

**TRIAL VENUE AND PROCESS:
THE VICTIM AND THE ACCUSED**LILLIAN MCGOVERN^{*}

Thank you Mr. Justice Geoghegan and good morning to you all. As I have been introduced, my name is Lillian McGovern and I have been the Chief Executive of Victim Support since 1998.

I am particularly pleased to be sharing the platform with Muireann Ni Bhrian, Geraldine Connolly and Kate Mulkerrins, all of whom bring a very particular and specialist expertise to the subject of sexual crime in Ireland.

The Rape Crisis movement must be commended for their excellent work with those who have suffered as a result of such degrading acts of personal violation. Victim Support continues to work in co-operation with the Rape Crisis centres around the country in ensuring that victims of sexual crime are referred to the appropriate professional help.

Victim Support assists over 7,000 victims of crime each year. Our trained volunteers and staff offer practical assistance and emotional support to those affected by many different types of crime, ranging from property crime right across the spectrum to those who have a family member murdered.

Victim Support's services include a Court Witness Service which offers the necessary support to men and women who have been raped or sexually assaulted. Our expertise does not include counselling for such individuals, but rather we provide that very necessary practical help and continued support before, during and after the trial. We know that the physical and mental scars for such people can be profound and we know that they are often made worse by a criminal system which they feel ignores or disregards their plight. In the course of my work I regularly hear of instances

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where victims have been left without information about their case, without protection from further attack and often without dignity as the most intimate details of their lives are openly discussed. All too often victims of these crimes feel that they themselves are on trial.

It is very important to point out that those working in the Court Witness Service are given rigorous training in this specialist area of work. There is never any discussion of the evidence so that any likelihood of coaching or contamination of the evidence does not occur. Furthermore, Victim Support policy does not allow the person who supports the victim in the aftermath of the crime provide the pre-trial familiarisation or offer support during the trial.

The number of people supported through the Court Witness Service amounts to 123 annually. Rape cases account for the highest category of those supported with sexual assault, incest and child sex abuse following very close behind. Victim Support welcomes this opportunity to comment on what is a very important consultation, aimed at helping this central sector of the justice system—namely venue and process—and I intend to speak specifically in relation to likely impacts on the victims and witnesses from Victim Support’s perspective. It is essential for everyone involved in the criminal justice system not to lose sight of the devastating experience of becoming a victim of a sexual crime. Recovery may take months or years. These acts can be particularly difficult to deal with and the experience can change an individual’s perception of the world and their surroundings. Fear, shock, worry, rage, distress and anger are always evident. Some people blame themselves and depression is an all too common consequence.

It is therefore vital that victims and witnesses are able to contribute positively to the process and without unnecessary trauma and the overall aim of all involved should be to ensure that they emerge relatively ‘unscathed’ from the proceedings.

Victim Support recognises the need to balance the rights of the accused, alongside the rights of victims and witnesses who may, for whatever reason, be considered vulnerable. We should aim to ensure full and equal participation within all legal proceedings through the use of special measures. In this way, the ability of victims and witness being able to present their very best evidence can be achieved, which in turn ensures that the system delivers on what is intended—justice for all.

What rights are victims currently afforded?

Article 4 of the UN Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power states that ‘victims should be treated with compassion and respect for their dignity’.

Article 6 states that:

The responsiveness of judicial and administrative process to the needs of victims should be facilitated by: ...

(c) Providing proper assistance to victims throughout the legal process.

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.

Article 6 of the European Convention on Human Rights gives everyone the right to a fair trial:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an

independent and impartial tribunal established by law...

The rights of victims are codified by the European Council Framework Decision of March 2001 on the standing of victims in criminal proceedings.¹ Article 2 states that each Member State shall

... continue to make every effort to ensure that victims are treated with due respect for the dignity of the individual during proceedings...

... ensure that victims who are particularly vulnerable can benefit from specific treatments best suited to their circumstances.

Here in Ireland, the Victims' Charter sets out the responsibilities of the criminal justice agencies and what victims correspondingly are entitled to expect.

