enacted to regularize the situation and it now provides that proceedings under the 1908 Act are to be held ‘otherwise than in public’ rather than *in camera* which permits media reporting of the case provided the identity of the complainant is not revealed. The verdict and sentence are permitted to be announced in public.

Role of survivor at sentencing stage

Victim Impact Statements

Section 5 of the *Criminal Justice Act 1993* as amended by section 4 of the *Criminal Procedure Act 2010* grants a statutory right to the victim of a crime to address the court as to the impact of that crime on that person. This usually takes the form of a victim impact statement which is presented to the court either by the prosecution or personally by the victim (or a family member in certain cases.) Section 5(3)(a) (as amended) provides:

“When imposing sentence on a person for an offence to which this section applies, a court shall, upon application by the person in respect of whom such offence was committed, hear the evidence of the person in respect of whom the offence was committed as to the effect of the offence on such person.”

Section 2(a) (as amended) allows the court to take into account and where necessary, receive evidence or submissions concerning the effect of the offence on the person in respect of whom it was committed. In practical terms, it is often a professional such as a psychologist or a counsellor at a victim support agency who will assist the victim in the preparation of such evidence. It is the role of the prosecution to facilitate the collection of such evidence and it is usually the Gardaí that carry out this task. Where the victim is a child under 14 years of age or a person with a mental disorder (whether that person is a child or of full age), a family member, parent or

³⁴ [1995] 1 IR 226.

guardian may give evidence as to the effect of the offence on the person concerned. Mental disorder in this context means 'a mental illness, mental disability, dementia or any disease of the mind'.

A further innovation in the 2010 Act was that evidence can now be given via video link. Section 5A of the 1993 Act was inserted by section 5 of the *Criminal Procedure Act 2010* which states:

"5 (1) (a) A child or a person with a mental disorder in respect of whom an offence to which section 5 applies was committed, may give evidence pursuant to section 5(3), whether from within or outside the State, through a live television link unless the court sees good reason to the contrary.

(b) Any other person in respect of whom an offence to which section 5 applies was committed may, with the leave of the court, give evidence pursuant to section 5(3), whether from within or outside the State, through a live television link.

(2) Evidence given under subsection (1) shall be video-recorded."

The effect of this section is that a person who has been subjected to sexual violence may apply to the court to give evidence as to the impact of the offence via live television link.

Section 5B as inserted by section 6 of the 2010 Act also makes provision for giving evidence of impact through an intermediary in the case of a child or person with a mental disorder. Such an intermediary will be appointed by the court.

The entitlement to address the court as to the impact of the offence under section 5 applies to sexual offences as set out in the *Criminal Evidence Act 1992* as amended by the *Criminal Justice (Miscellaneous Provisions) Act 1997* which includes rape, rape under section 4, buggery, aggravated sexual assault, sexual assault, defilement offences, protection of mentally impaired persons and incest offences.

It is important to remember that legal advisors for the defendant can challenge the contents of a Victim Impact Statement and are entitled to a copy of the statement (if in written format) in advance of its submission to the court. When advising a survivor of sexual violence, it is important to bear in mind the limitations placed on Victim Impact Statements by the rights of the accused person which includes the right to have the complainant cross-examined on the contents of the statement where an issue arises as to its contents.

Section 5(4) provides a safeguard for victims who are unable or unwilling to give evidence as to the impact of the offence insofar as the court is not entitled to draw inferences that the offence had little or no impact on that person by reason of the fact that they do not give such evidence.

The 2010 Act also inserted a provision whereby the court can direct that information or evidence given pursuant to section 5(3) or part thereof, should not be published or broadcast in the interests of justice. Persons or organisation who contravene this section are liable on conviction on indictment to 3 years imprisonment or a fine not exceeding €50,000 (or both) or if convicted summarily to a fine not exceeding €5,000 or imprisonment for 12 months or both. Advice on the preparation of Victim Impact statements is available on the RCNI website, the details of which are contained in the Appendix.

Financial compensation and civil proceedings to recover damages

Survivors may have different expectations of civil proceedings and criminal proceedings therefore legal advisors must be aware of those expectations and ensure that they are realistic and achievable. While the civil process in other contexts may be considered less traumatic than the criminal process, this is not necessarily so for survivors of sexual violence who may be forced to relive their trauma on a further occasion and without the safeguards of the special measures in place during criminal proceedings.

