

NATIONAL REPORT



**Victims of Crime
Implementation Analysis
of Rights in Europe**



VOCIARE
Victims of Crime
Implementation Analysis
of Rights in Europe

promotor



**Victim Support
Europe**

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APAV
Apoio à Vitima



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DISCLAIMER

All views expressed in the present report are those of the authors and not of the European Commission. Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lays with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report.

The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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EXECUTIVE SUMMARY

Directive 2012/29/EU (hereinafter, Victims' Directive) provides minimum rights to all victims of crimes and constitutes the core of the European Union's legislative package which gives all victims of crimes minimum rights to information, support and protection.

Member States were required to transpose the Victims' Directive into national law by the 16th of November 2016. The present national research report aims to assess the practical implementation of the Victims' Directive in Ireland.

Ireland has transposed the Directive in Ireland via the *Criminal Justice (Victims of Crime) Act 2017*.

After an assessment of that transposing legislation it was possible to detect **gaps and challenges** in the practical implementation of the Directive in Ireland.

- '**Competent authority**' was not defined in the transposing legislation to include all prosecuting authorities which prosecute criminal offences where there is a natural victim;
- **Information** being provided to victims of crime by the Gardaí (Police) does not fully comply with the Victims' Directive;
- There are concerns in relation to the quality of **interpretation and translation services**, which are provided to victims of crime;
- There is a lack of dedicated face-to-face **victim support services** nationwide for some victims of crime;
- Not all members of An Garda Síochána (the Irish Police Force) working with victims of crime have been **trained** as is required by Article 25 of the Victims Directive;
- There are outdated and insufficient **infrastructure** in courts and Garda Stations which make providing special protections difficult;
- Victims may have to travel long distances to access **specialized services**.

Despite the gaps and challenges, there are a number of good practices to point to as well.

- The **Office of the Director of Public Prosecutions (DPP)** has adhered to their obligations to provide information, support and protection under the Victims' Directive. With the creation of a dedicated "Victims' Liaison Unit", the DPP is available and responsive to

victims and their families.

- The **Prison Service** has been very proactive to put procedures in place to ensure that they adhere to their obligations under the Victims' Directive.
- An EU funded project lead by the **Irish Counsel for Civil Liberties (ICCL)** in conjunction with the **Bar of Ireland** and **the Law Society of Ireland** is leading the way with respect to training professionals working with victims of crime, in a format that is easily accessible.

THE DIRECTIVE HAS PAVED THE WAY FOR A HUGE CULTURAL SHIFT IN REGARD TO THE ROLE OF THE VICTIM IN THE CRIMINAL JUSTICE SYSTEM. THERE IS A MUCH GREATER AWARENESS OF THE NEEDS AND RIGHTS OF VICTIMS OF CRIME BY MANY OF THE ORGANISATIONS AND INDIVIDUALS WITHIN THE CRIMINAL JUSTICE SYSTEM. DESPITE THE GAPS AND CHALLENGES FACING IRELAND IN THE FULL IMPLEMENTATION OF THE VICTIMS' DIRECTIVE, A LOT HAS ALREADY BEEN ACCOMPLISHED AND MORE POSITIVE CHANGES APPEAR TO BE ON THE HORIZON.

INTRODUCTION

This report assesses the practical implementation of the Victims' Directive in Ireland in the context of the terms of reference of project *VOCIARE - Victims of Crime Implementation Analysis of Rights in Europe*.

A research methodology was developed by the lead project partners APAV and adopted to an Irish context. To support the work presented in this report, three research tools were used: desk research, an online survey, and one on one interviews.

The desk research permitted a legislative analysis and a mapping of competent authorities and organisations in Ireland. Further research was needed to determine whether the Directive was transposed in practice and not just on paper. Mapping competent authorities and organisations was also essential to ensure that detailed answers were received from the authorities, services and organisations which work in direct contact with victims.

The desk research was the first stage of national research. It included research of legal and policy instruments, literature and existing studies, opinions, discussions and other sources which are related to victims' rights. It collected and systematized existing quantitative and qualitative information on the research topic, covering i.e. Statistics on victim's rights, academic literature, media reports and relevant NGO researches and government reports.

The national online survey consisted of closed-ended questions directed at organisations and practitioners having contact with victims (police, prosecutors, judges and court staff, policy makers and victim support organisations).

The third instrument, the interviews, served as an addition to desk research. Any questions to which desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss such specific questions, in addition to the list of questions which were provided via the research tools. The Interviewees come from different professions working with victims of crime. They have not been identified to enable them to speak freely about the practical realities of implementing the Directive in Ireland.

In terms of structure this report first provides a basic overview of the legal framework to understand the transposition status of the Victims' Directive into Irish law. Subsequently, an evaluation of the practical implementation of the Directive will be presented. This document will explain if and how articles and rights provided by the Directive are transposed into Irish law. Each right will be briefly described and explained, as well as its transposition and practical implementation.

This report will conclude by identifying good practices, gaps, challenges and recommendations.

The author would like to thank the interviewees for providing their time to engage with this project. Thanks should also be given to Maria McDonald for reviewing a draft version of this report and providing for comments, views and feedback, which were incorporated with her permission.

The ICCL Guide on the Victims Directive which was drafted by Maria McDonald has been quoted throughout this report. Permissions has been sought for its use. The ICCL report outlines the legal application of the Victims Directive into Irish law via the *Criminal Justice (Victims of Crime) Act 2017* and it has been used and is endorsed in this context.

BASIC OVERVIEW OF THE LEGAL FRAMEWORK

The Victims' Directive came into force on the 16th of November 2015. It took Ireland almost two years to transpose the Directive into Irish law. They did so via a single legislative act, the *Criminal Justice (Victims of Crime) Act 2017*.

The former Minister for Justice, Frances Fitzgerald, the Department of Justice, the Justice Committee, Delegates in the Dáil and Seanad and their aids (Irish houses of parliament) and NGO's played a major part in the development and implementation of the *Criminal Justice (Victims of Crime) Act 2017*.

The *Criminal Justice (Victims of Crime) Act 2017* was signed into law on the 5 November 2017. The *Criminal Justice (Victims of Crime Act) 2017* was commenced¹ on 27 November 2017 with the exception of S.19(2)(c) and S. 30.² S. 19 (2) (c) and S. 30 were subsequently commenced on the 30th of May 2018.³

Ireland does not have a set criminal code. Instead, criminal law is comprised of statutes and court decisions. The Irish criminal justice system is an adversarial system of law. Victims are not party to criminal proceedings although there are some minor exceptions.⁴ Victims have no special status and they are generally regarded as witnesses during the investigation and trial. Crimes are investigated by the Irish police force, An Garda Síochána. Serious (indictable) offenses are prosecuted by the Director of Public Prosecutions. Minor (summary) offenses are prosecuted by An Garda Síochána. All prosecutions are taken in the name of the People of Ireland. The standard of proof is "beyond a reasonable doubt".

The primary criminal courts in Ireland are District Court; Central Criminal Court; Circuit Court and the Court of Criminal Appeal. Summary offences are prosecuted in District Court with non-jury trials. Indictable offenses of murder, manslaughter, rape, piracy and treason are prosecuted in Central Criminal Court. Circuit Court hears all other indictable offenses as well as appeals from District Court. Both Central Criminal Court and Circuit Court conduct trials with a judge and a jury of twelve people. Appeals from these courts are heard in the Court of Criminal Appeal.

¹ Once a bill is passed by the relevant legislative bodies (Dáil and Seanad), the President signs it into law. It becomes an Act and is added to the Statute Book. However, some Acts come into force immediately, while others are commenced on a later date by a relevant government Minister.

² S.19(2)(c) relates to measures under Part III of the Criminal Evidence Act 1992 enabling the victim to give evidence through a live television link, an intermediary, enabling a screen or other similar device. Section 30 Relates to an amendment of the Criminal Evidence Act 1992. Changes to court rules and administration were required prior to the commencement of these sections and they were subsequently commenced on 30 May 2018.

³ S.I. No 173/2018 Criminal Justice (Victims of Crime) Act 2017 (Commencement) Order 2018

⁴ Section 26 (3) (b) Civil Legal Aid Act 1995; Section 39 Sexual Offences Act 2017

When a member of the public has a concern about the conduct of An Garda Síochána, a complaint can be made to the Garda Síochána Ombudsman Commission (GSOC), GSOC is an independent statutory body that was established under the Garda Síochána Act 2005. They investigate a wide category of complaints related to abuse of authority; neglect of duty; and discourtesy. They also conduct investigations into complaints related to possible criminal offences committed by a member of An Garda Síochána.

EVALUATION OF PRACTICAL IMPLEMENTATION

ARTICLE 2 - DEFINITIONS

For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

In advance of the enactment of the *Criminal Justice (Victims of Crime) Act 2017* there was no legal definition of a victim of crime in Irish criminal law and rather legislation referred to a '*complainant*'. The term '*complainant*' only includes persons who have made a formal complaint to the Gardaí. The term victim, under Article (2) of the Directive includes persons who have not made a complaint or indeed may never report the crime. Under the Directive, victims who do not report a crime are still entitled to minimum rights.⁵

Section 2 *Criminal Justice (Victims of Crime) Act 2017* defines a victim as '*a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by an offence*'. This mirrors the definition in the Directive, outlined above.

The law with respect to the definition of a family member under the *Criminal Justice (Victims of Crime) Act 2017* has recently been summarised in the ICCL Guide on the Victims' Directive such that:

⁵ Article 8 (5), Victims Directive

'Family members are deemed to be victims for the purpose of the Act if the death of the victim was directly caused by a criminal offence.⁶ A family member will not be entitled to the rights thereunder if they have been charged with or is under investigation for the death of the victim.⁷

The definition of a family member under the Criminal Justice (Victims of Crime) Act 2017 includes a spouse, civil partner, cohabitant, child or stepchild, parent or grandparent, a brother, sister, half-brother or half-sister, a grandchild, an aunt, uncle, nephew or niece of the victim. Any other person can also be deemed to be a family member where that individual is or was 'dependent on the victim'. Similarly, any other person can also be treated as a family member for the purpose of the legislation if 'a court, a member of the Garda Síochána, an officer of the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, a director of a children detention school or a clinical director of a designated centre, as the case may be' consider that the individual had a 'sufficiently close' connection that would justify him/her being treated as a family member.⁸

Section 3 of the Criminal Justice (Victims of Crime) Act 2017 provides that where more than one family member seeks to avail of the rights under the Act, a request can be made of the family members to nominate one person to receive information.⁹ If the family are not able to reach an agreement then a family member may be nominated by the relevant authority,¹⁰ having regard to the relationship between the family member and the victim.¹¹ These provisions give clarity as to who are entitled to the rights set out under the Directive and when they will be made available. However, notwithstanding any legal definition, a victim and family members can still face the challenge of being recognised as a victim of crime. A victim does not have to make a complaint to be entitled to the rights under the Directive, but if they are not recognised as a victim, they may not be provided with information on first contact or access to support.¹²

⁶ Section 2 (2), Criminal Justice Victims of Crime Act

⁷ *ibid*

⁸ Section 2 (g) (i)-(ii), Criminal Justice (Victims of Crime) Act 2017

⁹ Section 2 (g) (i)-(ii), Criminal Justice (Victims of Crime) Act 2017

¹⁰ The Garda Síochána, the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre.