But what happens when these expectations are not met?

A thorough review of this Charter is imminent and Victim Support raises the question as to whether victims should have enforceable rights underpinned by legislation. Proper recourse for breach of rights would be available to victims and all agencies interacting with victims would have legal responsibility for ensuring that these rights are met. We welcome this review and expect that formal mechanisms will be established between all the agencies involved to ensure better information flow and communications in relation to investigation and development of cases in the interests of victims.

In looking at the above measures aimed at ensuring victims' rights within the criminal justice system the first issue to emerge is that of responsiveness. Delay in the legal process is found to be the major cause of dissatisfaction. Research conducted by the Dublin Rape Crisis Centre and the

¹ [2001] O.J. L082, p. 1-4.

School of Law at Trinity College highlighted this in their report *The Legal Process and Victims of Rape*.² Their findings concluded that the average length of time between report and trial was found to be nineteen months. We know from working with victims of rape and sexual assault that delays in cases have been anything from 18 months to two years in the Central Criminal Court. Distress caused to victims in such situations is often exacerbated when they are not kept informed of these delays and the reasons for them.

In addition, we know that in many instances cases have been adjourned a number of times before the trial actually takes place. This obviously causes considerable extra distress and frustration for the victim. This issue has been highlighted by recent research studies and, indeed, had been publicly commented on by Mr. Justice Carney as unacceptable for victims, particularly when an adjournment is requested by the defence but the victim has not been informed.

Court facilities have for a long time been of major concern to Victim Support. Many victims, and most specifically victims of rape and sexual assault have complained that the fear of meeting with the defendant prior to or after the case has added enormous additional trauma. I am happy to report that with the support of the Courts Service separate waiting rooms are being provided for this purpose in all Circuit Courts nationally and Victim Support is invited to assist in making recommendations for their design. We have been given assurance of similar facilities in the Central Criminal Court and we are awaiting news on this development. This small measure goes a long way in alleviating much of the very real trauma and worry of the victim at the time of the trial.

² Bacik, Maunsell and Gogan, *The Legal Process and Victims of Rape: A Comparative Analysis of the Laws and Legal Procedures Relating to Rape, and their Impact upon Victims of Rape, in the Fifteen Member States of the European Union*.

The use of the Victim Impact Statement is central to the concern of Victim Support in the process of sexual crimes. Victim Support considers the use of this Statement, as opposed to the use of the Victim Impact Report as crucial from the victim's perspective in ensuring that they have the opportunity to state how the crime has affected their life since. We also know from working with families of murder victims that the opportunity to be able to supply this information to the court prior to sentencing has a very therapeutic effect on the family. To this end, we have continued to press the Department of Justice, Equality and Law Reform to look at the placing of these statements on a statutory basis and I am aware that the matter has been given to the Law Reform Commission for further work.

We look forward to developments in this area.

We cannot emphasise enough the importance of providing information to the victim before, during and after the trial process. Victim Support has had discussions with the Chief Prosecution Solicitor in this regard and the fruits of these discussions are clearly reflected in their work. Our referral statistics show that all victims of rape and sexual crimes are being offered the assistance of Victim Support, both at Circuit Court and High Court levels. We have recently provided training on victim awareness to all their staff and feedback from this input has been positive. In addition, the Chief Prosecution Solicitor has undertaken to produce a booklet outlining this process and what victims can expect in a clear and concise manner. We see this development as part of a formal Trial Preparation Programme for victims of sexual crime, which was recommended by the Department of Justice Report 2001. These are all very tangible and practical ways that we can make the process more user personable and hopefully just a little less daunting for the victim.

Overall, if we look at the research work done in this area, *The Legal Process and Victims of Rape* and the Department of Justice, Equality and Law Reform's report on

Attrition in Sexual Assault Offence Cases in Ireland, it would appear that the adversarial nature of our justice system, the nature of defence in rape trials as well as hostile cross-examination results in an overwhelmingly negative impact on the victim.

So what improvements should we try to make to improve the experience for the victim?

