



RCNI Submission
To the Commission on the Future of Policing in
Ireland

February 2018

Introduction – Rape Crisis Network Ireland

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence since 1985. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

Introduction – This Submission

RCNI is very glad to have the opportunity to make this Submission to the Commission on the Future of Policing in Ireland. More and more of our clients, who are survivors of sexual violence, are willing to make a formal complaint to An Garda Síochána and where possible, give evidence at trial. For this group, engaging with the criminal justice process is challenging for many reasons, not least among them the gravity of the trauma of sexual violence and the fear of being re-traumatised by the criminal justice process itself, particularly in the witness box. It takes a long time, usually years. Meantime victims often must deal with fears for their own safety and that of their families as they work on their own recovery. Expert specialist support for this most vulnerable group of victims is vital, and part of that support is a compassionate, informed, professional and consistent response from members of An Garda Síochána.

RCNI acknowledges that the remit of the Commission allows for a more radical rethink about policing and is not limited to reforms of existing policing practice and procedure.

There have been many improvements in the Garda response to victims of sexual violence in recent times. It is vital that these successes are sustained into the future, that remaining deficiencies in the Garda response to these victims are addressed effectively, and that both successes and failures are used as springboards to develop new initiatives through which Garda policy in practice becomes the gold standard of international best practice on effective investigation of sexual crime and on appropriate, skilled, compassionate victim support.

Structure of this Submission

This Submission will describe the legal and administrative background to current policies and procedures in relation to sexual violence. It will then consider each one of several key aspects of the Garda relationship with victims of sexual violence in turn and set out under each of these headings, what works and what does not work for this group. Each one of these Sections will conclude with recommendations for positive change from RCNI.

The Background to this Submission

As indicated above, there have been many positive developments in the Garda response to victims of sexual violence in recent times, and in particular since the publication of “Crime Investigation”, the Garda Inspectorate Report from 2014¹. The last couple of years have seen the development of some additional Garda training in sexual violence, the establishment of a new Garda National Protective Services Bureau to oversee and monitor the rollout and operation of 28 new Regional Protective Service Units (among other functions), the allocation of more resources to combat online sexual offences, particularly those committed against children, the development of a new assessment procedure to identify victims’ specific protection needs and possible protective and special measures to address these, and the establishment of a series of Garda Victim Service Offices countrywide to make communication easier between victims and investigators – and this list is not exhaustive. Finally, in late 2017 the Criminal Justice (Victims of Crime) Act 2017² (CJVoCA 2017) became law, with the exceptions of Sections 19(3)(c) and 30. This Act transposed the EU Directive 2012/29 establishing minimum rights, support and protection for victims of crime and replacing Council Framework Decision 2001/220/JHA (the Victims’ Directive)³.

1 The Importance of Information – Keep It Simple

Simple to understand information helps to empower victims of sexual violence and to reassure them that their concerns are taken seriously. The prospect of making a formal statement, and later, perhaps being a witness in court can be nerve-wracking even for highly expert, experienced professional witnesses, let alone anyone who has undergone the severe trauma of a sexual assault. Because this level of stress makes it harder to take in information, it is vital that all important information be delivered in simple, unambiguous English and it helps also if it is available in a variety of ways, and if it is repeated several times.

RCNI recommends that all oral and written information given to victims of sexual violence by Gardaí to fulfil their obligations under the Criminal Justice (Victims of Crime) Act 2017, should be trauma sensitive and trauma-informed, so that it is:

- In simple language, and as short as possible while still ensuring it is complete and accurate;

¹ See this weblink to access Report: <http://www.gsinsp.ie/en/GSINSP/Crime%20Investigation%20-%20Full%20Report.pdf/Files/Crime%20Investigation%20-%20Full%20Report.pdf>

² Available online through this weblink: <http://www.irishstatutebook.ie/eli/2017/act/28/enacted/en/html>

³ Available online through this link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

- With regard to general information about criminal justice system: made available in several ways, e.g. leaflets, face to face, on Garda website, etc;
- Inclusive of a full description of all support services, including specialist services, available from local Rape Crisis Centres and others (e.g. SATU);
- As far as feasible, provided in standardized form from all Gardaí so as to minimise the risk of confusion;
- Repeated and reinforced in person, in writing and on the phone;
- Timely, so that victims are given as much notice as possible of new developments as they arise, such as court dates;
- As up to date as possible;
- Capable of being readily understood by the victim who needs to grasp it;
- Reassuring for victims of crime, so that they know they are entitled to certain information about their case, the justice system, available supports and so on, as a matter of course.