¹¹ Section 3(b), Criminal Justice (Victims of Crime) Act 2017

¹² Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) pp 9/10 available at <https://victimsrightsalliance.com.files.wordpress.com/2018/03/guide-on-the-victims-directive-and-victims-act-feb-2018.pdf>

ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.

Section 22 (1) of the Criminal Justice (Victims of Crime) Act 2017 transposes Article 3 of the Victim's Directive.

It provides that An Garda Síochána (Irish police), the Ombudsman Commission, the Director of Public Prosecutions (DPP), the Courts, the Courts Service, the Irish Prison Service 'shall, when dealing with a victim ensure that any oral or written communications with the victim are in simple and accessible language and take into account the personal characteristics of the victim including any disability, which may affect the ability of the victim to understand them or be understood'.¹³

During criminal proceedings, a victim may be able to get access to an interpreter or a translator if they need assistance to be understood. Assistance can only be sought where the victim is a witness or is giving evidence and:

- a. if a victim requests assistance in being able to be understood or to understand (Section 22 (3) (a));
- b. it appears to the member of the Garda or DPP that assistance is needed (Section 22 (3)(b);
- c. or the court directs an interrupter or translator (Section 22 (3)(c);¹⁴

¹³ Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL February 2018) p 19

¹⁴ *Ibid*

The survey, conducted as part of this project, indicates that the majority of respondents believe the current practice of recognising individual communication needs is rather insufficient.¹⁵

However, some good practises were identified when assisting victims to understand and are understood.

The right of victims to be accompanied by a person of their choice at first contact is widely acknowledged and accommodated in practice across An Garda Síochána. In rare cases victims are asked to choose a different person to accompany them. This is done in cases where a Garda may have a concern about "undue influence" or if a Garda believes the victim can't speak freely.¹⁶ In all cases the reasons for the decision must be documented and are subject to review by a supervisor.¹⁷

There is no Garda-wide training regarding how to identify special communication needs and how to tailor communication with victims based upon their individual needs. However, according to the Garda National Victim Liaison Unit, a number of initiatives are in the planning stages. This includes a cooperative measure between An Garda Síochána and the Irish Association of Speech and Language Therapists in the creation of a roadmap for providing assistance in language tailored to specific needs.¹⁸

The DPP have created a booklet for victims to help them understand their right under the Directive to request a reason and review for why a decision was made not to prosecute. The booklet is in plain, simple to understand language and received Plain English approval from the Irish National Adult Literacy Agency (NALA).¹⁹

Feedback from support professionals who accompany victims to court indicate that, in general, judges and barristers use simple, appropriate language when addressing child victims and adult victims with special communication needs. One remarked, 'barristers generally treat the victims appropriately and use language the victim will understand'.²⁰

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16 Interviewee 3

17 Interviewee 2

18 ibid

19

20 Interviewee 4.

ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

The *Criminal Justice (Victims of Crime) Act 2017* only applies to investigations which are conducted by the Gardaí or the Ombudsman Commission. Such a restriction prevents victims from accessing information in any other form of prosecution or investigation. Any statutory authority who potentially has the power to prosecute a criminal offence would fall under the remit of Section 4 and places an obligation on them to offer a victim information without unnecessary delay.²¹

The Victims' Rights Alliance believes there are a large selection of other bodies which prosecute criminal offences where there is a natural person who is a victim of crime. In their view these bodies should also fall within the definition of a 'competent authority' for the purpose of the Directive. This was raised with Government by the Victims' Rights Alliance at the drafting stage of the *Criminal Justice (Victims of Crime) Act 2017*, however, a decision was made not to include these bodies as it was suggested by Government that they prosecuted regulatory offences rather than criminal ones. It has been identified that this might be incorrect as the regulatory bodies are prosecuting criminal offences, all be ones of a regulatory nature²². In effect the *Criminal Justice*

21 Comments by Maria McDonald BL

22 Interviewee 1. The example given was where someone dies on a construction site. The Health Services Authority (HAS) carries out the initial investigation to ascertain whether a criminal offence has taken place. That file is then sent to the DPP. In these cases there is a nature person who is a victim. The deceased and family members also have the status of a victim under the Victim's Directive; however, they do not fall within the remit of the

(Victims of Crime) Act 2017 needs to be amended to include a significant list of bodies which prosecute criminal offences. The list includes but is not limited to include the Health and Safety Authority (HSA), Health Information and Quality Authority (HIQA), and The Child and Family Agency (TUSLA).

The right to information under Article 4 of the Directive has been transposed via Section 7 (1) of the *Criminal Justice (Victims of Crime) Act 2017*. Its implementation has been explained as follows:

'Section 7 (1) provides that a victim is entitled to certain information on first contact with An Garda Síochána or the Ombudsman Commission. The Gardaí and the Ombudsman Commission investigate criminal offences and provide information to victims of crime in the context of criminal proceedings; however, the Directive legally requires them to offer information to a victim on first contact and without unnecessary delay.²³ Information 'shall' be provided to victims on the available victim support services including specialist support services;²⁴ on how to make a complaint about a criminal offence;²⁵ on a victim's role in the criminal justice system;²⁶ how and under what conditions a victim can access protection;²⁷ on legal advice and legal aid;²⁸ compensation, for example the power of the court to make a compensation order;²⁹ the interpretation and translation services which are available;³⁰ on complaint procedures if a victim's rights are not protected by the competent authority;³¹ on the available restorative justice services;³² on special measures and procedures where a victim is resident in another member state other than where first contact was made;³³ and on contact details of the person who will communicate with the victim about the case.³⁴ A victim does not have to make a complaint to access this information.'³⁵

An Garda Síochána currently do not provide all victims with the comprehensive information outlined in Article 4 of the Directive or Section 7 of the *Criminal Justice (Victims of Crime) Act 2017* on first contact.

After a complaint is made, a Victim Information Leaflet³⁶ along with an informational letter is sent by post to the victim by a Garda Victim Service Office.³⁷ However, some victims never receive the

23 Section 7 (1), Criminal Justice (Victims of Crime) Act 2017

24 Section 7 (1)(a), Criminal Justice (Victims of Crime) Act 2017

25 Section 7 (1)(b), Criminal Justice (Victims of Crime) Act 2017

26 Section 7 (1)(e), Criminal Justice (Victims of Crime) Act 2017

27 Section 7 (1)(h), Criminal Justice (Victims of Crime) Act 2017

28 Section 7 (1)(n), Criminal Justice (Victims of Crime) Act 2017

29 Section 7 (1)(j), Criminal Justice (Victims of Crime) Act 2017

30 Section 4 (1) (f), Victims Directive

31 Section 4 (1) (h,) Victims Directive

32 Section 7 (1) (m), Criminal Justice (Victims of Crime) Act 2017

33 Section 7 (1) (f), Criminal Justice (Victims of Crime) Act 2017

34 Section 4 (1) (i), Victims Directive

35 Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) p 17

36 An Garda Síochána Victim Information Leaflet <https://www.garda.ie/en/Victim-Services/Where-else-can-I-get-support-/Victims-Information-Leaflet-English-and-Irish-Version-2016.pdf>

37 A further explanation of Garda Victim Service Offices is provided under Article 5.

information.³⁸ Furthermore, the leaflet is not compliant with the Directive. The leaflet includes some of the information required in Article 4, such as information about support services and compensation, but excludes other information such as how and when a judge may make an order for compensation. It is also not in language which is easy to understand.

A revision of the Victim Information Leaflet is currently underway. It is intended that the updated leaflet will address the information deficiencies in the current leaflet. It has been indicated that once approved, it will undergo the NALA Plain English process and it will also be translated into 37 languages.³⁹ However, there is no indication that the timing of victims receiving the information will change.

The Garda Síochána Ombudsman Commission (GSOC) is an independent statutory body, established under the Garda Síochána Act 2005. GSOC's primary responsibility is to deal with complaints made by members of the public concerning the conduct of members of the Garda Síochána.

GSOC provides a specially created information leaflet to complainants, informing them of their rights per the Directive; of what they can expect from GSOC in terms of how their complaint will be dealt with; and of support available to them from other agencies.⁴⁰ Although the leaflet is designed specifically for complainants alleging a criminal offense, a representative of GSOC has stated that the information is provided to everyone upon first contact with GSOC despite the fact that many of the cases handled by GSOC are ultimately investigated as breaches of Garda policy and procedures and not as criminal offenses.⁴¹

38 Interviewee 1; Survey Results

39 Interview 2

40 GSOC Annual Report 2016, p 40

41 Kathryn Doherty, Commission for the Support of Victims of Crime Consultative Forum, April 2018.

ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.

Section 12 (5)-(8) of the *Criminal Justice (Victims of Crime) Act 2017* transposes Article 5 of the Directive. If a victim makes a formal complaint to the Gardaí or to GSOC, then the victim should be provided with a written acknowledgement.⁴² The acknowledgment should include the 'basic elements of the alleged offence' and how a victim can access information with respect to the complaint.⁴³ If a victim does not understand the language of the acknowledgment then the victim can request that it be translated.⁴⁴ A translation of the acknowledgment must be done 'as soon as practicable and free of charge'.⁴⁵ The translation can be provided orally or in writing and via electronic means.⁴⁶

Written acknowledgement of formal complaints are provided by the Gardaí through the Garda Victim Service Offices (GVSOs)⁴⁷.

Letters acknowledging a complaint are generated through the PULSE system and posted by GVSOs to complainants within a few days of the crime being reported. The letters are individualised with the name of the Garda investigating the complaint; the name of the Garda Station; and the PULSE incident number. The standardised letters have been translated into 37 languages.

