

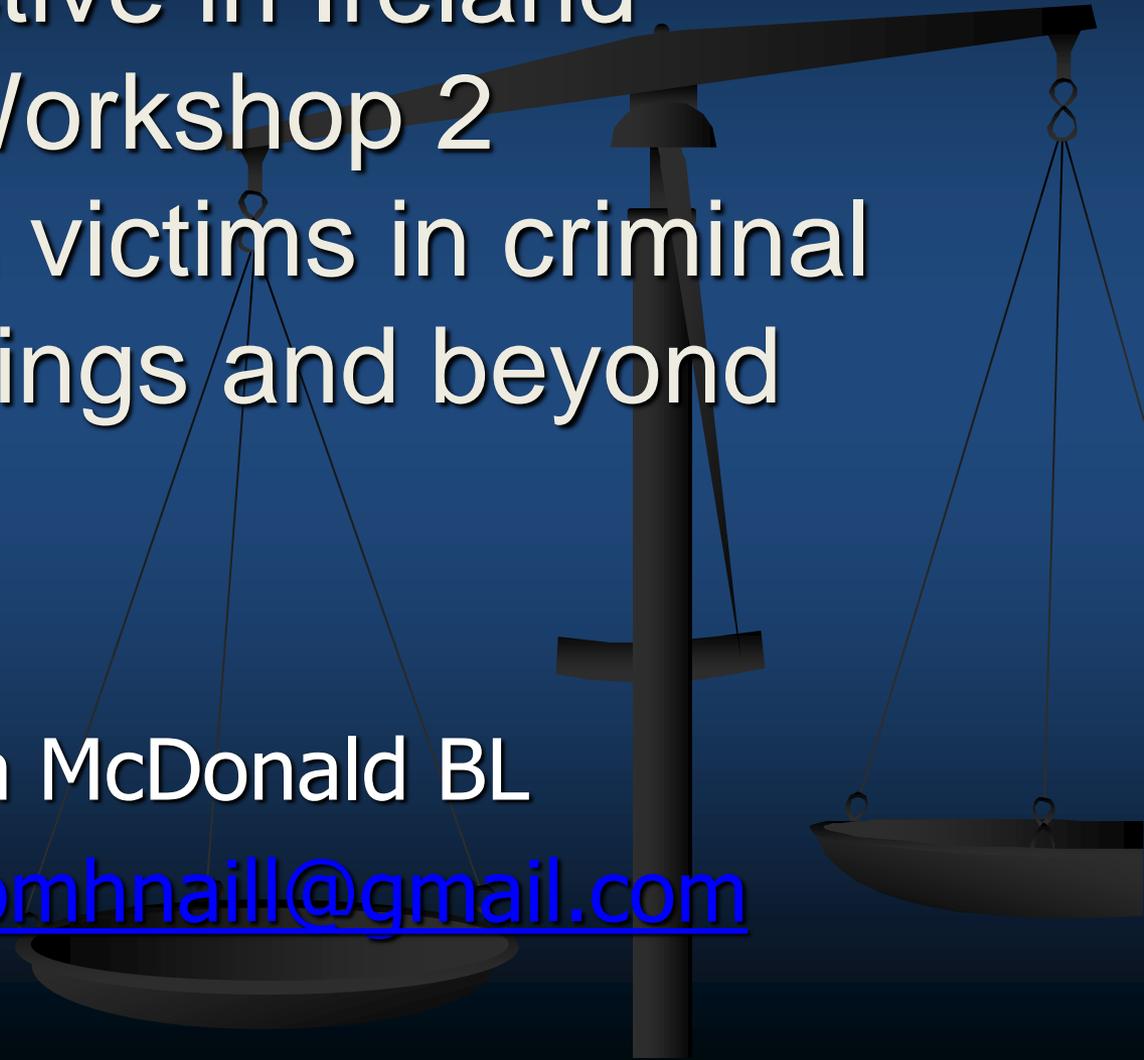
The Implementation of the Victims' Directive in Ireland

Workshop 2

Protecting victims in criminal proceedings and beyond

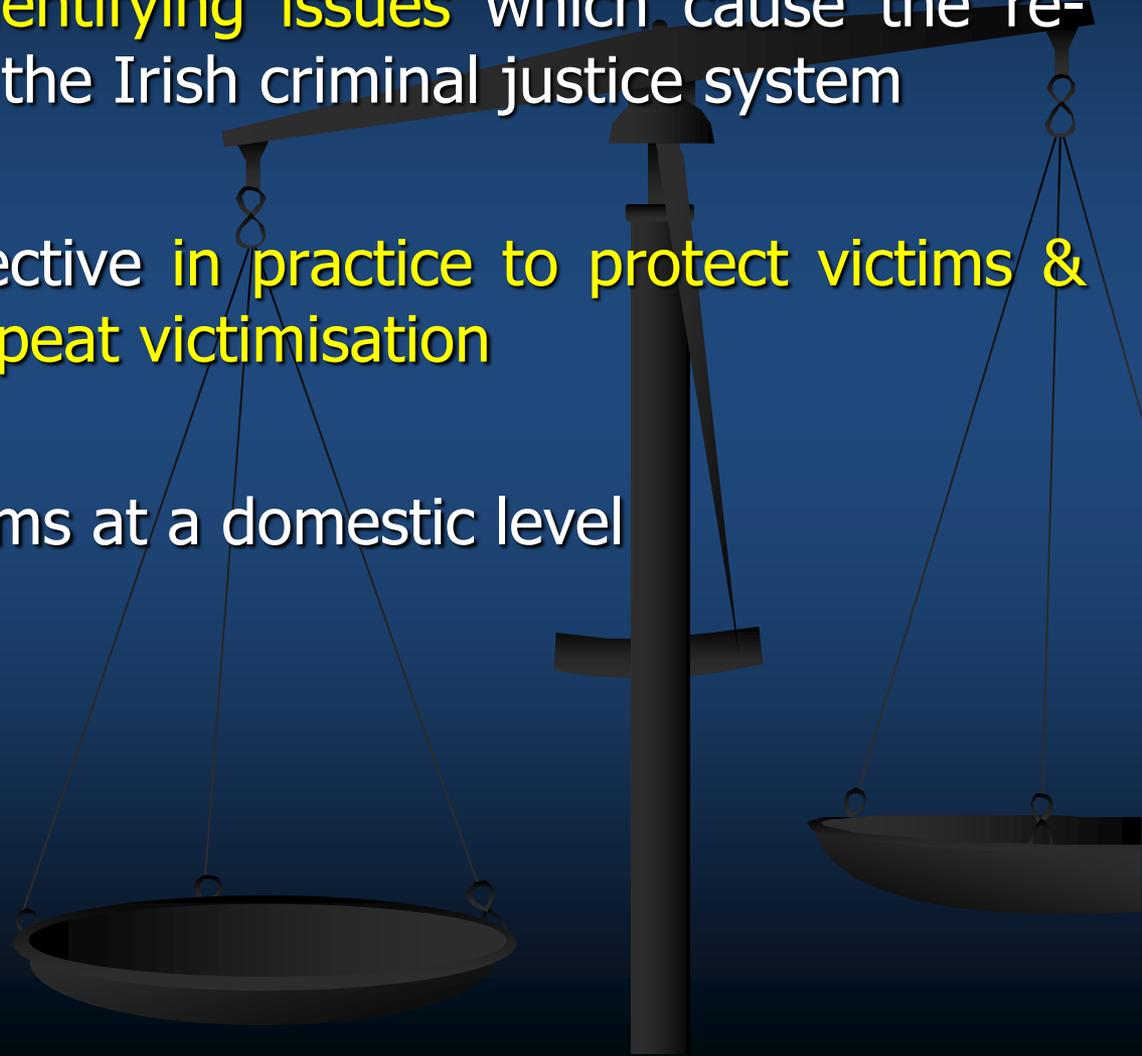
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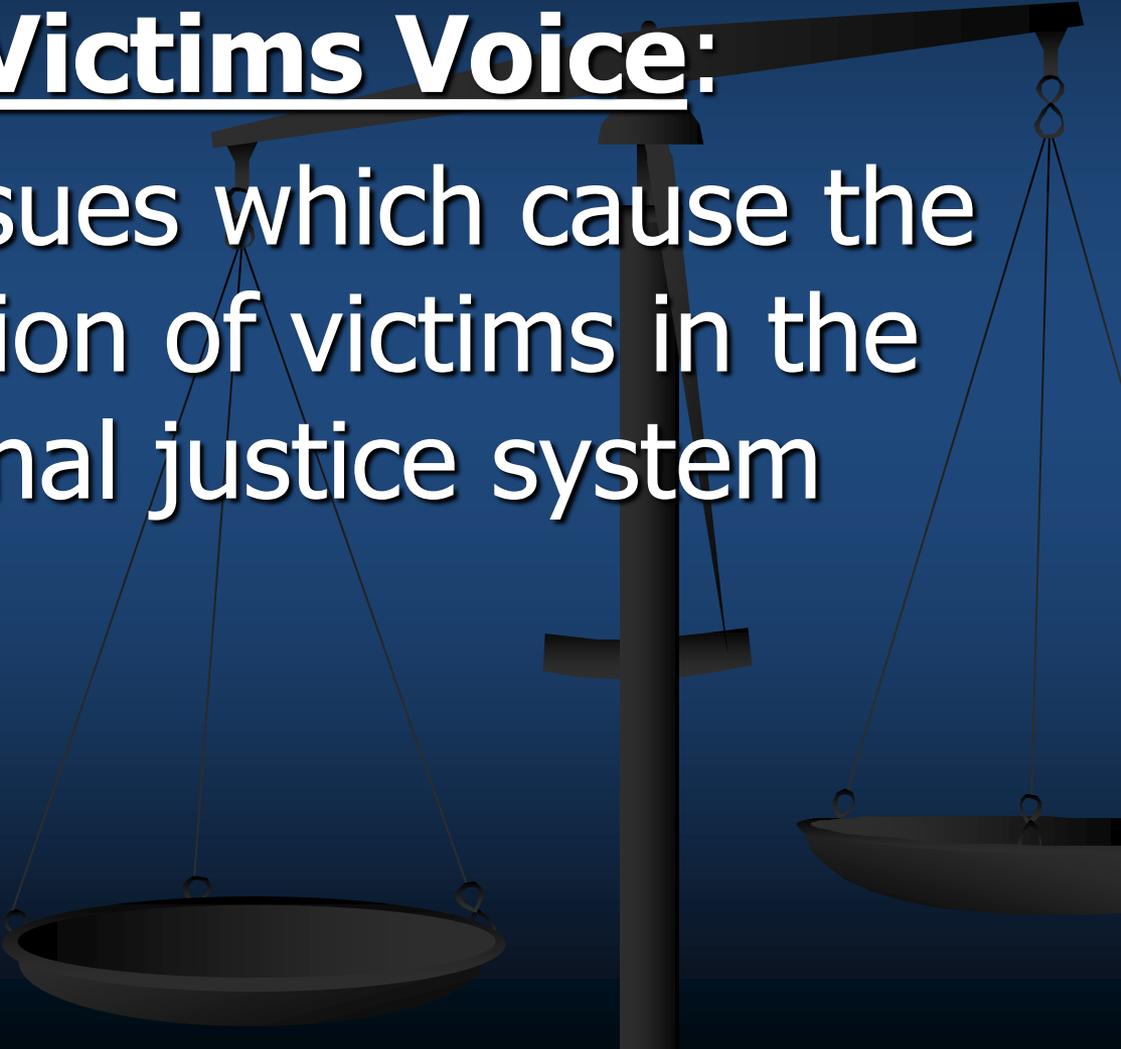


Introduction

1. The Victims Voice: **Identifying issues** which cause the re-victimisation of victims in the Irish criminal justice system
2. **Implementing the Directive in practice to protect victims & prevent secondary and repeat victimisation**
3. **Enforcement** mechanisms at a domestic level



1. The Victims Voice:



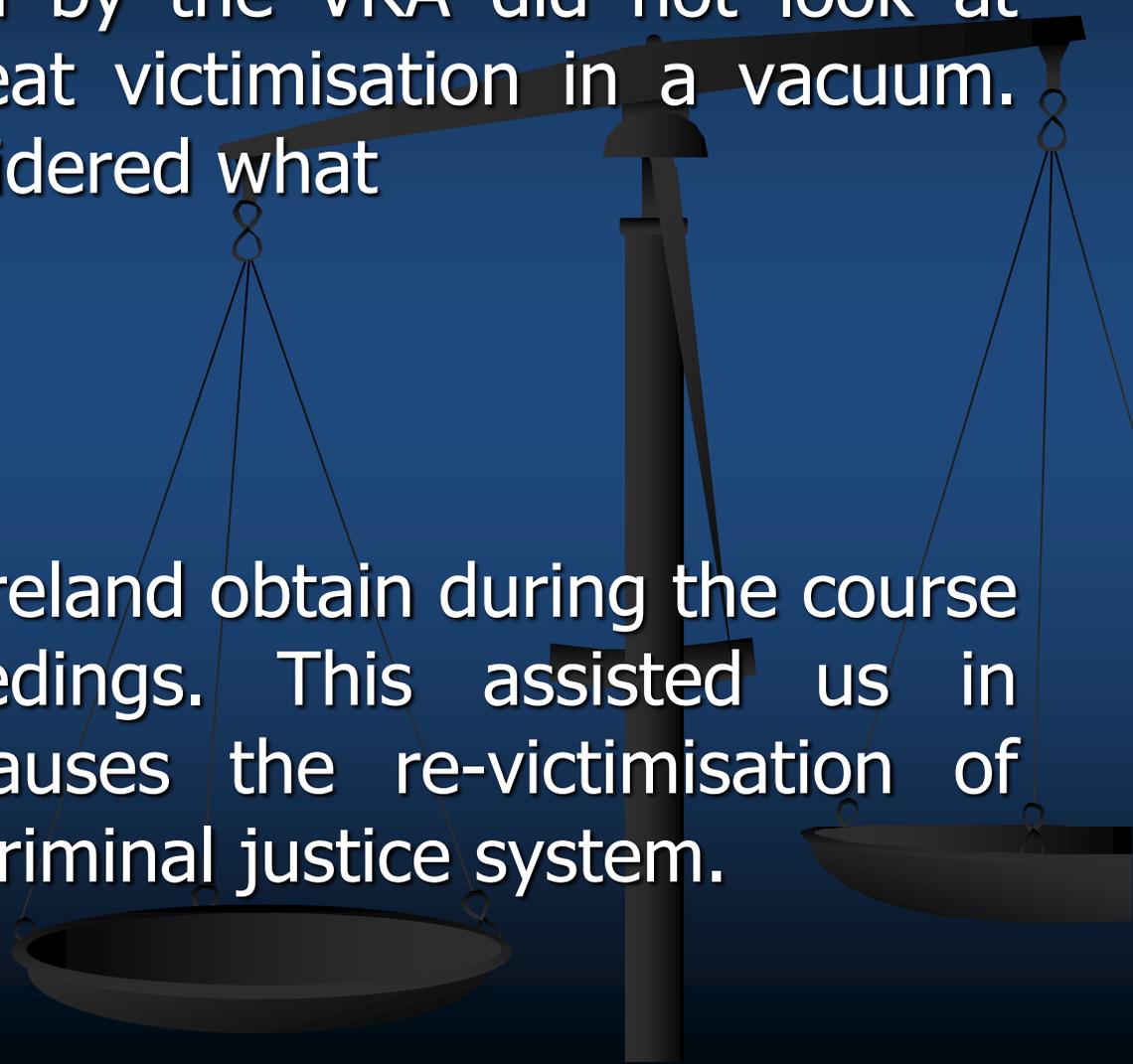
Identifying issues which cause the re-victimisation of victims in the Irish criminal justice system

What makes a victim feel intimidated and/or re-victimised?

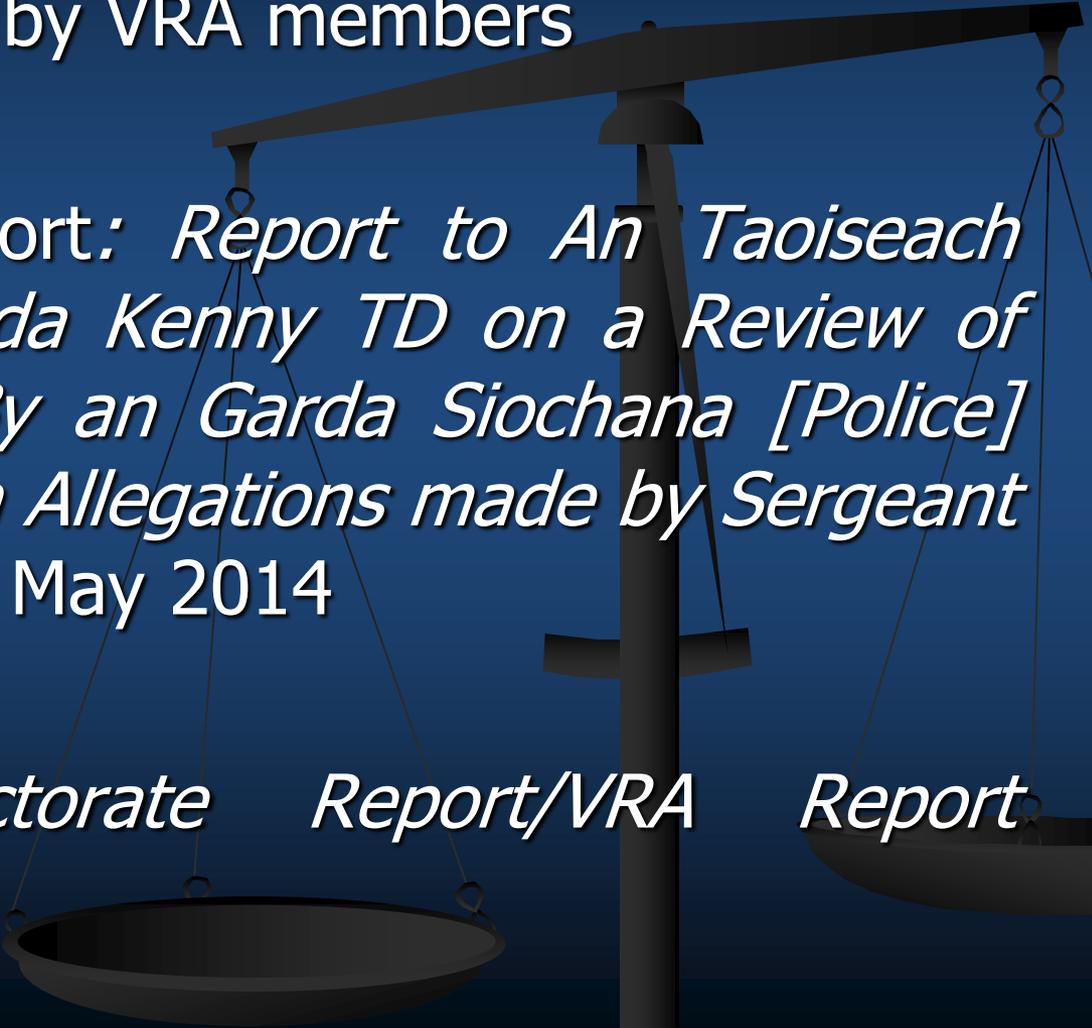
Research conducted by the VRA did not look at secondary and repeat victimisation in a vacuum. Rather we first considered what

- information,
- support and
- protection

victims of crime in Ireland obtain during the course of criminal proceedings. This assisted us in identifying what causes the re-victimisation of victims in the Irish criminal justice system.



