



RCNI Commentary on the

General Scheme of the

Criminal Justice (Legal Aid) Bill

to the

Joint Committee on Justice

As initiated

August 2023

Introduction - Rape Crisis Network Ireland (RCNI)

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. 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.

Comment on submission - Criminal Justice (Legal Aid) Bill

RCNI welcomes the extension of legal aid available to victims¹ of sexual offences. Due to our area of focus in research and advocacy related to sexual violence, this submission will be directed at Head 47 which is the amendment of section 26 (3A) of the Act of 1995. We will further address the wider approach which forms the basis of our work, that being a trauma-informed response. For many victims, their experience of the criminal justice process is one characterised as a re-traumatisation. Part of this is due to their isolation and inability to obtain the necessary assistance in navigating such a complex and opaque process. The provision of legal advice for victims of sexual crimes is a crucial step in supporting survivors and facilitating better engagement of victims with the criminal justice system which directly affects rates of attrition. While not considered an equal participant in the legal process, the central role of the victim means they require supports and protections of their rights. The intimate nature of these crimes combined with the associated rape myths and victim-blaming that exists makes many victims reluctant to make and sustain a criminal complaint. However, having access to independent legal advice from an early stage and continuing throughout the process empowers victims to engage with and withstand the criminal justice process. While RCNI and rape crisis centres around the country provide legal support to victims on an ad hoc basis, what is required is a comprehensive and far-reaching approach which more adequately caters

¹ When referring to victims in this submission, the reference includes the parent, guardian or adults relative of child victims (Head 47 3B (a)) and to the decision-making assistant or co-decision maker of a victim who lacks capacity (Head 47 3B (b)).

to the needs of victims of sexual violence. This submission will address three points which need to be highlighted. The first is the criteria applied for victims to qualify for legal aid, namely, the specific crimes stated in the Head that the Bill will apply to; secondly, the barrier facing most victims is resources, thus we are advocating that victims are not subject to means testing; and lastly, clarity on when and how victims will be able to access the legal aid services proposed.

Crime qualification categories

The Head as proposed is restrictive in its approach to which specified crimes will qualify a victim for legal aid services. The Third National Strategy on Domestic, Sexual & Gender-Based Violence seeks to ‘embed a victim/survivor centred approach’ which places victims needs at the forefront of its policy and responses.² In its framework for action the pillar of Prosecution undertakes to enhance access to the legal system for individuals experiencing DSGBV. This category is not limited to only certain individuals but all who have experienced DSGBV. This Head provides a list of crimes which qualify a victim for legal advice rather than a general all-encompassing definition which includes all crimes where the victim has been subjected to DSGBV. This listing of specific statutory crimes leaves victims, whose experience does not fall into a narrow prescriptive category, outside of the support of the legal aid system. Examples include instances of coercive control, harassment, and stalking, as well as online harms including the distributing, publishing and recording of intimate images without consent. Online harms pose a particular challenge in that the definitions, guidelines and resultant legislation require constant amendment to keep up with the ever-changing landscape. Amendments to legislation can create confusion, especially where Acts have not yet been consolidated and updated. Choosing language carefully in the drafting process can make such amendments unnecessary.

RCNI recommendation: It is our submission that rather than attempting to compile an extensive and exhaustive list of every possible crime which should be included, a more generalised definition covering all harms of this nature will mitigate against the possibility of

² <https://www.gov.ie/pdf/?file=https://assets.gov.ie/228480/67b6e3af-a0d2-4d70-889f-0b1e2001995b.pdf#page=null>

some crimes being excluded and further avoid the need for constant amendments to the legislation.

Means

A further barrier is means; legal services must be accessible to all victims. The Legal Aid Board currently provides free legal advice to victims of rape and sexual assault cases but only under limited circumstances.³ The practice is that these victims are not means tested nor are they required to make a contribution. Having the legal services provided by the Legal Aid Board is not only about assisting with the costs but also contributes to a standardisation of the level of expertise and services offered to victims. Due to various amendments to the legislation the legal provision for this right that victims enjoy in practice have not been clearly set out.

