

The Implementation of the Victims' Rights Directive into Irish Domestic Law



The need for collaboration and
effective enforcement mechanisms

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Introduction

1. Strength in Numbers – **Collaboration** of victims rights groups in Ireland

2. The Victims Voice: **Identifying issues** in the provision of information, support & protection to victims of crime in Ireland

3. **Implementing** the Directive **in practice**

4. **Enforcement** mechanisms at a domestic level



1. Strength in Numbers

Collaboration of victims rights groups in Ireland



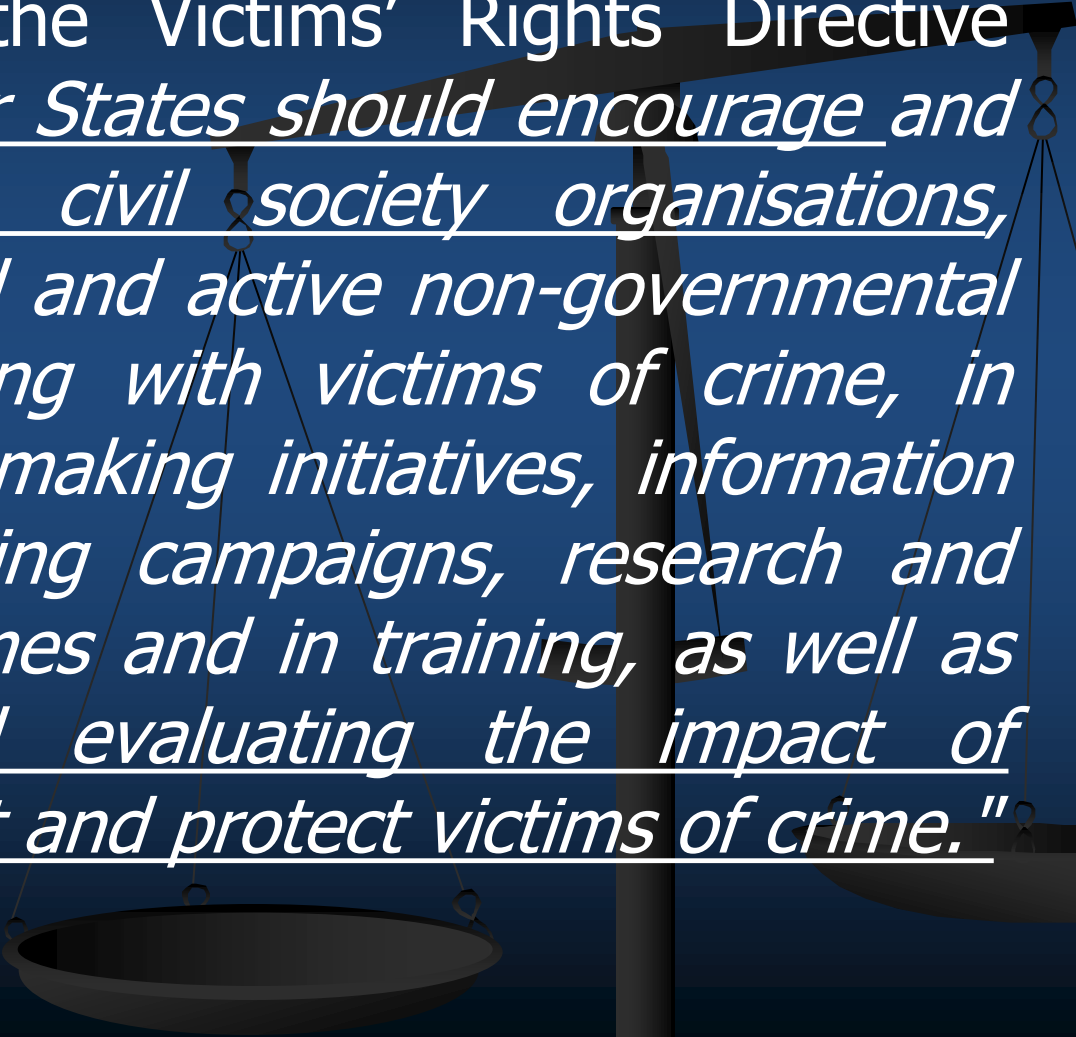
1. Strength in Numbers

The Victims' Rights Alliance [VRA] is an Alliance of victims support and human rights organisations in Ireland namely, Advocates for Victims of Homicide [AdVIC], the Dublin Rape Crisis Centre [DRCC], the Irish Council for Civil Liberties [ICCL], Inclusion Ireland, the Irish Road Victims' Association [IRVA], the Irish Tourist Assistance Service [ITAS], One in Four, PARC Road Safety Group, the Rape Crisis Network Ireland, Safe Ireland and Support after Homicide [SAH]. The Alliance has been formed with one key goal: to ensure the Victims' Rights Directive is implemented in Ireland within the proposed time frame with all victims of crime in mind.

www.victimrightsalliance.com

Why establish the VRA?

The foreword to the Victims' Rights Directive states that "Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policy making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime."



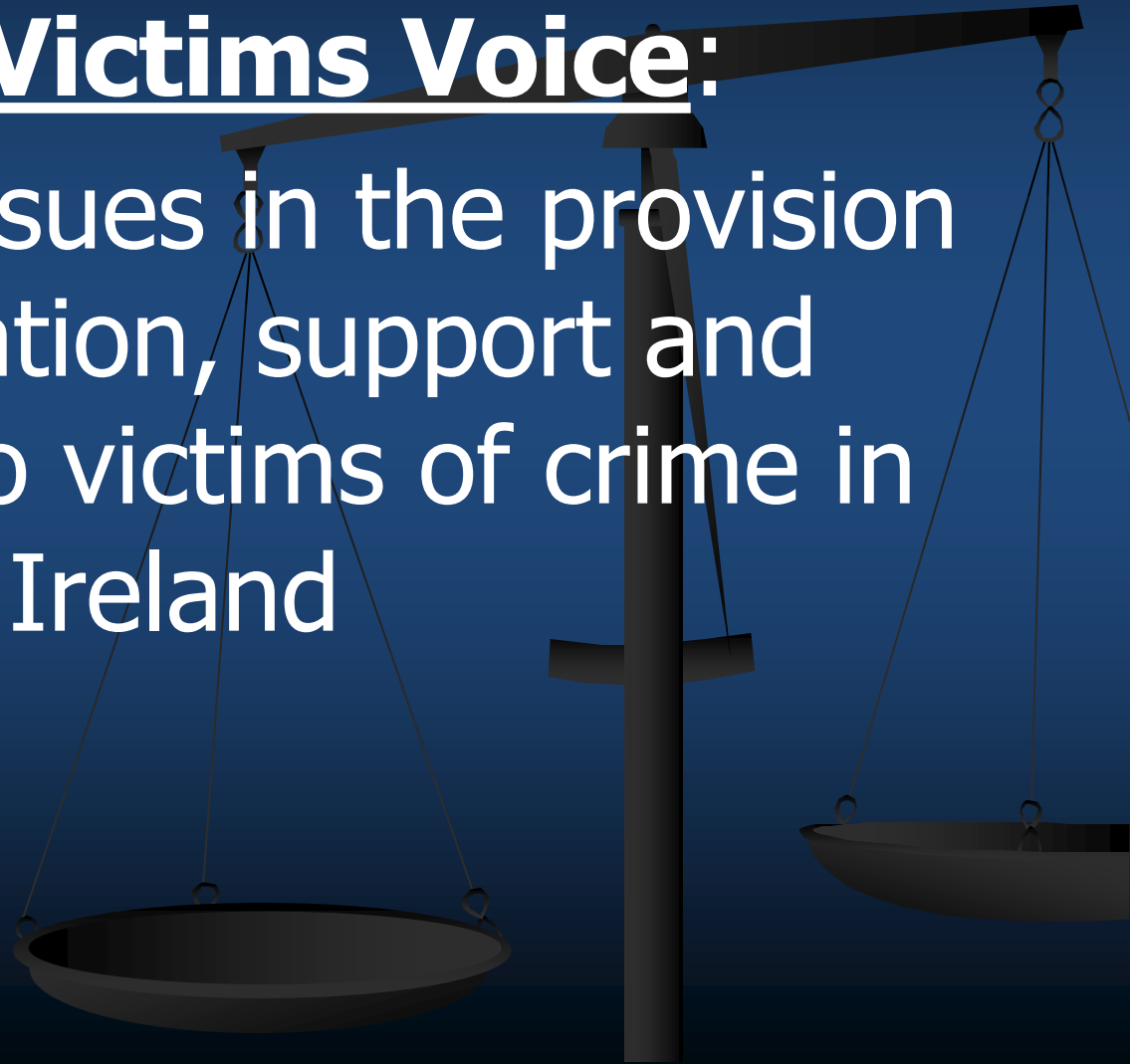
How will the VRA achieve its goal ?

The VRA members represents victims of homicide, domestic abuse/sexual assault/rape, road traffic collisions, tourists who are victims abroad and persons with disabilities. The VRA's has:

- * Identified issues and problems which victims face in obtaining information, support and protection in Ireland and;
- * By identifying these issues it highlights what needs change in practice to ensure effective implementation of the Directive.