2 Training on Sexual Violence:

An Garda Síochána has obligations to provide both general and specialist training to increase awareness of the needs of victims, appropriate to their level of contact with victims, and to enable police officers to deal with victims in an “impartial, respectful and professional” manner - to its members, under the Victims’ Directive at Article 25⁴. Our understanding is that there is a program in place already to achieve this at foundation level. In our view it is vital that this training, as well as any specialist or intensive training for operational Gardaí, includes input from specialist victim support services, such as Rape Crisis Centres, so that Gardaí can acquire a good understanding of the impacts of the trauma of sexual violence on its victims and also, of the range of support services available to them through Rape Crisis Centres.

RCNI recommends that Garda training on sexual violence should include:

- Detailed information on the impacts of sexual violence on its victims;
- The consequences of these impacts on victims as witnesses in criminal proceedings;
- The importance of proactive contact by Gardaí with victims throughout investigations and criminal proceedings;

⁴ Weblink to the full text may be found at footnote 3 above

- Appropriate information about specialist support services, including information about the range of supports they provide to victims, to enable appropriate referrals to be made to these services and to help ensure victims are linked with them at any point in the criminal justice process where they could be useful (e.g. accompaniment services);
- The importance of providing full and accurate explanations to victims about imminent and recent decisions taken by Gardaí, prosecutors, judges and others, as far as this is appropriate – and taking care to ensure that the implications of these decisions are understood fully by victims;
- Establishing and maintaining ongoing, not necessarily formal, links between investigating Gardaí and Rape Crisis Centres, among other services, at local level – our experience is that this is likely to have a positive effect on numbers of victims making, and maintaining, complaints;
- Understanding of the reasons why it is important to pay attention to victims' privacy and safety concerns, and address these in a timely manner⁵. This is particularly important when both victim and accused belong to small communities, are related or closely acquainted;
- Effective liaison with prosecutors and court staff, where necessary, to ensure that special measures identified in assessments may be put into effect if so ordered by the trial judge, in court when the trial opens; and
- “Unconscious bias” training, to help counter-act the effect of pervasive “rape myths” – e.g. “she did not fight back physically so she was consenting..”

RCNI also recommends that every possible opportunity should be taken to provide members of the new specialist Regional Protective Service Units with intensive training on best international practice both in handling investigations of sexual crime and in victim support; and further

RCNI recommends that through the CPD programme but not limited to its remit, every opportunity should be provided to all first responder Gardaí to avail of training in sexual violence. Finally,

RCNI recommends that An Garda Síochána draws on the knowledge and experience of Rape Crisis Centres of the nature, dynamics and impacts of sexual violence, at both national and local levels, in devising its training programmes, both general and specialist, in this area.

⁵ These considerations should form part of the assessment of each victim's specific protection needs, which must be carried out under Section 15 CJVoCA 2017.

3 Specialisation

RCNI welcomes very much the new initiative to roll out specialist investigative Regional Protective Service Units (RPSU's), around the country. Early feedback from our member Centres about the Units already established, is very positive. They should lose no opportunity to seek out, pilot and implement best international practice in relation to victims of sexual violence and in particular, the most vulnerable of these victims such as children – as it develops over time;

RCNI recommends that these Units are resourced and promoted appropriately so as to ensure that all victims of sexual crime across the country, have access to them; and

RCNI recommends that these Units should continue over time to explore, advocate for, and pilot, new measures to encourage the most vulnerable victims of sexual violence, such as children and those with an intellectual disability, to give their best evidence with the minimum risk of additional trauma to themselves.

4 Effective inter-agency working, especially at local level

In general, Gardaí should see themselves as part of the wrap-around team for survivors of sexual violence, taking account of the roles and responsibilities of all other relevant State and non-state agencies who serve various aspects of survivor needs and the justice process, and facilitating effective and appropriate referral and linkage.

Effective inter-agency connections, particularly at local level, have the potential to make victims' experience of the criminal justice system much less stressful. For example: several of our member Rape Crisis Centres have established informal, but regular meetings with a few key members of the Gardaí in their catchment area. These meetings provide opportunities to share, develop and eventually, implement good ideas to improve the experience of victims. One good idea which has become the usual practice in some areas, is to allow Gardaí to take statements from victims in Rape Crisis Centres.

RCNI recommends: Local RPSU's, in particular, should be proactive in establishing and/or developing links with local specialist support services for victims of sexual crime; and

RCNI recommends that An Garda Síochána should continue to seek out new links with other State and non-State agencies, at all levels – and to maintain existing links where they are already effective. An example of positive and effective Garda participation in a national-level inter-agency structure is their longstanding presence on the SATU Guidelines Committee, through three editions of Guidelines since 2006.