The Victims Voice in Ireland



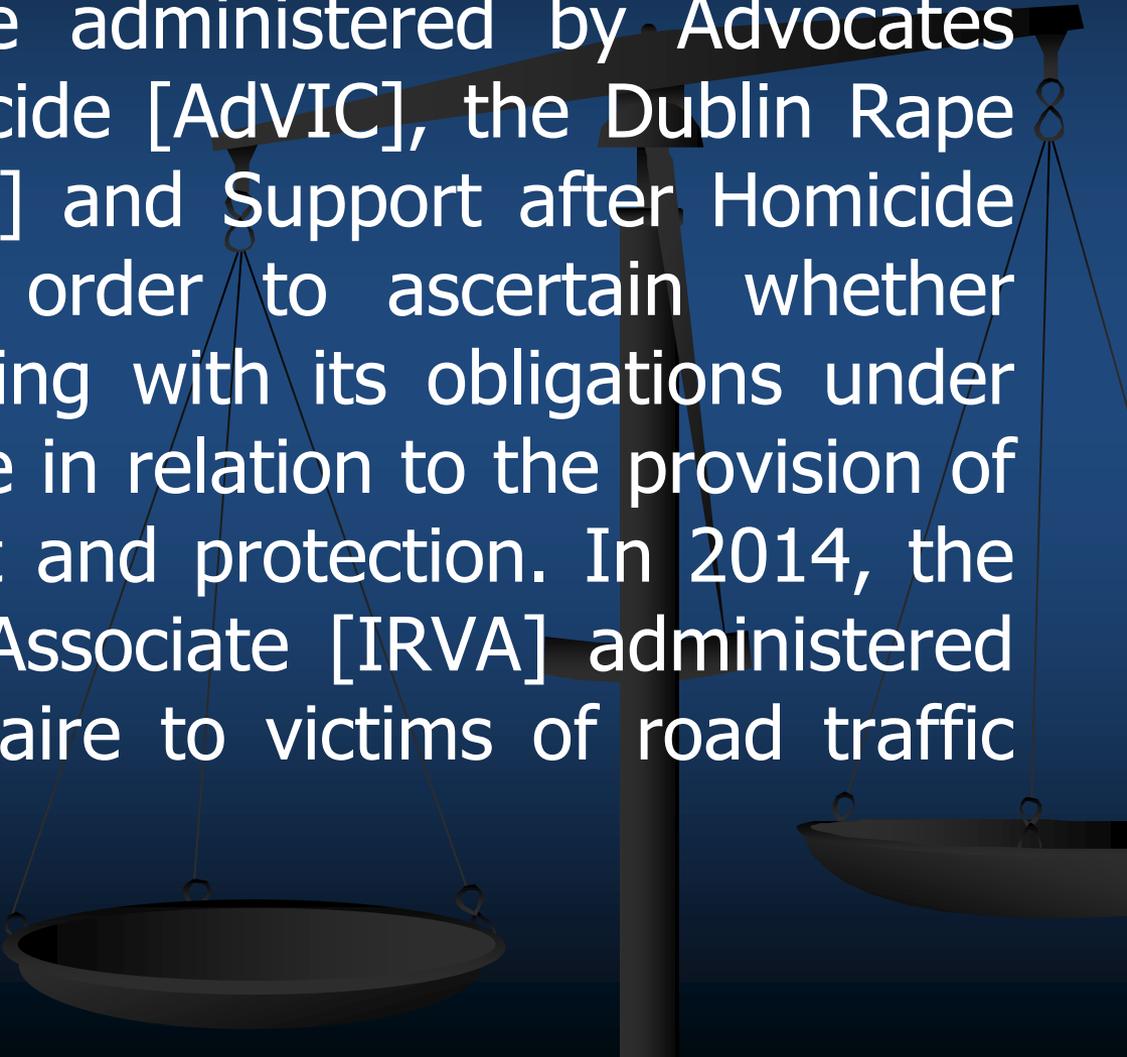
A. Survey of Victims by VRA members

B. *The Guerin Report: Report to An Taoiseach [Prime Minister] Enda Kenny TD on a Review of the Action Taken By an Garda Siochana [Police] Pertaining to Certain Allegations made by Sergeant Maurice McCabe, 6th May 2014*

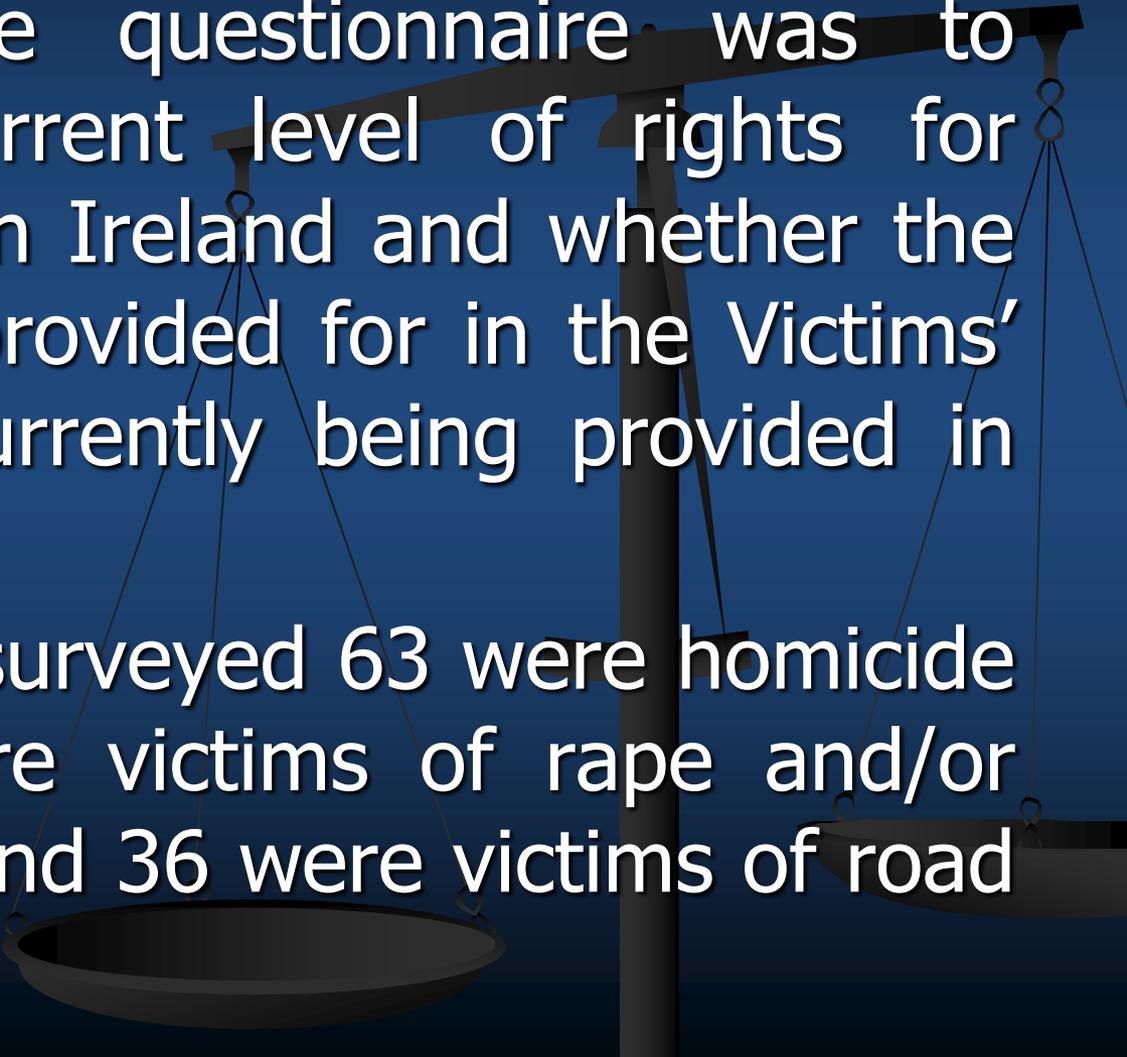
C. *Garda Inspectorate Report/VRA Report (November 2014)*

A. VRA Survey

Questionnaires were administered by Advocates for Victims of Homicide [AdVIC], the Dublin Rape Crisis Centre [DRCC] and Support after Homicide [SAH] in 2013 in order to ascertain whether Ireland was complying with its obligations under the Victims' Directive in relation to the provision of information, support and protection. In 2014, the Irish Road Victims Associate [IRVA] administered the same questionnaire to victims of road traffic collisions.



VRA Survey



The aim of the questionnaire was to ascertain the current level of rights for victims of crime in Ireland and whether the minimum rights provided for in the Victims' Directive were currently being provided in Ireland.

- Of 117 victims surveyed 63 were homicide victims, 18 were victims of rape and/or sexual assault and 36 were victims of road traffic collisions

Victims' Directive: Right to Information

Article 4 (1)

"Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation"

Victims' Directive

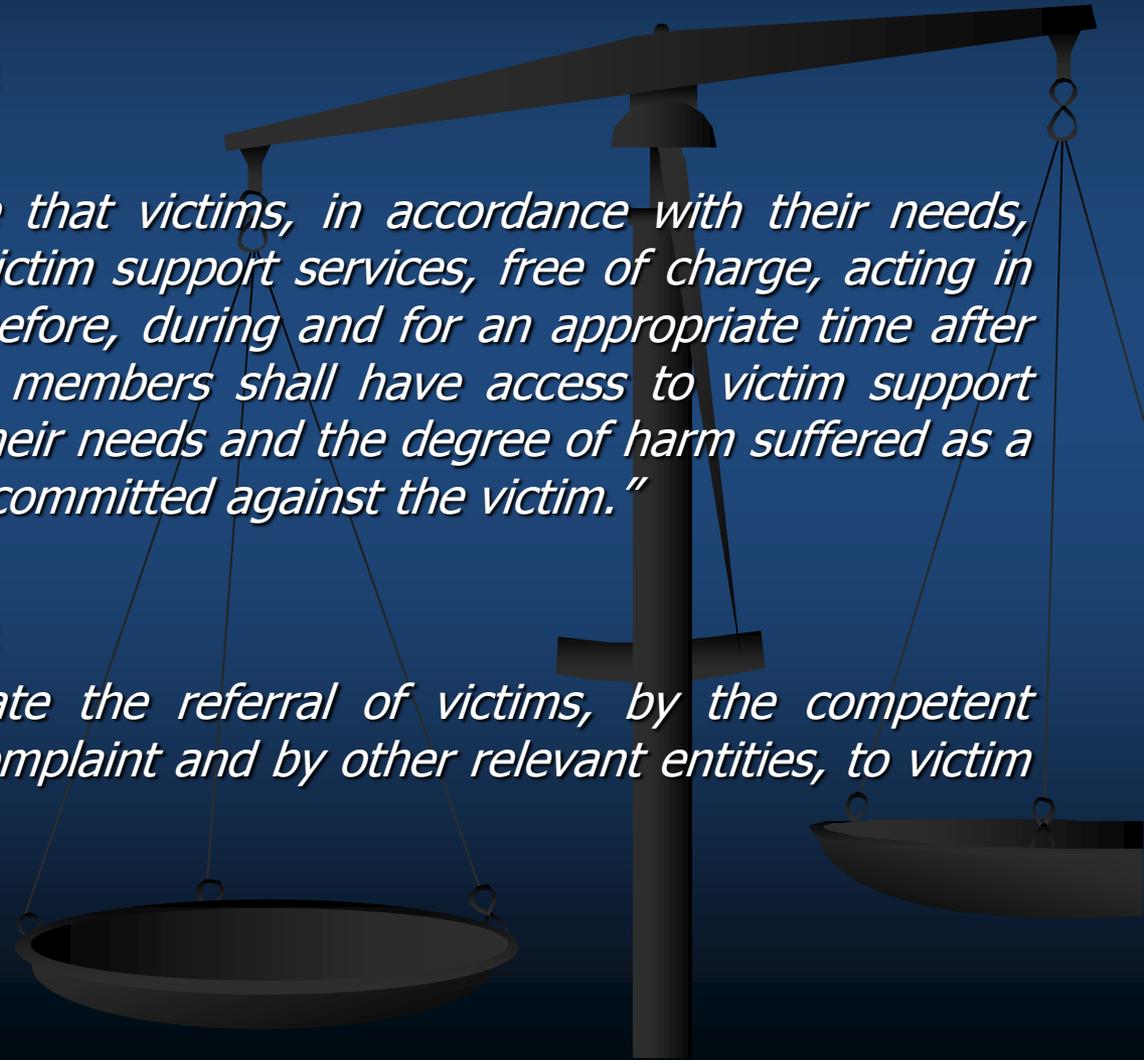
Right to Victim Support Services

Article 8 (1) provides that:

"Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim."

Article 8 (2) provides that:

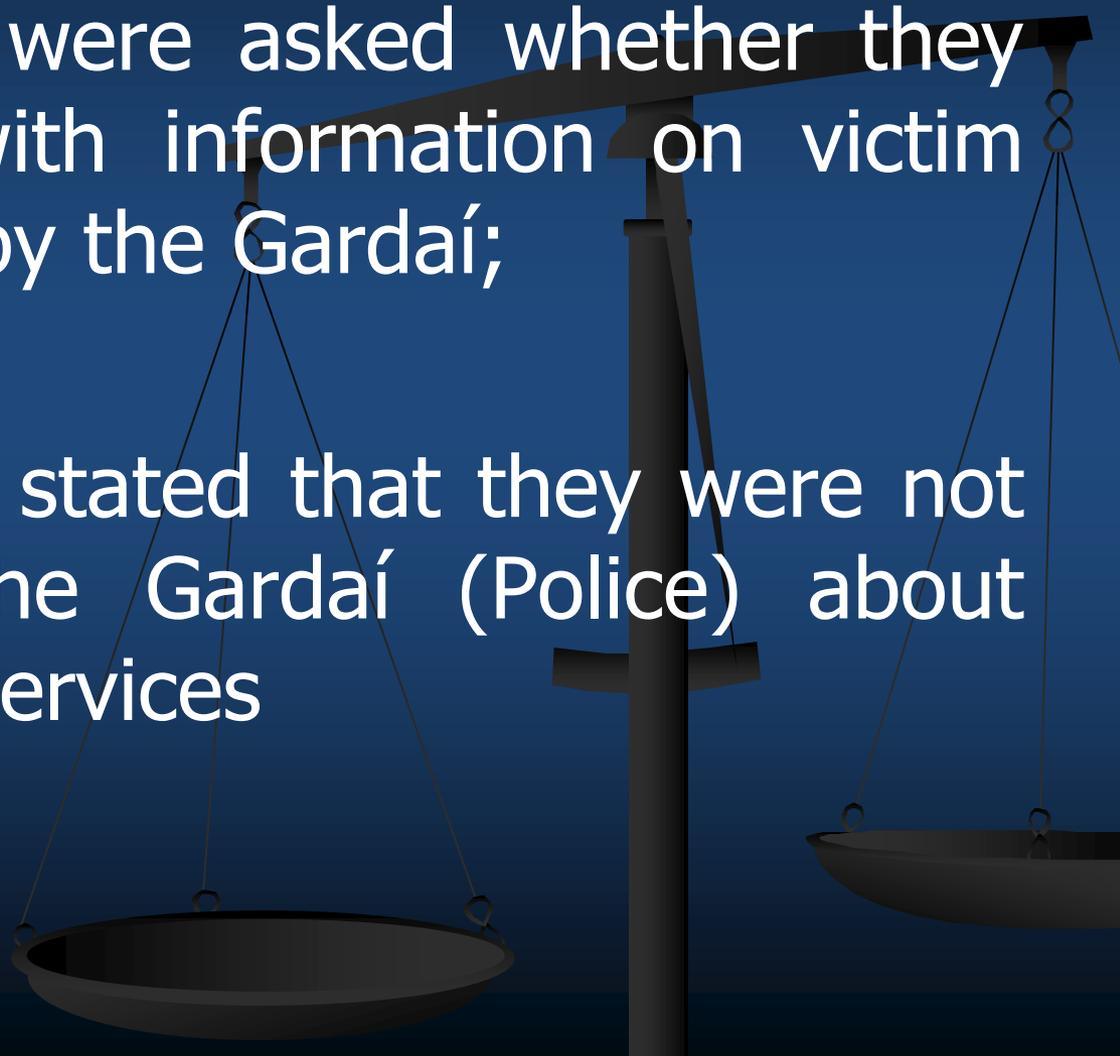
"Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services."