Survivors should be advised that there are a number of methods by which compensation may be obtained for crimes of sexual violence. Options will be limited for some survivors since it is often the case that the perpetrator of the abuse is not of means and may not be worth pursuing via the civil process. Unless the perpetrator is in employment, is of financial means or has property which can be attached by way of a court judgment, there is often little point in pursuing such persons, given the cost to the survivor of maintaining civil proceedings. In cases where civil proceedings are an option for the survivor, legal advisors should be careful to highlight to that person that civil actions can be lengthy and delayed and that there will be significant costs implication if the court does not find in their favour. Survivors should also be advised that civil actions can be pursued even if the accused person was acquitted at trial or a decision was made by the DPP not to prosecute the accused person. Advice on the differing burdens of proof in civil as opposed to criminal proceedings should also be given to the survivor. A survivor should be advised that should their claim be fully contested and a civil trial take place, there are no legal provisions in place limiting the types of questions that may be asked of them during cross examination and it will be a matter for the trial judge as to whether the accused person can pursue or continue with a line of questioning.

Legal advisors will be aware of Redress schemes in place in this jurisdiction for the past number of years such as the Residential Institutions Redress Board, many of which have now stopped accepting applications. Legal advisors will also be aware since the decision of the Supreme Court in *O’Keeffe v Hickey*³⁵ that the Department of Education is not responsible for sexual abuse by teachers in state schools since teachers are not employed by the Department of Education but rather by the Boards of Management of the schools in question.

Statute of Limitations and survivors of sexual abuse

The *Statute of Limitations 1957* was expressly amended in 2002 to take account of survivors of sexual abuse who may not have been in a position to report the abuse or pursue any action in respect of that abuse for a very long period of time. The statute provides for a limitation period of 6 years in civil actions for intentional torts such as assault, battery and trespass to the person. However section 48 of the 1957 Act was amended by the *Statute of Limitations (Amendment) Act 2000* by inserting new section 48A which provides:

“48A-(1) A person shall, for the purpose of bringing an action-

(a) founded on tort in respect of an act of sexual abuse committed against him or her at a time when he or she had not yet reached full age, or

(b) against a person (other than the person who committed that act), claiming damages for negligence or breach of duty where the damages claimed consist of or include damages in respect of personal injuries caused by such act,

be under a disability while he or she is suffering from any psychological injury that-

(i) is caused, in whole or in part, by that act, or any other act, of the person who committed the first-mentioned act, and

(ii) is of such significance that his or her will, or his or her ability to make a reasoned decision, to bring such action is substantially impaired.”

³⁵ [2008] IESC 72.

Subsection (2) allows this section to apply to causes of action that accrued both before and after the passing of the amending provision. An 'act of sexual abuse' is defined in section 2(7) to include:

- "(a) any act of causing, inducing or coercing a person to participate in any sexual activity,*
- (b) any act of causing, inducing or coercing the person to observe any other person engaging in any sexual activity, or*
- (c) any act committed against, or in the presence of, a person that any reasonable person would, in all the circumstances, regard as misconduct of a sexual nature"*

The effect of this section was to incorporate a concept of 'dominion' into the civil law to take account of the fact that many survivors of abuse do not come forward to report the abuse or seek redress for many years, usually due to the nature of the abuse and often, to their relationship with the perpetrator of that abuse.

There is a further limitation contained in subsection (3) however which provides that a survivor who had obtained professional legal advice that such an action could not be brought or a survivor (or a person acting on their behalf) who reported the abuse to the Gardaí, can only seek redress within one year after the passing the amending Act. Further details are contained in section 2 of the *Statute of Limitations (Amendment) Act 2000*. Section 3 of the Act reserves the right of the court to dismiss any action on the grounds of delay.

Criminal Injuries Compensation Tribunal

The Criminal Injuries Compensation Tribunal runs the compensation scheme for personal injuries inflicted and loss incurred as the victim of a crime. The scheme is funded by the Department of Justice and is known as Scheme of Compensation for Personal Injuries Criminally Inflicted. It is administered by the Criminal Injuries Compensation Tribunal, the members of which are appointed by the Minister for Justice and Law Reform.

