



**RCNI Submission on  
A Criminal Justice Strategy to  
The Department of Justice  
August 2020**

### **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.

### **Background – This Submission**

The Department of Justice is conducting an open consultation on the proposed new Criminal Justice Strategy, which aims to create a cross-departmental, inter-agency response to crime which is effective both as a means of preventing crime and as a means of holding its perpetrators accountable. RCNI is well aware that sexual violence crimes are usually difficult to investigate and prosecute successfully, on the basis of its own and other research findings and from its daily work supporting its victims through specialised counselling, accompaniment, advocacy and other services. It is clear to us that a compassionate, competent, trauma-informed and where appropriate, specialist response from all criminal justice agencies and professionals involved is a powerful support to victims of sexual crimes, whatever the outcome in any individual case. This kind of response reassures and empowers victims and helps to stay the course as their complaints through to the end of the criminal justice process over months, often years.

As you know, in 2017, An Garda Síochána National Protective Services Bureau began the process of rolling out specialist Divisional Protective Services Units in each of the Garda Divisions, to focus on a few related areas including sexual crimes. This process is now nearing completion and has created a cadre of dedicated and specially trained investigators in most regions. This positive initiative was complemented by the commencement of the Criminal Law (Sexual Offences) Act 2017, and the Criminal Justice (Victims of Crime) Act 2017, both of which extended the “menu” of special measures available to victims of sexual crime. The former Act also extended significantly the range of sexual offences in relation to child victims especially.

These and other welcome developments to assist victims of sexual violence are all extremely welcome, and RCNI’s view is that they have already had a positive effect on these victims’ experience of the criminal justice system. However, more must be done, and to that end, this Submission will focus most on those areas where an inter-agency approach has the potential to be most effective from the point of view of this particularly vulnerable group of victims of crime: it is not intended to be a comprehensive restatement of RCNI legal policy on all relevant aspects of the criminal justice system as it affects victims of sexual crimes. This is the case not least because the Review of the protections for vulnerable witnesses in the investigation and prosecution of sexual offences, led by Dr Tom O’Malley, which was

initiated by the former Minister for Justice and Equality in August 2018, is likely to be published in the near future. Once it is, RCNI will draft a separate response to it.

### **Structure of this Submission**

RCNI will examine each one of the most important subject areas from the point of view of victims of sexual crime in turn. Where appropriate, we will include recommendations for positive change under each subject heading. These areas will be considered in the light of the aims of the proposed Criminal Justice Strategy, its principles, and its high-level outcomes. The full text of the Department of Justice document setting out the background, aims, principles and desired outcomes of this process of collaboration on a new Criminal Justice Strategy is set out at Appendix 1 below for easy reference.

Appendix 2 is a list of selected RCNI submissions on various aspects of the criminal justice system with web-links for easy reference.

### **Subject 1: Specialist training of criminal justice professionals on the nature and effects of sexual violence, including historic child sexual violence, with a view to creating a specialist response from all the relevant criminal justice professionals and agencies, as far as possible:**

- RCNI is very much aware that significant progress has been made in this area by An Garda Síochána, the Office of the Director of Public Prosecutions, the Courts Service, the Bar Council, the Law Society, the Probation Service and the judiciary among others, in this area in recent times, both in terms of specialist training and in terms of the creation of a specialist cohort of practitioners with additional expertise in sexual violence related issues;
- RCNI is also aware that the importance of judges having access to training is now recognized to the extent that there is a statutory framework through which such training may be organised (Judicial Council Act 2019<sup>1</sup>);
- At the heart of any such specialist training should be an in-depth examination of the nature of the trauma caused by sexual violence and its consequences not only for individual survivors but also for the criminal justice process;
- Such training should also have at its core an in-depth examination of the nature and prevalence of the various myths, ie their tenuous connection with real life experiences and sexual crimes as they actually happen – should be scrutinized;
- To be truly effective from the point of view of sexual violence victims, all such training should include direct input from specialists: experienced specialist rape crisis counsellors and trainers first of all, but also psychologists and academics with specialised knowledge in this area;

---

<sup>1</sup> Available online via this web-link: <http://www.irishstatutebook.ie/eli/2019/act/33/enacted/en/html>