RCNI recommends: That Garda policy, command structures and professional pathways be open to co-location with other specialist services in survivor-centred best evidence and response initiatives whereby Gardaí form part of a multidisciplinary wrap-around team to ensure that the risk of secondary trauma is minimised and that their best evidence is

captured as early as is possible and appropriate, in the case of child victims of sexual violence and other groups of vulnerable victims.

5 Appropriate referral to/liaison with/knowledge of/other specialist support services

It is vital that Gardaí, especially specialist investigators, have a working knowledge of the range of specialist supports available to victims of sexual crime at least in their own area, so that they can refer victims appropriately. It is also very helpful if they can liaise effectively with local services, so that where necessary and desirable from a victim's point of view, services may be provided to assist in aspects of the criminal justice process (e.g. Garda accompaniment, Court accompaniment) as quickly and smoothly as possible.

RCNI recommends that every opportunity should be taken by local Gardaí, both first responders and RPSU members, to inform themselves about the range of local services available to victims of sexual crime.

RCNI recommends that the exploration of survivor centred co-location models should be explored.

6 Victim Safety

Victims of sexual crime often live in fear of retaliation or intimidation by the accused or his supporters, against themselves or their loved ones, once they have made a formal statement against him to the Gardaí. Accused persons will not be subject to any bail conditions unless and until they are charged, and once charged, very few will be remanded in custody until trial. The court proceedings, if any, are likely to take place a long time after the original complaint, often extending beyond one year (or even two or more). This means that complainants must often live with fears for their own safety and that of their loved ones for prolonged periods, even if bail conditions preventing contact by the accused are in place. Victims need to feel supported by Gardaí if they have any particular concerns, or the threat to them escalates, during this period, and for that reason,

RCNI recommends that investigating Gardaí take time to remind all victims of sexual crime regularly that there are steps which they can take to minimise the risk to them, if any particular safety concerns arise, or they have reason to believe that the threat to their safety or that of their loved ones, has escalated; and

RCNI recommends that any criminal offences which are brought to their attention by complainants and which involve intimidation, retaliation, breach of bail conditions, witness interference and so on – are investigated and prosecuted with vigour by An Garda Síochána.

7 Victim Privacy

Concerns that they will lose all privacy about their intimate lives and about the circumstances of the crime, loom large for victims of sexual violence, and particularly those

who live close to the accused or are closely acquainted through family, work or community. . To the extent that this is possible and appropriate, Gardaí should reassure victims that their personal history, including the history of the crime, will not become generally known. They should of course also advise victims not to talk about what happened to them on social media, or in any other public forum, unless and until the accused person is convicted. However, they also need to be frank about the demands of disclosure in criminal proceedings for victims, and should do their utmost to ensure that any consent given by victims to disclosure of their personal documents – is a **fully informed** consent. Further, when considering whether the victim has “specific protection needs” as required by Section 15 of CJVoCA 2017, Gardaí should bear in mind that most victims of sexual crime would welcome every possible measure to preserve some aspect of their privacy, in court proceedings, for example through the use of video-link. Finally, many victims are extremely anxious about bumping into the accused person accidentally in the court precincts on the day of the trial. Any possible measure which can be put in place to minimise the chances of such an encounter is important for victims’ well-being and indeed, possibly also their ability to give evidence.

RCNI recommends that at every stage of the criminal justice process, Gardaí should do all they can to preserve the privacy of the victim, insofar as this is appropriate to their role and to the interests of justice generally.

8 The importance of proactive contact with victims of sexual violence

As set out above, criminal justice proceedings can take a very long time indeed from initial complaint to final determination, particularly if there is a court hearing. During this time, it is a huge support for victims of sexual crime to have regular contact from the investigating officer in their case. It reassures them that their case has not been forgotten, that the system is still working to bring the accused to justice, and that they can refer back to the Gardaí if they have a particular concern, for instance about their own safety, or there is something they do not understand.

RCNI has been gathering Garda response data from its clients for a few years, and we are happy to report that survivor satisfaction with the level of Garda contact available to them – has increased over time. In 2015, the latest year for which published figures are available, the proportion of “reporter” clients with whom the investigating Garda maintained contact throughout the case, was 67%⁶. It is vital that this be maintained and improved, as it is something which really does help victims to stay with the criminal justice process over often very lengthy periods.

⁶ It was up to 67% in 2015 from 60% in 2014. See RCNI National Rape Crisis Statistics and Annual Report 2015, available online at: <http://www.rcni.ie/wp-content/uploads/RCNI-RCC-StatsAR-2015-1.pdf>

RCNI recommends that investigating Gardaí maintain contact with victims regularly, according to an informal but flexible schedule which is agreed with each victim, even if there is nothing particular to say on a given day. There may well be something which the victim wishes to raise and which has not yet come to the attention of the Gardaí.