There are a number of limitations on the scheme, the principal one being that damages cannot be claimed for general pain and suffering. Only compensation for loss including loss of earnings, medical expenses and other certifiable losses may be claimed. The Scheme specifically excludes a claim for maintenance for a child born to a victim of a sexual offence. Furthermore, compensation will not be paid if the victim and the assailant were living together as part of the same household at the time the criminal offence took place. This exclusion can impact significantly on survivors of sexual abuse, especially in cases of intimate partner abuse.

Any compensation that a survivor receives in another setting for example, via a civil claim or through a Redress scheme will be taken into account in the award of damages by the Tribunal. Social welfare payments or entitlements under sick leave schemes are also taken into account when assessing damages payable to a victim.

There is a very short time limit for making a claim under the scheme which is three months although the Tribunal may consider applications after this time if a satisfactory explanation is provided with the application. However, reporting the crime to the Gardaí is a prerequisite for applications under the scheme as the Tribunal will examine the Garda Report when making a decision on whether to award compensation or not. A single member of the Tribunal decides the amount of compensation in each case and if the applicant is unhappy with that ruling, an appeal lies to a 3 member Board. Hearings are largely informal and are held in private. Applicants are permitted to bring legal advisors to the hearing however the Tribunal will not pay any legal costs.

The EU Directive on Compensation to Crime Victims facilitates cooperation between EU member states so that victims can get compensation for crimes committed in another member state. The Criminal Injuries Compensation Tribunal processes claims from other member states and assists people living in Ireland to send claims to other member states. Contact details for the Criminal Injuries Compensation Tribunal are contained in the Appendix.

Compensation under section 6 of the *Criminal Justice Act 1993*

Sections 6 – 9 of the *Criminal Justice Act 1993* set out the procedure whereby a court may consider issues of financial compensation during the criminal process. Section 6 allows the court in any proceedings, instead of or in addition to, dealing with the convicted offender in any other way to make a compensation order requiring that person to compensate the victim for personal injury or loss resulting from the criminal offence.

The compensation payable under a compensation order shall be of such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the convicted person, the injured party or the prosecutor, and shall not exceed the amount of the damages that, in the opinion of the court, the injured party would be entitled to recover in a civil action against the convicted person in respect of the injury or loss concerned. The court is required to take into account the means of a convicted person before making such an order and may order the payment of the compensation in installments or through the District Court Clerk if necessary. The Act allows a convicted person to apply to the court to have any installments reduced or even cancelled entirely.

Section 9 deals with the interface between compensation under the 1993 Act and separate civil proceedings against the convicted person. It provides that where a compensation order has been made under the 1993 Act and damages later fall to be assessed in civil proceedings, any amount paid under a compensation order is to be taken into account and the accused person shall only be liable to pay further damages if the award at civil proceedings exceeds that ordered by the court during the criminal action. If the amount paid under the compensation order exceeds the damages assessed by the civil court, the court may order that the amount of the excess be repaid by that person to the person against whom the compensation order was made.

There are two important factors to note about the operation of this legislation. The first is that criminal courts are often reluctant to raise the issue of compensation, especially in the context of sexual offences, for fear that an order to pay compensation may be seen as an inappropriate punishment for crimes of such a serious nature. Furthermore, a sentencing court will be conscious of avoiding any allegation that a convicted person is 'buying their way out' of a prison sentence simply by being in a position to pay compensation to the victim. The second aspect of this legislation that legal advisors should be aware of is that the victim will not be legally represented at the point of the trial where compensation is likely to become an issue. Therefore, it will be the role of the prosecution to seek the victim's views on the issue of compensation, often at very short notice and with little time for consideration before a decision must be made. By discussing such matters in advance with their legal advisors, survivors will have had time to consider their views on compensation and will be prepared to express their views should the matter arise at trial.

Appendix

Resources for survivors

Support services for survivors of sexual violence

Rape Crisis Centres operate nationwide offering specialist support services for survivors of sexual violence including: helpline support, counselling, court accompaniment, SATU accompaniment, out-reach services, training, awareness-raising and lobbying. RCCs also provide support and information to family or friends who may be supporting someone who has experienced sexual violence.