## RCNI Submission on the Criminal Justice Strategy August 2020

- RCNI is very happy to help any State agency to find expert trainers both inside and outside the NGO community and to assist in other ways as appropriate, for example by helping the agency to access critical readers for sexual violence related training materials to be delivered by others;
- Any training initiative should be recognised as a necessary and legitimate use of the working time of all relevant professionals across all State agencies and relevant professions: training time should be built into the working year for all criminal justice professionals and should be paid – it should not be the norm that any such professional finds it necessary to undergo necessary training in their own time;
- While it is clear that training in this area must address the demands of each individual professional role in the criminal justice system, we think that each separate training programme should aim to develop a common understanding across all justice professionals of the nature and impacts of sexual violence and abuse. In our view, this could be done most easily by including a certain amount of common material in all the individual training programmes;
- Rape crisis and other sexual violence experts, psychologists and academics could advise on what should be included in this common core material, in collaboration with a range of criminal justice professionals;
- Any criminal justice or sexual violence professional who is part of such of a collaborative inter-agency group should do their level best to keep themselves informed of the latest thinking in this area and should share their learning with the rest of the group so that its guidance on training material is as good as it can be.

### **Subject 2: The endemic delays at every stage of the criminal justice process**

- The delay problem, particularly once a case has been sent forward for trial from District Court to Circuit Court or Central Criminal Court, has been around for a long time and having many causes, is not amenable to any single quick simple solution. However, it is necessary for us all to grasp the nettle and pull hard, to the extent that we can, just the same. Delays by themselves do much to reduce the effectiveness of the criminal justice system as a whole. Protracted delays and the attendant uncertainty and often continuing risks to personal safety are extremely stressful, even re-traumatising sometimes, for victims of sexual crime (especially the most serious offences). Delays also make it harder for victims to remember the events surrounding the crime in detail, and sometimes lead to a decision to withdraw from the case altogether. Of course, some delays are appropriate and necessary to ensure that the interests of justice are served, but many more are not. These are the delays that reduce both public confidence in the criminal justice system, and the confidence of its most vulnerable constituency, victims of serious crime, including sexual crime. The new Strategy should make the reduction of these delays **an absolute priority**.

## RCNI Submission on the Criminal Justice Strategy August 2020

- At RCNI, we believe that no solution to this problem can be effective without serious and sustained inter-agency co-operation, and without the commitment of significant resources: more forensic science staff, more specialist investigators, more prosecution staff, judges, more court rooms, more court time would all help to reduce delays.
- RCNI acknowledges of course that the Covid crisis has done much to make this problem worse, and that it is absolutely not the fault of any criminal justice agency or professional that so many jury trials in particular have been delayed. However, this unfortunate situation must still be addressed as urgently as possible, to reduce the risk of attrition as hearing dates are put off for Covid related reasons, some for lengthy periods.
- RCNI also recognises that the problem of delay for proceedings on indictment is compounded by the lack of a formal statutory pre-trial hearing framework. Legal and administrative issues which could have been raised and addressed months ahead of the trial are not brought up till the morning of the trial still far too often, and the result is that trials may be postponed for few hours or days, or worse, adjourned for weeks or months. This is both enormously stressful for all victims and other warned participants in the court proceedings concerned, and a huge waste of time and money.
- RCNI's view is that a more proactive approach to case management combined with a statutory pre-trial hearing framework which would enable **binding** rulings to be made on discrete issues which could not be overturned later in the same proceedings (absent a material change in circumstances) – would do much to reduce both delay before trial and delays during the trial itself.
- On this aspect of the delay issue, the Department of Justice has an opportunity to work closely with criminal justice professionals and others to bring forward proposals for the necessary statutory changes to be made. A vehicle already exists which could be modified if need be to achieve these aims, the Revised General Scheme of the Criminal Procedure Bill 2015<sup>2</sup>;
- The delay issue is a good example of the need for a forum in which those representing victims and others could raise problems and ask for the help of all other responsible criminal justice agencies and representatives of the relevant professions, in finding a solution which is acceptable and workable from the point of view of every interest represented therein.