2. The Victims Voice:

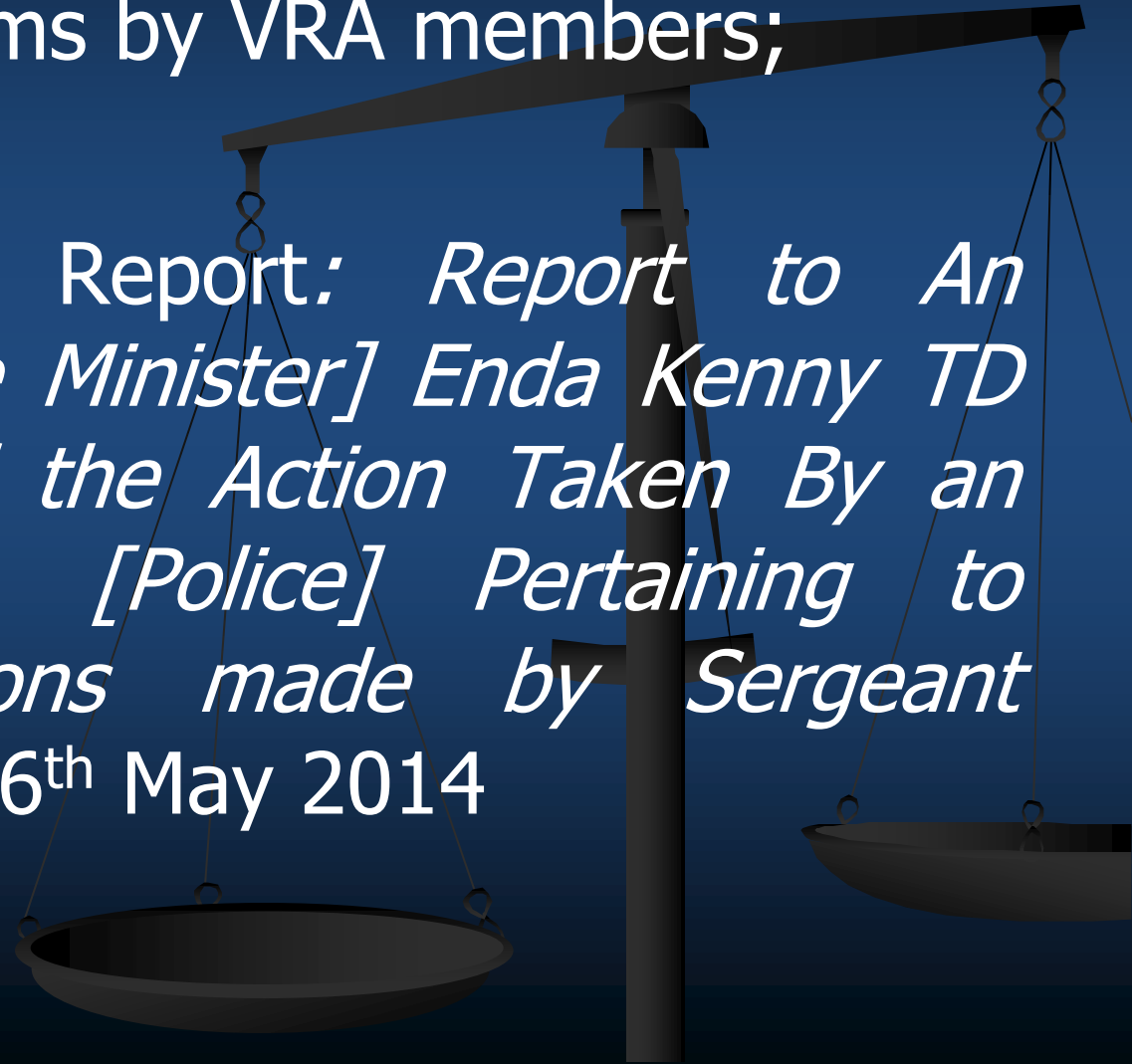
Identifying issues in the provision of information, support and protection to victims of crime in Ireland



2. The Victims Voice

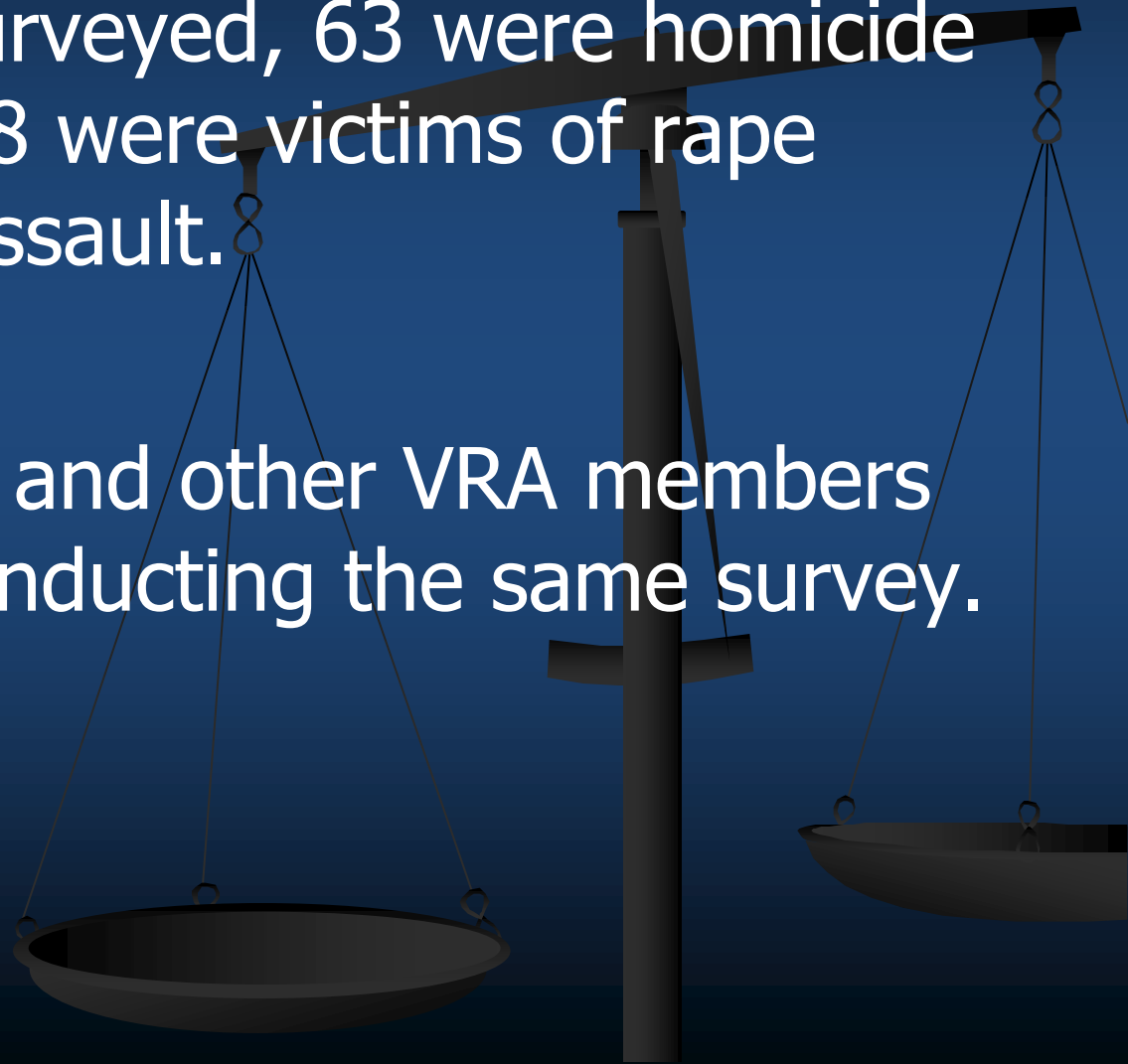
A. Survey of Victims by VRA members;

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



Survey of Victims by VRA members

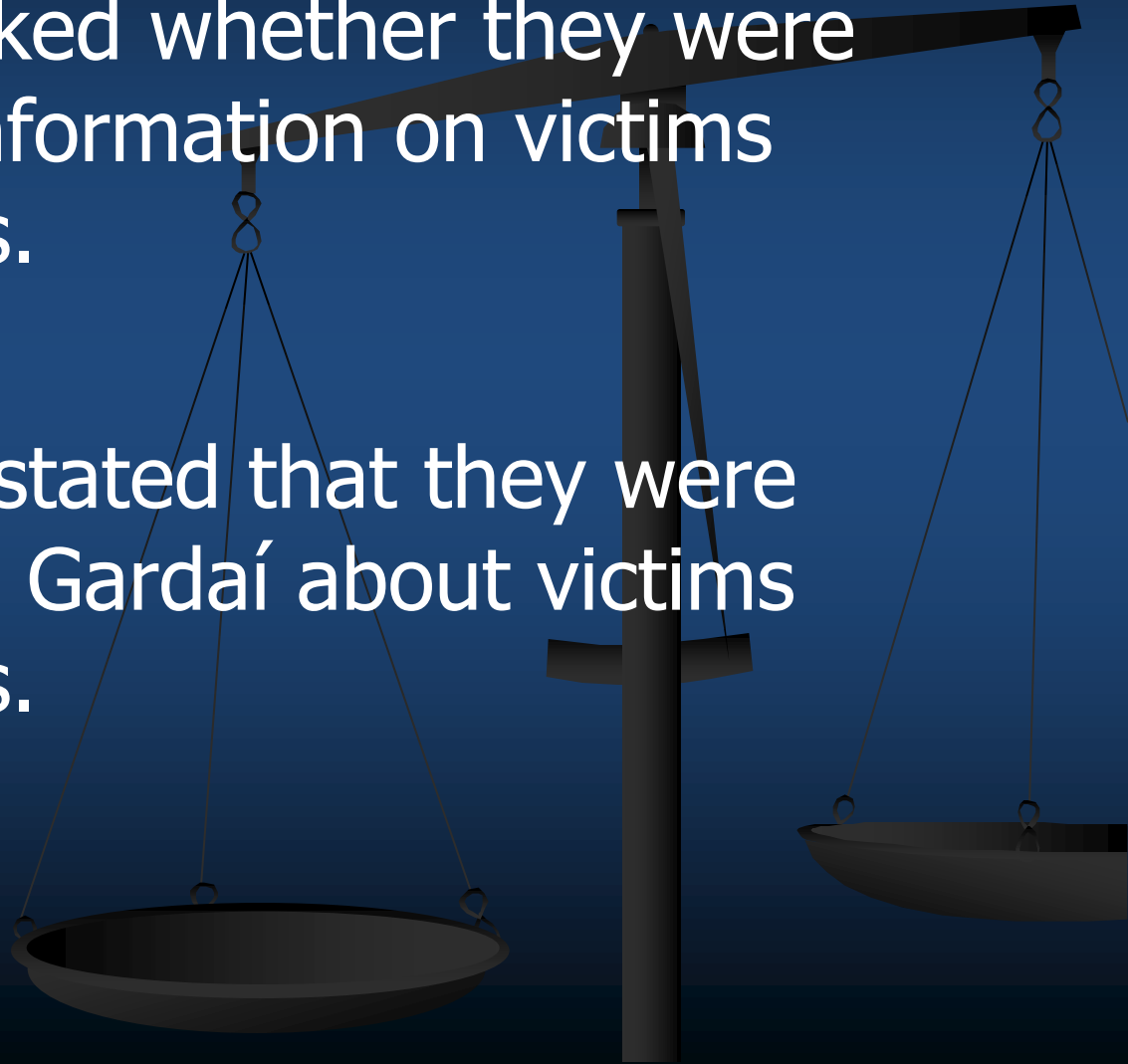
- Of 81 victims surveyed, 63 were homicide victims, while 18 were victims of rape and/or sexual assault.
- Survey ongoing and other VRA members are currently conducting the same survey.



