



Compensation for Victims of Crime Consultation by Law Reform Commission – RCNI Responses April 2022

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. 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 welcomes very much this opportunity to make a submission to the Law Reform Commission on compensation for victims of crime. The current administrative scheme needs more and more radical reform; we are much in favour of its being replaced by a statutory scheme which would set out clearly the basis on which compensation may be sought, the evidence which will be needed to support any such claim, and the process to be followed in order to make and pursue an application. In our view, this process should be as simple, accessible and transparent as is consistent with the interests of justice and should be underpinned by adequate resources and appropriate training for all decision-makers. In our view, access to the current scheme is still unnecessarily restricted and the whole process is opaque and very lengthy.

Clarity, simplicity and relative speed are all needed, but so too is an awareness that all survivors of sexual violence, like survivors of other offences, are individuals with varying support needs. It is not necessary to duplicate all specialised services to support survivors of sexual violence provided now by NGOs and others, but it is necessary to ensure that anyone who interacts with this most vulnerable group of survivors has a good understanding of the range of specialised services available so that they can pass on this information to those survivors and/or refer them to those services (only with consent of course). It is even more important that they have some understanding of the nature and effects of sexual violence.

RCNI's responses are provided below in answer to each one of the list of questions for consultees at pages 223-230 inclusive of the Consultation Report in the same order as in the report itself. The headings and questions are in a contrasting font colour so that they stand out easily.

Chapter 3 Legislating for Victim Compensation

Q 3.1 Do you agree that legislation is necessary to underpin Ireland's criminal injuries compensation process?

RCNI response: Yes, administrative arrangements have not worked very well for victims in our experience.

Q 3.2 The Commission seeks to identify the guiding principles that should be reflected in any legislation, so as to ensure that the provision of state compensation to victims of crime accords with a more modern, trauma-responsive approach to the needs of crime victims. Do you agree that the following would be appropriate guiding principles to be included?

- (1) Reparation;
- (2) Compensation as of right;
- (3) Acknowledgement and solidarity; and
- (4) Minimisation of secondary victimisation.

Are there additional or different guiding principles that should be reflected in legislation in this context?



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RCNI Response: RCNI agrees with all principles listed and would add the following:

(5) Ready access to a fair, simple, easy to understand, reasonably swift and efficient compensation claim process for victims;

(6) Equal access to the compensation scheme for all through the use of all appropriate additional measures and procedures to ensure that any victim who is a child or who is otherwise especially vulnerable because of a disability of any kind or for some other reason, receives specialist and appropriate assistance to make and sustain a claim;

(7) Transparency and consistency in applying appropriate criteria in decision-making by officials whether civil servants or independent quasi-judicial tribunal members.

We would also add to (4) above: Minimisation of secondary victimisation through a specialised, trauma-informed approach.

Q 3.3 The Commission considers that a steady and consistent funding model is essential to the effective and efficient functioning of any victim compensation scheme. The Commission seeks consultees' views as to whether some of that funding should come from court fines and the confiscated proceeds of crime and/or sources other than the Exchequer.

RCNI Response: RCNI agrees that a steady and consistent funding model is essential for any victim compensation scheme. It seems to us right in principle that the scheme should be funded at least in part by court fines and/or confiscated proceeds of crime. However, it would not be wise or fair to limit the size of the available fund in any given year to the funds available in that period from these sources alone. First, the available funds may not be enough to compensate all victims who are assessed as meriting an award of compensation from the scheme in a given year/other period, and second, making the compensation scheme overly dependent on available funds from court fines and/or confiscated proceeds of crime might have the unintended consequence of discouraging judges from making compensation orders against the offender under Section 6 Criminal Justice Act 1993¹.

Q 3.4 The Commission seeks consultees' views on the following:

(1) Whether the Scheme (including any amended Scheme) should continue to be administered by the Department of Justice; or

(2) Whether the Scheme should be administered by a body such as the Personal Injuries Assessment Board or the State Claims Agency); or

(3) Whether a new specialist criminal injuries compensation body is desirable.