- Athlone (Midland) Rape Crisis Centre: contact: www.amrcc.ie or Freephone 1800 306 600
- Carlow and South Leinster Rape Crisis Centre: contact: www.carlowrapecrisis.ie or Freephone 1800 727 737
- Dublin Rape Crisis Centre: contact: www.drcc.ie or Freephone 1800 77 88 88
- Donegal Sexual Abuse & Rape Crisis Centre: contact www.donegalrapecrisis.ie or Freephone 1800 448 844
- Galway Rape Crisis Centre: contact: www.grcc.ie or Freephone 1800 355 355
- Kerry Rape Crisis Centre: contact: www.krsac.com or Freephone 1800 633 333
- Kilkenny Rape Crisis & Counselling Centre: contact www.kilkennyrcc.ie Freephone 1800 478 478
- Mayo Rape Crisis Centre: contact: www.mayorapecrisiscentre.ie or 1800 234 900
- Northern Ireland Rape Crisis and Sexual Abuse Centre: contact www.rapecrisisni.com or 02890 329001/2 (within Northern Ireland) and 04890 329001/2 (from Republic of Ireland)
- Rape Crisis Midwest: contact www.rapecrisis.ie or Freephone 1800 311 511
- Rape Crisis North East (RCNE): contact: www.rcne.ie or 1800 212 122
- Sexual Violence Centre Cork: contact: www.sexualviolence.ie or Freephone 1800 496 496
- Tipperary Rape Crisis & Counselling Centre: contact Freephone 1800 340 340
- Tullamore Regional Sexual Abuse & Rape Crisis Centre: contact www.tullamorerrcc.ie or Freephone 1800 323 232
- Rape Crisis and Sexual Abuse Counselling Centre Sligo, Leitrim and West Cavan: contact: www.srrcc.ie or Freephone 1800 750 780
- Waterford Rape Crisis and Sexual Abuse Centre: contact: www.waterfordrsac.ie or Freephone 1800 296 296
- Wexford Rape & Sexual Abuse Support Service: contact: www.wexfordrapecrisis.com or Freephone 1800 330 033

One in Four Support is provided directly through individual psychotherapy, group therapy, advocacy/support, and 24 hour support on our online message boards. Contact: www.oneinfour.org or 01 662 4070.

Connect is a free phone counselling service for any adult who has experienced abuse, trauma or neglect in childhood. The service is also available to partners or relatives of people with these experiences. Contact: www.connectcounselling.ie or Freephone 1800 477 477.

Dignity 4 Patients is a patient support and advocacy organisation working with people who have suffered sexual assault or inappropriate sexual behaviour whilst a patient in a medical or therapeutic setting. Contact www.dignity4patients.org or 041 9845761.

Right of Place supports survivors of institutional child abuse and their families offering information, one to one meetings and group support. Contact www.rightofplace.com or Locall 1890 200 709.

Services for children

CARI Helpline is a point of first contact for members of the public and professionals who have questions about child protection and issues around child sexual abuse. Experienced operators provide information and advice to individuals and professionals with concerns about child sexual abuse or children displaying sexualised behaviour. Appointments for therapists can be made. Contact: www.cari.ie or by phone 01 8308523.

ISPC Childline provides a range of services for all children up to the age of 18. The Childline is open 24 hours a day, 7 days a week and can be reached by phone, text, email, online chat or through the website. Contact: www.childline.ie or Freephone 1800 666 666.

Barnardos offers a variety of specialised services to provide support to children, parents and families. Contact: www.barnardos.ie or Freephone 1800 222 300.

Sexual Assault and Treatment Units are available at the following locations:

CORK SEXUAL ASSAULT TREATMENT UNIT

South-Infirmery – Victoria University Hospital
Old Blackrock Rd, Cork. Tel: 021 4926100
Email: satu@sivuh.ie
Web: www.sivuh.ie/departments/sexualassaulttreatmentunit.html

DONEGAL SEXUAL ASSAULT TREATMENT UNIT

Letterkenny General Hospital
Co. Donegal
Tel: 074 9104436/Mobile: 087 0664593
Email: satu.letterkenny@hse.ie

DUBLIN SEXUAL ASSAULT AND TREATMENT UNIT

The Rotunda Hospital, Dublin 1.
Tel: 01 817 1736 (9am – 4.30pm, Monday to Friday).
Outside of these times, contact the Rotunda hospital generally on 01 817 1700
Email: satu@rotunda.ie

GALWAY SEXUAL ASSAULT TREATMENT UNIT

Hazelwood House, Parkmore Road, Galway
Tel: 091 765751
Mob: 087 6338118
Email: satugalway@hse.ie