42 Section 12 (5), Criminal Justice (Victims of Crime) Act 2017

43 Section 12 (6), Criminal Justice (Victims of Crime) Act 2017

44 Section 12 (7), Criminal Justice (Victims of Crime) Act 2017

45 Section 12 (8)(a), Criminal Justice (Victims of Crime) Act 2017

46 Section 12 (8)(b), Criminal Justice (Victims of Crime) Act 2017

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However, interviews suggest that even when formal complaints have been made there can be significant delays or a complete failure to input the complaint into the PULSE system. This means that there is no formal record or PULSE number of the formal complaint being made. This has meant that victims sometimes must follow up with the Gardaí for a PULSE number. However, the member of An Garda Síochána which originally took the report may be off or on holidays. The Garda Victims Office can only provide information and an acknowledgement when it is recorded in the PULSE system.⁴⁸

The GVSO Standard Operating Procedure and other Garda policies dictate that a letter is not be sent to victims of sexual crimes, domestic-violence related offences, human trafficking; as well as victims or families of any incident involving death or serious harm. In these instances, victims are to be provided with information in-person by a Garda.⁴⁹

The spirit of the policy is to provide a sensitive and personal service to victims of more serious crimes. However, feedback from victim service providers indicates that it has left some victims without record of the complaint and incomplete information on who to contact within the Gardaí and how to contact them.

As will be further discussed under Article 7, translation services for Garda stations, the courts and the prison service are provided by several translation agencies. When a victim asks for a translator to make a complaint, it is standard Garda practice to contact a service to provide translation either in person or over the phone.⁵⁰

48 Interviewee 1.

49 Domestic Abuse Intervention Policy, 11.5(c) See Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) p 19.

50 Interviewee 3.

ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.

Article 6 was transposed into Irish law in Section 8 of the *Criminal Justice (Victims of Crime) Act 2017*. The Act states that victims of crime must be informed about their right to receive certain information about their case upon request and a record should be taken of what information they want to receive.⁵¹ The ICCL Report on the Victims Directive, explained the implementation of Section 8 as follows:

'Upon request, a victim is entitled to information about the place and time of the trial and the type of crimes the offender was charged with, including the fact that the accused was charged,⁵² any final judgement of the trial,⁵³ and any significant developments in the investigation.⁵⁴ A victim is entitled to a copy of any statement made by them during the course of the investigation, including a victim impact statement.'⁵⁵

51 Section 8 (1) (a) (i)-(ii) Criminal Justice (Victims of Crime) Act 2017. Section 8 (2) Criminal Justice (Victims of Crime) Act 2017

52 Section 8 (2) (ii) - (g) Criminal Justice (Victims of Crime) Act 2017

53 Section 8 (2) (j) Criminal Justice (Victims of Crime) Act 2017

54 Section 8 (2) (a) Criminal Justice (Victims of Crime) Act 2017

55 Section 8 (2) (b) (i)-(ii) Criminal Justice (Victims of Crime) Act 2017

It goes onto say that:

'Information will not be provided to a victim if it could interfere with an investigation,⁵⁶ prejudice future or ongoing proceedings;⁵⁷ 'endanger the personal safety of a person';⁵⁸ or 'endanger' State security.⁵⁹ The decision with respect to whether or not information should be provided must be made by a member of the Gardaí not below Superintendent or an authorised member of the: Ombudsman Commission; the DPP; the Irish Prison Service; staff of the children's detention school, or the clinical director of the designated centre.⁶⁰ Reasons as to why the information was not provided should be recorded by the relevant agency'.⁶¹

Garda Victim Service Offices and the investigating Garda are responsible for providing most victims with information during the investigation of a complaint.

Letters are generated and posted to victims by Garda Victim Service Offices when there are significant developments in their case and when there is a final resolution. It is the responsibility of victims to follow-up with the GVSOs to obtain detailed information about the development.

Garda Victim Service offices operate during standard office hours and victims can generally contact someone in the office quickly and conveniently. However, most offices operate without voicemail and calls can 'ring out' when there is no one available to answer the line. The Crime Victims Helpline is aware of many situations where victims are unable to make contact with a Garda Victim Service Office and are left frustrated and annoyed that they can't leave a message or even verify they are ringing the correct phone number.⁶²

When a Family Liaison Officer is assigned to a case, they take on the responsibility for providing information about significant developments. Family Liaison Officers are specially trained officers who can be assigned to victims or family members of victims to provide accurate and timely information on the progress of a Garda investigation. They are also assigned to assist families of victims in cases of murder, fatal road traffic collision or kidnapping and are responsible for liaising with the family throughout the investigation. They provide contact details of victim support organisations which are available to support victims and/or their families.⁶³ Contact from a Family Liaison Officer would typically be made over the phone or in person.

56 Section 11 (1) (a) Criminal Justice (Victims of Crime) Act 2017

57 Section 11 (1) (b) Criminal Justice (Victims of Crime) Act 2017

58 Section 11 (1) (c) Criminal Justice (Victims of Crime) Act 2017

59 Section 11 (1) (d) Criminal Justice (Victims of Crime) Act 2017

60 Section 11 (2) (a)-(f) Criminal Justice (Victims of Crime) Act 2017

61 Section 11 (3) Criminal Justice (Victims of Crime) Act 2017

62 Crime Victims Helpline 116 006

63 <https://www.garda.ie/en/Victim-Services/Reporting-a-crime-FAQs/When-are-liaison-officers-available-.html>

Prior to the introduction of the Victims Directive and *Criminal Justice (Victims of Crime) Act 2017*, it was not uncommon for victims not be told about the time and place of the trial in their case unless they were needed to provide evidence (testify). This led to situations where victims were only made aware of the outcome of the case in indirect ways such as through the media. Since the establishment of the Garda Victim Service Offices, it appears that it is less common for this to occur.⁶⁴

Both the Gardaí and the DPP make decisions about whether or not to prosecute. In either case, victims are notified of the decision either orally or in writing.⁶⁵

The Irish Prison Service provides information to victims through the Victim Liaison Service. The service operates on an 'opt-in' basis and victims must register to receive notification. Once victims notify the Liaison Service that they would like updates, they will be notified of any significant developments in the management of the perpetrator's sentence as well as any impending release. Significant developments could include temporary releases, parole board hearings, prison transfers, and the expected release date. They will also notify victims if the offender dies while in custody.⁶⁶ The Victim Liaison Officer communicates with victims through a variety of methods including phone, text message, email, letter and skype.⁶⁷

64 Crime Victims Helpline 116 006

65 Guidelines for prosecutors, p 45

66 <https://www.irishprisons.ie/victim-liaison/victim-liaison-service/>

67

ARTICLE 7 - RIGHT TO INTERPRETATION AND TRANSLATION

Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.

The transposition of Article 7 into Irish law has been outlined in the ICC Guide on the Victims Directive as follows:

'Section 22 to 25 of the Criminal Justice (Victims of Crime) Act 2017 implement Article 7 of the Victims Directive. A victim who is a witness can access interpretation and translation under the Act when giving evidence if: the victim requests it; the DPP or the Gardaí recognise that the victim needs interpretation; or if the court directs that interpretation or translation is needed.⁶⁸ Interpretation or translation will be provided 'as soon as practicable'⁶⁹ and can be provided via different communication technology.⁷⁰ Translation can also be provided orally or in writing.⁷¹

A request for interpretation or translation can be refused if it appears that the individual does not need assistance to be understood or to understand.⁷² Reasons should be recorded if there is a refusal and the victim should be informed in writing of the decision, with a 'summary of the reasons', 'as soon as practicable'.⁷³ A written decision can be transmitted via electronic means.⁷⁴

A refusal to provide interpretation according to Section 25 of the Criminal Justice (Victims of Crime) Act 2017 shall not according to that provision 'operate to prevent, or provide a basis of delaying, the commencement or continuation of any criminal proceedings.'⁷⁵ However, a Judge in his or her discretion

68 Section 22 (3) (a)-(c) and (i)-(ii) Criminal Justice (Victims of Crime) Act 2017

69 Section 22 (4) Criminal Justice (Victims of Crime) Act 2017

70 Section 22 (5) & (6) Criminal Justice (Victims of Crime) Act 2017

71 Section 22 (6) Criminal Justice (Victims of Crime) Act 2017

72 Section 23 (1)(a) Criminal Justice (Victims of Crime) Act 2017

73 Section 23 (2)(a)&(b) Criminal Justice (Victims of Crime) Act 2017

74 Section 23 (8) Criminal Justice (Victims of Crime) Act 2017

75 Article 7 (8) Victims Directive

may determine that a victim should have access to interpretation or translation in accordance with the Victims Directive and the Act, notwithstanding any earlier decision to the contrary.⁷⁶ In such an instance a short adjournment may be required to comply with the Victims' Directive.⁷⁷ Practitioners should be cognisant of the quality and confidentiality of interpretation and/or translation being provided to victims of crime. An interpreter/translator may have acted for an accused on a previous occasion and the quality of the interpretation may put a victim at risk of repeat or secondary victimisation.⁷⁸

The provision of translation services for Garda stations, courts and the prison service are provided by six translation agencies identified through a public procurement process in 2015.⁷⁹ Two of the identified agencies are based in the United Kingdom.

Concerns have been raised about the quality of translations. In Ireland, anyone who wishes to work as a translator, even a legal translator, may do so, regardless of whether they have a qualification in translation or training.⁸⁰ The request for tender (RFT) issued as part of the public procurement process did not require translators to have qualifications in translation only that translators have qualification in the language concerned (or in English if English is not their native language). It also requires an audit of 5% of all translations for the purpose of quality control.⁸¹ This modest level of quality control may not be sufficient to insure accurate and appropriate translation services.

In some instances, the same translator will be used for both the victims and the accused which raises issues of accuracy and quality.⁸²

According to the Garda Victim Liaison Unit, interpreter and translation services are provided for victims when requested or when it is determined by the individual Garda that it is needed.⁸³ Research was unable to locate a policy document that outlines the procedures and guidelines for contacting and working with interpreters and translators.

In March 2003 there was negative publicity surrounding the use of interpreters in Garda stations. One case involved a suspect in a double homicide asking for and being provided by the Gardaí the phone number of the woman who had acted as his interpreter so that he could ask her on a date.⁸⁴ In response to the publicity, an internal committee was set up in An Garda Síochána and an implementation plan for the establishment of a Language Coordination Unit within An Garda

⁷⁶ Section 22 (3)(c) Criminal Justice (Victims of Crime) Act 2017

⁷⁷ Section 22 (3)(c) Criminal Justice (Victims of Crime) Act 2017

⁷⁸ Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) pg. 22

⁷⁹ Law Society Gazette, Lost in translation, page 56

⁸⁰ Law Society Gazette, Lost in translation, page 56

⁸¹ Ibid.

⁸² Interviewee 1.

⁸³ Interviewee 3.

⁸⁴ Carol Coulter The Irish Times 4th March 2003

Síochána was drafted by staff from the Interpol Office.⁸⁵ It does not appear that this Unit has ever been established.

During the trial phase, translation and interpreter services are provided for victims throughout the trial. This applies for when they are providing evidence as well as when they are observing the proceedings.