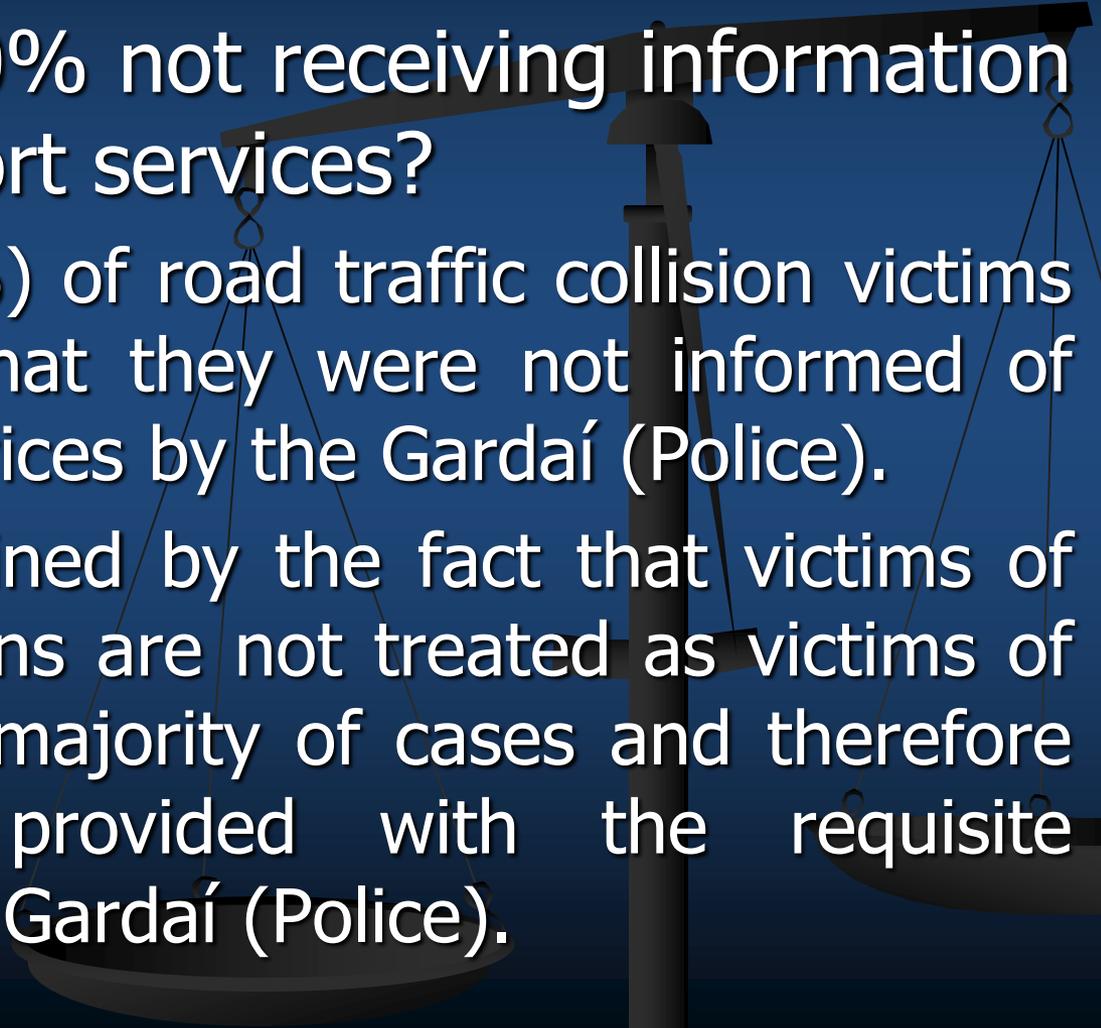
I. Information on Support Services

The 117 victims were asked whether they were provided with information on victim support services by the Gardaí;

- 64% of victims stated that they were not informed by the Gardaí (Police) about victim support services



I. Information on Support Services

- Why are over 50% not receiving information on victims support services?
 - 34 out of 36 (95%) of road traffic collision victims surveyed stated that they were not informed of victim support services by the Gardaí (Police).
 - This can be explained by the fact that victims of road traffic collisions are not treated as victims of crime in the vast majority of cases and therefore are not being provided with the requisite information by the Gardaí (Police).
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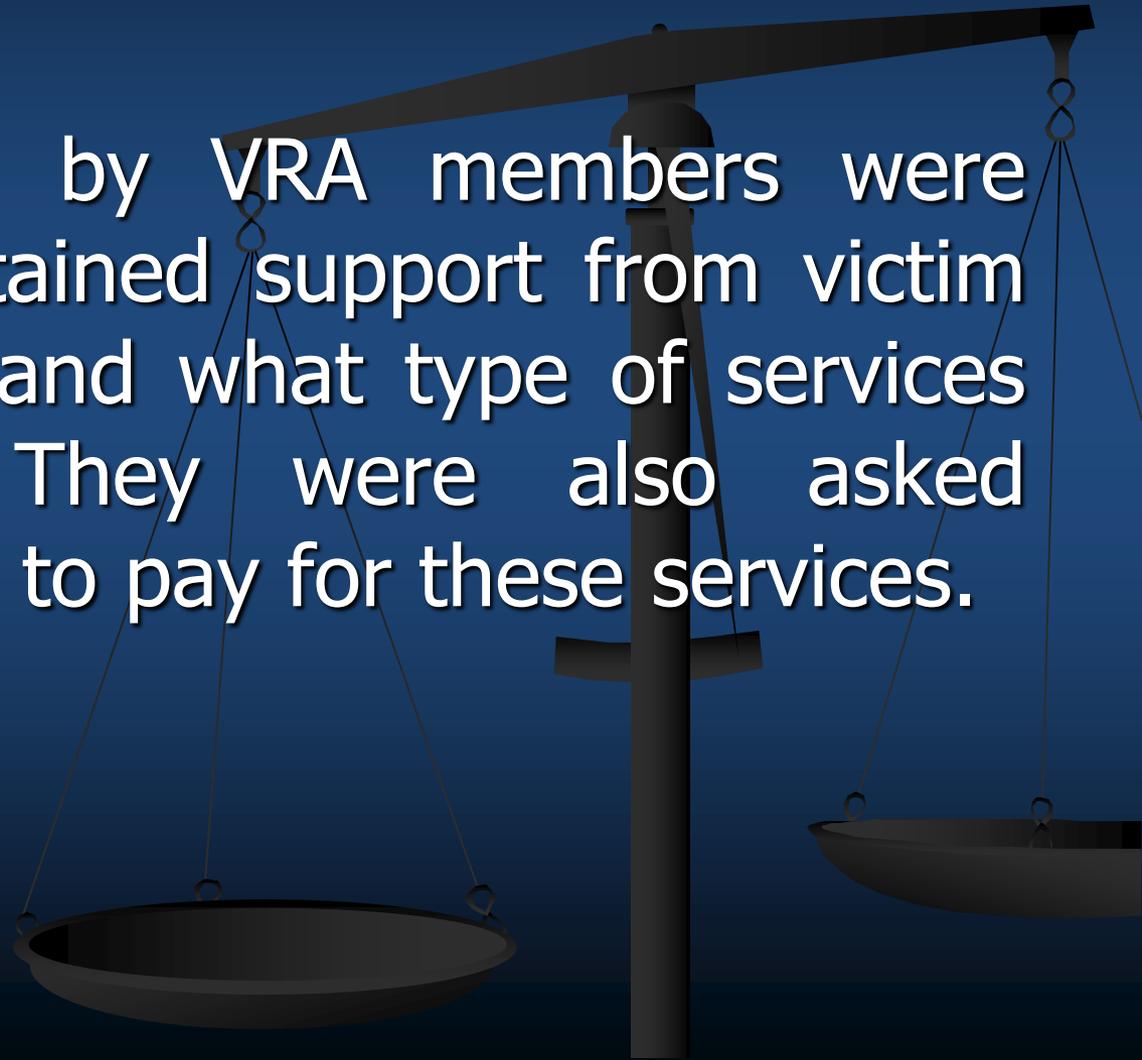
I. Information on Support Services

Why are over 50% not receiving information on victims support services?

- The figure is also low due to inclusion of rape/sexual assault victims, 89% of which stated that they did not receive information from the Gardaí about victim support services.
- This extremely high number can be explained by the fact that only half, 50% of rape victims actually make a formal complaint to the Gardaí (Police).
- This highlights that there are issues in ensuring victims who do not make a complaint have '**access**' to victims support services [see Article 8 (5) of the Directive]

II. Access to Victim Support Services Free of Charge

Victims surveyed by VRA members were asked if they obtained support from victim support services and what type of services they received. They were also asked whether they had to pay for these services.



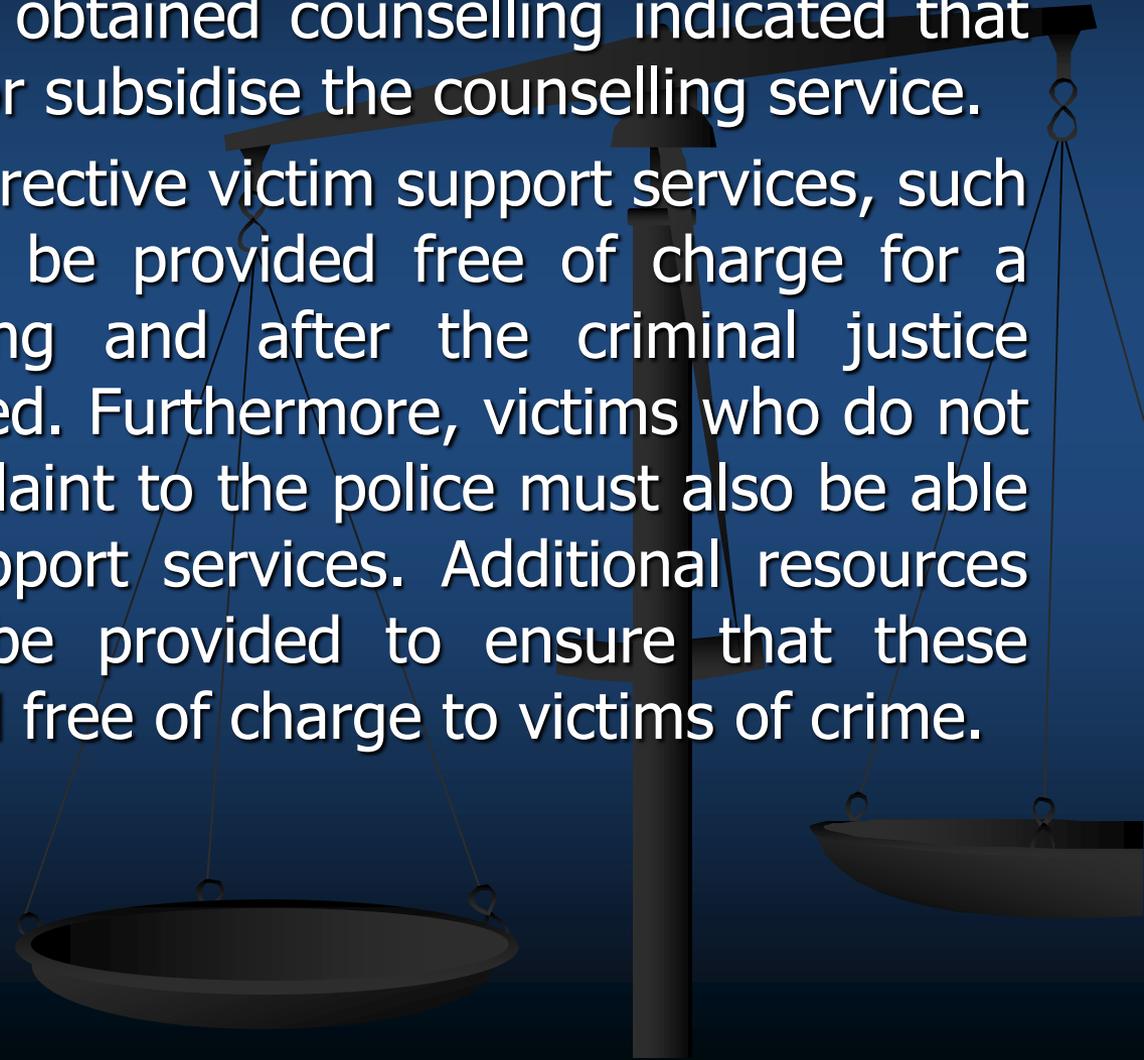
II. Access to Victim Support Services Free of Charge

Of 117 victims surveyed, 63% (74) specifically stated that they obtained counselling. Of these numbers:

- 75% [47 out of 63] of homicide victims obtained counselling;
- 100% [18 out of 18] of the rape and/or sexual assault victims obtained counselling;
- 25% [9 out of 36] road traffic collision victims obtained counselling;

II. Access to Victim Support Services Free of Charge

- 46% of victims who obtained counselling indicated that they had to pay for or subsidise the counselling service.
- Under the Victims' Directive victim support services, such as counselling must be provided free of charge for a period before, during and after the criminal justice process has concluded. Furthermore, victims who do not make a formal complaint to the police must also be able to access victim support services. Additional resources therefore need to be provided to ensure that these services are provided free of charge to victims of crime.



III. The Victims' Directive

Intimidation & Re-Victimisation

Article 18

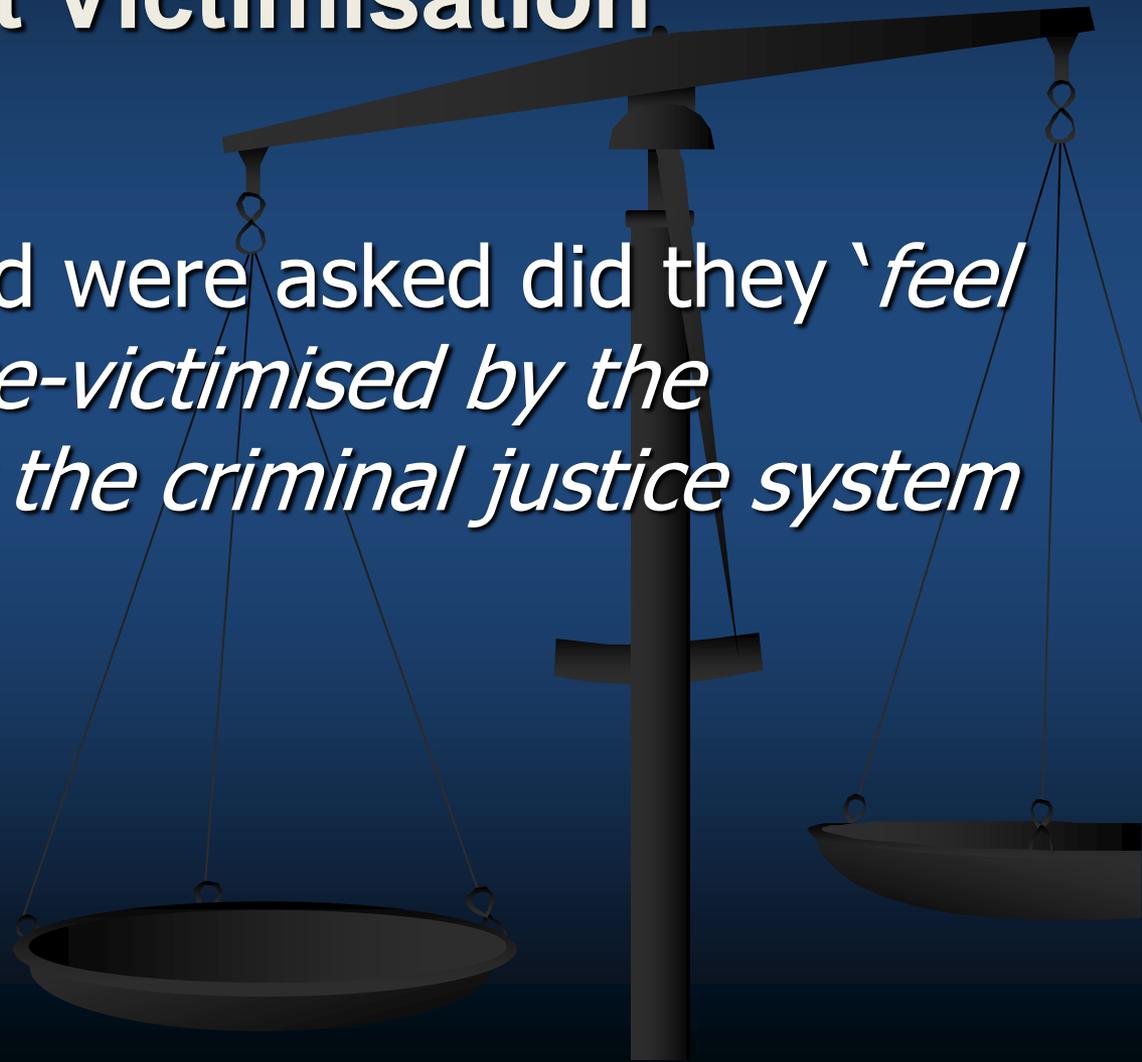
*'Without prejudice to the rights of the defence, **Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.'***

Article 19 (1)