---

<sup>2</sup> Available online through this web-link:

<http://www.justice.ie/en/JELR/Criminal%20Procedure%20Bill%20Revised%20General%20Scheme.pdf/Files/Criminal%20Procedure%20Bill%20Revised%20General%20Scheme.pdf>

### **Subject 3: Effective monitoring of protective measures outside court and of special measures in court including, but not confined to, the protective and special measures in the Criminal Justice (Victims of Crime) Act 2017<sup>3</sup>**

- The current “menu” of special measures, including new ones such as the prevention of personal cross-examination in sexual cases for adult victims and the use of screens, the expansion of video-link evidence, anonymity in breach of DVA cases, hearings in camera in non-sexual cases, and the right to object to cross-examination on aspects of one’s private life which are “unrelated to the case” - constitutes significant improvement to the previous arrangements for special measures, in theory. However, how can we be certain that these measures are effective for victims?
- In RCNI’s view, it is important that data is gathered professionally and comprehensively on the use of special measures, including the newest among them, so that we can answer readily such questions as: how often are they recommended, sought, granted, refused, and what are the factors associated with low or high use of these special measures? And, once granted, do they in fact result in victims feeling more comfortable or safer? If they are not granted, what is the effect on the victim? What if anything would have improved that victim’s experience of the criminal justice system? If the case was ended by the victim’s withdrawal, what role did the absence or denial of any special measure play in that victim’s decision to withdraw?
- Similar considerations apply to protective measures put in place to help protect victims pre-trial – such as SATU and Garda accompaniment, DVA orders (where applicable), bail conditions, arrest for witness intimidation, and so on – are these measures being recommended and/or sought in court and/or granted, and followed through on and if so in each case, are they working to protect victims of sexual crime effectively? We do recognize of course that there is a limit to what the Gardaí and the Courts can do to protect them as they await the conclusion of each pre-trial stage.
- While it makes sense to await the recommendations in the Review of the protections for vulnerable witnesses in the investigation and prosecution of sexual offences, being led by Dr Tom O’Malley (as these are imminent) and use them as a starting point, RCNI submits that it is now time to consider a complete overhaul of the legislation governing special measures for victims of sexual (and other) crimes. The measures can do much to make the experience of giving evidence easier for vulnerable victims and other witnesses (and we would regard all victims of sexual violence as intrinsically vulnerable). The difficulty is with access to them – the rules governing access are far from identical across all the various measures, and victims and witnesses who are over 18 and who do not suffer from a mental disorder (as

---

<sup>3</sup> See footnote 2 above for web-link to text

defined in the legislation) are often at a particular disadvantage in that the special measure which would be useful for them can only be made available with the leave of the court.

### Subject 4: Legal Advice for victims of sexual violence on the criminal justice process

- At present, victims of certain serious sexual offences only are entitled to free legal advice from State on the criminal justice system, and then only once someone has been charged with one of those sexual offences. Unfortunately, this means that victims of the highest volume sexual offence, sexual assault, are not able to benefit from this right. It has been argued before the Dáil and in the Joint Oireachtas Committee on Justice and Equality that this would be a very helpful measure (see [www.oireachtas.ie](http://www.oireachtas.ie) JOCJE debate for 13<sup>th</sup> November 2019<sup>4</sup>) and would encourage vulnerable victims to come forward to make a complaint to AGS and stick with it. This debate was the in-depth scrutiny of FF PMB Criminal Justice (Victims of Crime) (Amendment) Bill 2018<sup>5</sup> put forward by former FF Justice spokesperson Jim O’Callaghan TD.
- RCNI recommends that free legal advice is made available to all victims of sexual offences and submits that to be an effective measure to assist and empower them, it **must** be available from the pre-complaint stage and must be available until the end of proceedings, which may mean till sentence and beyond (parole, breach of conditions of suspension of sentence, breach of post-release supervision order, anti-harassment orders to give some examples). RCNI LPD does provide legal advice and support directly to survivors as part of her role on an ad-hoc basis. Of course, this cannot be a substitute for access to free legal advice as a right for all survivors. She is aware from her work that many queries about the criminal justice process come before a complaint is made, whenever a decision is made not to prosecute, and close to any trial proceedings. In RCNI’s view, it is important that survivors have access to their own legal advice at every point in the process.
- The evidence to the Joint Oireachtas Committee was that such a measure would not be likely to be very costly and could be established and managed by the Legal Aid Board, even if extended beyond victims of sexual offences to victims of violence in a close relationship, as proposed by the drafters of the Private Member’s Bill.