Court Services 2016 Annual Report indicates that courts accommodated 8,015 translator requests however information was not provided as to how many, if any, requests were denied. Court Services spent 1.04 million on interpreter services, including sign language for deaf or hard of hearing in trials and hearings of cases.⁸⁶

The survey indicates that many victim support providers have concerns about the overall lack of availability of interpreters, risk of interpreter bias and false assumptions that victims understand the language.

⁸⁵

⁸⁶ Court Services 2016 Annual Report

ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Unlike many Member States, Ireland does not have one national organisation that provides the majority of support services to victims of crime. Victim Support Ireland operated in this capacity until 2005 when, due to serious internal difficulties in the organisation, government funding was withdrawn.

Services to victims are now provided by a number of non-governmental organisations that focus on generalised crime, domestic violence, sexual assault as well as specialised support for child victims, the family of homicide victims, among others.

Services for victims on a **national scale** are primarily provided by **helplines**. The four main helplines for victims are Women's Aid (domestic violence); Dublin Rape Crisis Centre (rape and sexual assault); Crime Victims Helpline (general crime) and CARI (child victims). All of these numbers are free to call except for CARI which operates a low call (lower cost) number.

Face-to-face support for victims is provided by regional victim support organisations.

Victims of sexual assault can receive services from 16 rape crisis centres that operate across Ireland. Each organisation is individually managed and funded however 13 of the centres are members of an umbrella organisation, Rape Crisis Network Ireland. In general, the centres provide telephone support and information; counselling; and accompaniment to Garda stations, court; and Sexual Assault Treatment Units. Services are free with the exception of counselling for which some centres charge a fee.

Victims of domestic violence can receive services from 37 regional organisations across Ireland. Similar to rape crisis centres, each organisation operates independently. Most organisations offer telephone support; accompaniment to Garda stations, court and other relevant appointments; information about protective court orders; and advocacy. Most, but not all, also operate a refuge (shelter).

Non-specialised face-to-face support is provided by two organisations: Support After Crime and Federation for Victim Assistance.

Support After Crime (SAC) has an office in Cork (the second largest city in Ireland after Dublin) where one full-time manager; a part-time support worker and a team of volunteers provide emotional and practical support and information to victims of crime. SAC can also support victims from other surrounding counties (Clare, Waterford, Limerick and Tipperary) however SAC does not have offices in those areas. Victims must either travel to Cork; meet with representatives of SAC in their own home; or arrange to meet in a public space. Victims can contact SAC by phone or email during normal office hours.⁸⁷

The Federation for Victim Assistance (FVA) provides face-to-face support to victims of crime in three counties (Kilkenny, Mayo and Roscommon). FVA does not have an office where they can meet with victims so volunteers arrange to meet with victims in the victim's own home or in a public space. Victims can access services by leaving a message on a freephone telephone number⁸⁸ and will then receive a call back. Similar to Support After Crime, FVA provides emotional and practical support and information.

CARI provides specialised therapy and support to children and families affected by child sexual abuse. CARI operates a helpline⁸⁹ which is open Monday to Friday, 9.30am – 5.30pm. CARI also operates a court accompaniment service for children and families.

The fragmented approach to services have left gaps and inadequacies. Nine counties in Ireland do not have a domestic violence refuge, while 10 counties lack a specialist sexual violence service.⁹⁰ Face-to-face support for victims of general crime is available in only 11 counties. Dublin is home to 30% of the Irish population and it lacks face-to-face support for victims of general crime.

Lack of sufficient and stable funding is a serious and ongoing issue in the victim support sector. In the questionnaire, 18 out of 19 respondents indicated that more funding was needed to improve victim support services.

87 Website: www.supportaftercrimeservices.ie; phone: 021 432 0555; email: info@supportaftercrimeservices.ie

88 1800 277 477

89 1 890 924 567

90 <https://www.irishexaminer.com/viewpoints/analysis/funding-for-domestic-and-sexual-violence-support-services-inadequate-454653.html>

Most support services receive either all or a significant portion of their funding from government agencies such as the Department of Justice Victims of Crime Office and TUSLA Child and Family Agency.

TUSLA was established in January 2014 and is the dedicated state agency responsible for improving wellbeing and outcomes for children. This includes child protection and welfare services, psychological services, family and locally-based community supports, and domestic, sexual and gender-based violence services. They have an operational budget of over €750 million.⁹¹

The Victims of Crime Office was established in 2008 to improve the continuity and quality of services to victims of crime by state agencies and non-governmental organisations throughout the country. Working with an annual budget from the Department of Justice and Equality, the Office provides funding for services and support to victims of crime.

In 2015, the Victims of Crime office funded 50 different organisations for the provision of services to victims in the categories of general crime, domestic violence, sexual assault, and children. Total funding was 1.2 million euros which accounted for 2% of the total funding for those organisations.⁹²

In 2016, the Dublin Rape Crisis Centre received over 1 million in grants from TUSLA.⁹³ Women's Aid received €600,000 from TUSLA with the remainder of their operating funds coming from other government sources and fundraising.⁹⁴

No automatic **referral** process exists for victims to victim support services. At one time, Gardaí automatically provided Victim Support Ireland with the contact information for victims. Victim Support would then contact victims to offer support. As victims' information was being provided to Victim Support without consent, issues were raised about potential data protection violations. In 2001, after reviewing the matter, the Data Protection Commissioner advised that victims' information could no longer be shared without their express consent.⁹⁵ Gardaí changed their practice and provided victims with information about victim support services but did not share details of victims with support organisations. Victim Support Ireland reported a 70% reduction in the uptake of their services after Gardaí changed the procedures surrounding victim referral.⁹⁶

Since 2015, information about support services is now provided to victims primarily through contact with individual Gardaí and Garda Victim Service Offices. Most victims of crime are referred to Garda Victim Service Offices automatically through the Garda PULSE system. Standardised

letters are then sent to victims within three days after a complaint has been filed. Included with the letter is a standard leaflet that includes contact information about victim support organisations. As the letter and leaflet are developed out of the national Garda Victim Liaison Office, it does not necessarily include local or regional services that may be of assistance to victims nor are the resources tailored to address specific crimes. Personnel of Garda Victim Service Offices may also contact victims by phone after the letter is posted to see how the victim is doing. At this time, information about victim support services can also be provided.

As mentioned under Article 5, victims of sexual crimes, domestic-violence related offences, human trafficking; as well as victims or families of any incident involving death or serious harm do not receive a letter from the GVSU. Information and support are provided in person or over the phone by the investigating Garda, Family Liaison Officer or the Garda Victim Service Office.

91 <https://www.tusla.ie/>

92 Victims of Crime Office 2016 Evaluation and Financial Report

93 Dublin Rape Crisis Centre 2016 Audited Accounts

94 <https://benefacts.ie/org/7aa73776-b78b-489a-8f57-5f3fe973da2e/>

95 Data Protection Commission, 8/01

96 Ibid

ARTICLE 9 - SUPPORT FROM VICTIM SUPPORT SERVICES

Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.

As discussed above, victim support services are provided by over 50 organisations throughout Ireland. This section will provide additional information about the three organisations that provide national helplines for domestic violence, sexual assault and general crime.

Women's Aid provides support to female victims and children who are victims of domestic violence. They operate a 24/7 national helpline⁹⁷ that is free to call. The helpline contracts with a language interpreter service and can assist callers in 170 different languages. A text service is also available for women who are deaf or hard of hearing. Women's Aid meets with victims in six locations throughout Greater Dublin area but does not provide in-person support outside this geographic area. They offer emotional support, information and assistance in accessing refuge. In-person support is generally provided by paid staff and the helpline is answered by trained volunteers. Court accompaniment service is also available in the greater Dublin area. Women's Aid reported 21,451 contacts over the phone and in person in 2017.⁹⁸

The Dublin Rape Crisis Centre provides a national 24/7 helpline⁹⁹ that provides support to victims of sexual violence and childhood sexual abuse. The helpline, answered by a mix of volunteers and

97 1800 341 900

98 Women's Aid Impact Report 2017

99

staff, received 12,388 contacts in 2016.¹⁰⁰ The service also provides professional counselling, group therapy for survivors of childhood sexual abuse and accompaniment at Sexual Assault Treatment Units in the Dublin metropolitan area.¹⁰¹

The national Crime Victims Helpline provides a generic support service over the phone, email and text to victims of all crimes. The helpline, 116 006, is free to call and is open six days a week¹⁰². It is answered by a mix of volunteers and paid staff who provide a listening service, answer questions about the criminal justice system, and provide information about local and specialised victim support services as well as counselling. In general, the helpline sign posts victims to services as opposed to connecting them to services directly. The helpline received 4,455 contacts in 2017.

Ireland has 20 domestic violence refuges (shelters) across 17 counties that can accommodate up to 137 families.¹⁰³ In 2016, 1,460 women and 2,190 children were accommodated. 3,981 requests for accommodation were denied due to lack of space.¹⁰⁴ Refuges located in the Dublin area are under increasing pressure due to a housing shortage and the rising cost of rent for private accommodation. Safe Ireland highlighted the issue in their 2016 report No Place to Call Home:

"Traditionally women come into refuge for temporary emergency shelter and during their time in refuge engage in the range of supports offered. Depending on each woman's individual decision, women will either return home with safety plans and other supports in place or will choose to move, which usually involves securing a new place to stay for herself and her children.

Due to the current housing crisis this journey has come to a virtual standstill...Services confirmed that the availability of social housing, access to accommodation with Housing Associations and private rented accommodation 'has dried up in the past two years.'"¹⁰⁵

100 Dublin Rape Crisis Centre Annual Report 2017

101 Sexual Assault Treatment Units (SATU) carry out forensic clinical examinations following sexual assaults or rape. There are seven SATUs located across Ireland.

102 Current hours are Monday, Wednesday, Friday 10.00am-5.00pm; Tuesday and Thursday 9.30 am-6.30 pm and Saturday 2.00pm-4.00pm

103 SafeIreland <https://www.safeireland.ie/policy-publications/> retrieved on 27

104 Ibid

105 Safe Ireland No Place to Call Home 2016 p 3

ARTICLE 10 - RIGHT TO BE HEARD

Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

Victims of crime are not parties to proceedings in Ireland. They have a right to be heard in the trial via a Victim Impact Statement (VIS). In advance of the implementation of the *Criminal Justice (Victims of Crime) Act 2017* VIS were implemented in only limited circumstances. Section 31 of the *Criminal Justice (Victims of Crime) Act 2017* permitted all victims of crime to provide a VIS should they wish to do so. Victims may also have a right to be heard in a bail hearing in certain circumstances.

