



Dublin Rape Crisis Centre

Submission to the Judicial Planning Working Group

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A. Introduction

The Dublin Rape Crisis Centre (DRCC) aims to prevent the harm and heal the trauma of all forms of sexual violence in Ireland. We provide services including running the National 24-Hour Helpline, one-to-one therapeutic counselling and other supports to victims/ survivors; accompaniment to those attending Sexual Assault Treatment Units, Garda stations and court and education, training and advice to a wide range of people. In addition, we use our expertise and experience to provide reports, analysis and policy proposals to those tasked with action on behalf of victims/survivors of sexual violence. Through our work in the DRCC, we see first-hand the life long consequences of the trauma and harm caused by sexual violence of all kinds. These serious consequences negatively impact health, families, relationships, social well-being, education and work.

Throughout this submission we use the term victim/survivor. Those who contact us are victims of harm and potentially of crime and also have survived it. Many would regard themselves as one rather than the other. Some do not care for either term. In some cases, we also use the term complainant.

For further information, please contact Shirley Scott, Policy Manager at info@rcc.ie.

B. Context

Following the Programme for Government commitment “to establish a working group to consider the number and type of judges required to ensure the efficient administration of justice over the next five years”, the Judicial Planning Working Group (‘the Working Group’) issued an open call to interested parties for submission in relation to the following themes:

1. The number and type of judges required in Ireland in the next five years, and longer term to ensure the efficient administration of justice.
2. The impact of the Covid-19 pandemic, demographic changes, and implications of Brexit in regard to court caseloads and the subsequent resource requirements.
3. The development of judicial skills.
4. The extent to which efficiencies in case management and working practices, as well as enhanced digital technology, could help in meeting additional service demands, improving services, and access to justice.

These submissions will be considered by the Working Group in compiling their report and making recommendations to the Minister for Justice.

In accordance with the terms of reference provided by the Judicial Planning Working Group, the Dublin Rape Crisis Centre would like to address the following:

- the number and type of judges required in Ireland in the next five years, and longer term to ensure the efficient administration of justice
- the development of judicial skills
- the extent to which efficiencies in case management and working practices could help in meeting additional service demands, improving services, and access to justice.

C. The Issues Facing Complainants in Sexual Offences During the Judicial Process

Before offering possible solutions to the Judicial Planning Working Group, it is important to highlight particular issues that victims/ survivors of sexual violence face during the judicial process.

As identified in the *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences*¹ (The O'Malley Report), chaired by Tom O'Malley SC:

"..... witnesses in criminal trials, especially sexual offence trials, may be vulnerable by virtue of the circumstances in which they find themselves, even if they are not inherently vulnerable by virtue of age or disability"

Most victims/survivors of sexual offences know and are known to the accused and indeed the accused will often be a partner, ex-partner or family member. If not, they may come from the same community, work place or social group. The bringing of the complaint may have given rise to hostility or ruptures in family or community, adding extra pressure to a person going to court, often for the first time in their lives, to give evidence of the most intimate nature, to strangers.

Linked to this is the problem that most sexual offence trials are heavily dependent on the account given by the complainant of actions that were only witnessed by the complainant and the accused. Unlike other crimes, where there may be extrinsic evidence, these cases often heavily depend on the complainant recalling the activities the subject of the trial in every detail, with great accuracy, for the entire time between the occurrence of the actions and the conclusion of the trial.

The complainant is also aware that the role of the defendant and their legal team is to challenge the credibility of the victim/ survivor's account. That may be cross-examination, or by seeking (or threatening) to introduce evidence of sexual experience and intimate therapy notes. For the most part, the victim/ survivor does not have legal advice or representation and is in what can only be considered a hostile environment.

That requirement to recall every detail accurately and fully also impacts on victims/ survivors ability to recover from the trauma of the events giving rise to the trial. It is not surprising that as a result, many victims/ survivors abandon the justice process entirely faced with societal barriers and the barriers caused by the way in which the courts operate. This then denies victims access to justice.

In a snapshot survey that we did following the publication of the O'Malley report, those who had experienced the criminal justice system identified delay and uncertainty as the single biggest problem in the investigation and prosecution of sexual offences. This is borne out by our experience of accompanying victims/ survivors to court over decades who often find court trials equally if not more traumatic than the abuse which gave rise to the offences.

We are grateful for the opportunity to make this submission to the Working Group which we believe will be able to inform Ireland's obligations under the EU Victims' Directive², now directly applicable, which places an obligation on member states (at Article 18) to:

¹ August 2020. https://www.justice.ie/en/JELR/Pages/O'Malley_Report.Ch.1.4

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN>

“: . . . 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”.

Uncertainty as to trial date.

Complainants never have a true, set trial date as the availability of judges is subject to change or judicial administration is lacking on the date listed for hearing. This means that complainants can be notified of adjournments days before their trial, but in some instances, hours or even minutes before their trial. Recognising the impact of trauma and its effects on victims/ survivors, swift changes in such dates can be very damaging.

The impact of the sexual violence which gives rise to the offences is often experienced as a loss of control and autonomy. The swift change in trial dates can exacerbate those existing feelings. Particularly in cases where the victim/ survivor and accused are from the same family or community, but indeed in every case where the complainant is going to have to face the person accused of causing traumatic, damaging intimate harm, many victims/ survivors will need further clinical support. Having to prepare, step down, and then prepare mentally again for the ordeal can be extremely difficult and painful. In addition, it delays our capacity as an organisation to engage with other victims seeking therapy and thus has an impact on the wider mental health-care system, of which we are part.

As with all other victims of crime who have to attend court, there are logistical preparations to be made, scheduled and re-scheduled following adjournments, such as travel and accommodation, child-minding, or time off work, resulting in sometimes considerable expense.