*'**Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.'***

III. Protection from Intimidation and Repeat Victimization

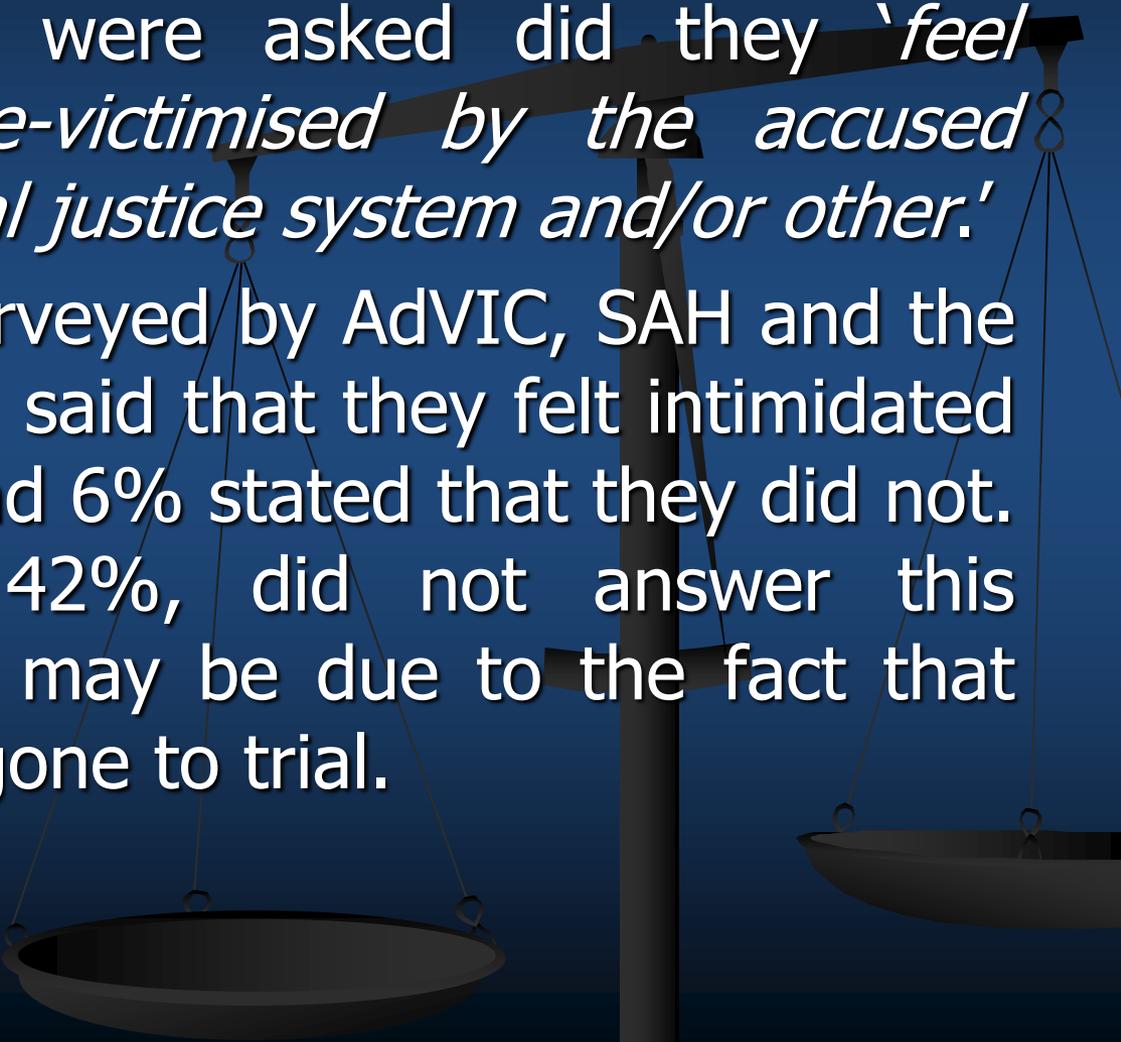
- Victims surveyed were asked did they '*feel intimidated or re-victimized by the accused and/or the criminal justice system and/or other.*'



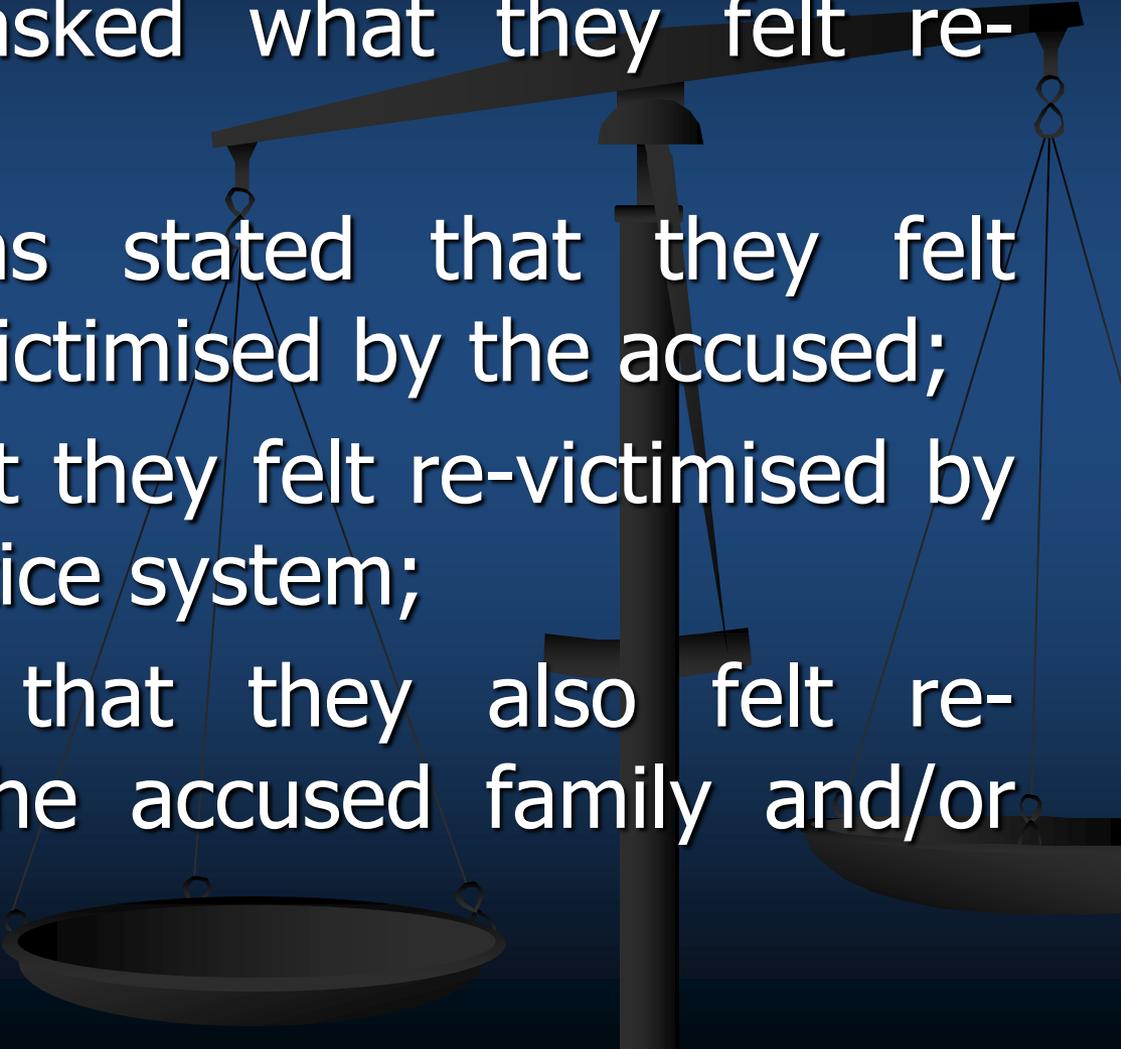
III. Protection from Intimidation and Repeat Victimization

- From the 36 questionnaires obtained by the IRVA 14% (4 out of 28 victims) of victims of road traffic collisions indicated that they did not feel intimidated, while 25% (7 out of 28 victims) indicated that they did feel intimidated. The remaining 61% indicated that the question was not relevant as they did not attend court, either because the victims were not informed of the court date, or their cases had not gone to trial.

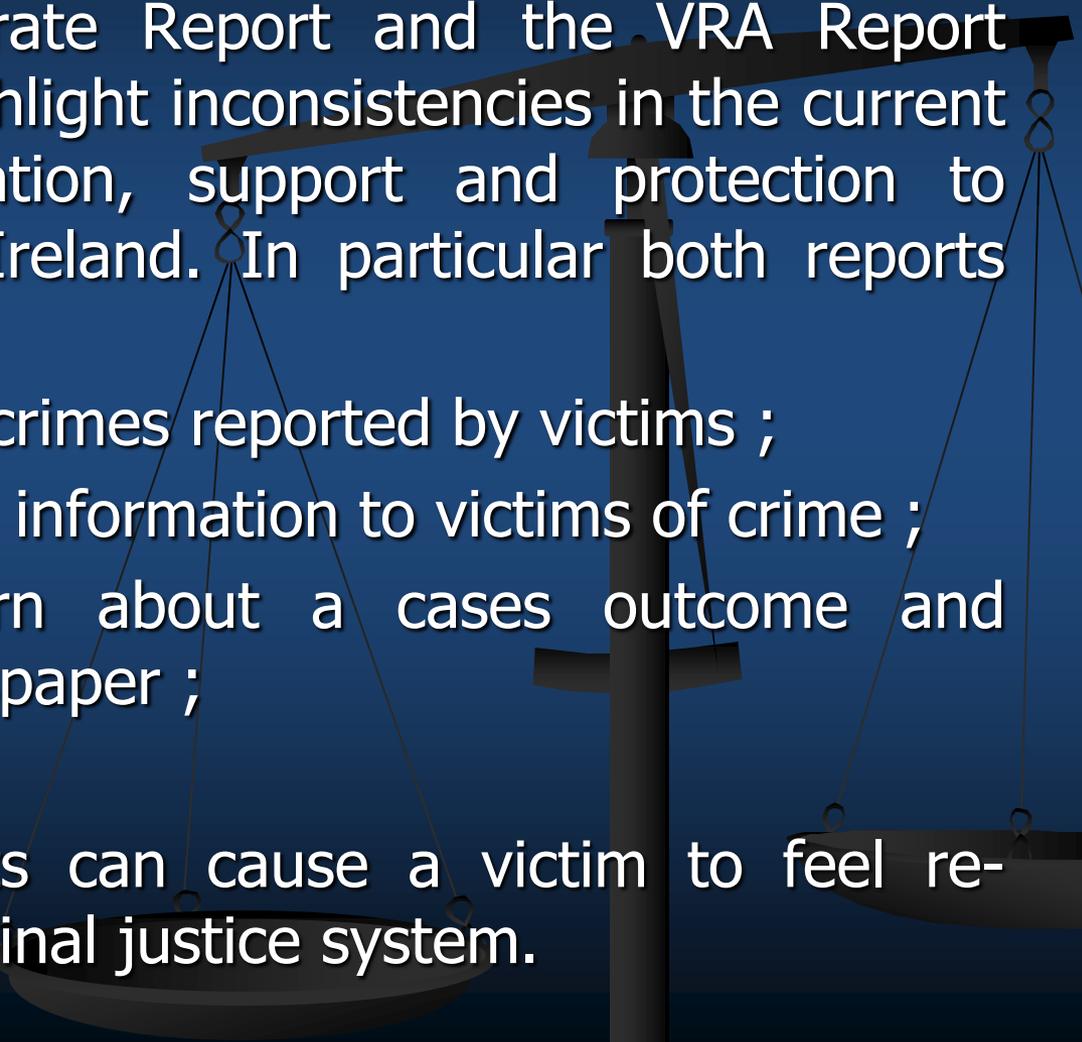
III. Protection from Intimidation and Repeat Victimization

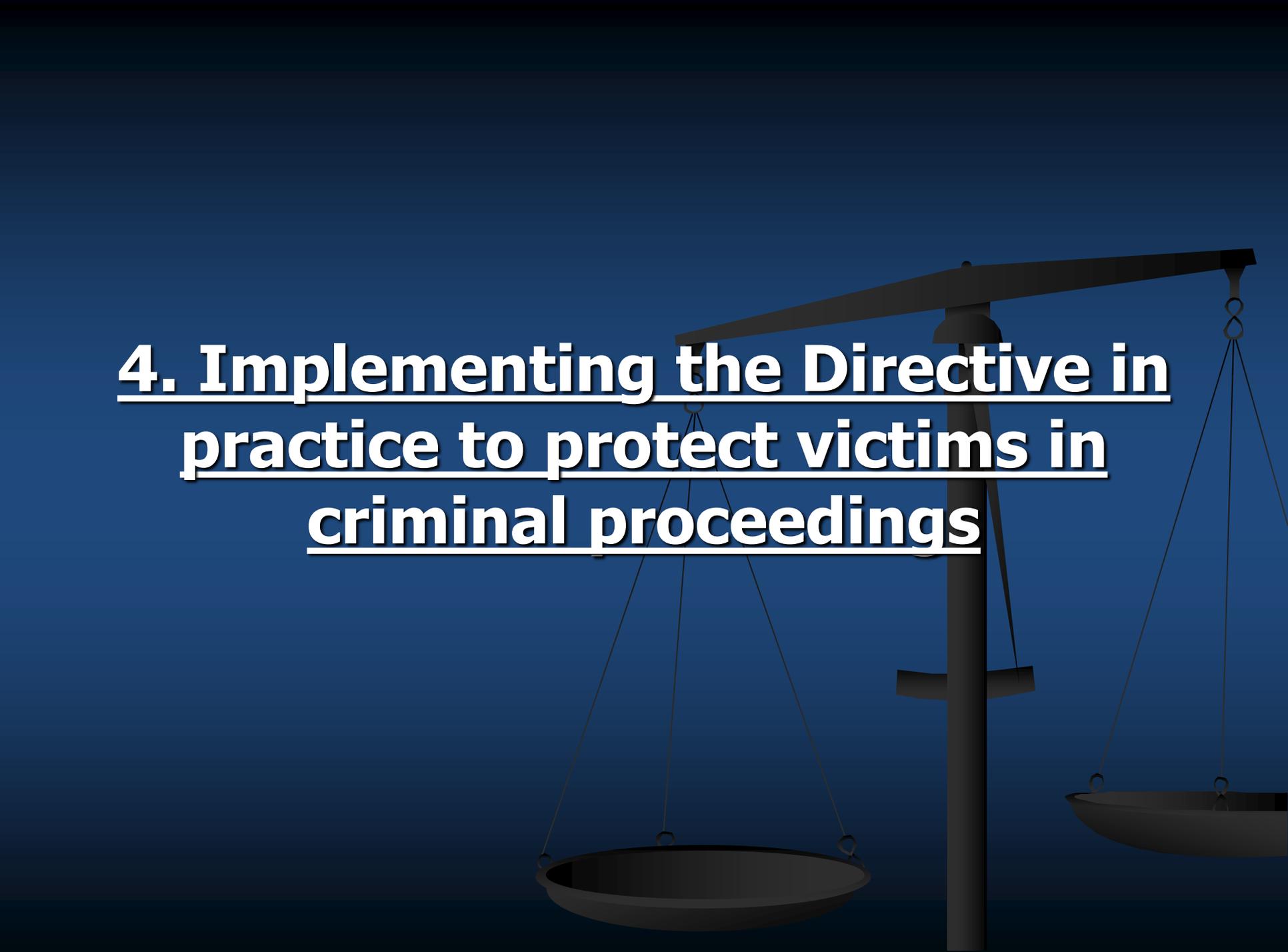
- Victims surveyed were asked did they '*feel intimidated or re-victimised by the accused and/or the criminal justice system and/or other.*'
 - 52% of victims surveyed by AdVIC, SAH and the DRCC [81 victims] said that they felt intimidated or re-victimised and 6% stated that they did not. The remainder, 42%, did not answer this question and this may be due to the fact that the case had not gone to trial.
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III. Protection from Intimidation and Repeat Victimization

- Victims were asked what they felt re-victimized by:
 - 49% of victims stated that they felt intimidated/re-victimized by the accused;
 - 72% stated that they felt re-victimized by the criminal justice system;
 - Others stated that they also felt re-victimized by the accused family and/or the media.
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Garda Inspectorate Report/VRA Report

- The Garda Inspectorate Report and the VRA Report (November 2014) highlight inconsistencies in the current provision of information, support and protection to victims of crime in Ireland. In particular both reports refer to the:
 - ❑ Failure to record crimes reported by victims ;
 - ❑ Failure to provide information to victims of crime ;
 - ❑ Victims can learn about a cases outcome and sentence in a local newspaper ;
 - All of these elements can cause a victim to feel re-victimised by the criminal justice system.
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4. Implementing the Directive in practice to protect victims in criminal proceedings