A. VRA Survey

Information on Support Services

- Victims were asked whether they were provided with information on victims support services.
- 46% of victims stated that they were informed by the Gardaí about victims support services.



VRA Survey

Information on Support Services

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

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

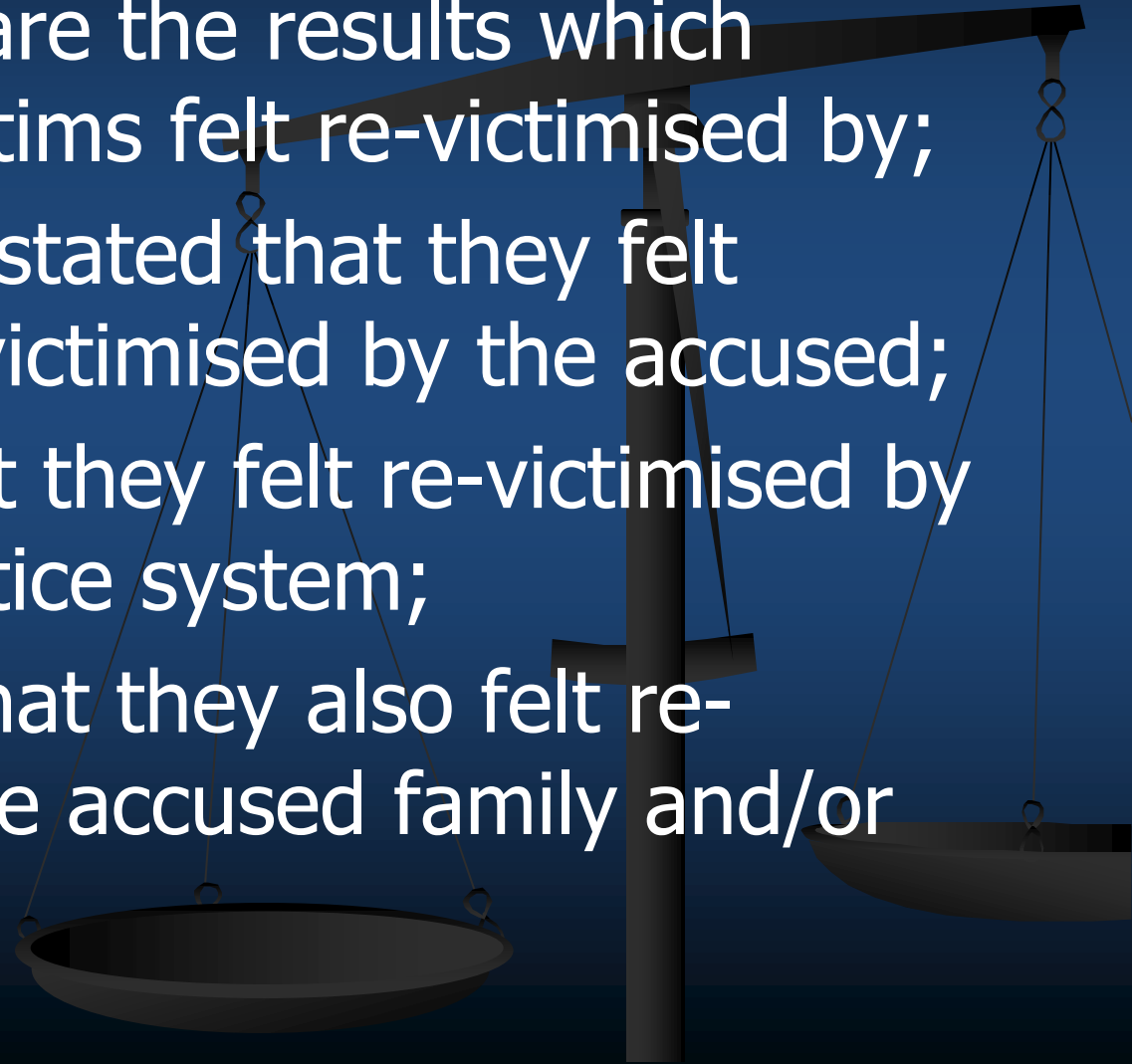
VRA Survey – Protection

- Victims were asked 'did they feel intimidated or re-victimised by the accused and/or the criminal justice system and/or other.' In response, 52% of people surveyed said that they felt intimidated or re-victimised and 6% stated that they did not. The remainder, 42%, did not answer this question and this may be due to the fact that the case had not gone to trial.

VRA Survey – Protection

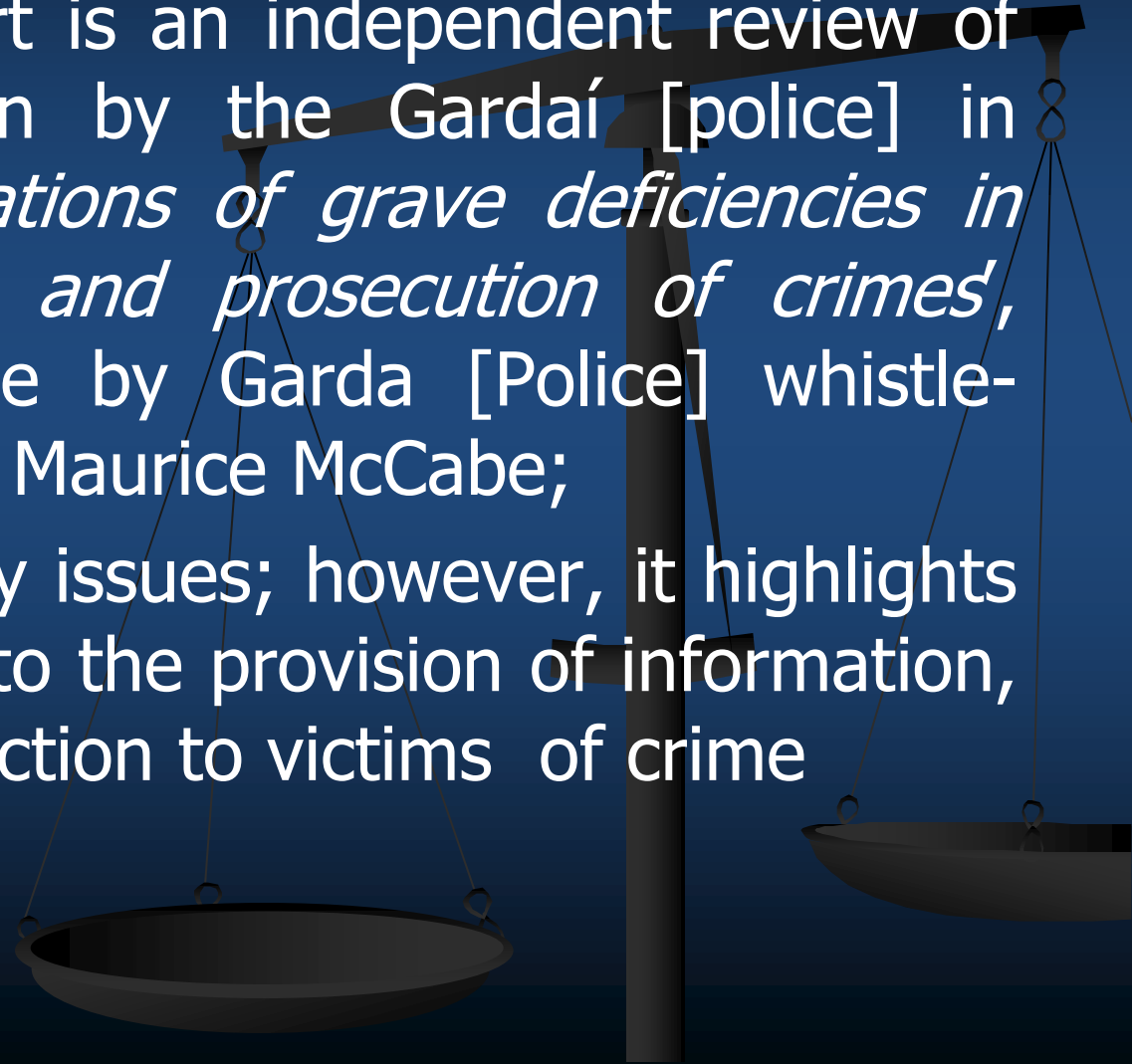
More interesting are the results which consider what victims felt re-victimised by;

- 49% of victims stated that they felt intimidated/re-victimised by the accused;
- 72% stated that they felt re-victimised by the criminal justice system;
- Others stated that they also felt re-victimised by the accused family and/or the media.



