

# ESTABLISHING COMPLAINTS PROCEDURES FOR VICTIMS OF CRIME

Maria McDonald BL  
@MMcDonald\_bl

On behalf of  
*Advocates for Victims of Homicide*  
*Dublin Rape Crisis Centre*  
*Support After Homicide*

# Justification

Article 4 (1) (h) of the Victims' Rights Directive provides that information should be offered to victims on

*'the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings.'*

# Are victims rights currently being breached?

Survey conducted by AdVIC, SAH and DRCC on victims of homicide and rape

Surveys still being returned – to date responses from:

- 63 homicide victims
- 14 rape victims

Total to date: 77 Responses

# Information on Victim Support Services [VSS]

*Victims were asked whether they were provided with information on victims support services?*

- 48% of Victims were informed by the Gardaí/Police about VSS

- 32% of Victims were not informed at all and shockingly 85.6% of Rape Victims were not provided with any information on VSS

- 20% received information on support services from other sources i.e. from Victims Support Groups, NGO's or from Friends/relatives

# The Directive: Providing information on VSS?

## **Article 4 (1)**

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

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

## **Article 8 (2) provides that:**

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

# Receiving information

*Victims were asked: how would you describe the ease with which you received information from the Gardaí about the progress of the case? [68 answers]*

- 47% of victims stated that it was either not very difficult or not at all difficult
- 29% said it was somewhat difficult
- 24% said it was very difficult

53% of victims surveyed had difficulties receiving information about their case

# The Directive: Receiving information about your case?

Article 6 (1) of the Directive provides that:

*'Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information.....'*

# Intimidation & Re-Victimisation

Victims were asked :

*Did you feel intimidated or re-victimised by the accused and/or the criminal justice system and/or other?*

- 51% of people surveyed said that they felt intimidated or re-victimised

- 5% stated that they did not feel intimidated or re-victimised

44% did not answer this question – this may be due to the fact that the case had not gone to trial yet



# Intimidation & Re-Victimisation

- 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

# Intimidation & Re-Victimisation

## From a Victims perspective

*'the garda made me feel like a criminal and that our feelings weren't taken into account. There was more respect given to the accused family.'*

*'the law is on the side of the criminal and not the victim'*

*'one of the accused intimidated us during the court proceedings and was allowed to do so by the court.'*

# Intimidation & Re-Victimisation

## From a Victims perspective

*'the behaviour of the defence solicitor was extremely intimidating because of their efforts to distract by "stalking" me as the mother of a murder victim, when I cried they accused me of trying to influence the jury! The judge eventually told them to stop it. It was [a] very frightening experience and added to my distress'*

*'[Felt re-victimised by] the guards coming to my home informed me that they still had my sons leg after he was buried the day previous. '*

# Intimidation & Re-Victimisation

## From a Victims perspective

*'the accused and his family sneering, making faces, brushing past me. The Criminal Justice System were all about the offender and we were not considered in the court and we had no where to complain about the defence counsel'*

*'Found dealing with Gardaí very traumatic and worse than the original experience of rape. Felt re-traumatised.'*

# Intimidation & Re-Victimisation

## From a Victims perspective

*'The murderer ruled the court. We wanted to sit in front row and were told it was for media only, [we were told to] move so we did, murderers family sat in those seats for [the] trial. They could have conversations with him. We shed a silent tear, his barrister turned around in his chair staring at us while our barrister spoke to the Jury. Then his barrister stood up to [the] Judge and said if the family are getting upset can they leave court [as] it could sway [the] jury.'*

# The Directive: Intimidation & Re-Victimisation

## Article 18

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

## Article 19 (1)

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

# Complaints made by Victims

- Only 12 people, [16% of victims surveyed] made a complaint to either the Superintendent, Victims liaison Officer or the Garda Ombudsman.
- 2 people, [17% of those who made a complaint] were satisfied with the manner in which their complaint was dealt with.
- 10 people, [83% of those who made a complaint] were not at all satisfied with the manner in which their complaint was dealt with.

# Why aren't victims complaining?

One victims who complained said that *'we were afraid that it would damage our case'*. Many more said that they considered making a complaint.

Here are some of the reasons given by victims as to why they did not complain:

*'I was afraid'*

*'Didn't want to bother them'*

*'I didn't make a complaint as I was afraid and confused'*

*'Didn't think there was any point'*



# Why aren't victims complaining?

*'No I did not complain. I didn't feel I would get anywhere. Nobody listens to victims needs. I wasn't in [the] right frame of mind to take it any further. I was too upset from my grief'*

*'No I did not complain. Didn't feel there was any point. Other family members didn't get anywhere. It would seem there was social connection between the Gardaí and the perpetrator.'*

# Solution?

- ▣ **Victims of Crime Ombudsman**
- ▣ **-or-**
- ▣ **Other / Victims Liaison Office**

# Victim of Crime Ombudsman?

1. Provision of information to victims
2. Referral to support services
3. Complaints (breach of the rights provided for in the Directive)
4. Recommendations on investigating complaints
5. Training
6. Co-operation and co-ordination between member states
7. Watchdog/liaison/monitoring role (Provision of data and statistics & Reporting)

# Victim of Crime Ombudsman?

## Other Issues:

1. Should a Victims Rights Ombudsman form part of the mandate of a pre-existing Ombudsman's office or should a separate office be set up via legislation?
2. How could a Victims Rights Ombudsman be funded?
  - a. Levy?

# QUESTIONS:

- **What do you think is the best means of dealing with Victims Complaints or breaches of the Directive?**