The ICCL Guide on the Victims Directive explains the law as follows:

*'Section 31 of the Criminal Justice (Victims of Crime) Act 2017 amends Section 5 of the Criminal Justice Act 1993 to enable all victims of crime to provide 'evidence or submissions' about the effect or otherwise of the crime on the victim. It in effect permits all-natural victims to provide a Victim Impact Statement should they wish to do so.'*¹⁰⁶

Moreover, *'Section 8 of the Criminal Justice Act 2017 inserts a Section 9A into the Bail Act 1997, permitting a court to hear a complainant's voice in bail applications. On the application of a member of An Garda Síochána, the court can receive evidence from a victim on the probability of 'direct or indirect interference or attempted interference' by the accused on the victim, or on the victim's family,'¹⁰⁷ and evidence of the seriousness and type of any danger.¹⁰⁸ If the victim is a child under the age of 14, then the court can obtain evidence from him or her, a family member or a guardian.¹⁰⁹ If the victim has a 'mental disorder', then a guardian can speak on his or her behalf.¹¹⁰ Where it is in their interests to do so, a court can order that information given in evidence should not be published.'*¹¹¹

¹⁰⁶ Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) pp 23/24

¹⁰⁷ Section 8, Criminal Justice Act 2017, formally Section 5, Bail (Amendment) Act 2006 inserting Section 9A (1) (a) of the Bail Act 1997

¹⁰⁸ Section 8, Criminal Justice Act 2017 formally Section 5, Bail (Amendment) Act 2006 inserting Section 9A (1) (b) of the Bail Act 1997

¹⁰⁹ Section 8, Criminal Justice Act 2017 inserting Section 9A (2) (a) of the Bail Act 1997

¹¹⁰ Section 8, Criminal Justice Act 2017 inserting Section 9A (2) (b) of the Bail Act 1997

¹¹¹ Section 8, Criminal Justice Act 2017 inserting Section 9A (3) of the Bail Act 1997;

The Criminal Justice Act 2017 makes it a criminal offence to publish evidence of a victim where an order is made to the contrary.¹¹² On summary conviction the maximum penalty is 12 months imprisonment and a class A fine. On indictment, the maximum sentence is 3 years imprisonment and/or a maximum fine of €50,000.

Section 8 of the Criminal Justice Act 2017 makes no reference to a 'victim' but rather uses the indicator 'complainant'. However, it predated the implementation and enforcement of the Criminal Justice (Victims of Crime) Act 2017.

The Criminal Justice Act 2017 commenced on the 14th of August 2017.¹¹³

As already mentioned, prior to the Victims Directive, victims only had the right to make a personal statement to the court in cases involving sexual offences or violent crimes. They were also allowed in other cases if the judge thought it appropriate, for example a fatal road traffic incident.

In light of this, there may be a lack of awareness among victims, victim support providers, and legal professionals of the expansion of the right for all victims to make a personal statement prior to sentencing. Feedback from professionals working in the criminal justice system indicates that there is growing awareness of the expansion of the opportunity to make a statement and uptake of this right by victims.¹¹⁴

The Crime Victims Helpline reports hearing from a number of victims that they have been told by the Gardaí that they *must* make a victim impact statement. This can cause considerable distress for a victim who does not want to provide a statement. This indicates that more training is needed within An Garda Síochána so that victims are accurately informed that they have a *right* to make a victim impact statement but that it is not *required* of them.

¹¹² Section 8, Criminal Justice Act 2017 inserting Section 9A (4) of the Bail Act 1997

¹¹³ Criminal Justice Act 2017 (Commencement) Order 2017 (S.I. No. 359 of 2017); Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) p 24

¹¹⁴ Interviewees 1 and 4

ARTICLE 11 – RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.

Section 9 of the *Criminal Justice (Victims of Crime) Act 2017* states that when a decision is made not to prosecute, 'a member of An Garda Síochána or an officer of the DPP 'shall' inform a victim of his/her right to review a decision not to prosecute and information should be provided to the victim on the review procedure'.¹¹⁵

The law has been outlined as follows:

'In Ireland, the legislation has provided that all victims of crimes have a right to review a decision not to prosecute. Section 10 (1) of the Criminal Justice (Victims of Crime) Act 2017 places time limit of 28 days on the right to request a review. A victim should request a review of a decision not to prosecute within 28 days from the date which they first heard of the decision not to prosecute. The time period can be extended if An Garda Síochána or the DPP are 'satisfied that circumstances exist that warrant the extension.'¹¹⁶

In practice, if the case was prosecuted by An Garda Síochána (District Court), then they, rather than the DPP, will provide a summary of reasons and a review of a decision not to prosecute. A form must be completed to request a summary of Garda reasons not to prosecute.¹¹⁷ The form must be completed

115 Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) p 21

116 Section 10 (2), Criminal Justice (Victims of Crime) Act 2017

117 Form Request for a Summary of Garda Reasons (Not to Prosecute) <https://www.garda.ie/en/crime-prevention/community-engagement/community-engagement-offices/garda-victim-liaison-office/request-form-summary-of-garda-reasons-not-to-prosecute.pdf>

and received within 28 days of a victim being informed of the decision not to prosecute.¹¹⁸ A form must be completed to request a review of a decision not to prosecute by An Garda Síochána.¹¹⁹ The time period of 28 days commences on a victim being told of the reasons not to prosecute.

Both Article 6 (3) and Article 11 (3) of the Victims Directive provide victims must be informed of their right to request a summary of reasons and to request a review of a decision not to prosecute. However, the Garda Information Leaflet, which should be provided to all victims of crime, makes no reference to the right of victims to request reasons or a review of decision not to prosecute.¹²⁰ Key to the rights set out in Article 6 (3) and Article 11 of the Victims Directive and the Act is the obligation to provide information to victims so that they are able to access these rights. Given the foregoing the Gardaí may not currently be fully compliant in providing information to victims.¹²¹

The DPP in Ireland has completed a comprehensive booklet which outlines how a victim can request a brief summary of the reasons not to prosecute and a review of a decision not to prosecute.¹²² It is worth quoting the relevant passage of the booklet:

"If you are a victim, or a family member of a deceased victim, and you are not satisfied with the reasons for our decision not to prosecute, you can ask for a review. The review will be carried out by a lawyer who was not involved in making the original decision. You should write to us and ask for a review within 28 days of the date on the letter telling you of the reason for not prosecuting your case. You should send your letter to our Communications and Victims Liaison Unit (see contact details on page 22).

Even if you did not ask us for a reason for the DPP's decision, you can still ask for a review of the decision. In this case, you should write to us and ask for a review within 56 days (8 weeks) of the date you were told of the decision not to prosecute.

In some cases the DPP may extend these time limits, but only if there is a good reason and it is in the interests of justice"¹²³

The Document makes it clear that a victim can only seek a summary of the reasons not to prosecute where they have received a decision not to prosecute on or after the 16th of November 2015 [the transposition date of the Directive]. No such date requirement has been outlined in relation to a review of a decision not to prosecute. It appears that the victim has 56 days to ask for a review of a decision not to prosecute from the date which the victim was told of the decision

118 Section 10 (1), Criminal Justice (Victims of Crime) Act 2017 Also see Garda Form <https://www.garda.ie/en/crime-prevention/community-engagement/community-engagement-offices/garda-victim-liaison-office/request-form-review-of-garda-reasons-not-to-prosecute.pdf>

119 Form Request for Review of Garda Decision (Not to Prosecute) <https://www.garda.ie/en/crime-prevention/community-engagement/community-engagement-offices/garda-victim-liaison-office/request-form-review-of-garda-reasons-not-to-prosecute.pdf>

120 <https://www.garda.ie/en/Victim-Services/Where-else-can-I-get-support-/Victims-Information-Leaflet-English-and-Irish-Version-2016.pdf>

121 Interviewee 2.

122 The Role of the DPP (November 2015) Re-printed (April 2016)

123 The Role of the DPP (November 2015) Re-printed (April 2016)

not to prosecute, although this time period is not contained in the Criminal Justice (Victims of Crime) Act 2017.

The Victims Directive does not place any time period on requesting a summary of reasons or a review of a decision not to prosecute. Such a short time frame of 28 days, if adhered to by An Garda Síochána and the DPP may be in breach of the Directive. It is accepted that both the Gardaí and the DPP do need to be cognisant of the rights of the defence and a long timeframe for requesting reasons and right to review would not be reasonable. That being said, 28 days is very short, although the discretion to extend the time period has the ability to be applied in a flexible manner and may thus prevent any legal challenge.¹²⁴

A Communications and Victims Liaison Unit was set up within the DPP July 2015¹²⁵. The Unit is primarily responsible for ensuring that the Office meets its obligations in respect of the rights, support and protection of victims as set out in the Directive. The Unit deals with all requests for reasons and reviews received from victims of crime.

Since October 2008, the DPP had only given reasons for decisions not to prosecute, on request, where someone had died. A total of 97 requests were received between October 2008 and November 2015. Of those 97 requests, 64% related to fatal road traffic incidents.¹²⁶

The 2017 DPP Annual report indicated significant increase in the request for a summary of reasons. From November 2015 to October 2017 there were 1,180 total requests for reasons received. Of those, 977 reasons were provided, 136 were refused and 67 were pending at the time of publication of the report.¹²⁷

Examples of instances in which requests are refused would include requests relating to decisions made prior to 16 November 2015, or where giving a reason may prejudice a future court case.

In Ireland, An Garda Síochána is responsible for prosecuting lower level or 'summary' offenses. The Garda PULSE system does not currently track the number of people who request the reasons for a decision not to prosecute a case. It has been indicated that current technology will need to be updated to accurately capture these numbers.¹²⁸

124 Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) pp 22/23

125 DPP Annual Report 2015

126 DPP Annual Report 2015

127 DPP Annual Report 2017

128 Interviewee 2.

ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.

The draft version of the *Criminal Justice (Victims of Crime) Bill 2017* did not contain a definition or a reference to restorative justice. It is understood that the failure to include it due to the lack of a state restorative justice programme.¹²⁹ Advocacy by NGO's, namely, the Victim's Rights Alliance and the Rape Crisis Network Ireland (RCNI) resulted in several amendments being put forward by members of the Dáil for its inclusion.

Section 2 of the *Criminal Justice (Victims of Crime) Act 2017* refers to a restorative justice scheme. It is defined as 'any scheme administered for the time being under which, with the consent of each of them, a victim and an offender or alleged offender engage with each other to resolve, with the assistance of an impartial third party, matters arising from the offence or alleged offence'.

Section 26 of the Act goes on to outline the safeguards that must be put in place in order to restorative justice to be used. In particular Section 26 (2) provides that an offender must acknowledge the basic facts of the offence and he/ she must consent. Section 26 (3) relates to the need to obtain the consent of the victim and the right of the victim to receive 'full and unbiased information' about the restorative justice scheme and his/ her ability to withdraw at any time.