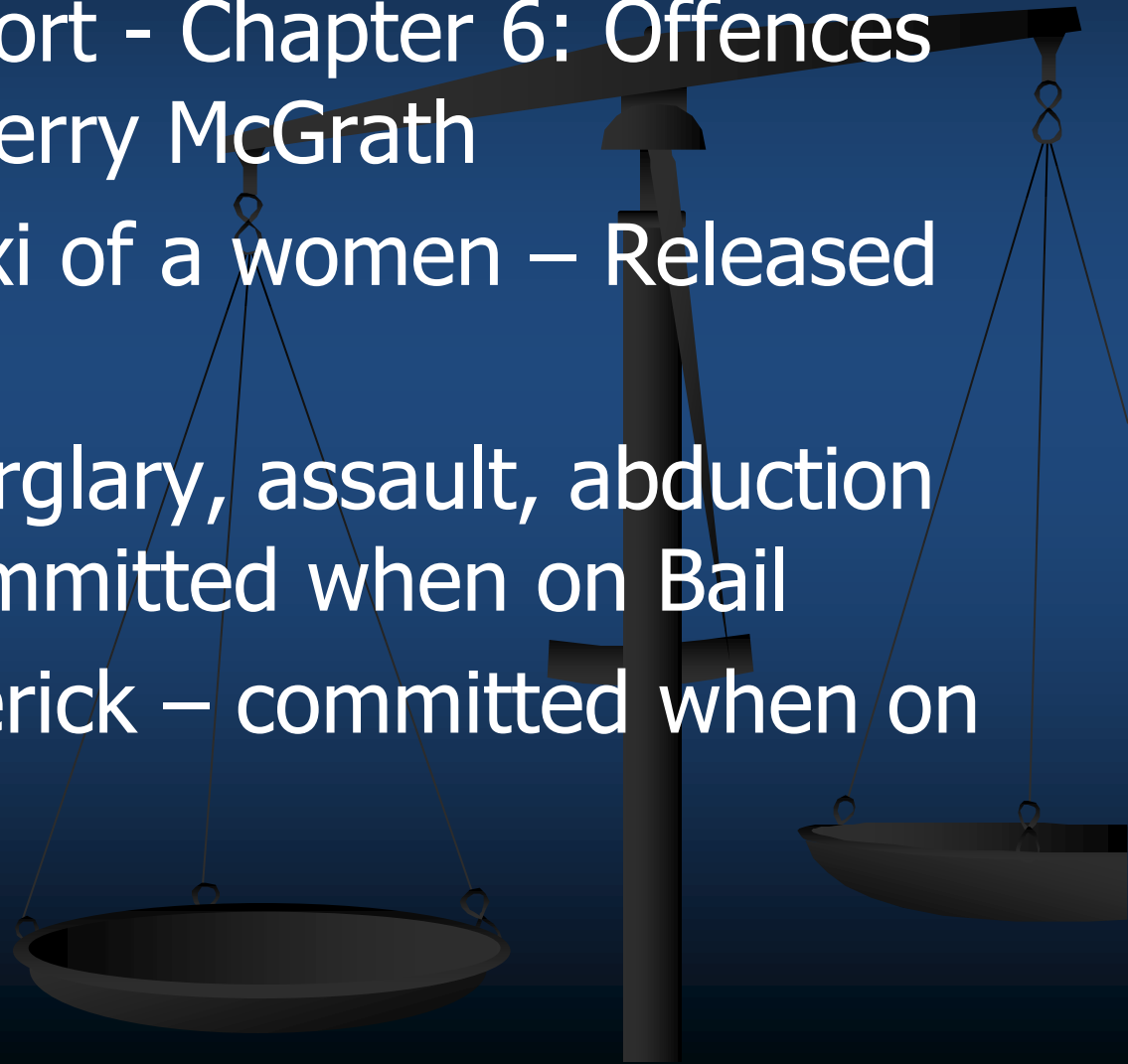
B. The Guerin Report

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



The Guerin Report: Offences Committed by Jerry McGrath

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



The Guerin Report



a. Pulse System – The Garda Information system – classification of crimes

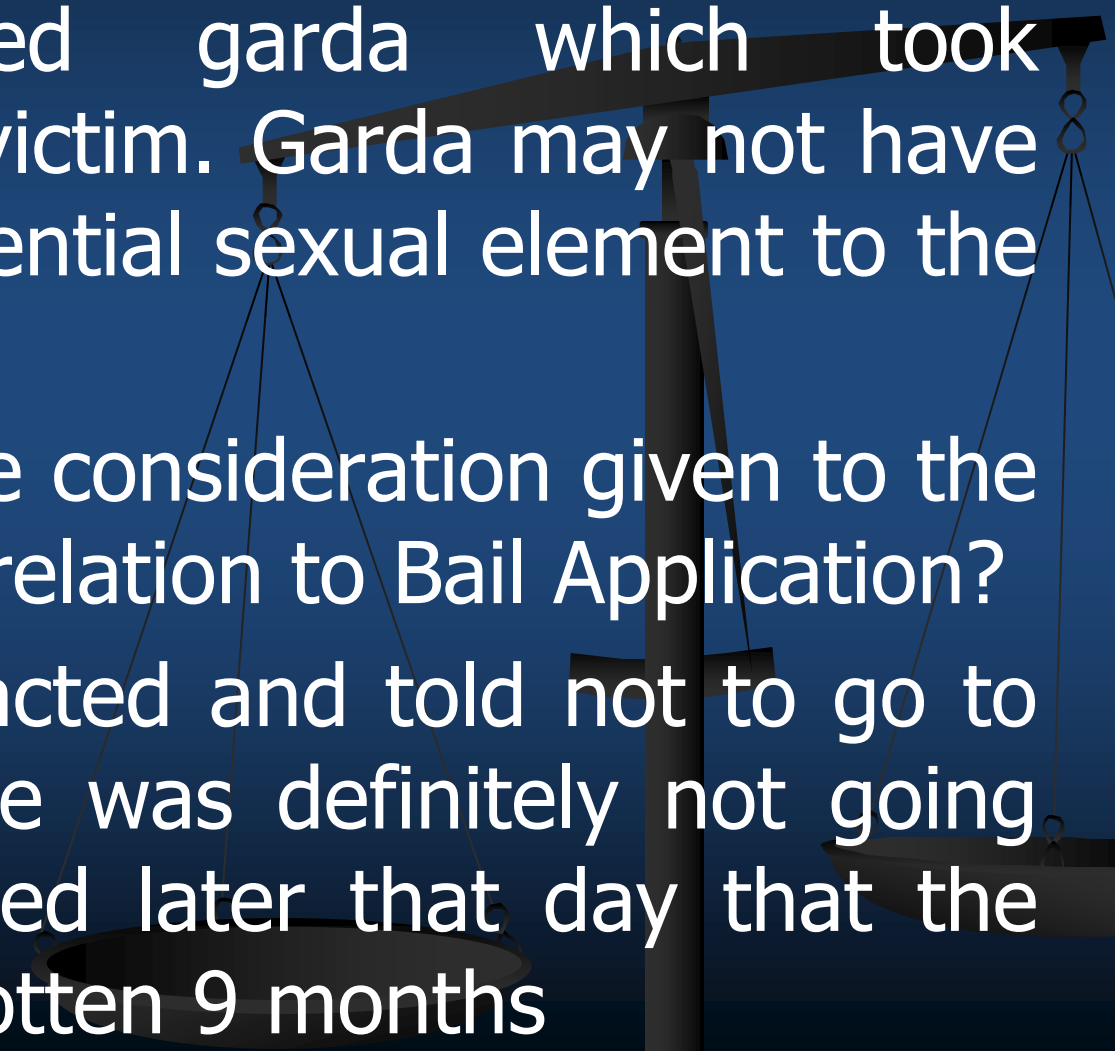
b. Delay in submitting the file to the Director of Public Prosecutions [DPP]. Failure to inform the DPP of the child abduction charges when seeking a direction

c. Bail in child abduction case. Information on the seriousness of the earlier assault.

d. Breach of conditions of bail terms not noticed as only one person on duty.

The Guerin Report

Victim 1 - issues:

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

Victim 1 - issues:

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

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

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

3. Implementing the Directive in practice



3. Implementing the Directive

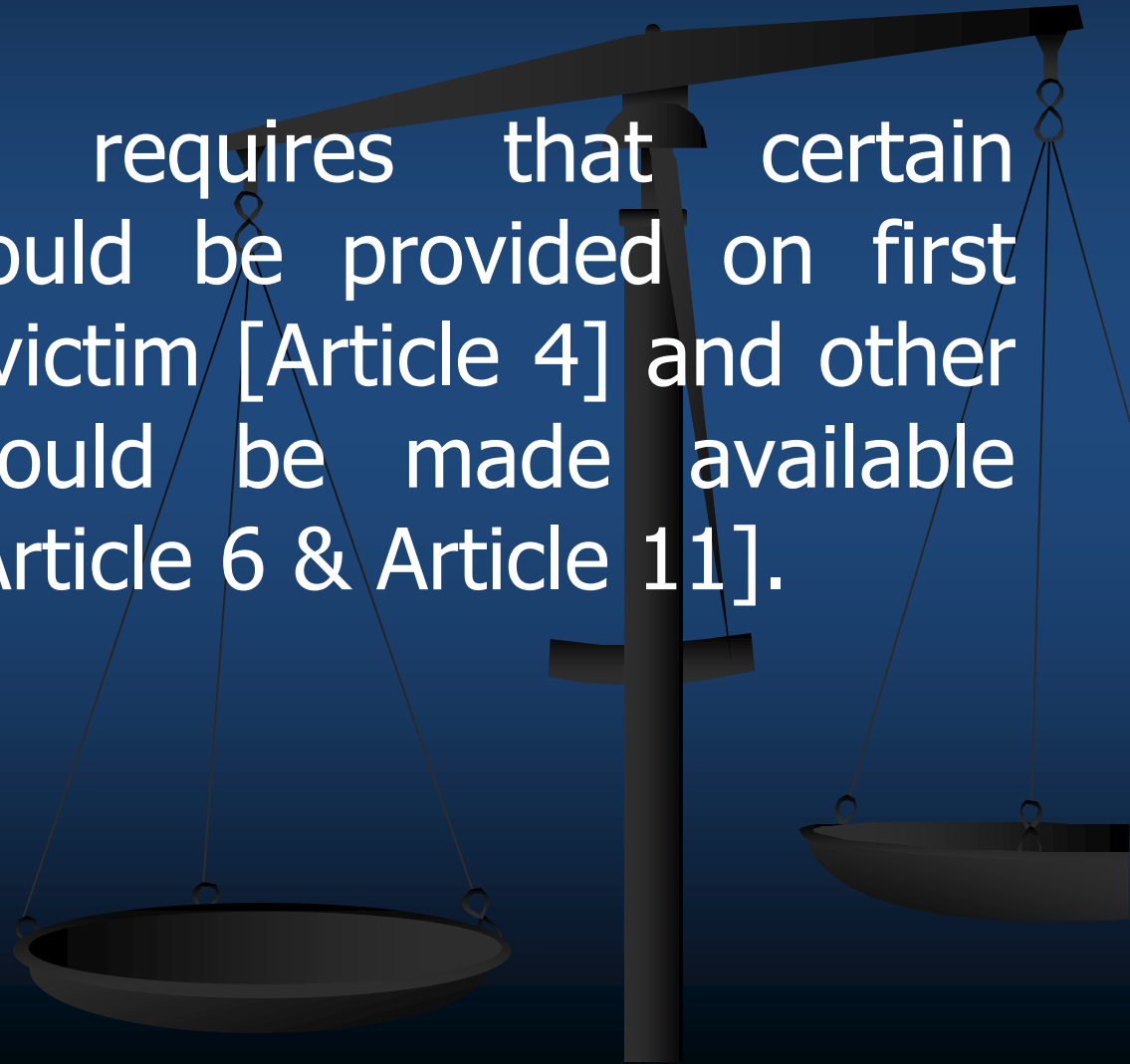
A. The Basics – Making a Statement

The VRA is aware of instances where the Gardaí [police] have refused to take statements from victims who are tourists or blind/suffer from mental disabilities.