RCNI Response: While we incline towards the view that a new specialist body would be desirable, this will take time and resources to set up. The precise structure of any new compensation procedure founded on statute matters less than making sure that that structure is staffed by a skilled team who are well-trained, well-supported, well-led and dedicated to providing a compensation scheme which operates to high standards and as far as possible, in the best interests of victims.

Q 3.5 If a new specialist body is desirable, what should its functions be?

RCNI Response:

¹ Accessible online via this web-link: [Revised Acts \(lawreform.ie\)](https://www.lawreform.ie/Revised-Acts)

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- Promotion, reception, assessment and determination of all claims for criminal compensation from victims by a dedicated, well-trained, well-supported, well-led team of administrators and independent Tribunal Members;
- Provision of specialist training on victim-related issues to all compensation scheme staff and Tribunal Members;
- The collection and management of funds from the various sources designated by statute to fund these activities
- Research and development activities, including periodic evaluations, to ensure that the scheme is adhering to the standards set both in national legislation and at EU level;
- Data collection and analysis on all compensation scheme activities;
- Any reporting necessary to EU bodies as well as to the Department of Justice (or whichever is the overseeing department designated by statute).

Q 3.6 Should it be concerned only with administering financial compensation (including adjudicating on claims for compensation), or should other measures, such as the provision of non-financial supports and services (for example counselling) and/or restorative justice measures, form part of its functions?

RCNI Response: It should be concerned principally with administering financial compensation (including adjudicating on those claims), but should also ensure as part of its relationship with victims that it provides them as early as possible with information and where so requested, with referrals, to victim support agencies, including where appropriate, any specialist support agencies and others including State agencies who can assist them. It would not make sense for the scheme to duplicate or compete with existing services.

Q 3.7 If other measures should form part of its functions:

(1) What services could or should be provided?

RCNI Response: See our response to Q.3.6 above.

(2) What professions and skills are required?

(3) How should the body be structured?

(4) How might such a body intersect with existing state- and NGO provided victim services?

Q 3.8 In addition to administering the compensation scheme, should a specialist body function as a “one-stop-shop” for victims? Should it have responsibility for providing information and assistance to victims going through the criminal justice system?

RCNI Response: See our response to Q.3.6 above.

Chapter 4 Awards of Compensation

Q 4.1 Should provision be made for the awarding of damages for pain and suffering (or, in the language of the BV case, damages for “non-material loss”) in all claims (not limited to fatal claims)?

RCNI Response: As far as offences of sexual violence is concerned, the physical injuries, as bad as they can be, are only one aspect of their devastating effects on survivors. The psychological pain and suffering are grave and long-lasting for very many survivors and have secondary negative effects, for example the destruction of intimate relationships, enforced unemployment during recovery, great difficulties with trusting anyone, not just in a future intimate relationship. For these reasons, it seems fair and equitable to us that survivors of sexual violence (and also survivors of other forms of interpersonal violence) should be able to claim compensation for pain and suffering which is psychological in nature.

Q 4.2 In what circumstances are emergency and/or interim awards desirable? How might such awards operate?



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RCNI Response: Survivors of sexual violence need a range of supports as they recover, and their needs will change over time. If these needs become so urgent and acute that the survivor should not be asked to wait for the full determination of their victim compensation claim lest their psychological health (or financial position) decline significantly in the meantime, then an emergency and/or interim award should be considered. It should be possible to make an application simply and quickly which is considered through a fast-track process, and to the extent which is reasonable and possible in the circumstances, the survivor should support their application with evidence.

Q 4.3 Should provision be made for compensation to be paid by periodical pension or periodical payment order? If so, in what circumstances?

RCNI Response: In our view, these circumstances should be limited to those in which the survivor themselves has made a request for compensation to be paid in either of these ways.

Q 4.4 Do consultees consider that capped awards of compensation would provide a fairer system for a greater number of applicants, promoting consistency and transparency?

RCNI Response: Yes, broadly, but there must always be room for exceptions so that justice can also be done for a survivor seeking compensation in circumstances which are unusual. This would avoid any injustice in an exceptional case where the normal “cap” is inappropriate for whatever reason.