WATERFORD SEXUAL ASSAULT TREATMENT UNIT

Waterford Regional Hospital
Dunmore Rd, Waterford
Tel: 051 842157
Email: wrh.satu@hse.ie

MULLINGAR SEXUAL ASSAULT TREATMENT UNIT

Midlands Regional Hospital Mullingar
Co Westmeath
Tel: 044 9394239
Unit Mobile Phone No: 086 0409952
Email: satu.mrhm@hse.ie

MIDWEST SATU SERVICE (Limerick) is an out of hours service operating from 6pm – 6am, Mon – Thurs with 24 hour cover throughout weekends and Bank Holidays. This service is activated when rape or sexual assault is reported to the Gardaí in any of the 3 counties Limerick, Clare and North Tipperary. For further information contact Ann Ryan HSE annma.ryan@hse.ie 067 46629/086 0402292.

Asylum and immigration

Irish Refugee Council Law Centre: services include advice clinics and early legal advice.
Contact: lawcentre@irishrefugeecouncil.ie or 01 7645854.

Immigrant Council of Ireland has an Independent Law Centre providing legal advice and support for migrants and their families.
Contact: www.immigrantcouncil.ie or 01 674 0200.

Migrant Rights Centre Ireland actively mobilises and campaigns for concrete policy changes that affect migrant workers and their families. Contact: www.mrci.ie or 01 8897570.

The Integration Centre is committed to the integration and inclusion of people from immigrant backgrounds in Ireland.
Contact: www.integrationcentre.ie or 01 6453070.

Domestic violence

SAFE Ireland is a national network of domestic violence services that continues to develop and sustain services. Details of domestic violence support services nationwide are provided through www.safeireland.ie or email info@safeireland.ie or call 090 647 0978.

Amen provides court accompaniment services, a confidential helpline, support services and information for men who have or are experiencing domestic violence. Contact: www.amen.ie or 046 902 3718. Contact after hours at 086 194 7270.

Disability support service

The COPE Foundation is a voluntary organisation offering support services to persons for intellectual disabilities. Contact: www.cope-foundation.ie or 021 750 71731 (a details list of disability support services is available in the 'links' section of this website).

Disability Federation of Ireland is an advocate for the voluntary disability sector supporting organisations to enable people with disabilities. Contact: www.disability-federation.ie or 01 454 7978.

The National Disability Authority is the independent state body providing expert advice on disability policy and practice, and promoting awareness. Contact: www.nda.ie or 01 608 0400.

Addiction

National Drug Advisory and Treatment Centre aims to provide an integrated, person centred, specialist addiction service, supported by best practice and national leadership in academic excellence. Contact: www.addictionireland.ie or info@dtcb.ie

Alcoholics Anonymous provides a full contact list for its services nationwide at www.alcoholicsanonymous.ie

Narcotics Anonymous provides a full contact list of its services nationwide at www.na-ireland.org

Gamblers Anonymous provides a full contact list of its services nationwide at www.gamblersanonymous.ie

Elderly

Age Action promotes positive ageing and better policies and services for older people.
Contact: www.ageaction.ie or 01 475 6989.

Irish Association of Older People is an advocacy and support organisation.
Contact: www.olderpeople.ie or 01 214 0737.

Older Women's Network (Ireland) is a nationwide network of women and women's groups.
Contact www.ownireland.ie or 01 884 4536.

Mental health

Mental Health Ireland is a national voluntary organisation. There are 105 local Mental Health Associations currently affiliated to Mental Health Ireland. While they are autonomous, they share the mission of MHI and participate in projects organised at national level. Contact details for mental health organisations and support services nationwide can be found via this website. Contact: www.mentalhealthireland.ie or 01 284 1166.

Samaritans Helpline provides 24 hour support for people experiencing feelings of despair or distress including those that may lead to suicide. Contact: www.samaritans.ie or 1850 60 90 90.

Aware provides depression support, information and education for people with depression and their families.
Contact: www.aware.ie or 1890 303 302.

Minorities organisations

SPIRASI is a humanitarian, intercultural, non-governmental organisation that works with asylum seekers, refugees and other disadvantaged migrant groups, with special concern for survivors of torture. In partnership with others, SPIRASI enables access to specialist services to promote the well-being of the human person, and encourages self-reliance and integration into Ireland. Contact: www.spirasi.ie or 01 838 9664.