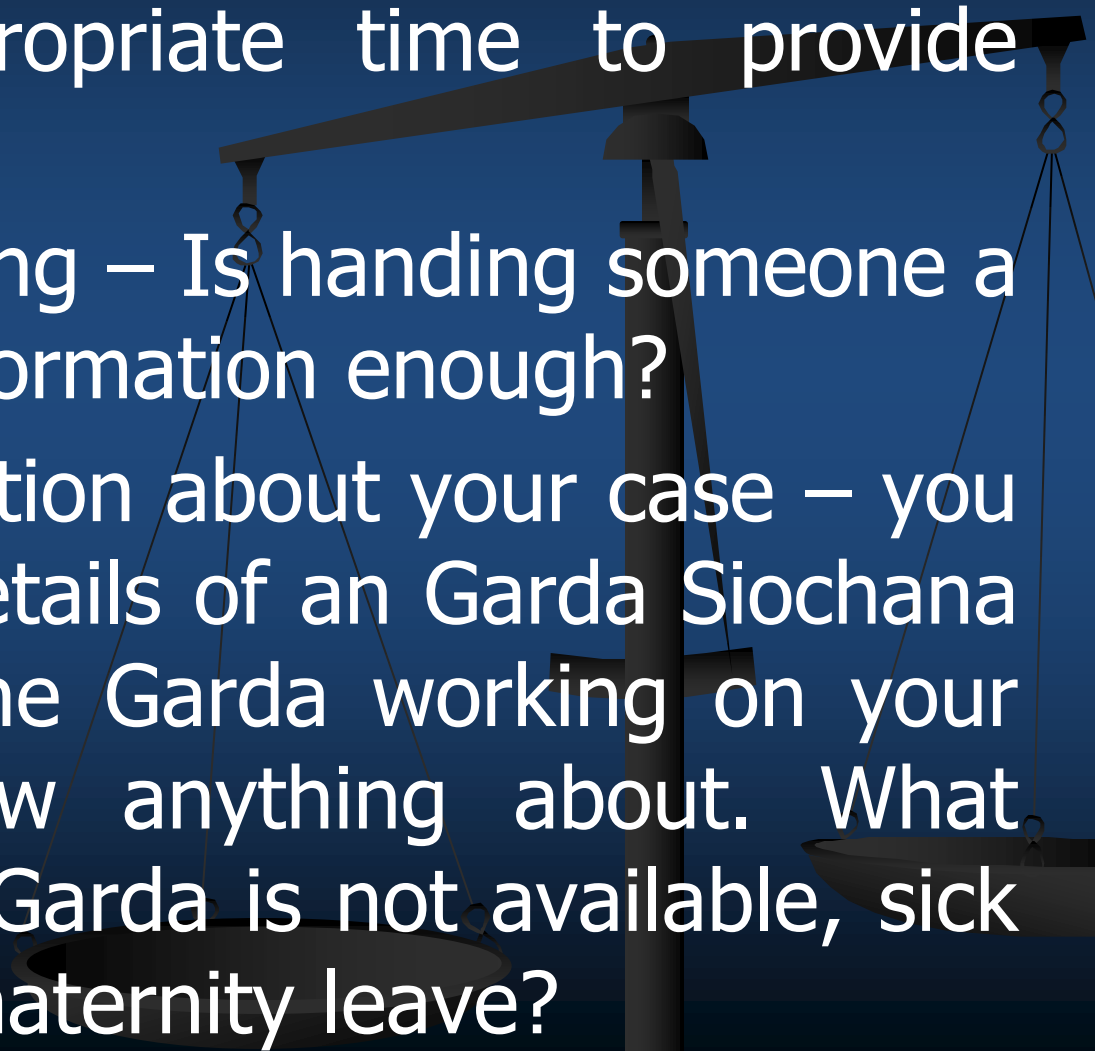
- Need to ensure that all victims can make a statement and that it is investigated appropriately - regardless of the mental and/or physical disabilities.
- Need to have training and accountability

B. The Provision of Information

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

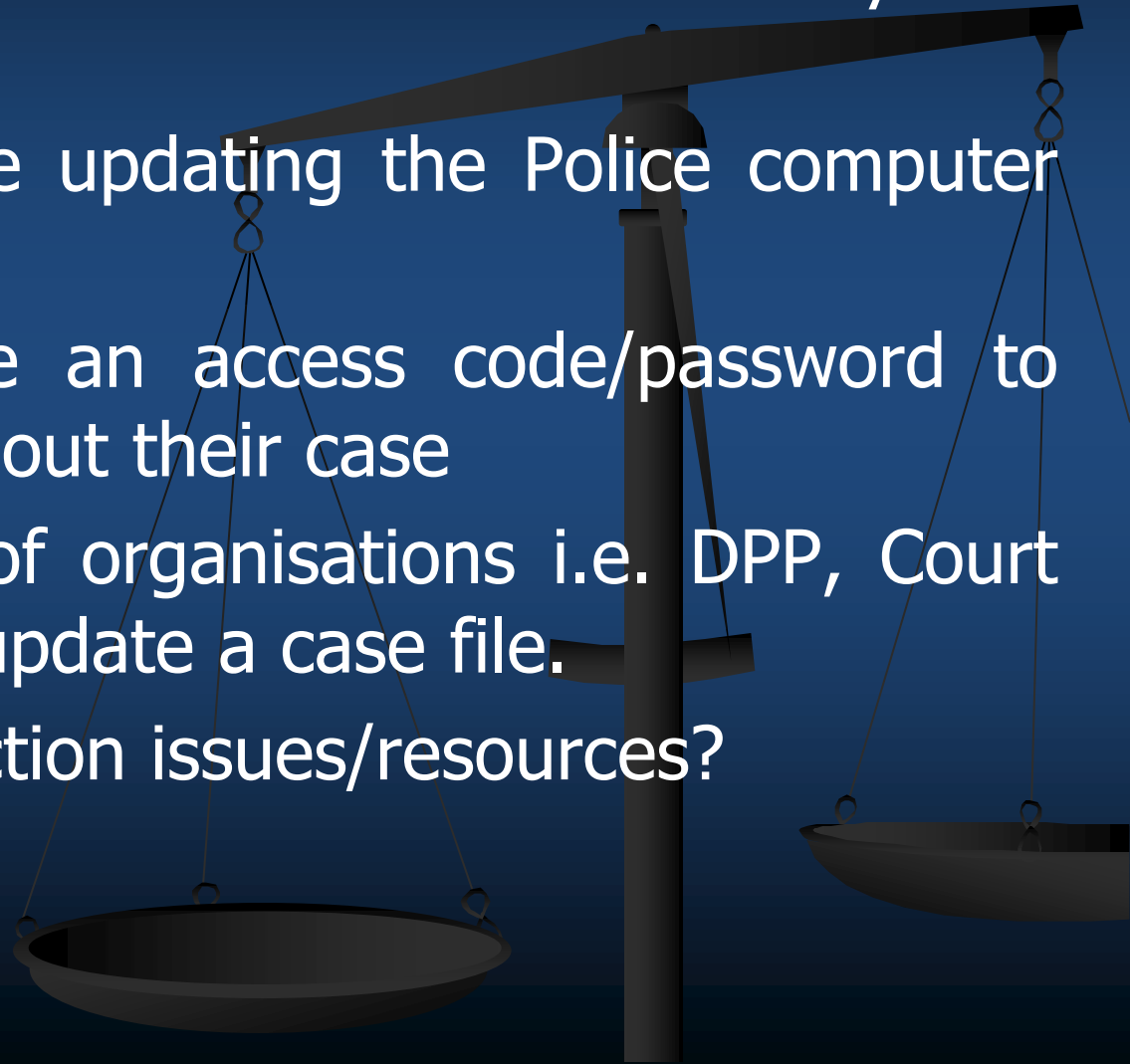


How information is going to be provided to victims?

- Timing – Appropriate time to provide information
 - Orally & in writing – Is handing someone a booklet with information enough?
 - Getting information about your case – you have contact details of an Garda Siochana [Police] Only the Garda working on your case may know anything about. What happens if the Garda is not available, sick or they go on maternity leave?
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Information about your case

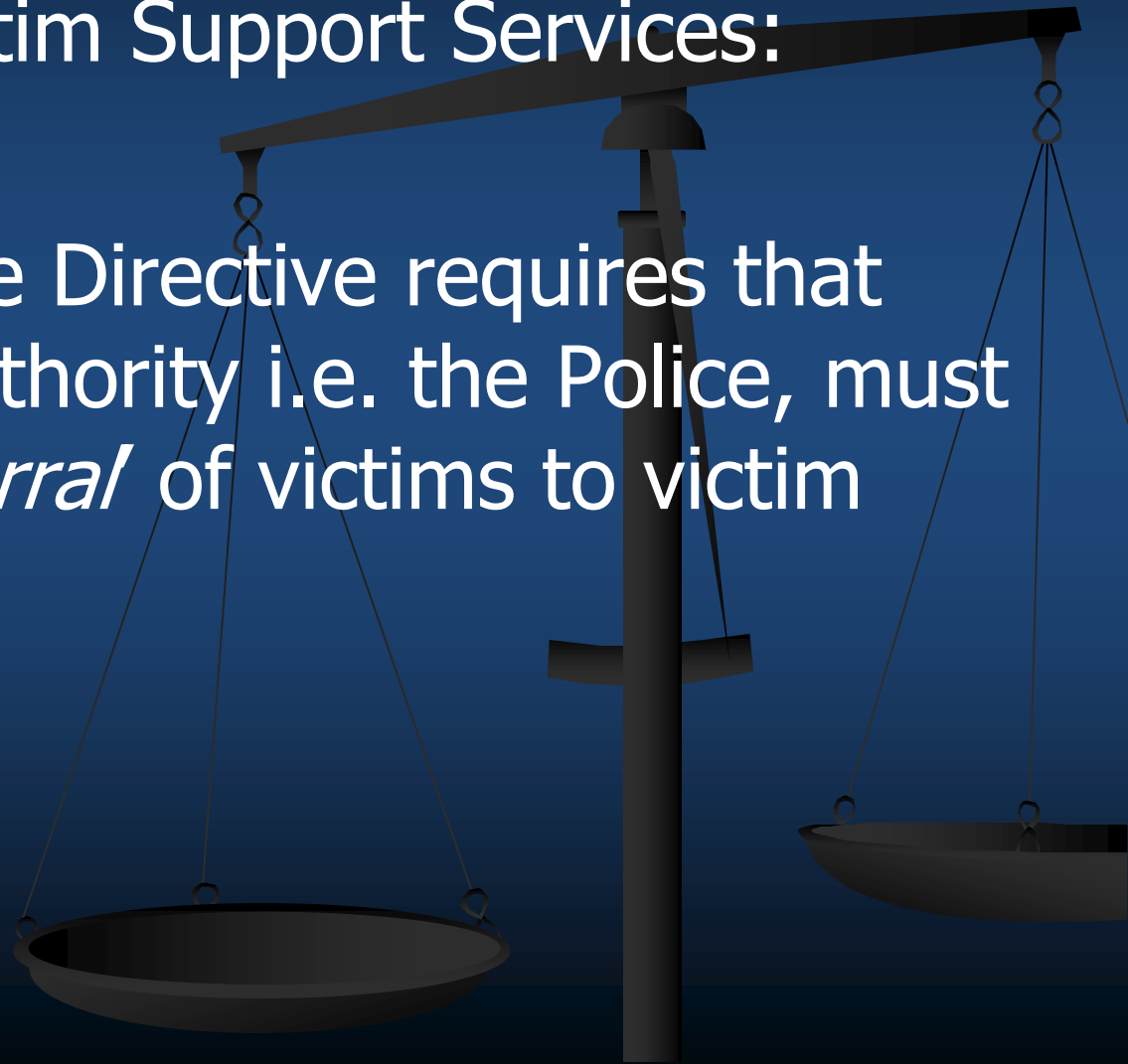
- Pulse system – Garda Information System outdated.
- In the UK they are updating the Police computer system.
- Victims could have an access code/password to gain information about their case
- Enable a number of organisations i.e. DPP, Court services, Police to update a case file.
- Issues: Data protection issues/resources?