Once given another trial date, it is not guaranteed that this date can't be subject to change again. Therefore, the current judicial process can seem like an uncertain, never-ending cycle of preparing for court, being denied the intended trial date, and consequently waiting for months and even years to receive a day in court and, consequently, justice. This in turn adds to the backlogs of sexual offence cases awaiting trial. Thus, the issue is of constant adjournments and lack of case management and support are not standalone barriers to accessing justice, rather they represent a wider issue facing the judicial process of sexual offence cases.

Once a complainant makes it to trial, it is not inherently clear if the trial will proceed without disruption. In particular, the strenuous process of starting and stopping trials is a constant characteristic of sexual offence cases in Ireland. Typically, these disruptions are a result of discrepancies between the defence and the prosecution regarding disclosure and the admissibility of evidence. Applications such as the use of the complainant's counselling notes or sexual history as evidence can be made without notice at the commencement or mid-trial. The Criminal Procedure Act 2021 has the potential to ease this disruption through late applications but it has not been commenced pending the making of Court Rules. To our knowledge, there is no deadline for when those rules will be brought into being and the Act commenced.

Delays can occur when the trial judge is unavailable to hear the victim impact statement of the complainant – a particularly traumatic time – or is not available to give sentence on a due date. In

this way, the lack of adequate planning in the current judicial model aids the delay of justice through the ways in which the system inadequately addresses the admissibility of evidence and disclosure and adequate case planning in sexual offence cases.

Information for Complainants. The Working Group planning should keep this in mind throughout their deliberations and ensure that all adequate information is available to complainants and those who support them. In addition, those support agencies mentioned above have valuable information which could help in better management. Consultation with court users should include structured, regular consultations with us and other such groups.

D. DRCC Recommendations to the Judicial Planning Working Group

The following recommendations are made with consideration to the efficiency of the trial process for both the complainant and accused, as well as the need to eliminate barriers to accessing justice and re-traumatization insighted by current trial practices:

D.1 There should be an adequate number of judges available at all times to preside over sexual offence cases in Ireland

It has been consistently reported by the DRCC's Court Accompaniment Workers that it appears there are not enough judges available or willing to preside over sexual offence cases in Ireland. The number of judges consistently available to preside over sexual offences cases should be determined through identifying benchmarks about the proper length of time between charge and trial.

The European Court of Human Rights has identified that lengthy delays in the Irish Courts have breached the rights of suspects³ – a matter which we understand is now being considered by the Department of Justice some 11 years after the finding. Lengthy delays between charge and trial, disruption or delay in the conclusion of trials equally cause hardship, trauma and damage to complainants and delay their capacity to heal and recover.

We submit that benchmarks may vary with a matter of weeks perhaps being appropriate in less complex/ summary cases. For cases in the higher courts, there may be a delay of some months but if victims' rights and interests are to be taken into account, as they now must be, then the benchmark should be a norm of no more than 12 months.

Working on that benchmark, it should be possible to calculate the set number of judges available at all times to preside over sexual offence cases. As sexual violence victims and survivors can be deemed vulnerable witnesses, it is necessary to ensure they are protected and given preference by the judicial process. By ensuring a set number of judges are available to preside over sexual offence cases, the issue of backlogs, constant adjournments, and the re-traumatization of complainants

³ McFarlane v Ireland 2010 ECtHR https://www.justice.ie/en/JELR/1-3260646-CASE_OF_MC_FARLANE_v_IRELAND.pdf/Files/1-3260646-CASE_OF_MC_FARLANE_v_IRELAND.pdf

could be weakened, if not negated entirely. Thus, it can strengthen the judicial process for all and potentially instigate further reporting and prosecution of sexual offences.

D.2 Judges need to be given adequate training regarding sexual violence and trauma if presiding over sexual offence cases

To address the issue of re-traumatization of victims during the judicial process, it is recommended that all judges presiding over sexual offence cases or pre-trial hearings regarding sexual offence cases be given adequate training on key concepts such as, but not limited to, consent, rape myths, and unconscious biases. Continuing, the required training modules should engage with objectives on the impact of sexual violence trauma and trauma-informed approaches to their judicial duties. By requiring such training of judges, the judicial system as a whole could be enhanced through providing specialists knowledge and, in return, garnering public support and trust in the system knowing that judges are aware of the realities of sexual violence victims and survivors.

D.3 The utilization of pre-trial hearings through the commencement of the Criminal Procedure Act 2021.

To address the consistent disruptions to trials due to issues arising from admissibility of evidence and disclosure in sexual offence cases, it is recommended that pre-trial hearings be utilized. We urge the Working Group to recommend that adequate resources be made available to the Courts Service or those who need them to finalise the necessary Rules of Court to facilitate commencement of the Criminal Procedure Act 2021.

D.4 Ensure adequate information to complainants and engage in structured discussions with them as court users and with those who provide accompaniment services.

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C. Conclusion

Whilst we have outlined some of the major issues complainants face in the current judicial process, we recognize that the very nature of sexual violence itself has profound and distinctive impacts and they present particular challenges for the criminal justice system. Hence, they merit distinctive consideration and responses, to which we have outlined in our recommendations. It should be noted that the risk of re-traumatization of victims and survivors of sexual offences during the trial phase of the criminal justice process is one that is not inherently unique to Ireland. However, this risk is significantly exacerbated by the prospect of uncertainty of trial dates, lengthy delays once the trial has begun due to disputes on the admissibility of evidence, and the lack of dissemination of crucial information and court appointed resources to complainants. Therefore, we welcome the efforts of the Working Group to endeavour to review the current system and provide judge-based solutions to the persistent issues facing victims and survivors in sexual offence cases during the trial process.