Akidwa is minority ethnic-led national network of African and migrant women living in Ireland. Contact: www.akidwa.ie or 01 834 9851.

Involve in partnership with Travellers is a national organisation which represents Centres of education and training and youth work projects nationally for Travellers. Contact: www.involve.ie or 090 649 8017.

Irish Traveller Movement is a national network of organisations and individuals working within the Traveller community. Contact: www.itmtrav.ie or 01 679 65 77.

Pavee Point is a national organisation promoting human rights for Travellers. Contact: www.paveepoint.ie

National Traveller Women's Forum is a network of Traveller women and Traveller women's organisations from throughout Ireland. Contact: www.ntwf.net or 091 771 509.

Sexuality

GLEN (Gay and Lesbian Equality Network) works for equality for lesbian, gay and bisexual people in Ireland. Contact: www.glen.ie or info@glen.ie or 01 672 8650.

LGBT Helpline is a non-judgmental and confidential service providing listening, support and information to lesbian, gay, bisexual and transgender (LGBT) people, their family and friends. Contact: www.lgbt.ie or 1890 929 539.

Sexual health and pregnancy

Irish Family Planning Association - Access to information, education, and health services regarding sex, sexuality, conception, contraception, safe abortion and sexually transmitted infections . Contact: www.ifpa.ie or 1850 49 50 51.

Positive Options is a crisis pregnancy counselling organisation. Contact: www.positiveoptions.ie

HSE Crisis Pregnancy Programme is a national programme tasked with developing and implementing a national strategy to address the issue of crisis pregnancy in Ireland. Contact: www.crisispregnancy.ie or 01 814 6292.

Prostitution and trafficking

Ruhama is an Irish NGO which offers services and outreach to women in prostitution in Dublin. Contact: www.ruhama.ie or 01 836 0292.

Turn Off The Red Light is a campaign to end prostitution and sex trafficking in Ireland. It is being run by a new alliance of civil society organisations. Contact: www.turnofftheredlight.ie or 01 674 0202.

Human Trafficking is an international web resource dedicated to stopping trafficking in human beings. Contact: www.humantrafficking.org

Poverty

European Anti-Poverty Network Ireland is a network of groups and individuals working against poverty. Contact: www.eapn.ie or 01 874 5737.

Money Advice and Budgeting Service is the national, free, confidential and independent service for people in debt or in danger of getting into debt. Contact: www.mabs.ie or 0761 072000.

St Vincent de Paul is a national organisation providing practical support to those experiencing poverty and social exclusion. Nationwide contact details can be found at www.svp.ie or 01 838 6990.

Simon Communities of Ireland provides support services for homeless persons. Contact details for services nationwide can be found on www.simon.ie

Legal information for survivors

Citizens Information is the national agency responsible for supporting the provision of information, advice and advocacy to the public on social and civil services. Contact: www.citizensinformation.ie or 0761 074000.

Crime Victims Helpline is a national helpline which is there to listen, inform and where relevant, to refer people to support services in the local area of victims of crime. Contact: www.crimevictimshelpline.ie or 1850 211 407.

Free Legal Advice Centres (FLAC) can be contacted at www.flac.ie or 1890 350 250 (information and referral line).

Legal Aid provides an accessible legal aid and advice service including the Refugee Legal Service. Contact www.legalaidboard.ie. This website contains a list of contact details for Law Centres nationwide.

An Garda Síochána can be contacted at www.garda.ie where a range of information including a station directory, services and referrals can be accessed. In cases of emergency, call 999 or 112.

The **Office of the DPP** can be contacted at www.dppireland.ie or 01 678 9222. Helpful documents on 'Going to Court as a Witness' and 'The Role of the DPP' can be downloaded from this website.

The **Courts Services** can be contacted at www.courts.ie or 01 888 6000. Helpful documents can be accessed via this webpage including advice for witnesses on who is who in the courtroom and advice for young witnesses.

The **Irish Prison Service** can be contacted at www.ips.ie or 043 33 35100. Persons wishing to contact the Victim Liaison Scheme should contact: Victim Liaison Officer, Irish Prison Service, IDA Business Park, Ballinalee Road, Longford, Co. Longford or vlo@irishprisons.ie

The **Criminal Injuries Compensation Tribunal** can be contacted at email: criminalinjuries@justice.ie or www.justice.ie (see the 'other regulatory functions' section, which contains the application form and scheme details) or on 01 661 0604.