It has been outlined the concern that Ireland have not fully transposed Article 12 of the Victims Directive¹³⁰. In this regard reference was made to arguably one of the few legislative restorative justice services in Ireland which falls under the *Children's Act 2001*.¹³¹ Section 29 (b) of the *Children's Act* relates to the ability to mediate between the child and the offender at what is called a 'conference'.¹³² However, there are concerns that restorative justice conducted under the *Children's Act 2001* does not fully comply with the Directive, notwithstanding amendments made

129 Interviewee 1.

130 Interviewee 1.

131 Section 22 (2) and (4) Children Act 2001 wherein the interests of the child victim and the views should be considered

132 Section 29 Children Act 2001

under 34 of the *Criminal Justice (Victims of Crime) Act 2017*. It has been indicated¹³³ that they were aware of instance since the transposition of the Directive where child victim's views and consent were not adequately and appropriately obtained when been dealt with under the restorative justice provisions of the *Children's Act*.¹³⁴ Significant training needs to be provided to anyone engaging with victims in this process to ensure that all victims are receiving the restorative justice safeguards outlined in Article 12 of the Victims Directive.

133

134 Section 26 (1)- (3) Children Act 2001

ARTICLE 13 - RIGHT TO LEGAL AID

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.

Victims of crime do not, for the most part, have the status of parties to criminal procedures therefore legal aid is generally only available to the accused, not the victim¹³⁵. An exception to this is during the prosecution of rape, aggravated sexual assault, sexual assault, defilement, or attempts to commit any of those offences. If an accused's legal team wants to question a victim about his or her sexual experiences, including sexual experiences not connected to the incident, they must apply to the court, usually in advance of the trial commencing in order to do so. In this instance, legal advice and representation is provided to the victim free of charge by the Legal Aid Board.¹³⁶

135 Section 26 (3) (b) Civil Legal Aid Act 1995; Section 39 Sexual Offences At 2017

136

ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.

There are processes in place for the reimbursement of expenses related to giving evidence in court.

When a case has been investigated by the Gardaí, the reimbursement process is coordinated by the investigating Garda or the Garda Victim Service Office. Requests for reimbursement are then processed by the local Superintendent of the area where the case is being prosecuted. Expenses that may be reimbursed are travel, meals and in some cases, accommodation. Victims may receive money for expenses up front in situations of financial hardship.

The Garda Ombudsman provides reimbursement of travel expenses and a fixed allowance for other costs involved in providing evidence in court.¹³⁷

¹³⁷ Garda Ombudsman Information for Victims of Crime leaflet

ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.

Any property owned by the victim which is seized during the criminal proceedings should be returned without delay. However, there may be occasions where the victim's property may need to be retained to be used as evidence in a criminal trial. In such an instance the property should be returned without delay once the trial has ended.

In 2017, An Garda Síochána upgraded its existing system of tracking property. All property and exhibits in Garda possession are now being recorded and tracked electronically. This will presumably assist in the efficient management and return of property.¹³⁸

¹³⁸ There was no further evidence which supports any further comments at this time.

ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

Section 6 of the *Criminal Justice Act 1993* permits a Judge to make an order for compensation if the victim has suffered personal injury or loss due to a criminal offence.¹³⁹ When considering the amount of compensation which is ordered the court should take into account the 'means' of the offender.¹⁴⁰

Maria McDonald BL in the Guide on the Victims' Directive made some observations about the application of this provision in practice:

'There is nothing preventing an offender from offering a victim compensation at for example sentence. However, one must be mindful of how this is done given the State's obligations under the Victims' Directive and the Criminal Justice (Victims of Crime) Act 2017 both of which provide that there must be due regard to the right of a victim to avoid contact with the offender, the right to protect the victim from repeat and secondary victimisation and the right of a victim to have his/her voice heard. An accused should not approach a victim offering him or her compensation. Rather a prosecutor or the Garda should ask the victim whether he or she wants to receive compensation from the accused/offender. It is then the victim's choice as to whether they want to receive the compensation offered. A victim may not want to receive monies from the offender and that wish should be respected.'¹⁴¹ The RCNI has suggested that victims should always be asked whether they want compensation at sentence. An offer of compensation by an accused can be a mitigating factor in sentencing.¹⁴² Transposition of Article 16 of the Victims Directive does not on first glance require any amendment to our existing law with

139 O'Malley 2016, 738; Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL February 2018) p 34

140 Section 6 (5) Criminal Evidence Act 1993

141 The People (DPP) v. Collins [2016] IECA 35

142 The People (DPP) v. Collins [2016] IECA 35

respect to compensation. However, the Directive and the Criminal Justice (Victims of Crime) Act 2017 place an obligation on the Gardaí and the Garda Ombudsman to inform victims of how and in what circumstances they can access compensation.¹⁴³ This includes a victim's right to compensation under any scheme which offers compensation to victims of a crime and information on the courts' power to make a compensation order under Section 6 of the Criminal Justice Act 1993'¹⁴⁴

Ms. Milquet, the European Commission's President's special advisor on victim compensation is currently looking at this issue. The Victim's Rights Alliance and some of its members completed a survey outlining some reforms that are needed in this area, particularly reform of the State Compensation Scheme which has been successfully judicially reviewed.¹⁴⁵

The state Criminal Injuries Compensation Scheme is administered by the Criminal Injuries Compensation Tribunal (CICT). The Scheme provides compensation to victims who have experienced personal injury or death as a result of crime. CICT was established in 1974 as a remedy for victims whose perpetrator did not have adequate resources from which to obtain any meaningful compensation. The Tribunal consists of a chairperson and six members. Tribunal members are practising barristers and solicitors who provide their services on a part-time basis.

CICT considers applications for reimbursement of vouched out of pocket expenses, including loss of earnings, experienced by the victim or, if the victim has died as a result of the incident, by the dependents of the victim. The Scheme does not compensate victims for "pain and suffering". In order for CICT to consider a claim, the crime must have been reported to the Gardaí "without delay". In 2017, the Scheme provided €3.97 million in compensation to victims of crime.¹⁴⁶

Concerns about the functioning of CICT have been raised by victims. The paperwork required can be onerous and there can often be long delays in receiving compensation. In a well-publicised case, a victim of a violent assault waited 13 years for a final decision regarding her compensation.¹⁴⁷

143 Article 4 (1) (e) Victims Directive; Section 7 (1) (i)-(j) Criminal Justice (Victims of Crime) Act 2017

144 Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) pp 35-36

145

146 Lawyers hit out at 'dysfunctional' criminal injuries compensation scheme

Published 4 January 2018

147 The Irish Times, Iron bar assault: Delay to award a 'breach of duty' over justice, 27 January, 2017

ARTICLE 17 – RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position: a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.

Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

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

It is possible for victims residing in Ireland to report a crime committed in another Member State to An Garda Síochána (AGS). AGS then forwards the case for investigation to the competent authority in the jurisdiction where the crime was committed. AGS also receives and investigates crimes forwarded to them by competent authorities of member states.

Witnesses can give evidence via video link to trials/court cases in Ireland from other countries. During 2016, witnesses gave evidence from countries including Australia, Germany, Isle of Man, United Kingdom, and the United States of America.¹⁴⁸

Ireland is unique in having a dedicated support service for tourist victims of crime, the Irish Tourist Assistance Service (ITAS). ITAS assists tourist victims in accessing emergency travel documents; facilitating the cancellation of bank and credit cards; arranging money transfers; and contacting family and relevant services such as insurance and car hire companies.

¹⁴⁸ Court Services Annual Report 2016, p 25 available at [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/300A3D2A10D824E88025816800370ED2/\\$FILE/Courts%20Service%20Annual%20Report%202016.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/300A3D2A10D824E88025816800370ED2/$FILE/Courts%20Service%20Annual%20Report%202016.pdf)

ARTICLE 18 - RIGHT TO PROTECTION

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.

Part 3 of the *Criminal Justice (Victims of Crime) Act 2017* focuses on protection of victims during investigations and criminal proceedings. Section 2 of the Act defines a protection measure as ‘a measure which is intended to safeguard the safety and welfare of a victim by limiting or preventing contact with, or repeat victimisation, retaliation or intimidation of, the victim by an alleged offender or any other person on his or her behalf and includes:

- (a) advice regarding the personal safety of the victim;
- (b) advice regarding the protection of the property of the victim;
- (c) advice regarding safety orders, barring orders, interim barring orders and protection orders within the meaning of the *Domestic Violence Act 1996*;
- (d) advice regarding orders under section 10 of the *Non-Fatal Offences Against the Person Act 1997*¹⁴⁹, section 10 (1) of the *Criminal Justice Act 2006* and section 26 or 26A of the *Criminal Justice Act 2007*;
- (e) an application to remand the alleged offender in custody; and
- (f) an application that any admission of an alleged offender to bail be subject to conditions.’

On first contact with a victim An Garda Síochána or the Ombudsman Commission is obliged to

¹⁴⁹ 10.—(1) 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. (...)

(3) Where a person is guilty of an offence under

provide information to him/her under Section 7 (1) (h) of the Act of ‘how and under what conditions a victim may obtain protection including by way of protection measures’. Moreover, a victim must be able to be informed of any escape from custody of an offender and what measures have been put in place for the victim’s protection.¹⁵⁰

There are four types of protective court orders available for victims of domestic violence—Protection Order, Safety Order, Barring Order and Interim Barring Order. Obtaining orders is done through a civil (non-criminal) process where victims petition the court on behalf of themselves and their children.

A **Safety Order** prohibits the subject of the order from committing further acts of violence or threats of violence. The subject of the order must also stay away from the residence of the applicant (if the parties do not live at the same address). A **Protection Order** is a temporary order that can be put into place during the time when petition for a Safety Order and/or Barring Order is waiting for a hearing and a decision from the court. It has the same effect as a Safety Order but it is only temporary.

A **Barring Order** contains the same prohibitions of violence and threats of violence in addition to barring the subject of the order from entering or being near the home of the applicant. An **Interim Barring Order** does the same as a Barring order but it is only put in place until a decision can be made regarding the full Barring order. An Interim Barring Order is only granted in exceptional cases where there is serious risk to the life of the applicant and a Protection Order is deemed insufficient.

The system for obtaining a protective court order is civil, however the violation of an order is a criminal offense. Gardaí have immediate powers of arrest in circumstances where an order has been violated.

¹⁵⁰ Section 7 (1) m (iv) *Criminal Justice (Victims of Crime) Act 2017*

ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

(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.

(2) Member States shall ensure that new court premises have separate waiting areas for victims.