A measure of success of RPSUs should be that survivors and vulnerable victims come to know, trust and utilise resources through them. Gardaí must continue not only to inform and lead on meeting survivors' rights and needs through these new Units, but must also continue to respond appropriately to requests for information about their case from individual survivors, as their understanding of the criminal justice system and their role increases over time.

9 Effective liaison with prosecutors

Gardaí have a statutory responsibility to provide any assessment report identifying a victim's specific protection needs, to the prosecutor in the case. It is in most cases the prosecutor's responsibility to make any applications for special measures on behalf of victims, in court. Gardaí accompanying victims to court should arrive with a thorough understanding of the victim's position on any special measures identified in the report and then ensure that the prosecutor is as well informed as possible on this point. As proceedings unfold, Gardaí should ensure that any decisions contemplated or indeed, made by the prosecutor or the Court, are fully explained to, and understood by, the victim. Where possible and appropriate, Gardaí should convey the victim's stance on such matters as the acceptance of a plea to a lesser offence, a possible application for compensation after conviction, and so on, to the prosecutor, again to ensure that his/her decision is as well informed as possible.

RCNI recommends that Gardaí accompanying victims to Court should do their best to both to represent the prosecutor's or the Court's decisions accurately to the victim and where necessary and appropriate, should also do their best to convey the victim's stance on specific issues to the prosecutor, as far as possible in advance of any decision, to ensure that those decisions are as well informed as possible as to the victim's views. This is particularly important if there has not been any opportunity to address the issue(s) during the pre-trial meeting (prosecutor, Garda and victim).

10 Effective victim support at Court and beyond

When someone is sentenced for a sexual crime, there are often a number of ancillary orders made. Some of these will be specific conditions attached to the suspended portion of a sentence, or to a post-release supervision order. It is important that victims understand the effect of each order made by the Court on sentence, and even more important that they understand what they should do if they know or suspect that any one or more of these orders has been breached. Also at this stage of proceedings, it is important that victims are

informed about other possible protective measures post sentence, such as Sex Offender Orders. Gardaí should be aware that it is likely that once the perpetrator's release date approaches, the victim will become quite anxious that they will track him/her down and/or harass or attack him/her, or his/her loved ones, and should be prepared to advise the victim on what to do if s/he has any concerns.

RCNI recommends that victims leave Court after a sentence having been informed fully and accurately about the effects of the various orders made in the proceedings, and also, about what they should do if they have any concerns in the future about the behaviour of the convicted person.

11 Full and accurate data collection

It would be a great advance if An Garda Síochána were to collect, collate and analyse data, which is gathered from "reporter" victims of sexual crime during the assessment process, the rest of the investigation and beyond, with a view to finding out the combinations of characteristics and circumstances which are associated with positive experiences – and positive outcomes, which should not be limited to convictions. This would inform policy, procedure and where necessary, law reform initiatives.

Ideally, in order to develop the best insights and capacity to monitor and learn, data in this area should be fully cross-referenced across all of the professionals and agencies supporting the survivor giving whole-of-case data for analysis. This is not currently possible. A trusted third party is a solution to achieve what is currently not possible and should be allowed for under Garda governance and explored further across all the relevant statutory and non-statutory partners.

As far as victim support is concerned, and in addition to information access rights under GDPR, Garda information systems should be capable of being interrogated securely by victims at any time – so that a victim, by entering a unique and secure ID number can access information about their own case at any time, without having to contact the Garda in their case or wait till the next contact point.

RCNI recommends that Garda data collection and analysis systems are resourced, maintained and developed in such a way as to provide meaningful information on victim and perpetrator trends (for sexual crime) to policy makers and Garda supervising officers and management;

RCNI recommends that the possibility of a secure online victim enquiry system is explored as soon as possible.

12 Raising legal issues as they arise and getting them addressed

It is important that there is an effective procedure in place through which An Garda Síochána as a whole can raise concerns about legal issues to do with the range of criminal

offences and/or the range of investigative powers, open to them – with Government, through the Department of Justice, so that these issues may be addressed effectively.

RCNI recommends that An Garda Síochána seek to establish a formal procedure through which their legitimate concerns about legal issues relevant to their role may be communicated to Government, addressed and resolved.

Conclusion

Achieving the best possible evidence from this vulnerable group of prosecution witnesses and achieving the best possible response to them, are not incompatible aims, and RCNI recognises that An Garda Síochána has made very good progress in relation to both in recent times. However, An Garda Síochána collaboration and partnership with the other relevant professionals and bodies including non-state specialist services such as Rape Crisis Centres should be fostered to ensure expert assistance in supporting victims, through the development of more training, better inter-agency links, and a better understanding of vicarious trauma as it can affect any professional in regular contact with traumatised people, among whom are many victims of sexual violence.

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