C. Referral to Victim Support Services

i. Referral to Victim Support Services:

Article 8 (2) of the Directive requires that the competent authority i.e. the Police, must *facilitate the referral* of victims to victim support services .



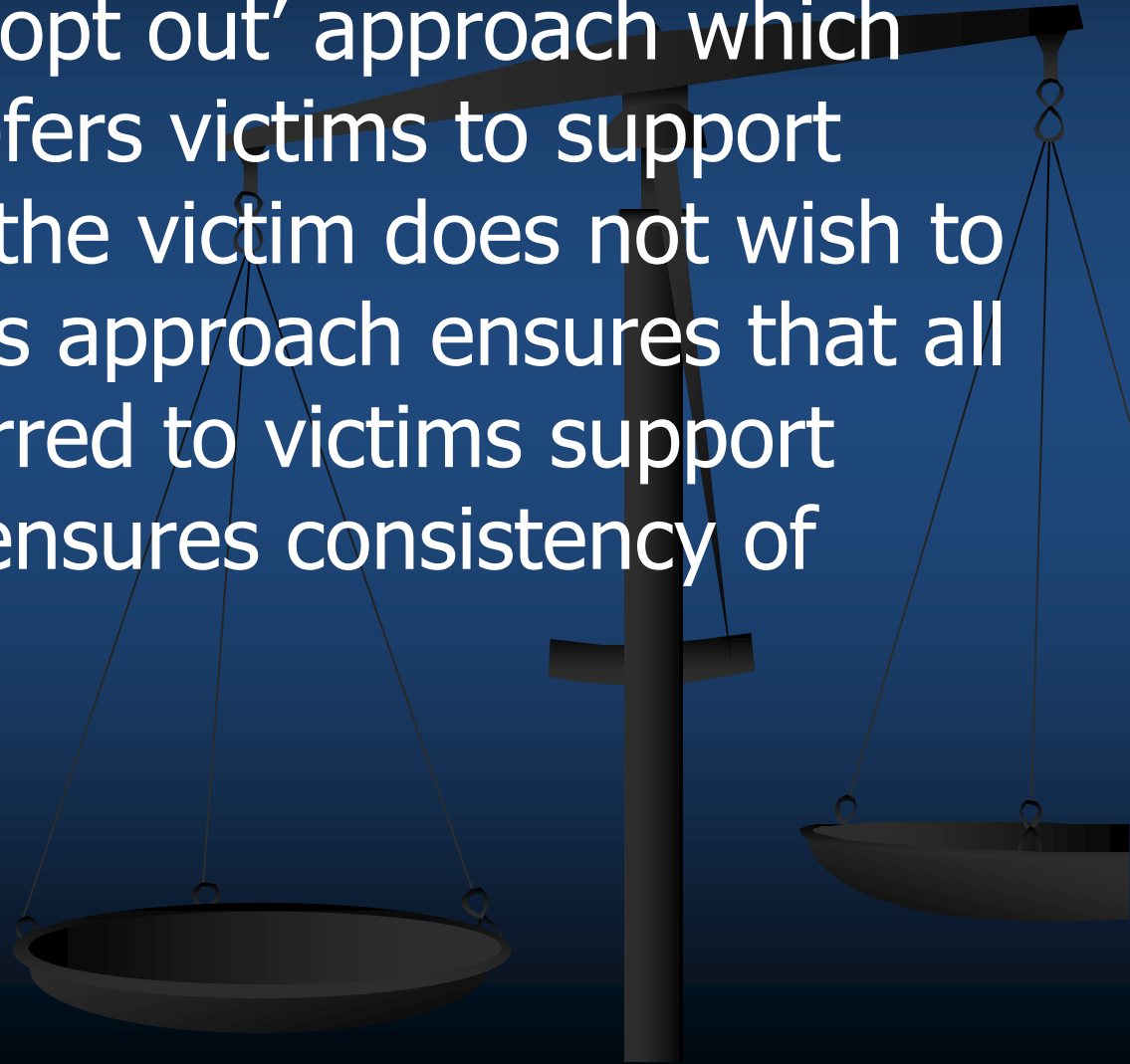
Referral to Victim Support Services

In Ireland, data protection legislation has an '*opt in*' approach that requires Gardaí [Police] to seek permission from victims prior to their referral to a victim support service. Sometimes victims:

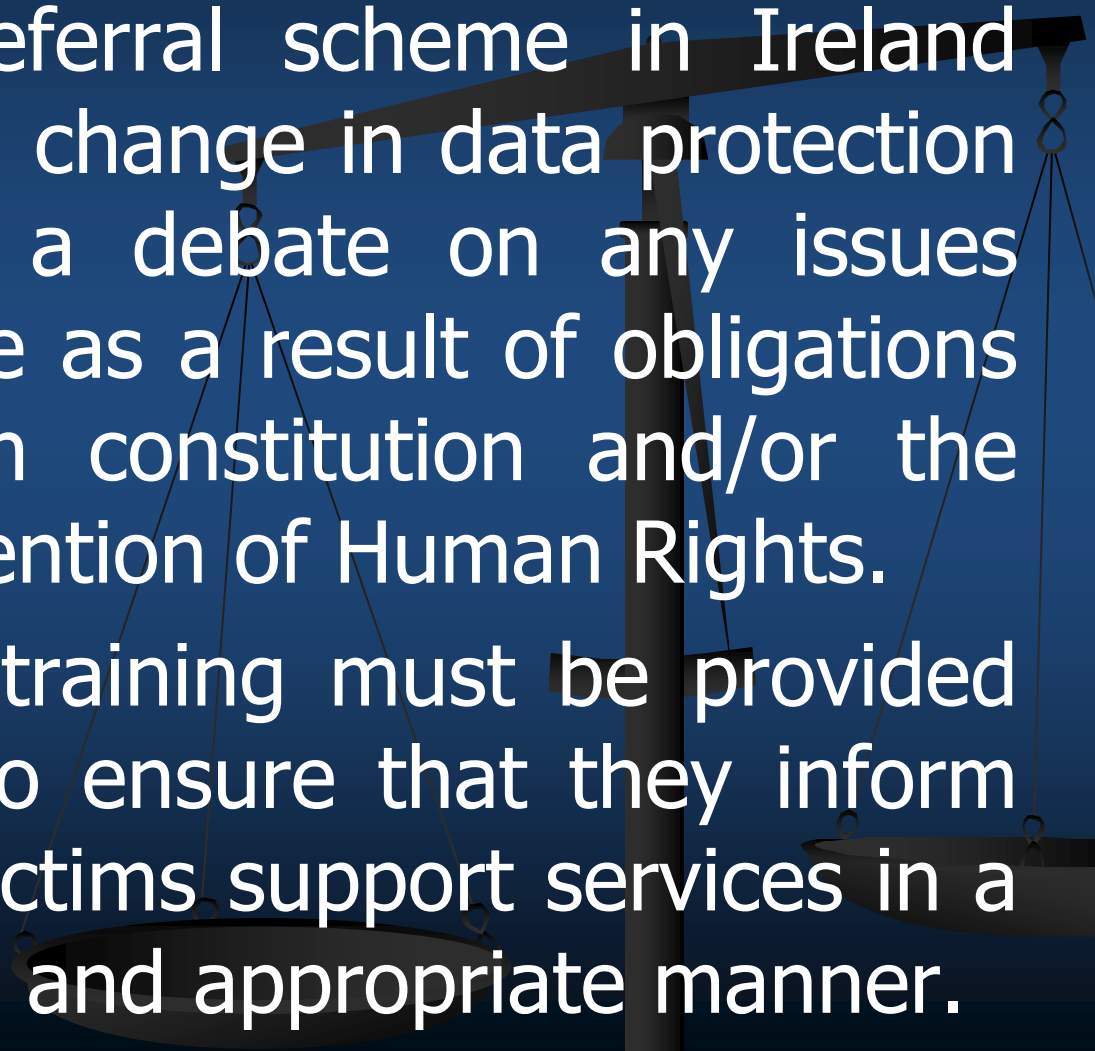
- A. Are not asked whether they want to be referred.
- B. Victims may be asked at an inappropriate and traumatic time, therefore the victims does not understand what the garda is asking.
- C. The manner by which a Garda may ask a victim may discourage the victim from agreeing to the referral .

Referral to Victim Support Services

- The UK has an 'opt out' approach which automatically refers victims to support services unless the victim does not wish to be referred. This approach ensures that all victims are referred to victims support services and it ensures consistency of service.