Nevertheless, it has been outlined that 'victims in provisional courts regularly have contact with the offender. There are two reasons for this. First, the court house do not have separate waiting areas for the victim. Secondly, the court lists are not managed in such a way to permit victims to avoid contact with the offender. District Court lists have a significant amount of cases listed at the same time, with the court rooms being packed to capacity. This is also the case with some circuit court lists, though to a lesser extent. Both the offender and the victim could be standing or sitting beside each other. If court lists were managed, taking account of a victim's needs, then this may better facilitate a victim avoiding contacting with the offender.'¹⁵³

In Irish law, the victim has a right to avoid contact with the offender. Section 33 of the *Criminal Justice (Victims of Crime) Act 2017* inserts a Section 5 A into the *Court Service Act 1998* which provides that as 'far as is practicable' contact between the offender and the victim and his/her relatives, family and friends 'may be avoided where necessary for the purpose of the criminal proceedings'. Furthermore, any courts build after the commencement of the act must have a separate waiting area for victims.¹⁵¹

The Court Services Annual Report 2016 illustrates the work that has been done to try to avoid contact with the offender:

*'Support for victims remains an important element of the service provided for court users. Major building projects completed since the establishment of the Service include dedicated facilities for victims with the Criminal Courts of Justice providing facilities of a particularly high standard. Similar facilities but on a less extensive scale are available in other court buildings including Carrick-on-Shannon, Castlebar, Cork, Ennis, Galway, Kilkenny, Sligo, and Tullamore. The Service supported the provision of new facilities in Tralee courthouse by Kerry Rape and Sexual Abuse Centre during the year. Additional dedicated facilities are included in the seven court building projects underway around the country. These facilities will be a feature of future major courthouse refurbishment works. During the year, the Service, on request, continued to reserve seats for victims and their families in courtrooms, particularly during longer running criminal trials.'*¹⁵²

¹⁵¹ Section 33 of the Criminal Justice (Victims of Crime) Act 2017 inserting Section 5A (b) into the Court Services Act 1988

¹⁵² Court Services Annual Report 2016 pp 18-19

¹⁵³ Interviewee 1.

ARTICLE 20 – RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Section 16 and 17 of the *Criminal Justice (Victims of Crime) Act 2017* outlines the special protection measures which are available for victims during investigation and how and when they are provided. These measures include the right to be interviewed in a building which is designed for that purpose by a person trained appropriately.¹⁵⁴ Interviews should be conducted when possible by the same person and when it relates to an offence of a sexual nature of violence in a close relationship the victim can request that he/she be interviewed by a person of the same sex.¹⁵⁵

A victim has a right to be accompanied by a person of their choice.¹⁵⁶ The request that a victim be accompanied by a different person *'is not taken lightly'* and the reasons for the request must be documented.¹⁵⁷ One example of a legitimate reason provided to a victim to justify the choice of a different person was when the accompanier was a suspect in the investigation (i.e. Domestic violence related assault). All requests must be documented and if the reasons are deemed insufficient by a supervisor *'they will be held accountable'*.¹⁵⁸

In June 2017, the Gardaí launched new 'Protective Services Units' (DPSUs) in four areas¹⁵⁹ as part of a phased roll-out of the units across the country. According to the Gardaí, these units are designed to 'deliver a consistent and professional approach to the investigation of specialised

154 Section 17 (1) (i)-(ii)

155 Section 17 (1) (a) (iii) & (b)

156 Section 12 (1), Section 14 (2), Section 18 (3) Criminal Justice (Victims of Crime) Act 2017

157 Interviewee 3

158 Interviewee 2

159 Cabra (Dublin), Clondalkin (Dublin), Anglesea Street (Cork), and Dundalk

crime types, including sexual crime, human trafficking, child abuse and domestic abuse' as well as 'the provision of support for vulnerable victims of crime, including enhanced collaboration with the Child and Family Agency to safeguard children.'¹⁶⁰ Personnel attached to the units are to receive an initial two-day training and then quarterly training on an on-going basis. Phase two of the roll-out was originally intended for 2018 however, at the time of this report no additional units have been established.

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ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

Section 20 of the Criminal Justice (Victims of Crime) Act 2017 permits the court to exclude the public, if they are satisfied 'that there is a need to protect the victim of the offence from secondary and repeat victimisation, intimidation or retaliation' and 'it would not be contrary to the interests of justice in the case'.¹⁶¹

The Constitution says that all cases should take place in public. However, some trials take place without the public being present. These include:

- Rape, defilement and incest;
- And cases where the accused is under the age of 18.

When the public is excluded from a trial, members of the media may still be in the courtroom. Usually, they cannot report the names of the accused or the victim or write anything that could help people find out their names.

¹⁶¹ Section 20 (1) (a)-(b) Criminal Justice (Victims of Crime) Act 2017. There was no other evidence with respect to the practical implementation of Article 21.

ARTICLE 22 - INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

Section 15 (1) of the *Criminal Justice (Victims of Crime) Act* requires that an individual assessment be conducted by either An Garda Síochána or the Ombudsman Commission to identify a victim's protection needs, if any.¹⁶² Furthermore, the assessment should also consider if a victim 'might benefit from protection measures' including measures during the investigation of the offence and during criminal proceedings.¹⁶³

A number of factors will be considered during the course of the assessment, namely: the nature and type of the crime; the circumstances of the crime; the harm suffered by the victim; the personal characteristics of the victim; whether there is any bias or discriminatory motive, which may be related to the victim's characteristics; and finally it recognises the particular vulnerability of certain victims, such as victims of trafficking, terrorism, gender based violence, victims with disabilities et al.¹⁶⁴

An Garda Síochána took meaningful steps in the area of victim assessment previous to the passage of the *Criminal Justice (Victims of Crime) Act 2017*. In November 2015, all members of the Gardaí were issued *aide memoires*¹⁶⁵ to carry with them in their notebooks.¹⁶⁶ The aide memoire provides a list of the key information must be ascertained by Gardaí to assess victims' special protection needs.

The procedure for assessment is well documented by the Centre for Crime Justice and Victim Studies at the University of Limerick School of Law in their report *Developing Directive-compatible practices for the identification, assessment and referral of victims*:

¹⁶² Section 15 (1) (a) Criminal Justice (Victims of Crime) Act 2017

¹⁶³ Section 15 (1) (b)-(c) Criminal Justice (Victims of Crime) Act 2017

¹⁶⁴ Section 15 (2) (a)- (f) Criminal Justice (Victims of Crime) Act 2017

¹⁶⁵ An aide memoires are issued by the Gardaí as memory aids or reminders for frontline staff.

¹⁶⁶ An aide memoires are issued by the Gardaí as memory aids or reminders for frontline staff.

*'The information is gathered at the scene and then entered into the PULSE system; as an additional safeguard, the central controller of PULSE that receives the information from the Gardaí for input into the system will ask the Garda all questions relating to everything covered in the aide memoire. The aide memoire ensures the Gardaí note the nationality of the victim; whether they speak English and their requirements for translation; whether they requested a doctor and whether they requested to be interviewed by a Garda of a particular gender. The Gardaí must note any specific characteristics and needs of the victim, such as whether they have needs regarding their hearing, literacy, mobility, or visual capacity, and whether they have protection or other needs. The Gardaí must also note whether the incident involves any discriminatory or other motives. Specific contact requests and times and methods (email, telephone etc.) must also be asked of the victim.'*¹⁶⁷

Once the information is entered into the PULSE system, it is transferred to the appropriate divisional Garda Victim Service Office. The information that indicates a need for special protections is flagged for the superintendent's office for action.

GSOC has also implemented procedures for the assessment of victims' special needs. According to the 2016 Annual Report, staff has been asked to assess *'whether a person who has made a criminal allegation to GSOC appears vulnerable to repeat victimisation, intimidation or retaliation (according to a number of specified factors), and/or whether they require any special measures during the investigation, such as specialist interviewing or assistance with communication.'*¹⁶⁸

It is difficult to determine how well the system for both the Gardaí and GSOC are functioning in practice. The 2016 Annual Report for An Garda Síochána stated that a review of the new services provided by Garda Victim Service Offices was subject to a review in late 2016 to assess how well they were meeting the requirements of victims. A focus group with victims was also to take place in early 2017.¹⁶⁹ The results of these evaluations have not been made public.

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168 Garda Ombudsman 2016 Annual Report, p 40

169 An Garda Síochána 2016 Annual Report, p 12

ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.

(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.

A victim with special protection needs is entitled to extra protection measures, additional to the ones identified above when referring to the right to protection, during the criminal proceedings under Article 19 (1) of the *Criminal Justice (Victims of Crime) Act 2017*. This includes the exclusion of the public, or a portion of the public from the trial hearing.¹⁷⁰ It also includes the right under Section 21 of the Act for a victim not to be cross-examined about his/her private life not related to the criminal offence. Amendments are also made to Part III of the *Criminal Evidence Act 1992* which permit a victim 'to give evidence through a live television link or an intermediary or enabling a screen or other similar device to be used in the giving of evidence'.¹⁷¹

In 2016, there were 120 Court venues in Ireland with seven additional courts under construction. In those, there were 33 courtrooms equipped with conferencing technology.¹⁷² There is significant variation in courthouses across Ireland. This variation has led to a delay in the use of screens as Court Services addresses the practicality and logistics of the use of screens for each court.

Evidence given in witness rooms in Ireland during 2016 included that given by underage or vulnerable witnesses in 30 cases in the Criminal Courts of Justice. In addition, evidence was given to an Irish court via a portable video link for the first time when the Service facilitated a request to enable an elderly witness to give evidence from a private house.¹⁷³

170 Section 19 (2) (a) Criminal Justice (Victims of Crime) Act 2017 referring to Section 20 Criminal Justice (Victims of Crime) Act 2017
 171 Section 19 (2) (b) and (c) Criminal Justice (Victims of Crime) Act 2017
 172 Court Services Annual Report 2016, p 4
 173 Court Service Annual Report 2016, p 25

ARTICLE 24 - RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

Section 17 (7) of the *Criminal Justice (Victims of Crime) Act 2017* focuses on an assessment of protection needs of child victims. There is a presumption under the Act that child victims always have special protection needs.¹⁷⁴ When conducting any assessment regard must be had to the child's best interests, any views which the child raised considering his/her maturity and age and the view of the parent or guardian.¹⁷⁵ A child victim is entitled to special protection measures during court proceedings such as giving evidence via television link, the use of an intermediary and the use of screens.¹⁷⁶

When children provide evidence in court, they can do so through a video link when the facility is available in the courthouse. There are video link facilities in 45 courtrooms in 21 courthouses across Ireland.¹⁷⁷ When providing evidence through video link, a child sits in a small 'witness' room in the courthouse and is only allowed to be accompanied by a staff member of court services. No one else, such as a parent or legal representative, is allowed in the room.