Greater expedience in the processing of rape cases. Victim Support believes that the moving of the Central Criminal Court to other centres in Ireland would ensure that cases are dealt within a faster time-frame. The need for victims and their families to travel to Dublin, often on a number of occasions and for a lengthy period, places additional untold pressures. We are well aware of the wider implications of possible lack of anonymity and potential intimidation in choosing this option but it is our belief that with the introduction of special provisions, of which I will speak later, would alleviate many of these concerns. Consultation with many such victims over the last number of weeks bears this out.

The need for a national victim/witness survey which asks victims of sexual crime about their treatment by An Garda Síochána, the Chief Prosecution Solicitor, Victim Support, defence and prosecution lawyers and the courts. Some valuable work has been done in this area by the Rape Crisis Centres and we have gleaned some feedback from our own work. However, an extensive project of this nature should address the experiences of all victims, *i.e.* those who received support services as well as those who did not. Feedback from such a study would provide clear direction for the criminal justice system in planning a better system for all such victims. The National Crime Council has recommended to the Government that a National Crime Victimization Survey should be carried out biennially and the Minister for Justice, Equality and Law Reform has given a commitment to this from 2004. I consider that very valuable insights will be provided from such a survey in planning for the future.

There is a need for the development of a more formalised trial preparation programme for victims of sexual crime which would be systematically offered to all victims in advance of trial. We know that where victims and their families avail of the services of Victim Support their experience can be made less stressful and these people continually tell us that this is so. Our experience has also shown that very often these victims are not familiar with the law and how it works, perhaps have a wrong or misguided understanding of how the system operates, and very often have expectations that may or may not be able to be met by all those involved in the system. Obviously their overriding impression of the system will be influenced by the outcome of the case, but it should never be overlooked that good preparation, a clear understanding of the process, as well as real and meaningful support can make a significant difference to a person's experience throughout the process.

To this end I would like to see the Working Group on the Jurisdiction of the Courts look at 'best practice' models of victim participation in the criminal justice system. Specifically, I would like to refer to recent developments in the UK in this area. The Government's White Paper *Justice for All* says:

The people of this country want a criminal justice system that works in the interests of justice. They rightly expect that the victims of crime should be at the heart of the system. We aim to rebalance the system in favour of victims, witness and communities and to deliver justice for all. This White Paper aims to rebalance the system in favour of victims, witnesses and communities and to deliver justice for all...³

Shouldn't this be what we aspire to here in Ireland also?

³ CM 5563, *Justice for All*, p. 1.

Specifically the Home Office has already:

- more than doubled funding for Victim Support since 1997;
- banned defendants without legal representation cross-examining rape victims personally;
- invested £11 million in CPS to communicate prosecution decisions directly to victims; and
- established the Community Legal Service which is not available to over 99% of the people of England and Wales.

Plans for a Victims' Bill will include measures to:

- Codify the criminal law to make it accessible to everyone and ensure that victims are aware of their rights;
- Introduce more measures for vulnerable and intimidated witnesses, such as screens, pre-recorded video evidence and TV links and any other measures necessary to ensure that the victim is well placed to provide the best evidence. Victims of sexual crime, because of the nature of the crime, are included in this category.
- Appoint a Victims' Commissioner to uphold the rights of victims and investigate complaints and concerns of victims.

Perhaps one of the most ambitious measures proposed is that by 2005 victims will be able to track the progress of their case online. I am a firm believer in learning from other's experience. In the area of victim support and victims' rights, the UK is viewed as well ahead of many other jurisdictions.

I know how expensive it is to have a speaker such as ex-US President, Bill Clinton speak to such a gathering as there is here today. But in order to give you a flavour of his thoughts on victims and their rights he is on record as saying

When someone is a victim, he or she should be at the centre of the criminal justice process,

not on the outside looking in... Ordinary citizens have a constitutional right to attend trials. All of this is as it should be. It is only the victims of crime who have no constitutional right to participate, and that is not the way it should be.⁴

⁴ Clinton, *Remarks at the announcement of the Victims' Rights Constitutional Amendment*, 25 June 1996.