### Subject 5: National Advocacy Service

- Victims of sexual crimes, and other serious crimes against the person, need support throughout the process of deciding whether to report the crime, making a formal complaint, the forensic examination if any, the ensuing investigation and

---

<sup>4</sup> You can access the text of this debate via this web-link:

[https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_justice\\_and\\_equality/2019-11-13/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-11-13/)

<sup>5</sup> Available online via this web-link:

<https://data.oireachtas.ie/ie/oireachtas/bill/2018/67/eng/initiated/b6718d.pdf>



prosecutorial stages, and any court proceedings stage – and beyond. In particular, it is recognized that being accompanied to a Garda appointment is so great a support that it is now a right in the Criminal Justice (Victims of Crime) Act 2017. For a good many years now, with the help of some State funding, both SATU accompaniment and Court accompaniment volunteers have been trained in these roles and have made themselves available to provide informal and generally, non-interventionist support to victims. It is important to stress that victims of sexual (and no doubt other) crimes need support at other, less dramatic moments in their journey through the criminal justice system. Sometimes, they need practical information and referral to more specialised services.

- In our view, this role of support and advocacy worker should be professionalised and should be run so that ultimately, each victim who would like to avail of this support can be allocated to a worker who will undertake all these roles for him or her from the beginning of the process to the end of it. This complements, but does not substitute for, legal advice (or where possible, representation). To this end, RCNI recommends that a plan is developed to fund a pilot scheme which is then independently evaluated. If the evaluation is favourable, consideration could then be given to rolling out such a scheme to cover the whole country. We are aware that a similar scheme has been running very successfully for some years in Scotland under the auspices of Rape Crisis Scotland, with Government funding, and would respectfully submit that a similar scheme could be put in place here.

### **Subject 6: Prosecution patterns for sexual offences**

- RCNI's view is that it would be immensely helpful for survivors, those who support them in Rape Crisis Centres and elsewhere, and criminal justice professionals - to have access to anonymised statistical information about the proportion of sexual offences in which a prosecution is directed, the range of reasons as to why no prosecution was directed, and some even rudimentary information about the circumstances of the crime, including demographic information about the complainant and the accused. It seems to us that the proportion of cases in which a prosecution is directed (leading to a conviction for some offence in a clear majority of cases) – is growing, but we would like to be able to ground that suspicion in fact.
- If we are right, and the proportion of (for example) adult rape cases prosecuted has now risen from the 30% recorded in Rape and Justice in Ireland (2009)<sup>6</sup>, it would be very encouraging for survivors awaiting a decision on their case – to know that.
- If we are wrong, and the proportion of the same type of case prosecuted is now lower than it was some 15 years ago, it is clear that this would need to be addressed. In the rape crisis world, we need to be able to give our clients full and accurate

---

<sup>6</sup> "Rape and Justice in Ireland" (2009), Hanly et al, Liffey Press, Dublin. The Executive Summary is available online via this web-link: <https://www.rcni.ie/wp-content/uploads/Exec-Summary.pdf>



## RCNI Submission on the Criminal Justice Strategy August 2020

information so that they are prepared as best they can be for the DPP's decision on their own case, and there is no doubt that this learning would be immensely valuable for both Garda investigators and specialist prosecutors within the Office of the DPP.

- It is at least possible, if not probable, that Rape Crisis workers and others working with survivors of sexual violence could help both An Garda Síochána and the Office of the DPP identify possible reasons for any attrition, particularly those which are related to their clients' experiences of the criminal justice process. (There are a number of reasons why clients might feel obliged to withdraw a complaint which do not relate to the criminal justice process itself).
- In our view, the examination of this kind of data would be most fruitful if at least part of it were done collaboratively, ie as a kind of informal partnership between AGS, DPP, and the NGOs. This kind of cross-pollination of approaches would be likely to yield the most useful information which investigative and prosecutorial agencies could use to refine their respective functions.