RCNI recommendation: We submit therefore that this Bill must clearly and unequivocally confirm that victims of sexual offences will not be required to comply with a means test nor will they be required to make contributions to access legal aid services for sexual offences.

Clarity on the 'How' and 'When'

Victims are severely limited in the process of how and when they can access legal aid. Currently, two particular areas of concern are the access to legal advice before a decision to make a complaint and continued legal support throughout the criminal justice process, particularly during the trial. The introduction of this Bill is a welcome first step in the improvement of these services, however there is a lack of clarity in the wording of Head 47 as to the timing and extent of how a victim may access legal advice and at what stages that legal advice will be provided. We submit that the following requires discussion and amendment:

³ www.legalaidboard.ie/en/our-services/criminal-legal-aid/victims-of-crime/

‘Legal advice under this subsection may be provided to a victim of the following offences at any time before, subsequent to, or whether or not a complaint or decision to prosecute in the matter is made’

Our understanding of this clause is that the victim may access legal advice at any time preceding their making a complaint and any time subsequent to their engagement with the Gardai. Furthermore, should a complaint be made, they may access legal advice before and subsequent to a decision on whether to prosecute being made. The clause itself lacks clarity how and when a victim may access this legal advice. On the surface it places a requirement on the victim to at the very least come forward and engage with the Gardai before being able to access legal advice. For many victims, the decision to make a complaint is influenced not only by their prior experiences with the Gardai but also their perceptions as to what will be asked of them in the justice process. This creates a potential barrier for many victims and could discourage them from reporting in the first place. While the Gardai are required and do provide victims with information on the criminal justice process, measures and the victim’s rights, it is not their role to provide legal advice to victims on aspects of the case that may be covered before and in the initial interview. Victims often require legal advice before they approach the Gardai to better understand the process and their rights on matters such as disclosure of counselling records and other privacy considerations on evidence gathering.

RCNI recommendation: It is our submission that victims should be given the opportunity to access this legal advice directly through the Legal Aid Board or a suitable facilitator before any engagement with the Gardai and DPP is considered, if they so choose.

As stated above, obtaining legal advice, and gaining a better understanding of the process beforehand empowers victims to make informed decisions as to whether they wish to make a complaint and whether they are prepared to sustain the complaint going forward. It is important that those victims who do engage directly with the Gardai should be provided with legal advice before making a complaint or even being interviewed. This legal advice should of course extend to when a decision on whether or not to prosecute has been made. Victims need advice on what review and alternative procedures are available to them. The Head further lacks clarity on the duration of when the legal advice would be accessible. The

language as it stands, refers to 'subsequent to' but does not provide specifics on when that period ends. Does this 'subsequent' period end at a decision whether or not to prosecute or does it continue on throughout the legal process including trial? RCNI has consistently called for legal advice to be available to victims, free of charge, regardless of the sexual offences involved, from the moment the offence takes place until conclusion of the criminal proceedings whether that be a decision not to prosecute or a continuation to trial and we reiterate that call now.

RCNI recommendation: We submit that the legal advice referred to should be available to victims throughout the legal process including the trial.

Summary:

- Rather than attempting to compile an extensive and exhaustive list of every possible crime which should be included, a more generalised definition covering all harms of this nature will mitigate against the possibility of some crimes being excluded and further avoid the need for constant amendments to the legislation.
- This Bill must clearly and unequivocally confirm that victims of sexual offences will not be required to comply with a means test nor will they be required to make contributions to access legal aid services for sexual offences.
- Victims should be given the opportunity to access this legal advice directly through the Legal Aid Board or a suitable facilitator before any engagement with the Gardai and DPP is considered.

We submit that the legal advice referred to should be available to victims throughout the legal process including the trial. RCNI are at your disposal should you wish to engage with us further on any of these points.

Carmichael Centre

North Brunswick Street

Dublin 7 D07 RHA8

August 2023

Web site: www.rcni.ie

Email: legal@rcni.ie