A. The Basics – Making a Statement

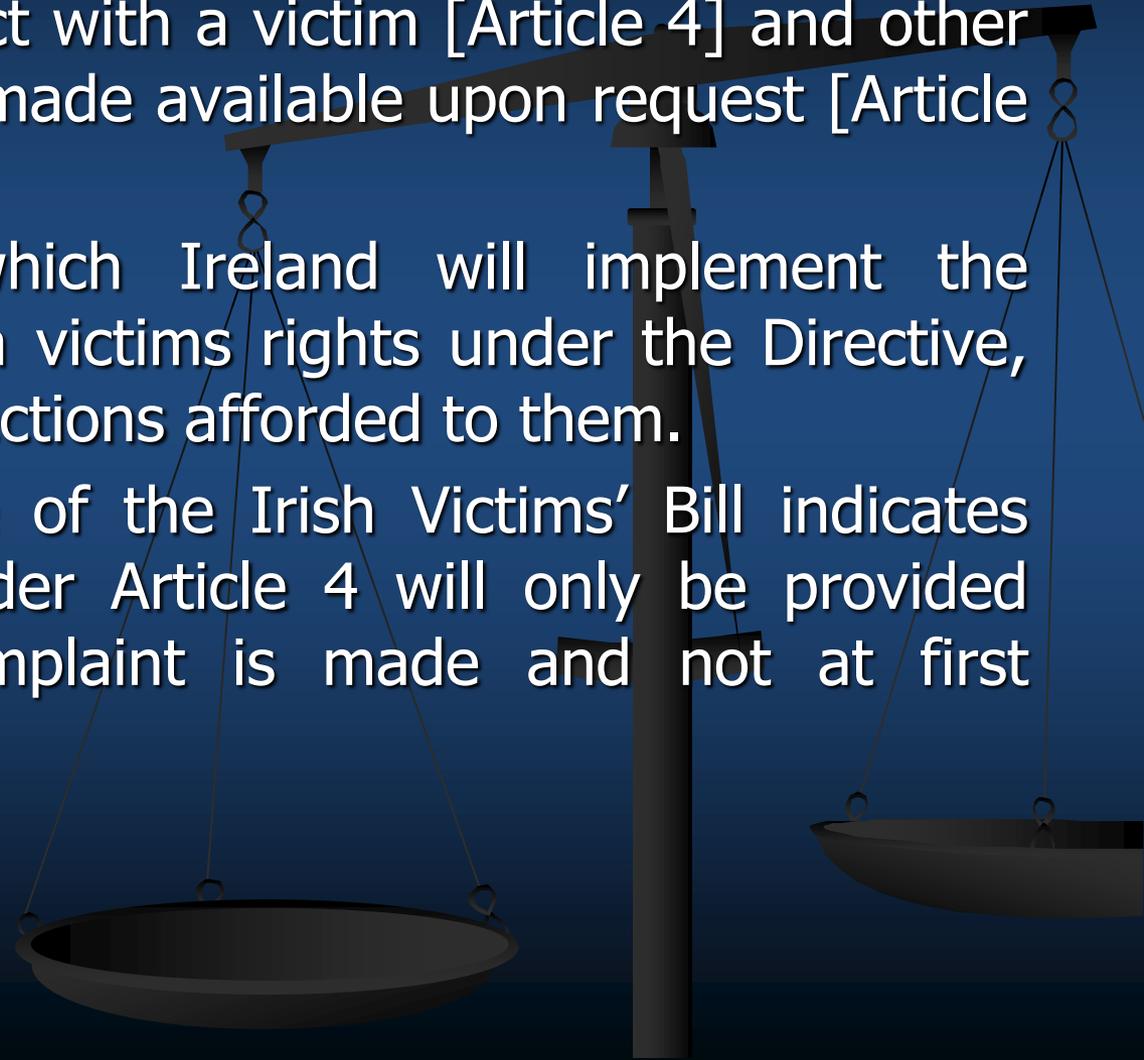
The VRA is aware of instances where the Gardaí [police] have refused to take statements from victims who are tourists or blind/suffer from mental disabilities. We are also aware of instances where they have put a victim at risk of serious injury/death by failing to act on information/complaint.

- Need to ensure that all victims can make a statement and that it is investigated appropriately - regardless of the mental and/or physical disabilities.
- Need to have training and accountability

B. The Provision of Information

The Directive requires that certain information should be provided on first contact with a victim [Article 4] and other information should be made available upon request [Article 6 & Article 11].

- The manner by which Ireland will implement the Directive may limit a victims rights under the Directive, and reduce the protections afforded to them.
- The current scheme of the Irish Victims' Bill indicates that information under Article 4 will only be provided when a formal complaint is made and not at first contact.



C. The use of testimonial aids in practice in court proceedings - Intermediaries

Intermediaries are permitted under section 14 (1) of the Criminal Evidence Act 1992 provides: *Where—*

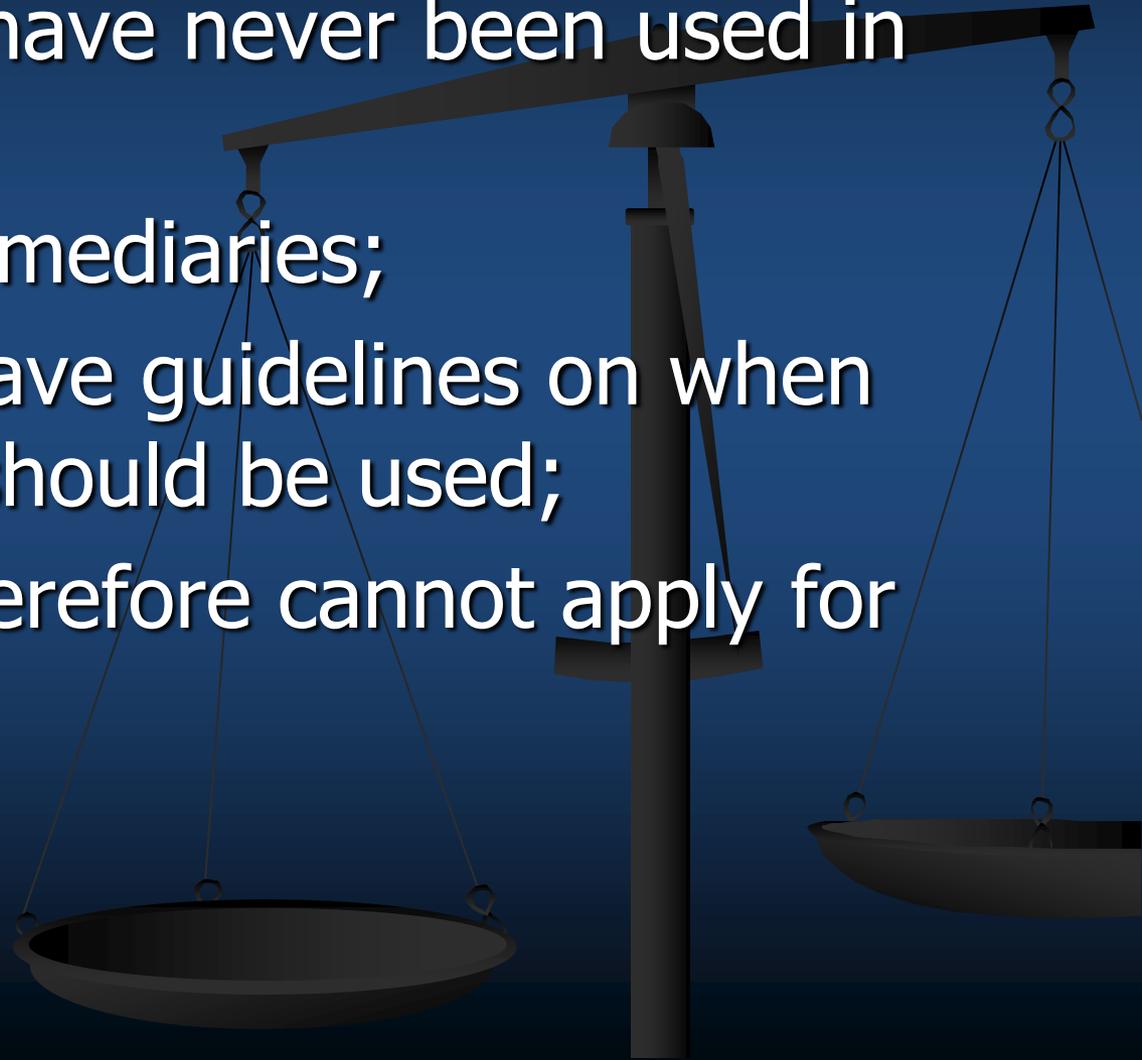
*(a) a person is accused of an offence to which this Part applies, and
(b) a person under 17 years of age is giving, or is to give, evidence through a live television link,*

the court may, on the application of the prosecution or the accused, if satisfied that, having regard to the age or mental condition of the witness, the interests of justice require that any questions to be put to the witness be put through an intermediary, direct that any such questions be so put.

(2) Questions put to a witness through an intermediary under this section shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his age and mental condition the meaning of the questions being asked.

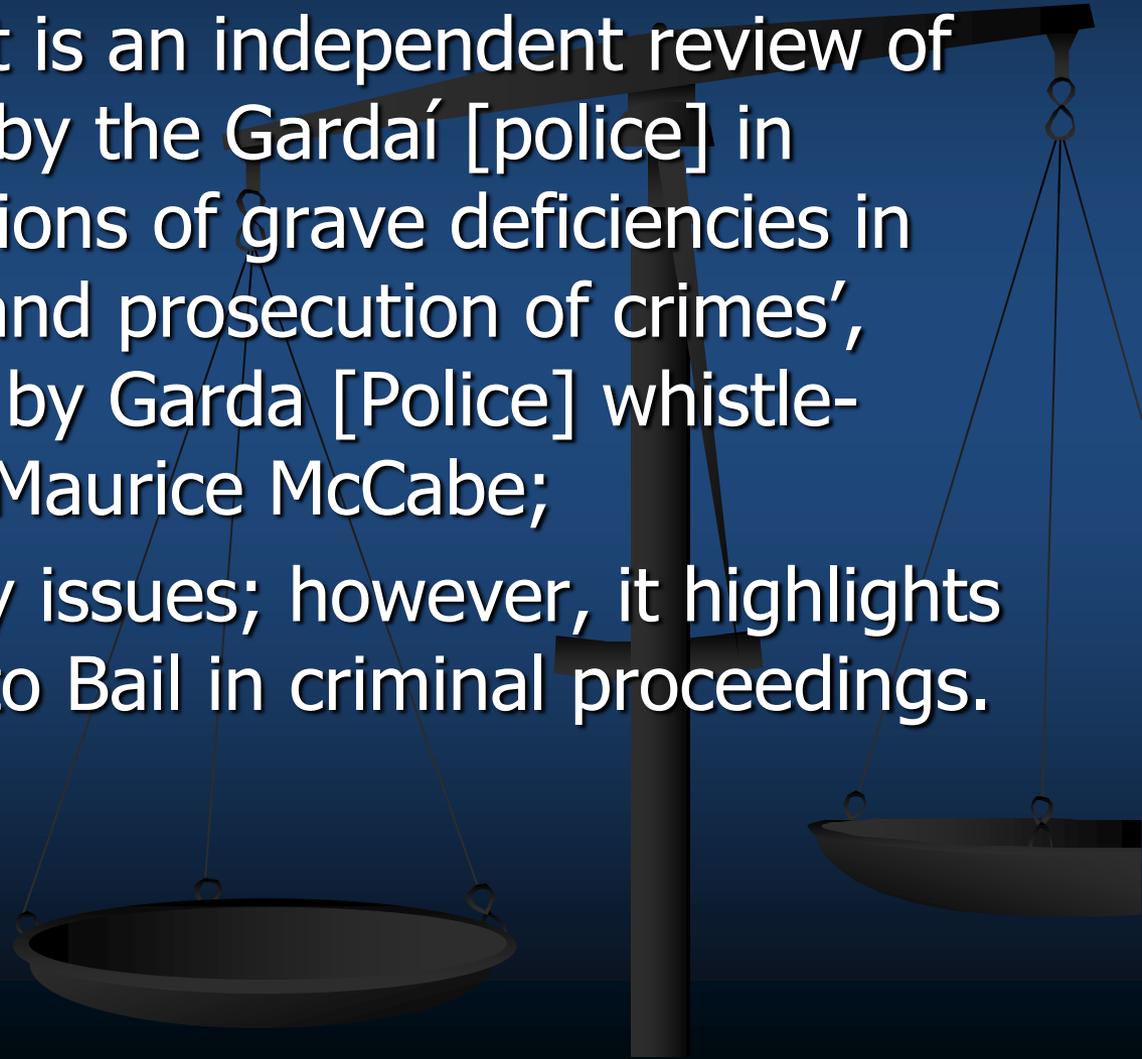
C. Protection in Court Intermediaries

- Intermediaries have never been used in Ireland. Why?
- No trained intermediaries;
- DPP does not have guidelines on when intermediaries should be used;
- Prosecutions therefore cannot apply for their use.



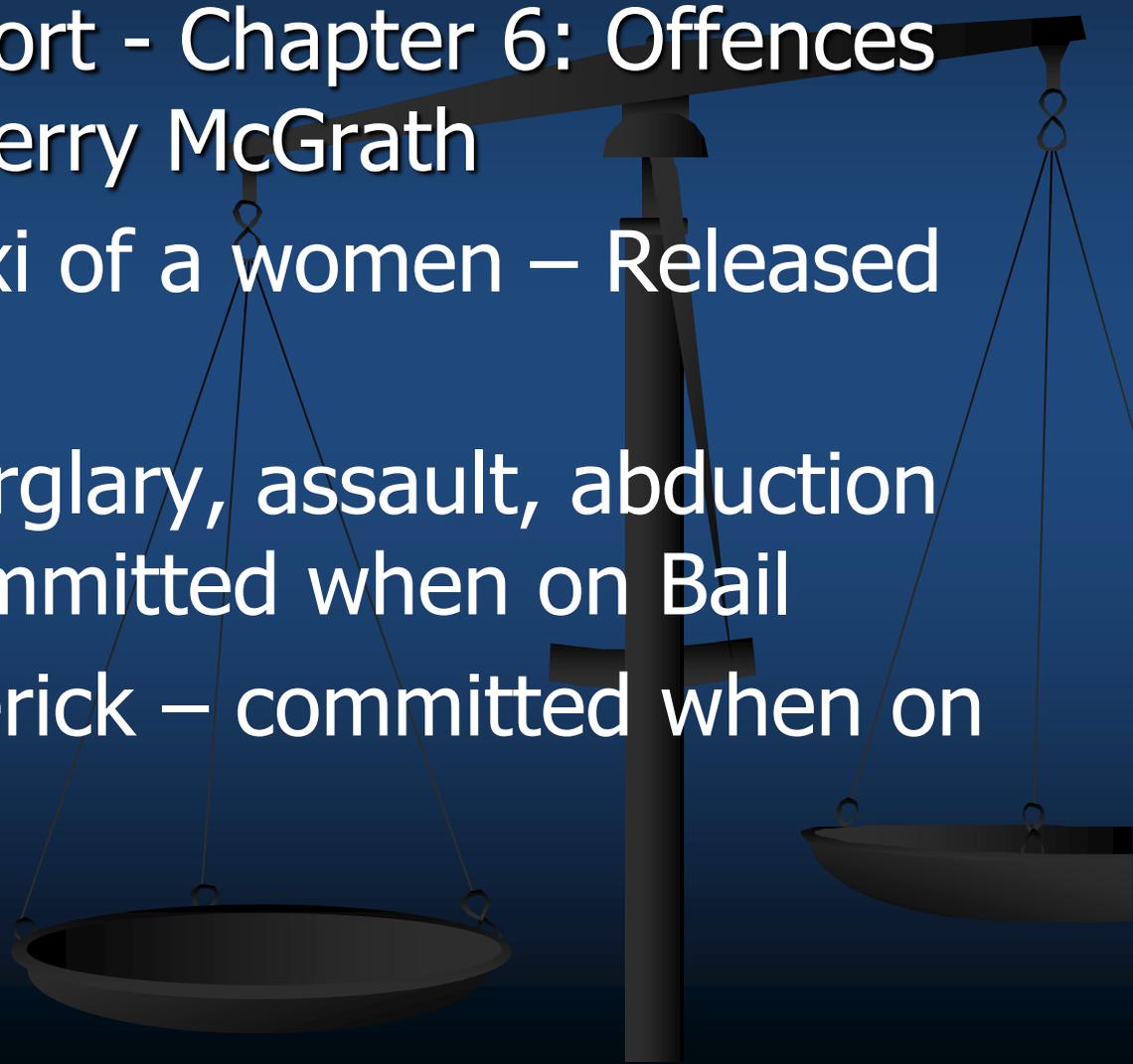
D. The role bail plays in protecting victims in criminal proceedings

- The Guerin Report is an independent review of the actions taken by the Gardaí [police] in relation to 'allegations of grave deficiencies in the investigation and prosecution of crimes', which were made by Garda [Police] whistleblower, Sergeant Maurice McCabe;
- It deals with many issues; however, it highlights issues in relation to Bail in criminal proceedings.