### Conclusion

RCNI submits that it is apparent from each separate subject discussed above, that effective and targeted inter-agency collaboration is needed to achieve them, and that in most of them, it would make sense to collaborate with other agencies and individual professionals working with victims of other forms of interpersonal violence. In our view, there is need for three things:

- An over-arching high-level structure similar to the existing Criminal Justice Strategic Committee but wide enough and flexible enough to include some representation from specialist victim support organisations, on those issues which concern their clients directly – whose function is to establish guiding principles, aims, and outcomes;
- A number of smaller, more specialised, ad-hoc Sub-Committees whose function is to examine and address specific issues at the direction of the parent Committee, each one composed not only of the relevant State agency representatives but also of outside experts, including NGO representatives and others with specialised knowledge;
- In each case, an infrastructure which ensures that each Committee and Sub-Committee has an effective Chair and has adequate resources to do its job well without undue imposition on its members.

Please do not hesitate to contact us at RCNI if you would like more information on any point, or would like to discuss any of them further.

We would be delighted to help with the development of this important initiative in any way we can.

RCNI/LPD/Final

3<sup>rd</sup> August 2020

Rape Crisis Network Ireland clg

Carmichael Centre

North Brunswick Street

Dublin D07 RAH8

Tel: 01 865 6954

Email: [legal@rcni.ie](mailto:legal@rcni.ie)

Website: [www.rcni.ie](http://www.rcni.ie)

#### **APPENDIX 1:**

#### **Full Text of Department of Justice Background Document on a Criminal Justice Sectoral Strategy – Public Consultations 2020 (reformatted)**

The Department of Justice and Equality is conducting an online public consultation process to inform the development of a joint strategy for the criminal justice system. This document sets out the background to this consultation process (Part 1), as well as the purpose, proposed direction, mission and guiding principles for the Strategy itself (Part 2).

#### **Part 1 – Background**

##### **Introduction**

The Criminal Justice Strategic Committee was established in 2015 to coordinate activities and processes across the criminal justice system in order to align and use resources to best effect and to improve outcomes for the public. The Committee is chaired by the Department of Justice and Equality and comprises the heads of the independent agencies in the sector: An Garda Síochána, the Director of Public Prosecutions, the Courts Service, Irish Prison Service, Probation Service, Forensic Science Ireland, Legal Aid Board and the Policing Authority.

Over the last few years this has resulted in the sector developing closer links and strategic solutions such as the Joint Agency Response to Crime (JARC) initiative where agencies work together with individuals to constructively manage their offending behaviour and reduce reoffending. Building on this, the Committee is now developing the first criminal justice sectoral strategy with a view to having it in place later this year. The purpose of the strategy is to set out our shared vision for a joined

up criminal justice system, to embed and sustain this collaborative work into the future, driving increased innovation and greater cohesion leading to more effective solutions and sanctions and better outcomes for the public. While the process will of course continue to fully respect the operational independence of the relevant agencies, the agencies have agreed that the strategy will help to inform their own strategic priorities and will form the agenda for the Committee's annual work programme.

### **Public Consultation**

Earlier this year, four interactive 'Policy Forum' events took place, involving stakeholder groups including those who work in the criminal justice system, other Government Departments, victims, NGOs and civil society, legal practitioners and academics.

We are now moving into a public consultation phase and are seeking the views of the public on the processes that should be included for consideration in the Strategy. This will involve online workshops, as well as an online survey and a call for written submissions.

The criminal justice system as a whole contributes to how communities and individual members of communities feel about general safety and well-being and how people interact with each other, and as such we need to hear the voices of communities. The outputs and insights from this consultation process will inform the development of the Strategy document, due to be published later this year.