Alternatively, do capped awards have the potential to operate unfairly?

RCNI Response: See response to Q4.4 above.

Q 4.5 Is there a case to be made for a tariff system of compensation, whether generally or (for example) in relation to any compensation payable for pain and suffering? What would be the relative advantages and disadvantages of a tariff system be?

RCNI Response: Yes, subject to the proviso in our answer to Q.4.4 above, as far as awards for pain and suffering are concerned. However, with regard to quantifiable losses (by which we mean what would be referred to in the civil courts as “special damages”), there should not be a “cap”. If a quantified loss is incurred, it should be compensated for in full. A tariff system for compensation for pain and suffering would have the merit of promoting consistency and transparency, which are both very important to survivors, in our experience.

Chapter 5 Eligibility and Exclusion

Q 5.1 The terms of the Scheme set out the categories of victim who may apply for compensation: the victim themselves, any dependant of a deceased victim, or a person who has suffered financial loss because of the victim’s injuries. Are the existing categories of victim under the Scheme in this jurisdiction sufficient? Should they be further classified, or classified differently? If so, how?

RCNI Response: It seems to us appropriate and fair that the categories of victim who may apply for compensation should be the same as those provided for already in victims’ rights legislation, **except** that it should also retain the category of person who has suffered financial loss because of the victim’s injuries, and should retain the category of “dependant”. The definition of “victim” in that legislation should be adopted, ie a natural person who has suffered physical, mental or emotional harm or economic loss directly caused by the offence itself, which also includes a “family member” of a victim who died as a result of the offence. We have



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set out below the definition of “family member” in the Criminal Justice (Victims of Crime) Act 2017 at Section 2² for easy reference:

“family member”, in relation to a victim, means—

(a) a spouse, civil partner or cohabitant of the victim,

(b) a child or step-child of the victim,

(c) a parent or grandparent of the victim,

(d) a brother, sister, half brother or half sister of the victim,

(e) a grandchild of the victim,

(f) an aunt, uncle, nephew or niece of the victim, and

(g) any other person—

(i) who is or, where the victim is deceased, was dependent on the victim, or

(ii) who a court, a member of the Garda Síochána, an officer of the Ombudsman Commission, the Director of Public Prosecutions, the Irish Prison Service, a director of a children detention school or a clinical director of a designated centre, as the case may be, considers has or, where the victim is deceased, had a sufficiently close connection with the victim as to warrant his or her being treated as a family member;

Q 5.2 European Union law requires fair and appropriate compensation to be paid to victims of violent intentional crime. There is a lack of clarity in the terms of the Scheme on the entitlements of victims without physical injury to receive compensation. Do you agree that psychological injury should be expressly included within the definition of a crime of violence in a statutory reformed scheme?

RCNI Response: RCNI agrees in the strongest possible terms that psychological injury should be expressly included within the definition of a crime of violence in any statutory reformed scheme. We know how grave, long-lasting, far-reaching and hard to treat such injury is.

Q 5.3 The current minimum award threshold is €500. Does that minimum strike a fair balance between maximising Tribunal resources and ensuring victims are appropriately compensated?

(1) If your answer is no, can you suggest a minimum award threshold that would be fair and appropriate?

RCNI Response: Yes.

² Accessible via this web-link:

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Q 5.4 A standard feature of most criminal injury compensation schemes is that the applicant/victim is required to “provide all reasonable assistance” in the compensation process and also to the police in the investigation of the offence.

(1) Is it fair and appropriate to refuse an award of compensation if an applicant has withdrawn their complaint from the Garda Síochána?

RCNI Response: Our response is: in the context of sexual offences, absolutely not. There are myriad good reasons why a survivor of sexual violence might withdraw a complaint from the Garda Síochána.