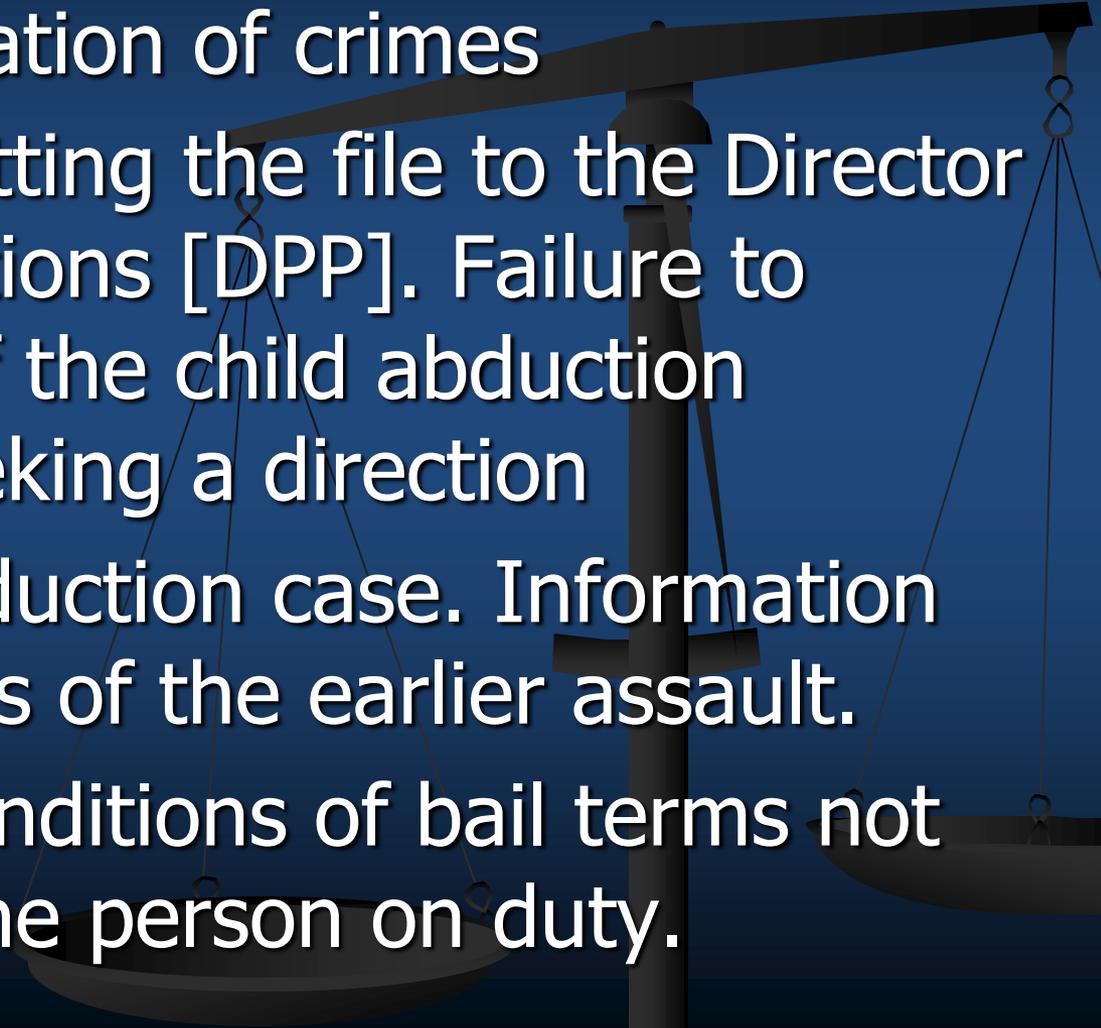


The Guerin Report: Offences Committed by Jerry McGrath

- The Guerin Report - Chapter 6: Offences Committed by Jerry McGrath
 1. Assault in a taxi of a women – Released on Bail
 2. Aggravated burglary, assault, abduction of a child – committed when on Bail
 3. Murder in Limerick – committed when on Bail



The Guerin Report



- a. Pulse System – The Garda Information system – classification of crimes
- b. Delay in submitting the file to the Director of Public Prosecutions [DPP]. Failure to inform the DPP of the child abduction charges when seeking a direction
- c. Bail in child abduction case. Information on the seriousness of the earlier assault.
- d. Breach of conditions of bail terms not noticed as only one person on duty.

The Guerin Report

Victim 1 - issues:

1. Inexperienced garda which took statement from victim. Garda may not have considered a potential sexual element to the assault.
2. No adequate consideration given to the victims safety in relation to Bail Application?
3. Victim contacted and told not to go to court as the case was definitely not going ahead – Contacted later that day that the defendandant had gotten 9 months

The Guerin Report

Victim 1 - issues:

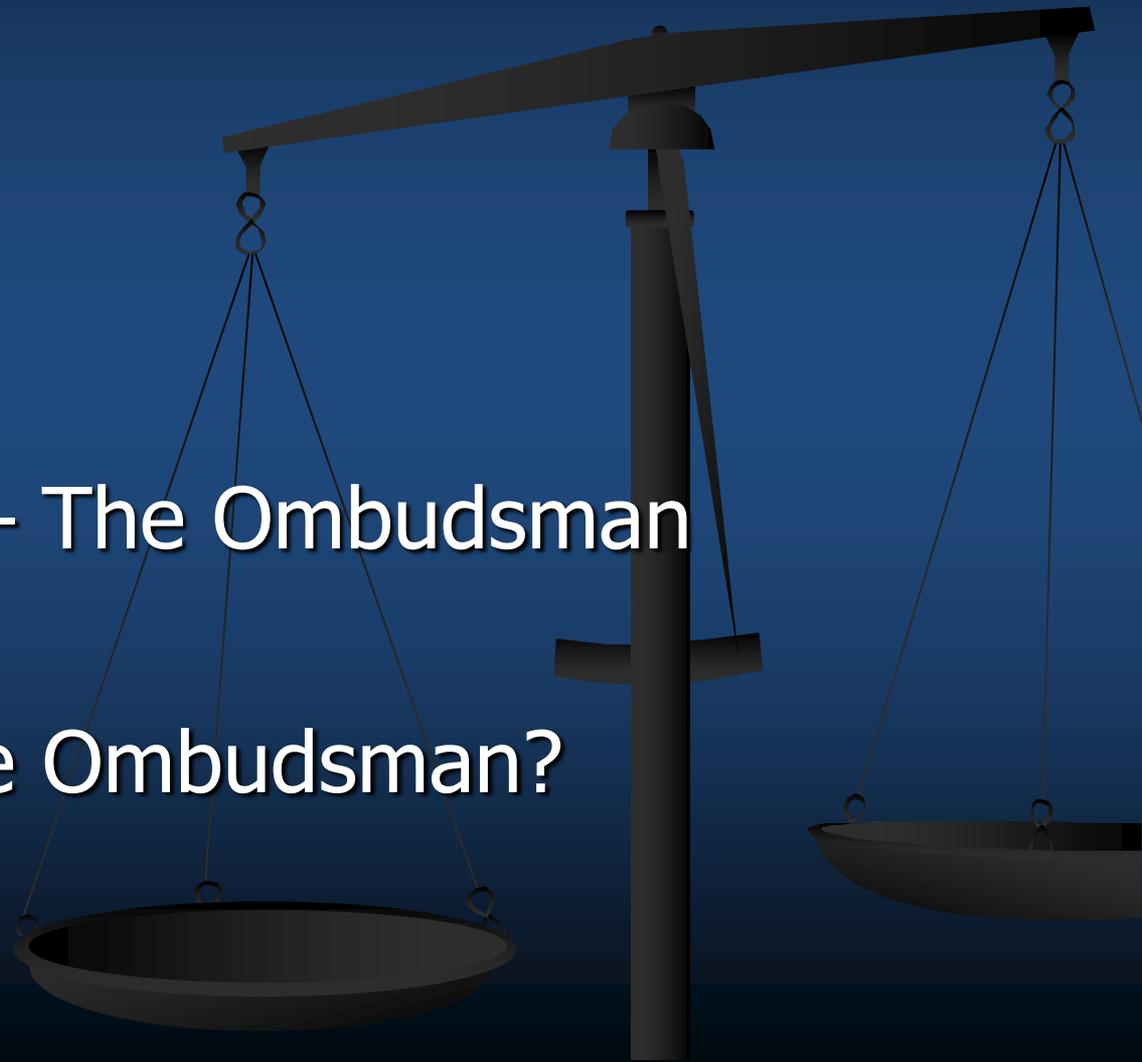
4. Victim called the superintendent to find out why she was told not to go to court – calls were not returned.

5. Victim Impact Statement – Not addressed in court. Furthermore no information given in court on the affect of the offence on the accused.

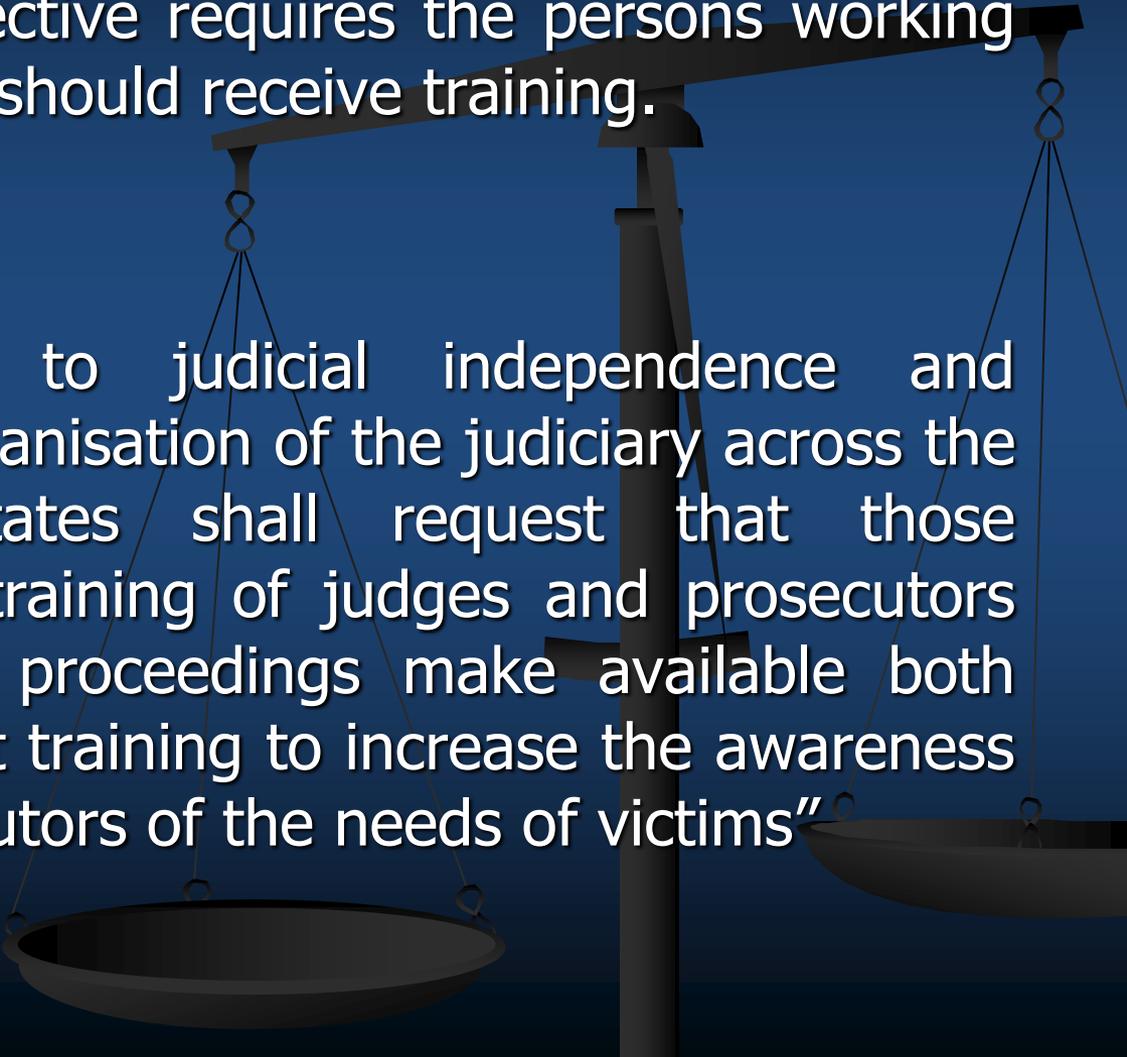
6. Information available in the media, which the victim was not told by the Gardaí.

E. How can a victim complain in Ireland if their rights under the Directive are not protected in criminal proceedings;

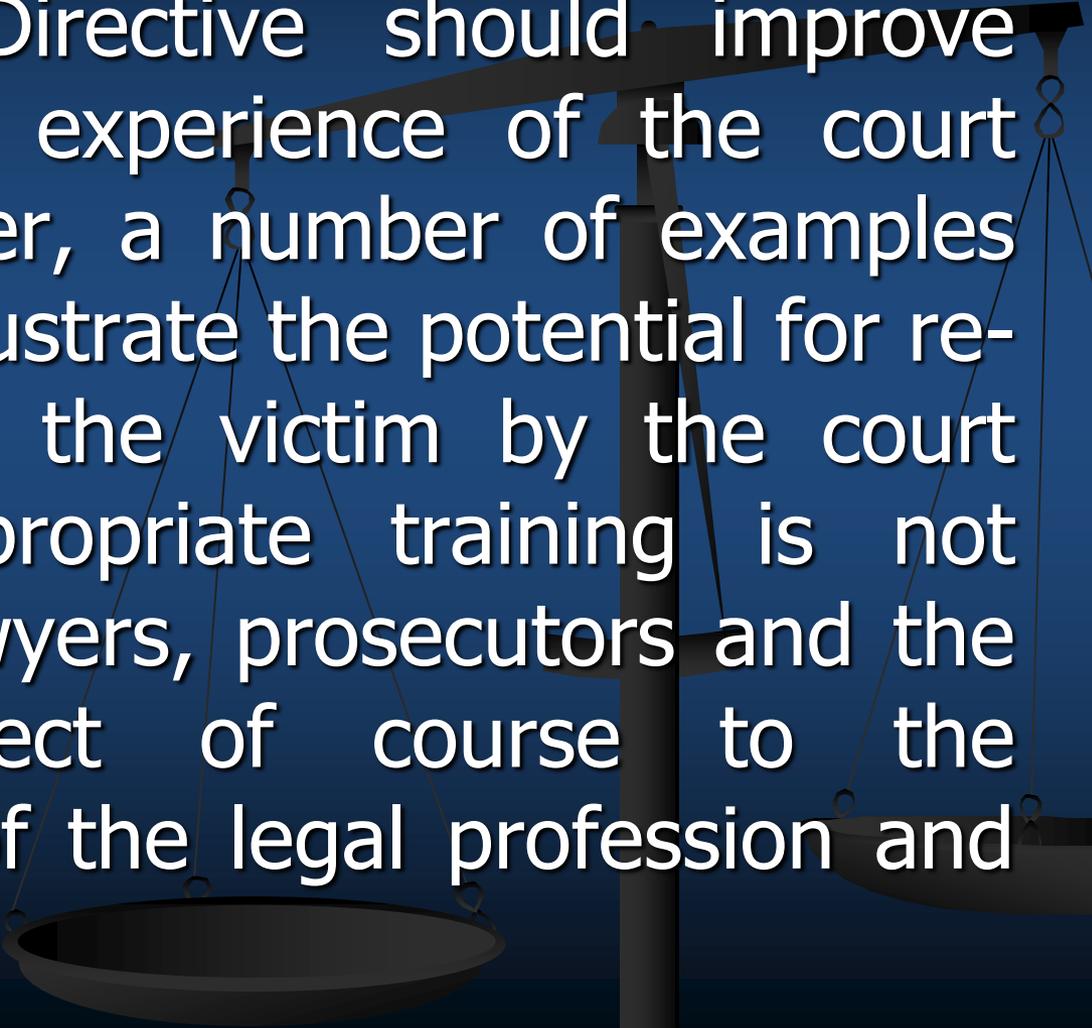
- DPP
- Gardaí
- Law Society
- Bar Council
- Courts Service – The Ombudsman
- GSOC
- Victims of Crime Ombudsman?



F. Implementing the Directive: Training

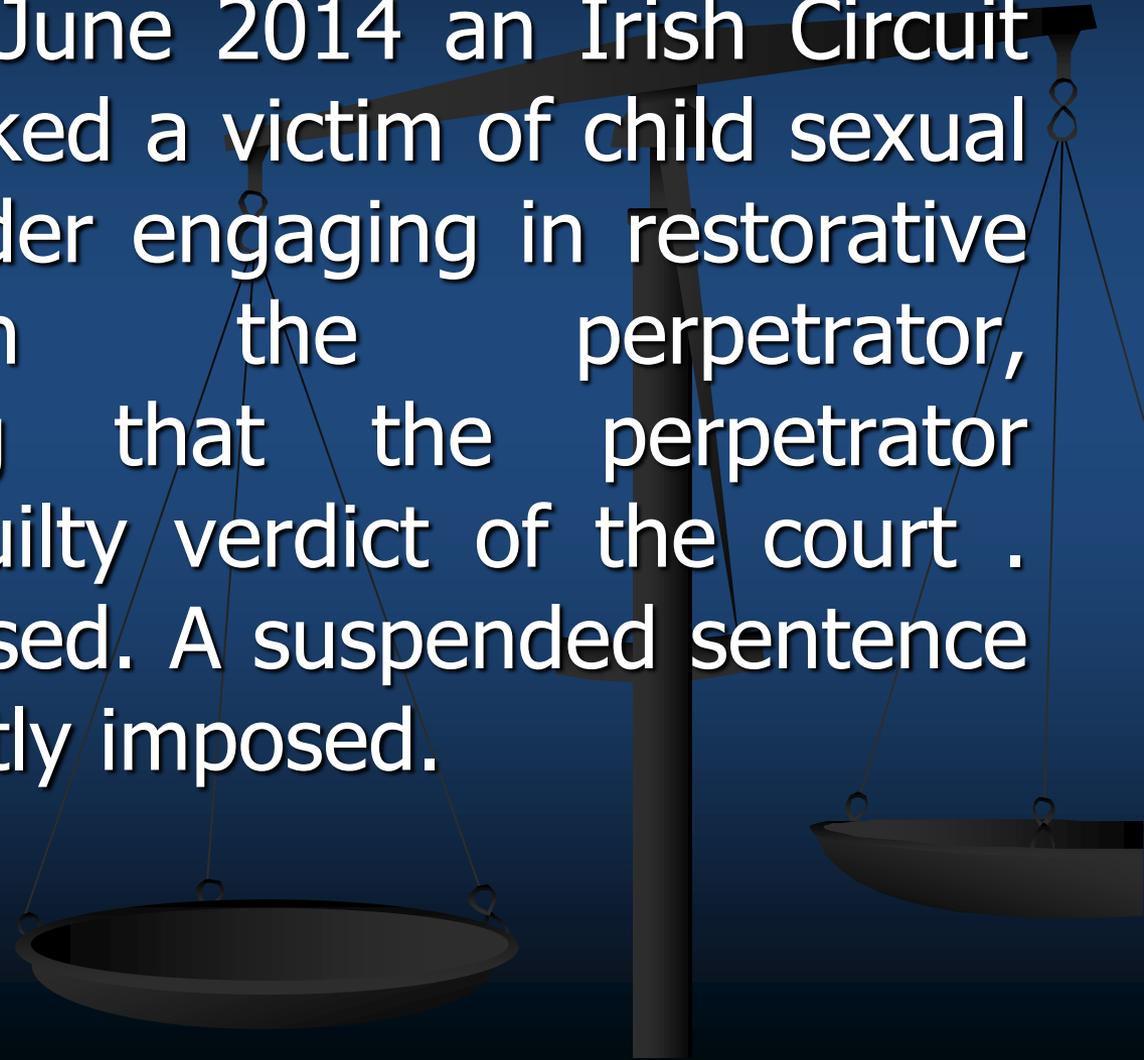
- Article 25 of the Directive requires the persons working with victims of crime should receive training.
 - Article 25 (2) states:-
 - “Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims”
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F. Training