174 Section 17 (7) (a) Criminal Justice (Victims of Crime) Act 2017
 175 Section 17 (7) (b)(i)-(iii) Criminal Justice (Victims of Crime) Act 2017
 176 Section 19 (2) (b) and (c) Criminal Justice (Victims of Crime) Act 2017
 177 Court Services Annual Report 2017, p 27

Currently the courts have been very restrictive on what sources of comfort or ‘support aids’ a child can use while providing evidence. In one case, a child who was testifying through video link, was not allowed to bring a teddy bear with her to hold in her lap (out of the camera’s view) because it was deemed to be a distraction.¹⁷⁸ It has been outlined that discussions are ongoing to develop a pilot project on the use of court house facility dogs for child victims.¹⁷⁹ It is hoped that these trained dogs will be able to be used as a communication aid for child victims¹⁸⁰.

Ireland does not have juvenile courts or specialised sections in regular courts for child victims. There is no mandatory training required for anyone in the criminal justice system in how to interact and work with child victims. However it seems that in general, judges, prosecutors, and defence barristers speak to children in a sensitive manner.¹⁸¹ The Criminal Evidence Act, 1992, included provisions that make it easier for children to give evidence by getting rid of

- The need to give evidence on oath
- The need for corroboration (previously, additional evidence confirming the evidence given by the child was needed)
- The wearing of wigs and gowns by barristers when evidence is being given by television links.

178 Eve Farrelly, Child Accompaniment Support Service, speaking at Victims Directive Conference, 9th April, 2018, Dublin

179 Interviewee 1

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181 Interviewee 4

ARTICLE 25 - TRAINING OF PRACTITIONERS

Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.

Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.

Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.

Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

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Article 25 has not been transposed into Irish law. Although at one stage a provision with respect to training was included in later version of the *Criminal Justice (Victims of Crime) Bill 2017*, it was, nevertheless, subsequently removed.¹⁸²

There are a number of good practices to highlight in the area of training. The Irish Council for Civil Liberties, The Bar of Ireland and The Law Society of Ireland obtained EU funding to develop a training programme for lawyers and the judiciary across five different jurisdictions. The free Massive Open Online Course (MOOC) brought together experts working with victims of crime at a domestic and international level and which covered the Victims’ Directive; the *Criminal Justice (Victims of Crime) Act 2017*; vulnerable victims and testimonial aids; and compensation and complaints. The training programme was accessed by many people with a role in the Irish

182 Maria McDonald BL, ICCL Guide for Lawyers on the Victims Directive and the Criminal Justice Victims of Crime Act 2017 (ICCL, February 2018) p 37/38

criminal justice system. An exception was An Garda Síochána where they were contacted and offered access to the MOOC. There was no formal response to the invitation to access the training. However, a number of individual Gardaí have supported the training by pre-recording a video for the MOOC and being involved in a Victims' Conference

Furthermore, Mary Rose Gearty SC of The Bar of Ireland, runs an advocacy course for barristers. This training programme represents international best practice and enables a barrister to test and improve their advocacy skills.

Court Services have reported that 70 of their frontline staff took part in training and workshops conducted by victim support groups with one of the workshops focussed on the requirements of the EU Directive.¹⁸³ Eleven staff were trained in dealing with vulnerable witnesses and in the process of giving evidence by video link.¹⁸⁴

Since 1995, new Garda recruits have received training on responding to victims of domestic violence from the national domestic violence service Women's Aid.¹⁸⁵ In 2017, Women's Aid trained 350 new Garda recruits at the Garda College.¹⁸⁶ It is unclear what, if any, additional training Gardaí receive after the initial training.

183 Court Services Annual Report 2016, p 19

184 Court Services Annual Report 2016, p 7

185 Womens Aid Annual Report 2013, p 4

186 Women's Aid Impact Report 2017, p 4

ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.

Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.

A Victims of Crime Consultative Forum, organised by the Victims of Crime Office, has been held annually since 2009. It provides an arena for victim support organisations to put forward the views of victims with a view to shaping strategy and policy initiatives. The latest Consultative Forum was held in April 2018 and focused on the Criminal Justice (Victims of Crime) Act 2017. Representatives from the Department of Justice; An Garda Síochána; Garda Ombudsman; Court Services; Criminal Injury Compensation Tribunal and the Irish Prison Service provided attendees with information about how their respective organisations were addressing the rights of victims.

In 2010, a national strategy was developed by Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-based Violence. It was reviewed in 2014 and a second strategy is now in place to run from 2016 to 2021. It aims to

'Change societal attitudes to support a reduction in domestic and sexual violence and improve supports available to victims.' Its stated goals are:

1. To promote a culture of prevention and recognition through increased understanding of domestic, sexual and gender-based violence, and

2. To deliver an effective and consistent service to those affected.¹⁸⁷

Ireland is also party to a series of Conventions related to the rights of victims including:

Council of Europe

- European Convention on Mutual Assistance in Criminal Matters, 1959 (in force in Ireland since 1997)
- Convention on Cybercrime, 2001 (in force in Ireland since 2002)
- Council of Europe Convention on Action against Trafficking in Human Beings, 2005 (in force in Ireland since 2010)
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007 (signed by Ireland in 2017 but not yet ratified)

UNITED NATIONS

- United Nations Convention against Transnational Organized Crime, 2003 (ratified by Ireland in 2010)

EUROPEAN UNION

- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, 2000

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GOOD PRACTICES

A number of good practices were identified in the practical implementation of the Victims' Directive in Ireland have been identified.

Training

Training is key to ensuring that the Directive is implemented in practice. The EU funded project lead by the ICCL in conjunction with the Bar of Ireland and the Law Society of Ireland is leading the way with respect to training professionals working with victims of crime, in a format that is easily accessible. This project is being rolled out in four other jurisdictions, with partners in Hungary (Ministry of Justice), Lithuania (The Human Rights Monitoring Institute), Portugal (APAV) and Slovenia (The Peace Institute). The ICCL Guide on the Victims' Directive, referred to throughout this report, has been or is in the process of being adapted and translated in each of these jurisdictions. Similarly, the training provided in Ireland has been adapted and rolled out Hungary, Lithuania, Portugal and Slovenian.

Information, support and protection

The Office of the DPP has adhered to their obligations to provide information, support and protection under the Victims' Directive. The Prison Service has also put procedures in place to ensure that they adhere to their obligations under the Victims' Directive. Over the course of the past few years they have had an increase in people requesting information on when offenders are released from prison. This is in part because victims must request access to information from the prison service. If a victim does not know about the service then they cannot access it and it appears that more victims are being informed of their right to request information, as is required under Article 4 of the Victims' Directive.

Focus on the victim

Most importantly there appears to be a cultural shift and an understanding that victims' rights must be protected and adhered to. Prior to the implementation of the Victim's Directive and arguably the implementation of the *Criminal Justice (Victims of Crime) Act 2017*, there was a focus on the fair trial rights of the accused and a concern that providing a victim with rights might impact on the accused rights. After conducting the interviews and the survey it now appears clear that there is a better understanding that the accused rights must be balanced with the rights of the victim. Certainly, a lot more work needs to be done in An Garda Síochána in this regard but it is a process that has started.

GAPS, CHALLENGES, AND RECOMMENDATIONS

A significant amount of work still needs to be done to ensure that the Victims' Directive is implemented in Ireland in practice. Interviews and surveys conducted as part of this research indicate that there are gaps and challenges ahead to ensure that victims can access their rights under the Victims' Directive. However, the challenges are not unsurmountable. The implementation of the recommendations in this report should ensure that the Victims' Directive is fully implemented for victims of crime in Ireland.

All prosecuting authorities prosecuting criminal offences which must provide rights to natural victims

The limitation of the *Criminal Justice (Victims of Crime) Act 2017* to An Garda Síochána and the Ombudsman Commission means that some victims of a criminal offence are not legally entitled to their right to information, support and protection under the *Criminal Justice (Victims of Crime) Act 2017*. This is because there are other prosecuting authorities in Ireland which prosecute criminal offences, but they are not included within the remit of the *Criminal Justice (Victims of Crime) Act 2017*.

The *Criminal Justice (Victims of Crime) Act 2017* should be amended to include all bodies which prosecute criminal offences where there is a natural person who is a victim of crime.

The Gardaí and right to information

The Garda Leaflet for victims of crime currently does not comply with the Victims' Directive. The result is that all victims are not receiving their right to information as is required under Article 4 (1) of the Victims' Directive.

An Garda Síochána need to update their victims leaflet to comply with Article 4 of the Victims' Directive. It should be in plain and simple language to comply with Article 3 and it should be NALA approved. Research indicates that An Garda Síochána is aware of the issue and the revision process is underway.

Further training needs to be provided to Gardaí on the ground to make them aware of their obligations to victims under the Victims' Directive and the *Criminal Justice (Victims of Crime) Act 2017*

Quality of translation and interpreters

There are concerns that translators and interpreters are not regulated and there are no guidelines with respect to the standard or confidentiality exercised by them.

Consideration should be given to the implementation of regulations to govern interpreters and translators that work with victims and accused persons.

Victim Support Services

A victim's right to access victim support services was not included in the *Criminal Justice (Victims of Crime) Act 2017*. Not all victims of crime have access to adequate and specialist victim support services.

Additional funds need to be provided to support services to ensure they can provide a free of charge service to victims of crime in line with Ireland's obligations under Article 8 and 9 of the Victims' Directive.

Right of victims to avoid contact with an offender

It is appreciated that certain court rooms throughout Ireland are old and do not have the ability to provide a separate waiting area for victims of crime. However, the current manner by which some lists are managed make it inevitable that a victim will encounter an offender and potentially the offender's family.

Court lists should be managed to enable a victim to avoid contact with the offender. The Gardaí and the Court Registrar also have a part to play in ensuring that a victim knows when he/ she is due in court and where they can wait to avoid the offender.

Training

Training is essential to ensure that victims can access their rights under the Victims' Directive. A significant amount of training has been provided by professionals working with victims. However, more needs to be done by An Garda Síochána to ensure that its members are trained on their obligations under the Victims' Directive and the *Criminal Justice (Victims of Crime) Act 2017*.

CONCLUSION

The Directive has paved the way for a huge cultural shift in regard to the role of the victim in the criminal justice system. There is a much greater awareness of the needs and rights of victims of crime by many of the organisations and individuals within the criminal justice system. Despite the gaps and challenges facing Ireland in the full implementation of the Victims' Directive, a lot has already been accomplished and more positive changes appear to be on the horizon.

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An Garda Síochána Garda Victims Service Office Standard Operating Procedures

An Garda Síochána Domestic Abuse Intervention Policy

<https://www.hse.ie/eng/about/who/primarycare/socialinclusion/about-social-inclusion/>

APPENDIX 1 – CONTACT LIST OF INTERVIEWED PROFESSIONALS

#	Name	Institution	E-mail	Phone #
1	Maria McDonald, BL Barrister	Victims Rights Alliance/Irish Council of Civil Liberties		
2	Superintendent	An Garda Siochana		
3	Sergeant	An Garda Siochana		
4	Manager	Victim Support at Court		



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