Referral to Victim Support Services

- An 'opt out' referral scheme in Ireland would require a change in data protection legislation and a debate on any issues which may arise as a result of obligations under the Irish constitution and/or the European Convention of Human Rights.
 - At a minimum training must be provided to the Gardaí to ensure that they inform victims about victims support services in a timely, effective and appropriate manner.
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Access to support services

ii. Access to support services for victims who do not make a formal complaint

- How can this be achieved?



D. Protection in Court - Intermediaries

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

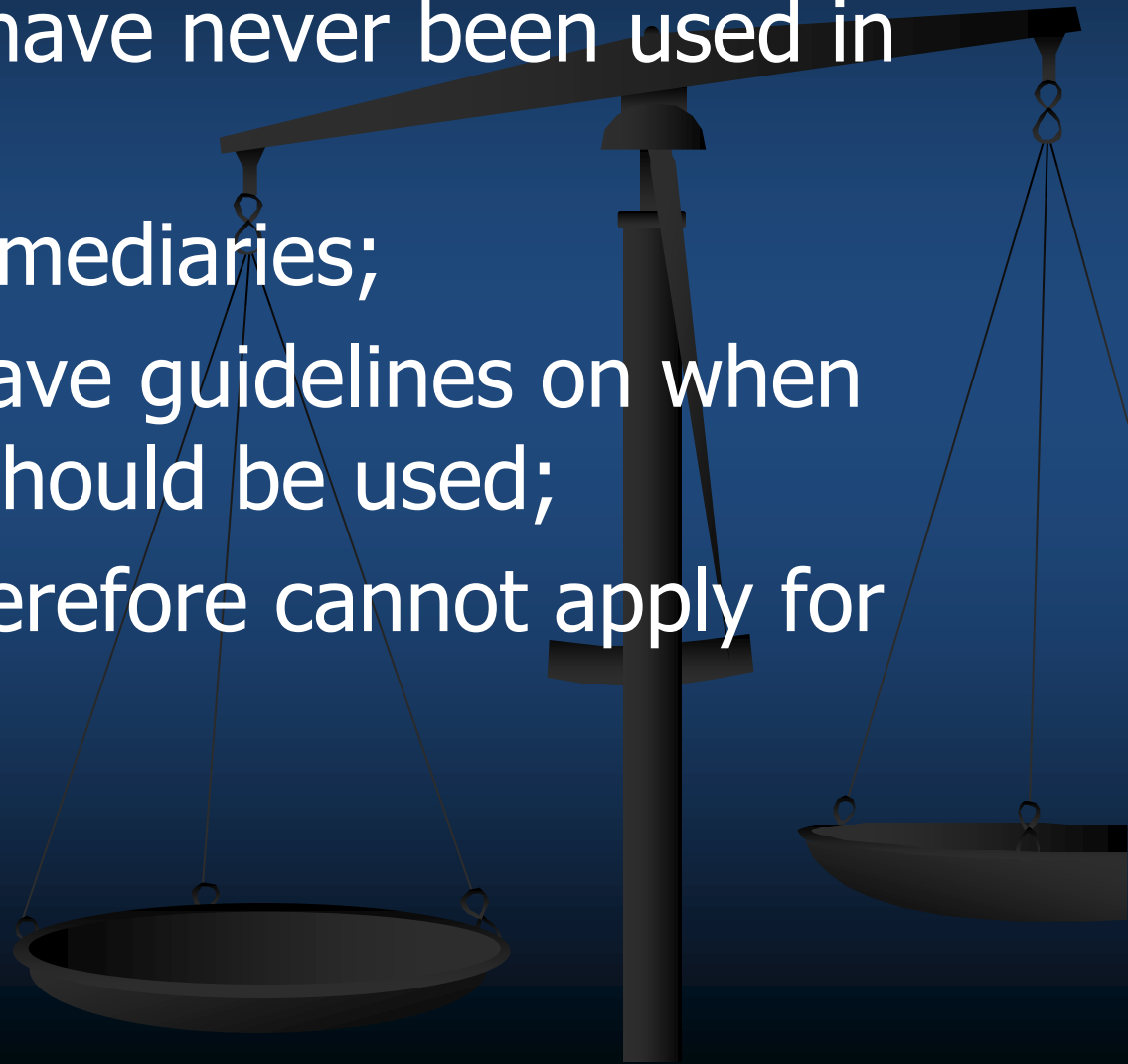
- (a) a person is accused of an offence to which this Part applies, and*
- (b) a person under 17 years of age is giving, or is to give, evidence through a live television link,*

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

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

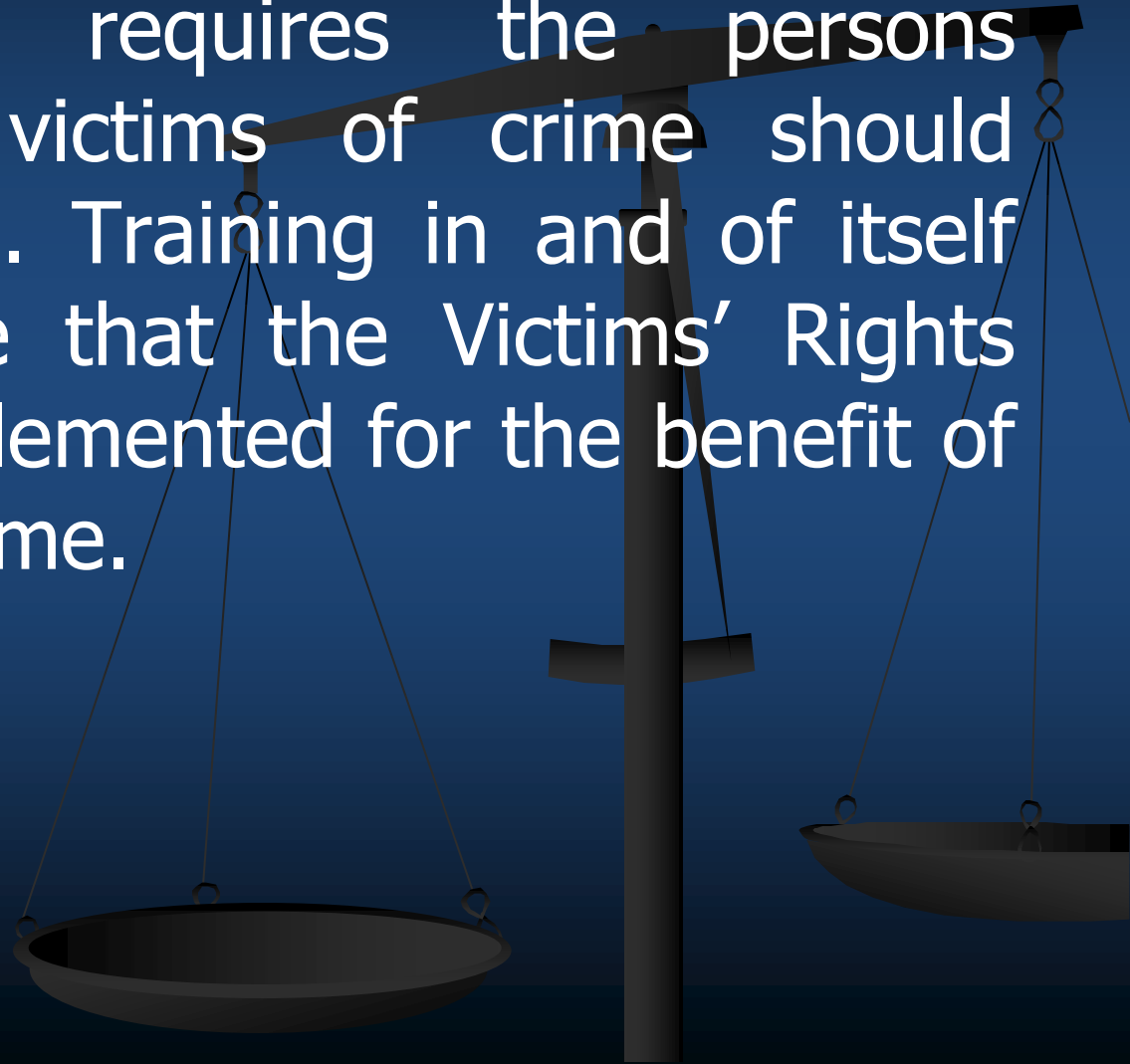
Protection in Court - Intermediaries

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



E. Implementing the Directive: Training

- The Directive requires the persons working with victims of crime should receive training. Training in and of itself will not ensure that the Victims' Rights Directive is implemented for the benefit of all victims of crime.