- Many have to do with well-founded fears of the criminal trial process itself.
- Some (thankfully fewer nowadays) have to do with challenging and sometimes, re-traumatising experiences with Garda members and other State agencies during the investigation or prosecutorial processes.
- Still others have to do with ongoing intimidation and retaliation campaigns run by and on behalf of the accused person, particularly where threats are made to vulnerable family members, and
- Others again arise from the psychological burden of prolonged exposure to the offence itself. By this last point, we mean the need for a survivor to keep the details of the offence to the forefront of her mind for a very lengthy but indeterminate period while the offence is investigated, prosecuted, goes through the courts, finally gets heard after (quite possibly) several and lengthy adjournments, and ultimately (if all goes well) results in an appropriate sentence. Not everyone has the psychological strength to do this even if they have very good personal and professional support.

Please note – this is not an exhaustive list of good reasons for withdrawal. There can be no such thing, in our view.

Q 5.5 No compensation is payable where the Tribunal is satisfied that the victim was responsible for, and contributed to, because of provocation or otherwise, the offence giving rise to their injuries, and the Tribunal may reduce the amount of an award where, in its opinion, the victim has been partially responsible for the offence.

(1) How should reference to an applicant’s contribution to their injuries be defined for the purpose of limiting eligibility?

RCNI Response: In the context of sexual offending, there is **no** action by the survivor which should be taken into account in limiting eligibility for compensation. Sexual offences are the entire responsibility of the offender, convicted or not. However, if an applicant were himself convicted of a sexual offence or other offence against the person and suffered a defensive injury caused to him by the victim in the course of carrying out this sexual or otherwise violent offence, we see no reason why his conduct should not reduce, if not annihilate, any entitlement he would otherwise have to compensation.

(2) Should intoxication of the victim form part of an assessment of “contribution to their injuries”?

RCNI Response: Absolutely not, in the context of sexual offences. No degree of intoxication detracts from the culpability of the offender. If anything, a substantial degree of intoxication of the victim - adds to it.

Q 5.6 Compensation can be refused or reduced if the Criminal Injuries Compensation Tribunal considers that the conduct of the victim, or his or her character or way of life make it inappropriate that he or she should be granted an award. The Commission considers that this exclusion, as currently drawn, is overly broad and potentially disproportionate. The references to character and way of life are both vague and subjective. The views of consultees are sought on how to reform this limitation on eligibility:

RCNI Response: At least as far as sexual offences are concerned, the conduct of the victim or his or her character or way of life should never make it inappropriate for him or her to receive an award. Neither conduct nor character is relevant: a compensation award should not be a prize available only to certain categories of victims. Becoming a victim is not a choice.



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(1) What criteria should justify refusal or reduction of an award of compensation for criminal injuries? For example, should a history of criminality justify refusal or reduction, or only criminality of a particular level or seriousness?

RCNI Response: If the victim incurs personal injuries at the hands of another person because s/he was in the course of carrying out an attack (sexual or otherwise) against that person, that person was able to defend him or herself and in the course of so doing, caused those personal injuries – we see no compelling reason why the State should compensate him in any way for those injuries, which were in essence self-inflicted.

We repeat that we see no reason why a history of criminality should in itself limit eligibility for any victim to compensation, apart from the circumstances outlined in the previous paragraph.

(2) Should a similar limitation be retained but restricted to conduct that is causally linked to the injuries inflicted?

RCNI Response: Please see our response to Q.5.6 (1) above.

(3) Should the decision-maker retain discretion to consider an applicant's personal conduct or circumstances in relation to the injuries inflicted but be required to conduct a proportionality assessment in the exercise of this discretion?

RCNI Response: In the context of sexual offences at least, absolutely not. The applicant's personal conduct or circumstances are not relevant to the issue of compensation for injuries caused by an offence.

Chapter 6 Procedural Issues

Q 6.1 The Commission is committed to assessing the processes of the Tribunal with a view to ensuring not only that they are efficient and fair, but also that they do not re-traumatise victims. The Commission seeks the views of consultees on all aspects of the application process: its format, whether it is generally easy or difficult to complete, and aspects which are not clear or could be improved.

- (1) What information is necessary to complete an application for compensation?
- (2) How can administrative burdens be reduced?