- The Victims' Directive should improve victims' overall experience of the court system; however, a number of examples from Ireland, illustrate the potential for re-victimisation of the victim by the court process if appropriate training is not obtained by lawyers, prosecutors and the judiciary, subject of course to the independence of the legal profession and the judiciary.
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F. Training

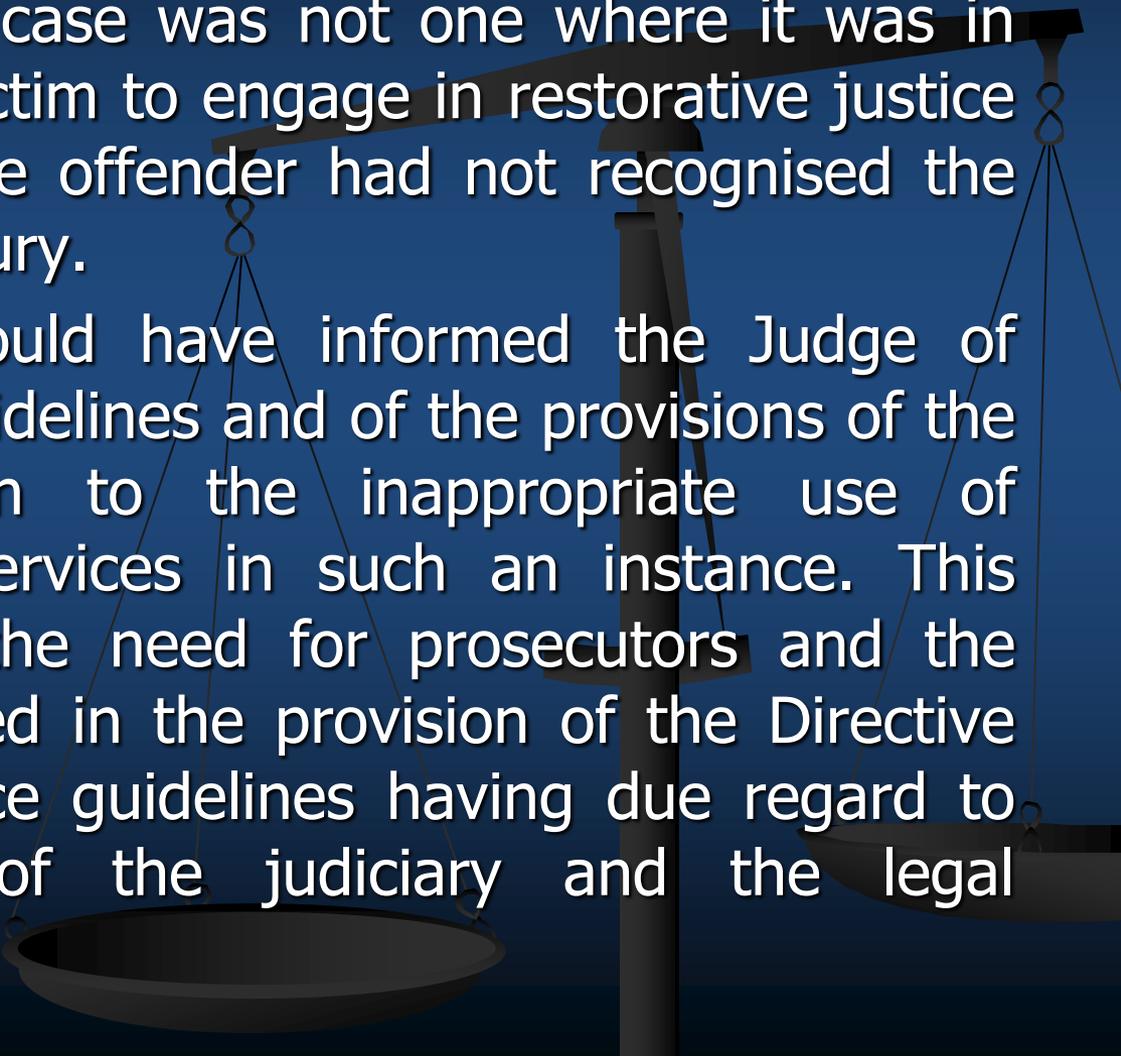
- On the 4th of June 2014 an Irish Circuit Court Judge asked a victim of child sexual abuse to consider engaging in restorative justice with the perpetrator, notwithstanding that the perpetrator rejected the guilty verdict of the court. The victim refused. A suspended sentence was subsequently imposed.



F. Training

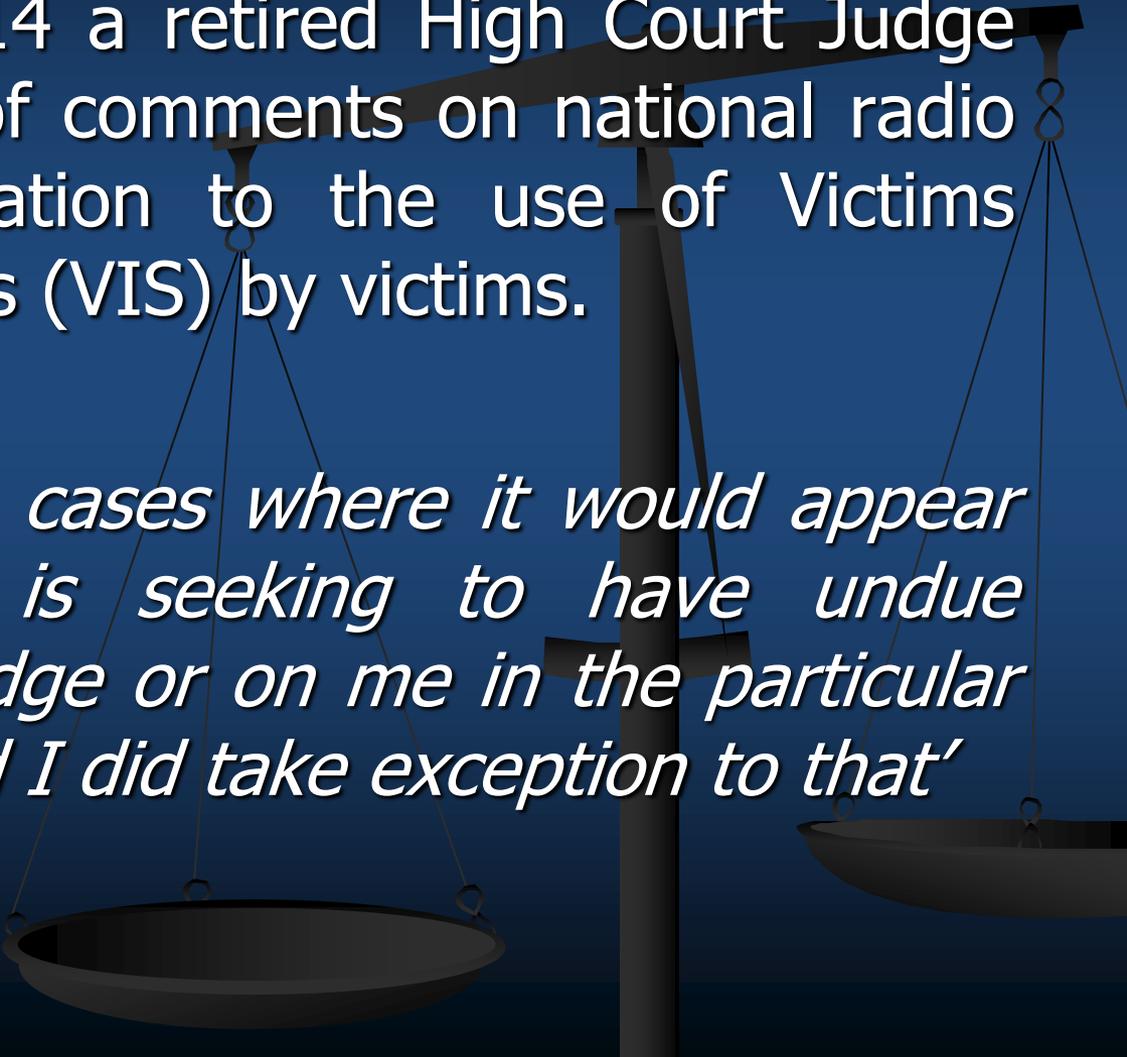
- Article 12 of the Victims' Directive provides for safeguards in the context of the use of restorative justice services. One of the main requirements is that *'the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time'* and the *'offender has acknowledged the basic facts of the case'*.

F. Training



- The aforementioned case was not one where it was in the interest of the victim to engage in restorative justice not least because the offender had not recognised the guilty verdict of the jury.
- The prosecution should have informed the Judge of restorative justice guidelines and of the provisions of the Directive in relation to the inappropriate use of restorative justice services in such an instance. This example illustrates the need for prosecutors and the judiciary to be trained in the provision of the Directive and restorative justice guidelines having due regard to the independence of the judiciary and the legal profession.

F. Training



- In September 2014 a retired High Court Judge made a number of comments on national radio in Ireland in relation to the use of Victims Impact Statements (VIS) by victims.

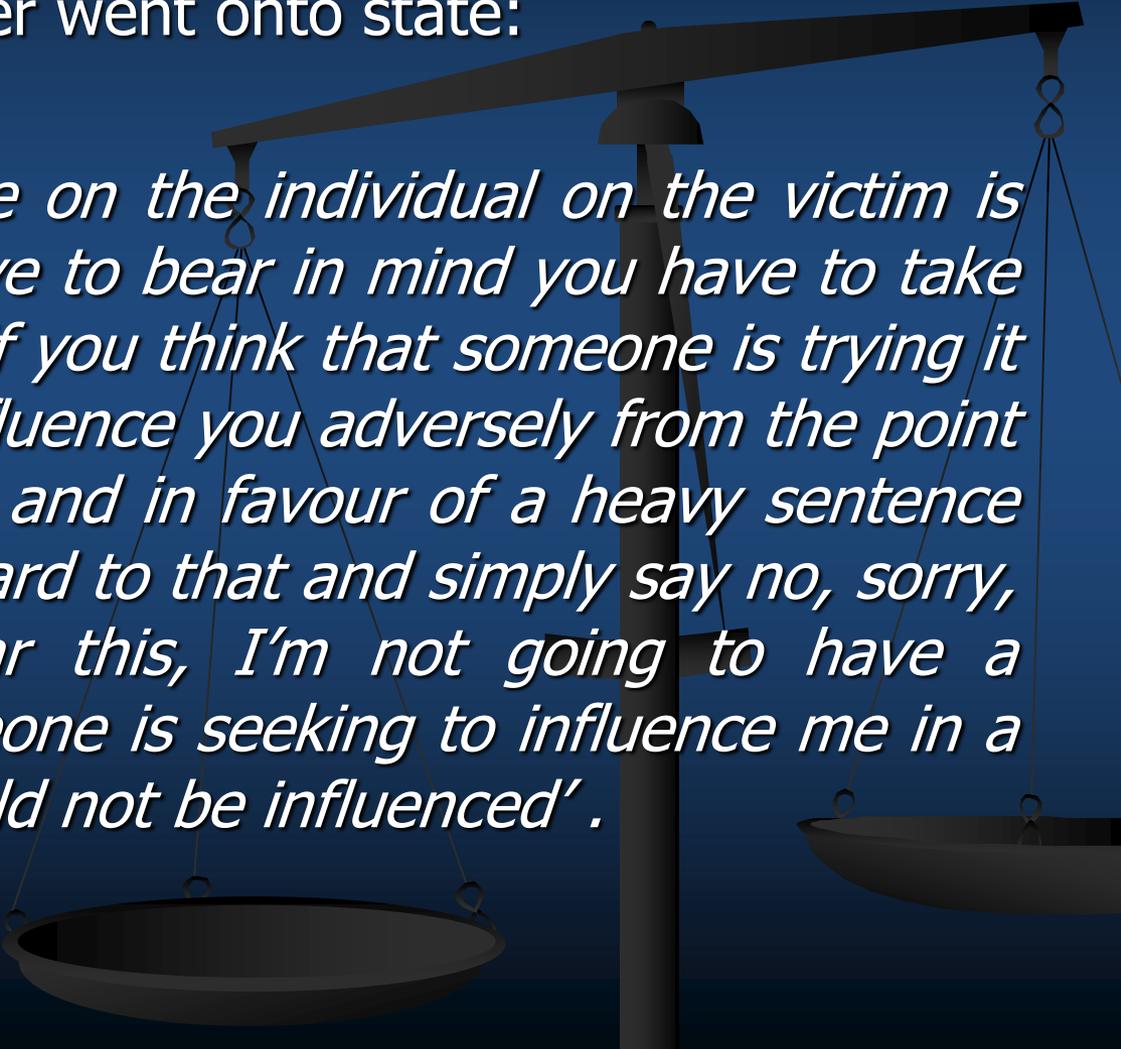
He stated:-

- *'There have been cases where it would appear that the victim is seeking to have undue influence on a Judge or on me in the particular circumstances and I did take exception to that'*

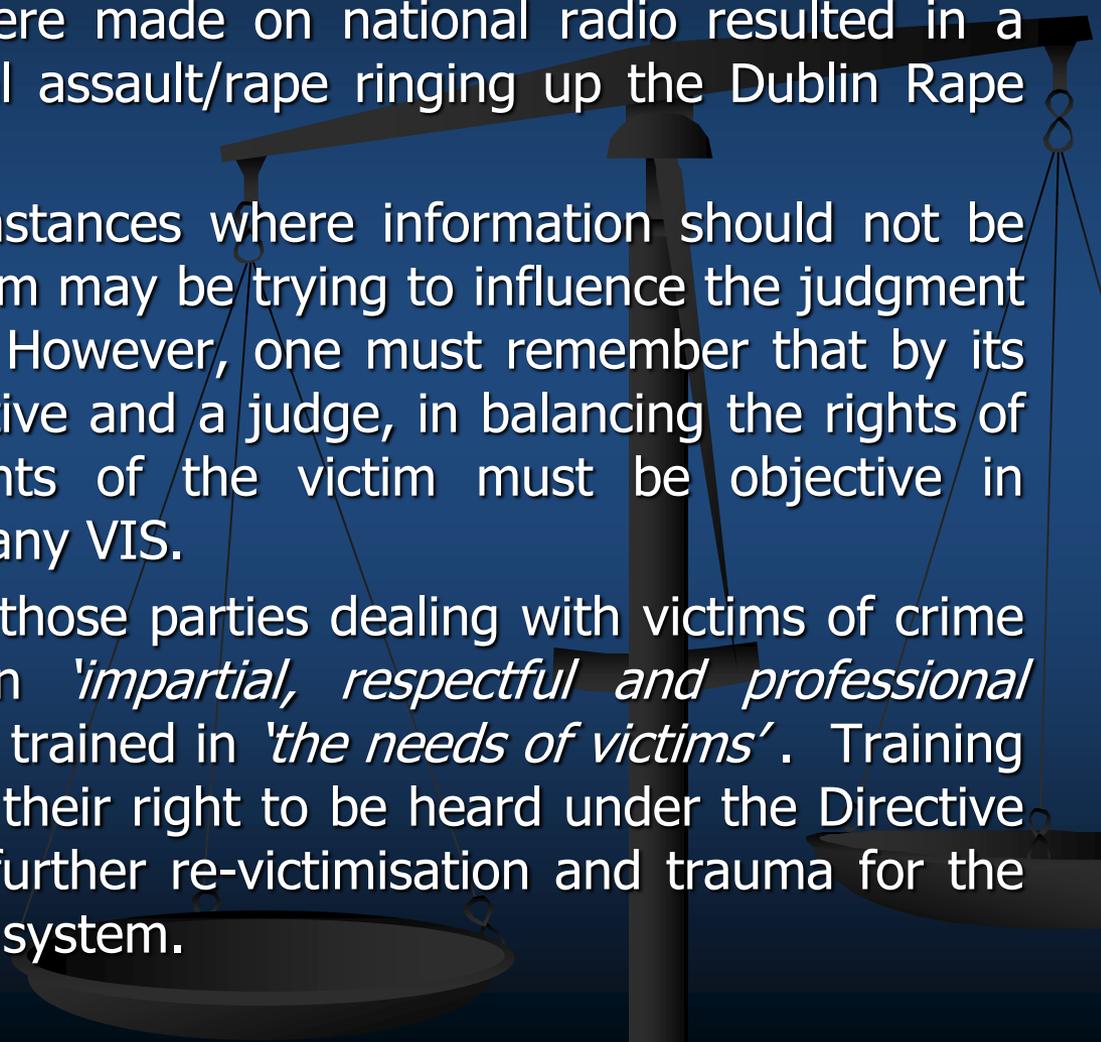
F. Training

- The retired Judge later went onto state:

`The effect of the crime on the individual on the victim is something that you have to bear in mind you have to take into consideration and if you think that someone is trying it on and is seeking to influence you adversely from the point of view of the accused and in favour of a heavy sentence you must just have regard to that and simply say no, sorry, I'm not going to wear this, I'm not going to have a situation in which someone is seeking to influence me in a manner in which I should not be influenced'.