4. Enforcement mechanisms at a domestic level



Enforcing the Directive in Ireland: Complaints Procedure

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

a. transparent,

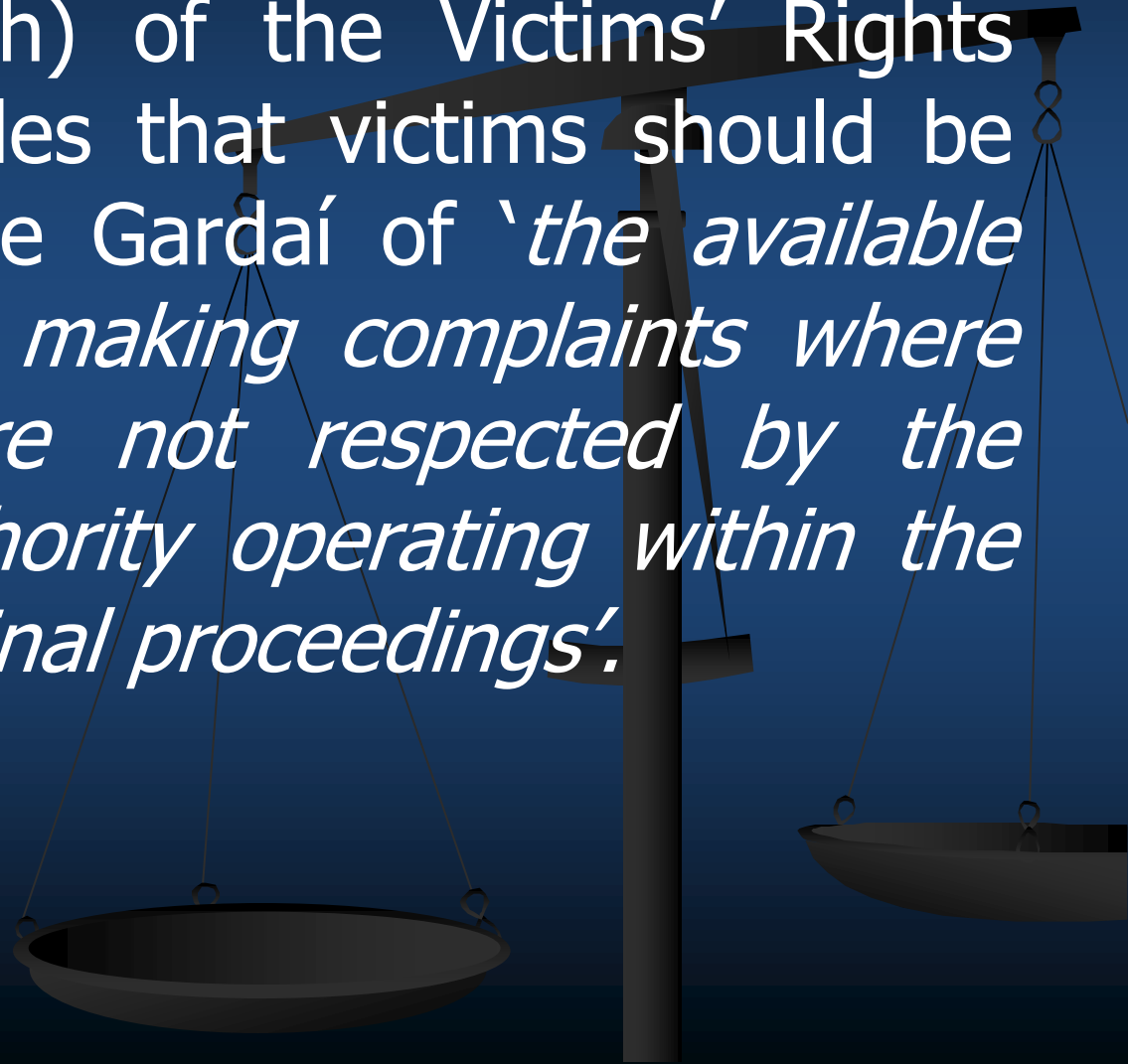
b. clear and;

c. Easy and timely complaints procedure

which would enable victims to make a complaint about a breach of their rights under the Directive.

Enforcing the Directive: Complaints Procedure

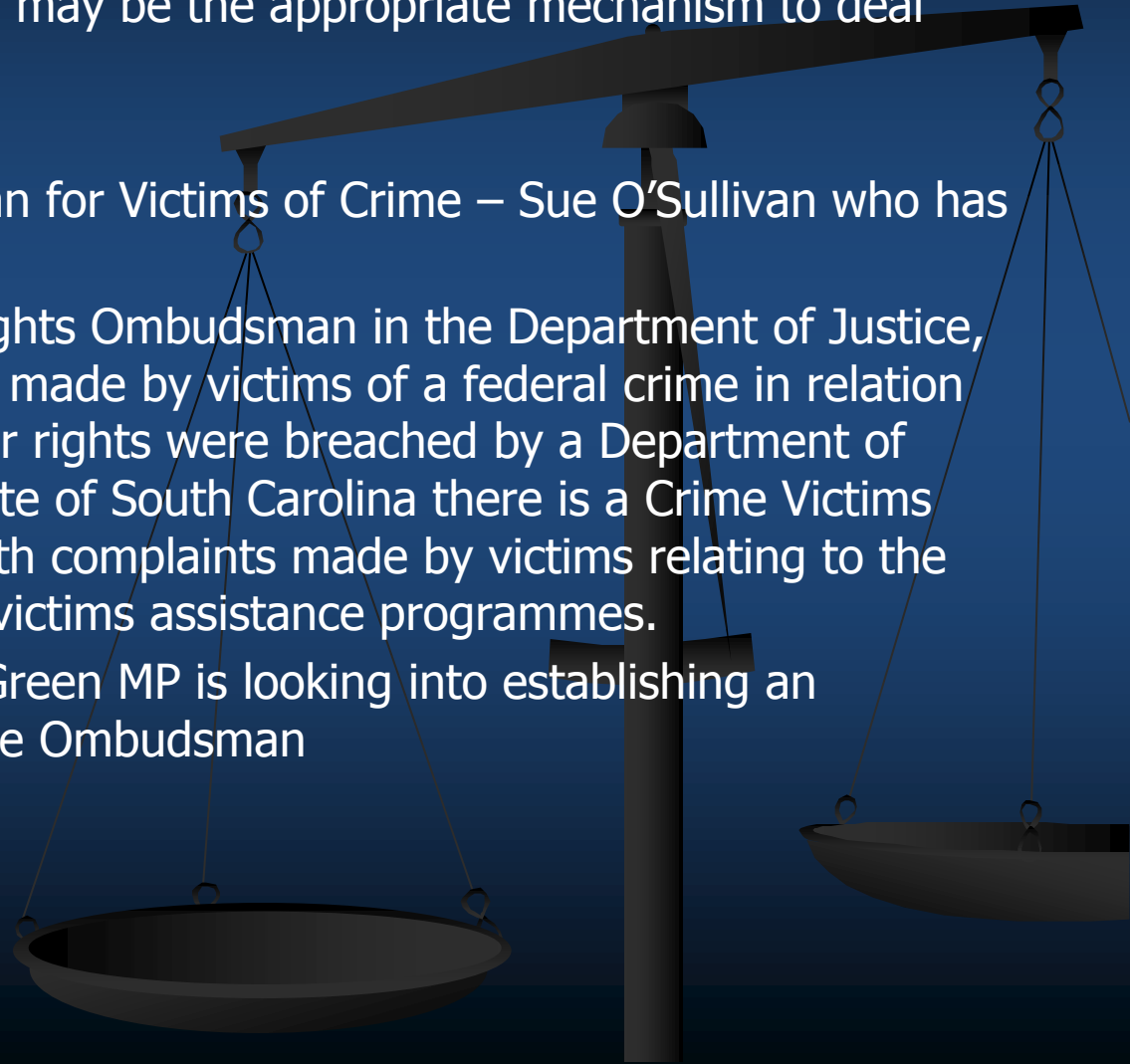
- Article 4 (1) (h) of the Victims' Rights Directive provides that victims should be informed by the Gardaí of *'the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings'*.



Enforcing the Directive: A Victims of Crime Ombudsman?

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

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

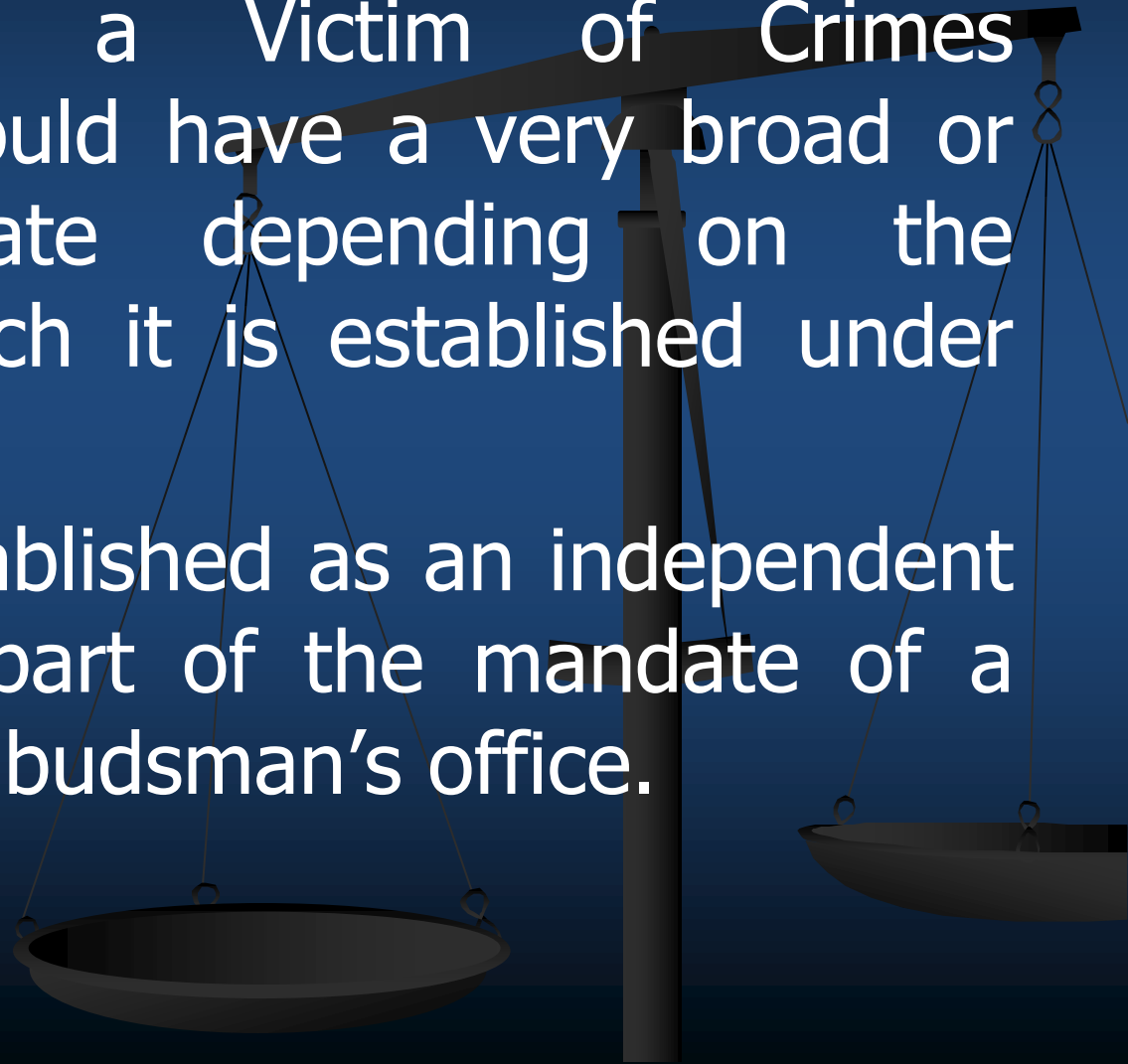


Enforcing the Directive: A Victims of Crime Ombudsman?

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

Enforcing the Directive: A Victims of Crime Ombudsman?

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



YOUR QUESTIONS & COMMENTS



The END