RCNI Response:

(1): The difficulty with completing these applications is that it is difficult to work out the level of detail required on each point and/or also to work out what exactly must be supplied by way of proof. Are soft copies enough? Are photocopies sufficient if they are certified copies/are not? If one exists, should the victim append a copy of her Garda statement to the form? What happens if original documentation (of any kind) is unavailable? Are soft copies enough as proof of injury or expense in some circumstances? The answers to these and other questions are hard to discern.

(2): It needs to be clear what will, and will not be sufficient to satisfy the person assessing the application that enough evidence on a particular point has been provided. More guidance is needed on this. Also, there needs to be an effective phone or email support process which is resourced to provide a response to the survivor within a reasonable time. The language also needs work: some of it is hard to understand for anyone who is not used to reading legal documents.

Q 6.2 Would an online application process reduce administrative obstacles and make the scheme more accessible?

RCNI Response: It would certainly make it more accessible for most survivors, as most are computer-literate, in our experience. Guidance as to which documents may legitimately be supplied in soft copy without prejudicing the claim needs to accompany any online process, and it should not be the only form of application process.

- (1) Would an online application process be suitable for all claims, or only for more minor claims?



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RCNI Response: We see no reason in principle for differentiating between applications in respect of more serious and more minor claims in this regard. However, the more serious the claim, the more likely it is that an online application will have to be supported by numerous hard copy original or certified-copy documents in due course, but these documents should not have to be supplied at the outset to accompany the application itself.

(2) What are the disadvantages of an online system?

RCNI Response: The main disadvantage is that not every survivor is computer-literate, for any one or more of a number of reasons. These survivors would find it very difficult to make a claim without assistance. In our view, it is the compensation scheme itself which should provide that assistance by offering various other ways in which an application could be made.

Q 6.3 The current Scheme requires applications for compensation to be made within three months of the date the criminal injury is sustained. No applications may be accepted by the Tribunal where the event giving rise to the injury took place more than two years prior to the date of the application.

(1) Are time limits required?

RCNI Response:

In the context of sexual offending at least, and in the context also of offences against the person, our response is that time limits are neither required nor desirable. Many survivors of sexual offences find it extremely difficult to come to terms with what has happened to them. It may take them a long time (often years) to disclose the violence to anyone, let alone consider making a claim for compensation. Also, many survivors do not realise that they could consider making a claim until it is far too late to make one.

(2) If so, are the existing time limits appropriate?

RCNI Response: N/A

(3) Are there circumstances in which extensions of time should be permitted? If so, what circumstances?

RCNI Response: If there must be time limits, survivors of sexual offences should be exempted from them.

Q 6.4 The Commission would like to hear from consultees on the kinds of supports that would assist applicants in the application process:

(1) Are additional supports required for particular categories of victim? If so, what supports are required?

RCNI Response: For survivors of sexual offences, specialist supports are most appropriate. These may be accessed through the dedicated specialist services, for example rape crisis centres, Cari (Children at Risk in Ireland), ASSC (Accompaniment Support Services for Children), One in Four among others. Most provide both specialised counselling services, general support including practical support and referral, helpline services and a range of legal support and Court and Garda accompaniment services. Any victim compensation scheme should have a statutory duty to provide survivors with information about these services and/or to refer them to those services, in the latter case only with the consent of the survivor.

(2) What additional supports are required for applicants with language barriers, physical or intellectual difficulties?

RCNI Response: In our view, early access to competent interpreters to assist with the application and with any tribunal appearance is an important and necessary support. With regard to any survivor who for whatever reason might find it difficult to communicate what has happened to them and to explain the effect of the offence(s) on their lives, the support

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of a suitable intermediary is invaluable. In addition to this form of support (and sometimes, instead of it): advocacy and support services, including accompaniment services, should if at all possible be provided by a person who is expert in communicating with and on behalf of the particular survivor who has some form of disability which affects their ability to communicate and who wishes to make and pursue a compensation claim.

3) What additional supports are required for families and loved ones bereaved by homicide in the application process?