F. Training



These statements which were made on national radio resulted in a number of victims of sexual assault/rape ringing up the Dublin Rape Crisis Centre in distress.

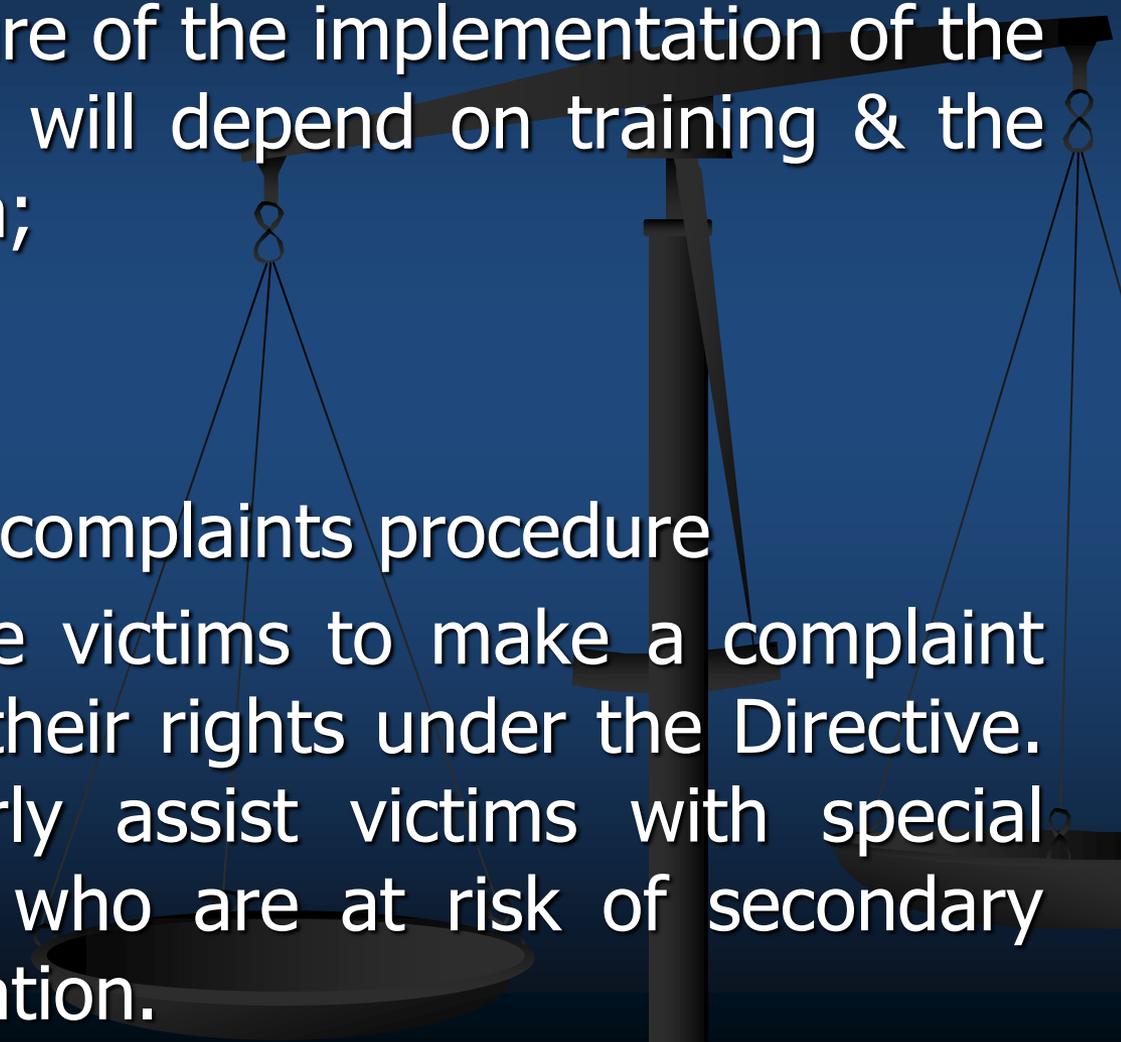
There are of course circumstances where information should not be included in a VIS and a victim may be trying to influence the judgment either directly or indirectly. However, one must remember that by its very nature a VIS is subjective and a judge, in balancing the rights of the accused with the rights of the victim must be objective in considering the contents of any VIS.

The Directive provides that those parties dealing with victims of crime should treat victims in an *'impartial, respectful and professional manner'* and they should be trained in *'the needs of victims'*. Training in the needs of victims and their right to be heard under the Directive would assist in preventing further re-victimisation and trauma for the victim in the criminal justice system.

5. Enforcement mechanisms at a domestic level



Enforcing the Directive in Ireland



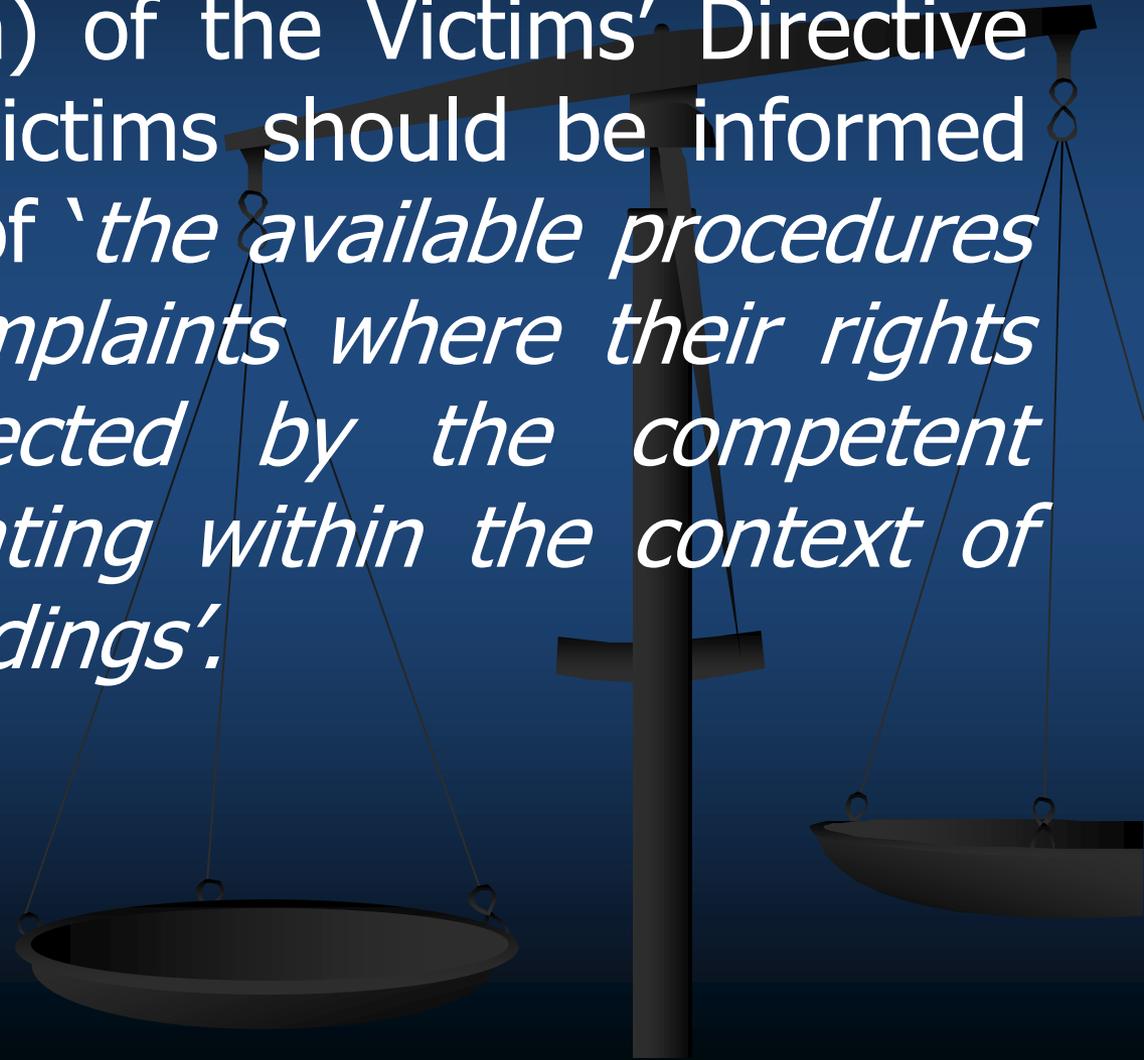
The success or failure of the implementation of the Directive in Ireland will depend on training & the implementation of a;

- a. transparent,
- b. clear and;
- c. Easy and timely complaints procedure

which would enable victims to make a complaint about a breach of their rights under the Directive. It would particularly assist victims with special needs and victims who are at risk of secondary and repeat victimisation.

Complaints Procedure

- Article 4 (1) (h) of the Victims' Directive provides that victims should be informed by the Gardaí of *'the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings'*.

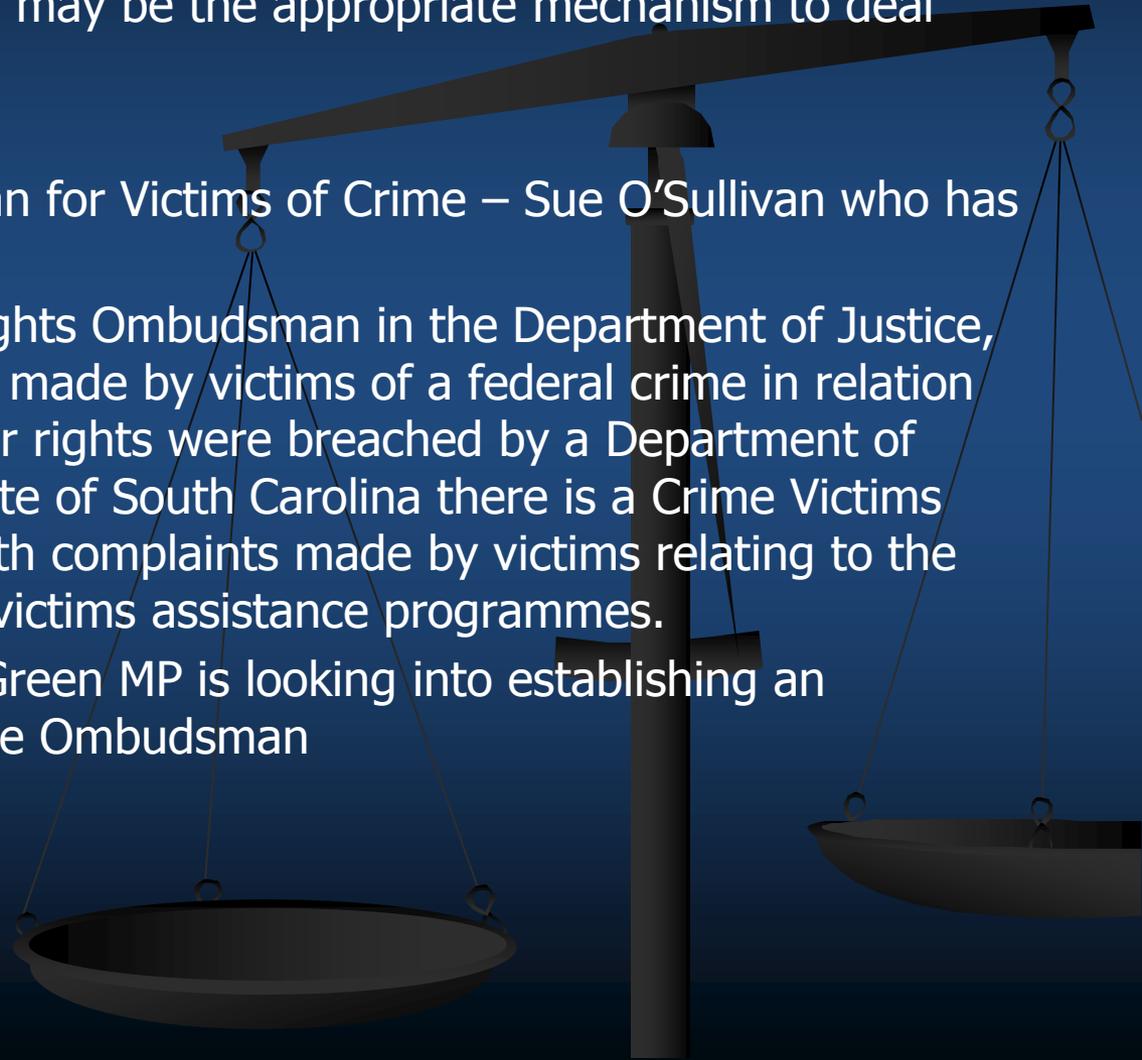


Complaints Procedure

A Victims of Crime Ombudsman?

A Victim of Crimes Ombudsman may be the appropriate mechanism to deal with victims complaints:

- Canada: Federal Ombudsman for Victims of Crime – Sue O’Sullivan who has spoken at the Conference
- US: Office of the Victim’s Rights Ombudsman in the Department of Justice, which deals with complaints made by victims of a federal crime in relation to the manner by which their rights were breached by a Department of Justice employee. In the state of South Carolina there is a Crime Victims Ombudsman which deals with complaints made by victims relating to the criminal justice system and victims assistance programmes.
- In the UK Minister Damian Green MP is looking into establishing an independent Victims of Crime Ombudsman



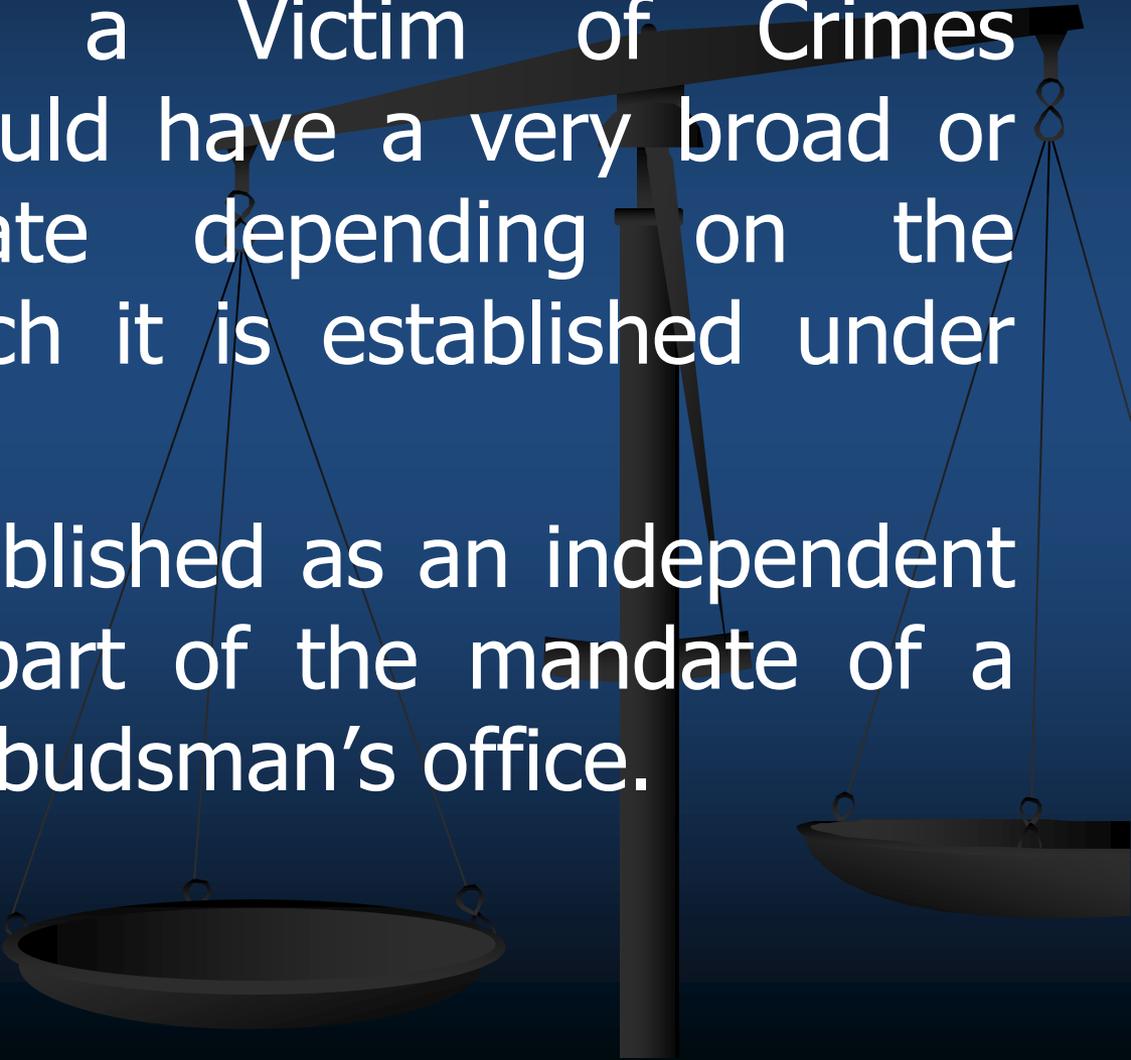
Complaints Procedure

A Victims of Crime Ombudsman?

- The foreword to the Directive recommends that *“Member States should consider developing ‘sole points of access’ or ‘one-stop shops’, that address victims’ multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation”*. A Victim of Crimes Ombudsman offers such a solution.

Complaints Procedure

A Victims of Crime Ombudsman?

- If established a Victim of Crimes Ombudsman could have a very broad or narrow mandate depending on the manner in which it is established under legislation.
 - It could be established as an independent body or form part of the mandate of a pre-existing Ombudsman's office.
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YOUR QUESTIONS & COMMENTS



The END

