



**RCNI Opening Statement on  
Victims' Testimony in Cases of  
Rape and Sexual Assault  
to the  
Joint Oireachtas Committee on Justice  
March 2021**

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## RCNI Opening Statement to Joint Oireachtas Committee on Justice on Victims' Testimony in Cases of Rape and Sexual Assault for 23.03.2021

**Rape Crisis Network Ireland** welcomes very much this opportunity to address the Justice Committee on victims' testimony in cases of rape and sexual assault. We would like to take a moment to acknowledge the present Government's commitment to full implementation of the O'Malley Review recommendations and the significant progress made so far. RCNI also acknowledges recent positive changes introduced by other agencies, for instance An Garda Síochána and the Office of the Director of Public Prosecutions.

This Opening Statement is intended to summarise the main points of our Submission on Victims' Testimony and to address a small number of specific issues which affect victims of sexual violence testifying in criminal proceedings.

- Victims' Testimony is a **key component** of an effective criminal justice process;
- The **pursuit of excellence** in all their contacts with victims of sexual offences by relevant professionals must be a key principle – both to minimise the risks of re-traumatisation of witnesses by the criminal justice process itself and to ensure that they are supported to give their best evidence in that process. The harm which can be caused by the criminal justice system itself to victims is real, and is sometimes described by them as worse than the sexual violence itself;
- Victims of sexual violence should be seen as **inherently vulnerable** witnesses; of these, some are **additionally vulnerable**, for example because of their young age or because of a disability – and all victims should be seen as **individuals** in need of individual supports;
- Many aspects of the criminal justice system can pose challenges for victims of sexual offences, **from the very beginning** – these include lack of access to legal advice, inability to contact investigators, lack of personal support, delayed access to specialist supports including counselling where indicated, endless delays at each stage of the process itself, fears for their personal safety and for their privacy throughout the process, and last but by no means least, fear of being subjected to lengthy and oppressive cross-examination on their private lives, going well beyond the facts of the offence itself;
- Good care of sexual violence victims begins **from the moment that an offence is communicated**, is multi-faceted, takes account of individual needs, continues through to the end of any trial and beyond, and involves effective collaboration between statutory agencies and NGOs;

### **Lengthy Delays are not only re-traumatising in themselves but affect quality of victims' memory**

- The primacy of oral evidence in our criminal justice system is at odds with modern psychological science, and this is now recognised in other common-law jurisdictions. As the Scottish judge Lord Carloway put it, "a person's memory does not improve over time or being put under stress";
- For example, we could mitigate the negative effects on memory of very lengthy delays between offence and trial by allowing at least the **most** vulnerable witnesses (children and those with a "mental disorder"<sup>1</sup> or communication difficulty) to have their **entire evidence pre-recorded** and allowed to stand as their

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<sup>1</sup> Defined as: "mental illness, mental disability, dementia or any disease of the mind" – S.5 Criminal Justice Act 1993 as amended

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evidence at trial - not just as at present, their pre-recorded evidence in chief, in the case of children and those with a "mental disorder".<sup>2</sup>

- We could also allow **any** victim of sexual violence who wishes to do this to have their evidence in chief pre-recorded and stand as their evidence at trial.

### Access to Special Measures at Court is Difficult

- Special measures remain hard to access in court for many victims of sexual violence who are neither children nor have a "mental disorder". RCNI recommends that the current legislative framework is **simplified and streamlined** so that a presumption in favour of access to special measures is created for **any** victim of, or witness to, sexual (or other) violence.
- Serious consideration should be given as part of this process to introducing **special measures for accused persons**, so that the present legal culture, which is inclined to view special measures for victims and certain other witnesses as intrinsically unfair to the accused, will cease to see these measures as a threat to the interests of the accused which must be opposed. There is no need to view the twin aims of improving supports for vulnerable witnesses and achieving a fair trial for the accused as mutually exclusive – they are not;
- Any new legislative framework should include wide-ranging judicial powers to allow the **introduction of any novel, individually tailored special measure** to assist a vulnerable witness to give evidence, provided that its introduction is not contrary to the interests of justice;
- It should also address the **gaps in the use of intermediaries** in our current legislation – that is, the use of intermediaries should extend to the witness's answers, and should include witnesses whose "mental condition" is fine and who do not have a "mental disorder" but do have a communications difficulty;

### Beyond Special Measures

- RCNI has long advocated that any victim of sexual violence who needs it should have access to support from a dedicated, professional advocacy and support worker from their first contact with either an NGO or with An Garda Síochána. Our vision is a **national network of professional advocacy and support workers**, housed in and managed by the specialist services, who are able to provide practical and emotional support, referrals, accompaniment services and links to other sources of information, advice and support as appropriate, and whose role is distinct from that of legal advisors or specialist counsellors.
- For all the measures suggested in this Statement and in our Submission, and which are already in hand as part of the O'Malley Review Implementation Plan, RCNI stresses that **enough resources**, including judges, must be made available if it is to succeed as it should, and these resources should include
- Access to appropriate training which challenges head-on the many **pervasive rape myths** on which much defence cross-examination of victims is still based, in part by pointing out that as they are not based on fact but on prejudice and misogyny, they are not in fact **relevant to the issues in the case**<sup>3</sup>. However,

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<sup>2</sup> This will not be appropriate in every case of course, for instance: where video-recording has been part of the abuse itself

<sup>3</sup> Specialist training for the relevant professions is receiving detailed attention from the Department of Justice at present as part of the Implementation Plan for the O'Malley Review recommendations.

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RCNI also recognises that rape myths need to be identified and rooted out outside the courtroom, through education and awareness raising initiatives.

I am happy to do my best to answer any questions on this Opening Statement and on the general issue of victims' testimony in sexual violence cases. Thank you for listening to me.

**Ref:** RCNI/LPD/1

**Date:** 16<sup>th</sup> March 2021

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### **References**

Please refer to the RCNI Submission on Victims' Testimony in Cases of Rape and Sexual Assault for a full list of references.