RCNI Response: We will not try to answer this question as it falls outside our area of expertise.

(4) What additional supports are required for victims making cross-border applications from other jurisdictions?

RCNI Response: Survivors making applications from other jurisdictions need to be put in touch with appropriately specialised victim support services here who have the capacity to take them on. Offering these survivors the possibility of making a statement about their injuries and losses by secure remote video-call technology would be very helpful to some survivors, as would the option to give their evidence to any Tribunal by video-link from their country of residence.

Q 6.5 What measures are required to protect victims from secondary victimisation in the compensation process generally?

RCNI Response: These are the most important of these measures, in our view:

- All those interacting with survivors of sexual violence should have training in the nature and impacts of sexual violence, which includes an element of anti-unconscious bias training, and ideally which is provided by experts in the area;
- Early information about, or referral to with consent, an appropriate specialised service should be provided in every case;
- Early information about, or referral to with consent, legal advice, should be provided, as should the advice itself, without charge – before the application is even written;
- Easy to understand information about the entire process should be readily available in multiple languages, on a website – and should be accessible to those with literacy difficulties;
- It should be possible to request a private interview with an administrative assessor, if putting together a written application is too daunting – either face to face in person, or using remote technology;
- The offer of an intermediary to assist with the same purpose would also be helpful;
- Survivors should be allowed to use support workers as advocates in writing or in face to face or remote meetings;
- Survivors should be allowed to have support workers present during hearings/interviews;
- It should be possible to give evidence at Tribunal using video-link technology.

Q 6.6 The Commission seeks the views of consultees as to the effects of delay on applicants under the Scheme and possible options to reduce or eliminate delays in the compensation and appeals process.

RCNI Response:

- Delays (not just in the compensation scheme world but in any legal process) are very difficult for applicants who are survivors of sexual violence as they force them to go on keeping what happened in the forefront of their minds for months or years, preventing them from completing their recovery.
- The lack of timely compensation for necessary expenses incurred can have devastating financial effects in itself.
- There should be time limits for the completion of assessments (and where referred to Tribunal, for determinations) of compensation claims, and
- There should be clear guidance available from the very beginning as to what is and is not acceptable as proof of what is claimed. In our experience, much delay emanates from uncertainty on this point.

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- We also think that legal advice at the earliest stages would likely have the effect of reducing overall delays.
- Lastly, to state the obvious, the victim compensation scheme itself must be resourced properly to assess and determine claims within a reasonable time, if delays are not to remain endemic.

Q 6.7 The Commission seeks the views of consultees as to whether applicants require legal advice and/or representation in the compensation process. If it is considered that legal assistance is necessary and desirable, should provision be made for legal aid?

RCNI Response: Our response contains an inherent contradiction: On the one hand, on principle the process should be so simple and transparent and easy to understand that no legal advice or representation is needed at any stage, and this is undoubtedly something towards which any victim compensation scheme should strive. On the other hand, having the right legal advice and assistance from the beginning in order to complete the application and gather the right documents (in the right form) to support that application – is likely to save much time and trouble for the survivor and possibly, public money as well. We suggest tentatively that

- Legal advice which is funded publicly would be a good investment and would be likely to reduce the numbers of cases reaching Tribunal, or Court ultimately; and
- At the very least, if a case does have to get as far as Court to be resolved – legal representation paid for by the public purse should be available to those who cannot afford to instruct a private solicitor.

Q 6.8 Should the Tribunal have discretion to award legal costs to applicants where it considers such an award to be appropriate? What limits, if any, should be imposed on such discretion?

RCNI Response: It should have such discretion at least in circumstances where the applicant could not have made the application without legal support and also in circumstances where any technical legal argument is being relied on by either side to make their case. We are not sure that it is appropriate to fix any limits on the Tribunal's discretion in this regard.

Q 6.9 The Commission seeks the views of consultees regarding the benefits of creating an external appeal mechanism, to a court or to a body such as the Ombudsman, on a compensation decision.