### **Part II – Towards a Criminal Justice Sectoral Strategy Aims and purpose of the Criminal Justice Sectoral Strategy**

**The Strategy (and the associated Implementation Plan)** is a sectoral initiative which:

- will provide a basis for the Department and the agencies in the sector to commit to **working collaboratively** in the interests of a cohesive joined up system to make safer communities throughout Ireland;
- will identify **shared strategic priorities to support a more efficient system**; - will set out a timeline for the implementation of evidence-led sustainable policy actions, based on accurate aligned data and a strong research programme;
- will be living documents which identify **joint projects** across the criminal justice system, as well as synergies and opportunities for consolidation.

Based on the consultations to date, a vision and mission statement, principles and values to support delivery have also been identified. Some high level outcomes from the implementation of the Strategy have also been identified and are presented below for your consideration.

### **Vision**

A joined-up criminal justice system that upholds human rights, builds public confidence and trust, and works together to **improve efficiency and the experience of those who rely on us** to support a safer Ireland.

### Mission

We will:

- Drive greater cohesion by prioritising actions to support our shared commitment to **preventing crime and reducing harm**;
- Work to ensure that **good quality, timely information** is provided to users and that they are dealt with **fairness, dignity and respect at all stages**; and
- Build an innovative culture, embedding system-wide thinking, collaborative working and **evidence based decision making**.

### Supporting Principles/Values

- **Working together collaboratively:** Working cohesively together with a 'whole-of sector' approach to problem solving and information sharing.
- **Integrity and Accountability:** Inspiring trust and confidence for users of the criminal justice system through honesty, fairness and accountability.
- **Evidence based:** Supporting the use and sharing of high quality data (both qualitative and quantitative) to inform and assess effective policies and actions.
- **Innovative:** Creating value relevant to our mission by encouraging a culture of innovation and, where possible, the application of new and better solutions.
- **Open and Engaged:** Communicating proactively with the public and external stakeholders about our work, encouraging transparency and building trust and confidence.

### High level outcomes

1. **Improved effectiveness of a criminal justice system that vindicates the rights of the individual.**
  - A joined up criminal justice system will reduce delays, reduce processing times and increase public safety.
2. **More efficient use of resources across the criminal justice sector.**
  - The right resource in the right place at the right time, using a 'whole-of-sector' approach.
3. **Greater availability and use of research, evaluation and data.**

## RCNI Submission on the Criminal Justice Strategy August 2020

- Better aligning and sharing of data across the criminal justice sector will facilitate better service delivery, support better decision making and drive operational efficiencies across the sector.
  - Less repeat data entry will improve quality leading to more accurate, consistent integrated data across the system.
  - More accessible evidence and data will facilitate research and lead to better, evidence-based policy making.
- 4. Increased confidence in the criminal justice system.**
- More information and clarity for the public together with systemic improvements, consistent with human rights and procedural fairness, will positively impact on individuals' experience of the system.

### APPENDIX 2: Selected RCNI Submissions on criminal justice

1. RCNI Submission on Legal Advice to the Joint Oireachtas Committee on Justice and Equality, November 2019, available via this web-link: <https://www.rcni.ie/wp-content/uploads/RCNI-Legal-Advice-PMB-Submission-to-JOCJE-dated-29th-March-2019-Final.pdf>
2. RCNI Submission on the Preliminary Report by Sir John Gillen (NI) (2019): available through this web-link: <https://www.rcni.ie/wp-content/uploads/RCNI-Gillen-Review-Submission-January-2019-LPD-Final-1.pdf>
3. RCNI Submission to the Review of the protections for vulnerable witnesses in the investigation and prosecution of sexual offences (2018), available through this web-link: <https://www.rcni.ie/wp-content/uploads/RCNI-Review-of-investigation-and-prosecution-of-sexual-offences-autumn-2018-Submission-Final.pdf>
4. RCNI submission on Sexual Violence to the Joint Oireachtas Committee on Justice, Defence and Equality (2013), available via this web-link: <https://www.rcni.ie/wp-content/uploads/RCNISubmissiononSexualViolencetoJointOireachtasCommitteeonJusticeEqualityandDefenceJune2013FINAL.pdf>
5. RCNI policy paper on Case Management and Pre-Trial Hearings (2012), available through this web-link: <https://www.rcni.ie/wp-content/uploads/RCNICaseManagementandPreTrialHearingspositionpaperMay12.pdf>