Resources for legal advisors

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence with a proven capacity in strategic leadership. The RCNI role includes the development and coordination of national projects including expert data collection, supporting Rape Crisis Centres to reach best practice standards, using our expertise to influence national policy and social change. RCNI is the representative, umbrella body for our member Rape Crisis Centres who provide free advice, counselling and support for survivors of sexual abuse in Ireland. Contact: www.rcni.ie or 091 563676.

Men's Network deals all areas of men's lives; family, relationships, social circumstances, health (mental and physical), work, socialisation, conditioning and feelings. They offer counselling and domestic violence intervention support services. Contact: www.mens-network.net or 051 844260/1.

The Other Half is an alliance of men's and women's organisations working together to end men's violence against women. Contact: info@theotherhalf.ie

The Children's Rights Alliance is a coalition of over 100 non-governmental organisations (NGOs) working to secure the rights of children in Ireland, by campaigning for the full implementation of the UN Convention on the Rights of the Child. Contact: www.childrensrights.ie or on 01 662 9400.

Stay Safe is a personal safety skills programme which aims to; give children the skills necessary to enable them to recognise and resist abuse/victimisation; teach children that they should always tell an adult about any situation which they find unsafe, upsetting, threatening, dangerous or abusive; develop children's self-esteem, assertiveness and self-protective skills. Contact: www.staysafe.ie or by phone on 01 620 6347.

European Council on Refugees and Exiles is a pan-European Alliance of 70 organisations in 30 countries, established to promote the rights of those who seek international protection in Europe. Contact: www.ecre.org or email ecre@ecre.org

Victims' Charter

The following are the contact details for **complaints** in relation to compliance with the Victims' Charter which can be downloaded at the following link: <http://www.victimsofcrimeoffice.ie/en/vco/Pages/WP10000006>

Crime Victims Helpline: Service Co-ordinator, National Crime Victims Helpline, 3rd Floor, Block B, Harcourt Centre, Harcourt Street, Dublin 2. Tel: (01) 408 6118 Fax: (01) 408 6125. Email: info@crimevictimshelpline.ie

An Garda Síochána: Your local Superintendent - contact details available in the telephone directory or from www.garda.ie or in writing to: The Garda Victim Liaison Office, An Garda Síochána, Community Relations and Community Policing Section, Harcourt Square, Dublin 2. Tel: (01) 666 3880 or (01) 666 3822 or (01) 666 3882 Fax: (01) 666 3801. Email: crimevictims@garda.ie. Alternatively, contact Garda Síochána Ombudsman Commission, 150 Abbey Street Upper, Dublin 1. LoCall: 1890 600 800. Tel: (01) 871 6727 Fax: (01) 814 7023. Email: info@gsoc.ie or www.gardaombudsman.ie

Courts Service: Head of Customer Services, Courts Service, Phoenix House, 15–24 Phoenix Street North, Smithfield, Dublin 7. Tel: (01) 888 6000 Fax: (01) 888 6090 or www.courts.ie

Director of Public Prosecutions: Director of Public Prosecutions, 14 - 16 Merrion Street, Dublin 2. Tel: (01) 678 9222 Fax: (01) 661 0915 or www.dppireland.ie

Legal Aid Board: Customer Liaison Officer, Legal Aid Board, 47 Upper Mount Street, Dublin 2. Tel: (01) 644 1900 Lo-call: 1890 615 200, Fax: (01) 662 3661 or www.legalaidboard.ie

Criminal Injuries Compensation Tribunal: The Chairman, Criminal Injuries Compensation Tribunal, 13 Lower Hatch Street, Dublin 2. Tel: (01) 661 0604. Fax: (01) 661 0598 or email: criminalinjuries@justice.ie or www.justice.ie (see the 'other regulatory functions' section, which contains the application form and scheme details)

Support for lawyers

LawCare provides a confidential support service for solicitors and barristers.

Contact: www.lawcare.ie or at the following helplines for solicitors: 1800 991801 or for barristers: 1800 303145



The Halls : Quay Street : Galway

T: 091 563676 E: info@rcni.ie

www.rcni.ie



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