RCNI Response: This seems to us very desirable, as long as it is to a court or other body with the power to affirm or overturn decisions and to make fresh decisions.

Chapter 7 Interaction with Compensation in the Criminal Process

Q 7.1 The Commission is keen to learn of consultees' insights into how frequently orders under section 6 of the Criminal Justice Act 1993 are made at sentencing.

RCNI Response: In our experience, they are made very rarely on sentencing for sexual offences.

Q 7.2 Do section 6 orders meet the objectives of the Victims' Directive that:

(1) victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings, and

(2) Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

RCNI Response: In our view, the answer to this question is broadly speaking – no. There is not much likelihood of the offender providing compensation under Section 6 Criminal Justice Act 1993 within a reasonable time as matters stand at the moment, given how long it is taking to investigate, prosecute and bring to Court any sexual offender. (Existing listing delays were much exacerbated by Covid-related factors). The difficulty about promoting measures like Section 6 to

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encourage offenders to provide adequate compensation to victims (with sexual offences anyhow) is that if the offence is in any way serious, the offender is likely to be jailed for an appreciable time. There, he will have next to no income, and his earning prospects will get worse the longer he remains inside. That means that he will have a good case to apply to the Court for a rebate on what he owes the victim. This is not ideal. Therefore, the State should step in to replace the offender at least as far as sexual offences and other serious offending against the person is concerned.

Q 7.3 How could such orders be improved, or measures to encourage offenders to provide adequate compensation be strengthened?

RCNI Response: The difficulty with this is that not many sexual offenders unfortunately have means adequate to paying the high level of compensation that would be appropriate and fair in the circumstances.

Q 7.4 The Commission is keen to determine if the process of court-ordered compensation could be restructured so that it offers protection for accused persons from prejudice, while maintaining the integrity of the sentencing process and providing reparation for victims. The Commission is inclined to the view that the current process of waiting for the conclusion of criminal or civil proceedings to decide on an application for compensation under the Scheme is potentially inefficient. It may also cause financial hardship for victims.

(1) Do you have any views or suggestions on how to better integrate these parallel processes in a clear and efficient manner for victims?

RCNI Response: We can certainly endorse the view that these delays may cause financial hardship for some survivors. More generally, it seems unfair and frankly oppressive for the survivor to have to wait till the determination of any criminal or civil proceedings already in train to be concluded till their compensation scheme application can be decided, given the very lengthy current delays with all court hearings, in large part due to Covid-related factors.

(2) Could the compensation order at the conclusion of the criminal trial operate notionally in favour of the victim, with provision for the order in fact to operate in favour of the state criminal injuries compensation fund, so that the cost of compensation is not unnecessarily borne by the taxpayer?

RCNI Response: The same hurdles will still be in place, whoever becomes the recipient of the compensation ordered: many sex offenders will likely not be able to pay it at the time of sentence, and their ability to pay it in the future will be reduced significantly by the (almost inevitable) prison sentence. We suspect that reliance on offenders to pay the compensation will result in more of the burden being paid by the State, not less, and that diverting fines revenues and confiscated proceeds of crime revenues would be a more cost-effective approach.

Q 7.5 The Commission seeks the views of consultees on the possibility of reducing procedural hurdles for victims of crime with ongoing legal proceedings by introducing information sharing from the criminal or civil courts to the Tribunal, such as sharing the book of evidence from a criminal trial, as supporting documents for a victim's compensation application.

RCNI Response: Our understanding is that the key document to which the survivor needs a right of access for a compensation claim is the Garda report, as it appears that this is what is most relied upon by the present system in order to make an assessment and/or determination on a claim. If the key document is or becomes something else, there should be a statutory right for a survivor to access it, with any necessary redactions of course. The key principle here is that the survivor should know the entire basis on which a decision will be made on their claim, and that means having a right to access any key documents relied on by the scheme's assessment staff and/or the Tribunal, having the right to submit evidence and make submissions based on that Garda report once it has been accessed, and having the right to have this evidence and/or submissions considered in any decision-making process.



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RCNI/LD/1

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