



**RCNI Submission on the General Scheme of the forthcoming
Criminal Justice (Community Sanctions) Bill 2014**

April 2014

RCNI Submission on Criminal Justice (Community Sanctions) Bill General Scheme to Joint Oireachtas Committee on Justice, Defence and Equality April 2014

Introduction – Rape Crisis Network Ireland Overview:

1.0 Rape Crisis Network Ireland broadly welcomes the forthcoming Criminal Justice (Community Sanctions) Bill 2014, as set out in the General Scheme. In general, RCNI welcomes the inclusion of victims' interests as an important part of the sentencing process, and also, as an important way of assuring the best possible risk assessment and management of sex offenders once they are released from prison. In particular, RCNI welcomes those provisions which implement its own earlier recommendations in relation to compensation and pre-sentence assessment reports.

Rape Crisis Network Ireland: Aims, Activities, Goals, Members, Staff

2.0 RCNI is the national representative body for its 13 member Rape Crisis Centres. It 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 including expert data collection, supporting Rape Crisis Centres to reach best practice standards, legal advice and policy development, and using our expertise to influence national policy and social change. Our member Rape Crisis Centres provide free advice, specialised counselling, advocacy and other supports such as Court and Garda accompaniment, for survivors of sexual abuse in Ireland, including a growing number between the ages of 14 and 18. The RCNI Legal Director has chaired the Legal Issues Sub-Committee of the National Steering Committee on Violence against Women from September 2008 to date. NSCVAW is a high-level multi-agency advisory body, chaired by the Head of Cosc, the National Office for the Prevention of Domestic, Sexual and Gender-Based Violence. The NSC remit includes making recommendations to Government and relevant State agencies for the improvement of existing services and structures which affect victims of both domestic and sexual violence. Over the past few years, LISC has produced a number of legal recommendations and discussion documents, which have been approved by the NSCVAW. Where this RCNI document makes recommendations relevant to sentencing which are in accordance with those made by LISC, this is stated in the text *in italics*¹.

3.0 This Submission – Structure:

This submission is made on a Head by Head basis, beginning with Head 8, and is limited to those Heads which are most relevant to victims of sexual violence crimes. It refers throughout to our existing legal reform position papers and submissions, and web links to the full texts are included where appropriate. This document should be read in conjunction with the relevant sections of the RCNI Submission on Sexual Violence and the Criminal Justice System made to the Joint Oireachtas Committee on Justice, Defence and Equality in writing in June 2013².

Part 2:

¹ A summary of LISC's remit and composition can be found at Appendix II hereto.

² Available online through this weblink for convenience: <http://www.rcni.ie/wp-content/uploads/RCNISubmissiononSexualViolencetoJointOireachtasCommitteeonJusticeEqualityandDefenceJune2013FINAL.pdf>. The relevant paragraphs are 3.9 to 3.10.5 inclusive.

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- 3.1 Head 8 – Discharge Orders and Binding Over Orders relating to summary offences:** While relatively few sexual offences are dealt with summarily, nevertheless we welcome the inclusion of “the need to have due regard to the interests of any victim of the offence” at Subhead (3) (c), as one of the matters to which a court may have regard when considering whether a discharge order or binding over order, is appropriate in a particular case. RCNI considers that this is especially appropriate in this situation, as there will be no conviction if a discharge order or binding over order is made. For many victims of sexual offences, this is difficult to accept. In our respectful submission, the interests of victims should **always** be included in the consideration of any disposal without a conviction.

RCNI recommends that the wording in relation to the interests of any victim be changed from “may have regard” to “shall have regard”, so that any judge considering a discharge order or binding over order is obliged to consider the needs of any victim of the offence.

- 3.2 Head 9 – Restorative Justice criteria for the purposes of Head 8(3)(f):** While this provision is not likely to apply to many victims of sexual offences, nevertheless we welcome the condition at Head 9(1)(c) to the effect that the victim of the offence has accepted the reparation. It has the effect of putting the victim’s point of view at the centre of any restorative justice process, giving him/her control over the outcome. We submit that any judge considering a disposal without conviction should be obliged to consider if the restorative justice criteria have been fulfilled, where applicable.

RCNI therefore recommends that the wording of Head 8 in relation to restorative justice criteria be changed from “may have regard to” to “shall have regard to”, to put it beyond doubt that where they are applicable, the restorative justice criteria must be included in any consideration of a disposal without conviction.

Part 3

- 3.3 Head 16 – Probation Assessment Reports –** Head 16 (2) (c) and (d) in particular: RCNI welcomes these provisions which complement the proposed new provisions at Head 48 replacing Section 99 of the Criminal Justice Act 2006 and Part V of the Sex Offenders Act 2001, which are close to recommendations made in various RCNI policy papers and submissions on sentencing. It seems to us of the first importance that sentencing judges should have the benefit of probation assessment reports whenever either a suspended, part-suspended sentence OR a post-release supervision order is being considered in respect of a sex offender.

RCNI recommends the following:

(1)With regard to the content of such reports, we submit that each one should include a detailed assessment of the risk of future re-offending and make proposals to address any such risk, where appropriate; (Head 16(4)(a) refers) ; further

(2)If anyone convicted of a sex offence does not co-operate with the preparation of a probation assessment report, that fact should be brought to attention of the sentencing judge, who should have the power to impose sanctions if s/he is satisfied that there is no reasonable excuse for the failure to co-operate; (there does not appear to be any sanction proposed for non-cooperation in the preparation of a Probation Assessment Report)

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(3) As part-suspended sentences provide an important mechanism through which the court may impose conditions aimed at reducing the risk of re-offending after release, - and activate the full sentence if these conditions are breached – we submit that part-suspended sentences should be included explicitly in the wording of Head 16(2)(c).

(4) Where the sentencing judge considers it may be appropriate to impose a part-suspended sentence on a sex offender, we submit that s/he should have regard to some of the same matters which must be considered by a sentencing judge when s/he has to decide whether to impose a post-release supervision order, namely:³

“(a) the need for a period, after the offender has been released into the community, during which his or her conduct is supervised by a responsible person,

(b) the need to protect the public from serious harm from the offender,

(c) the need to prevent the commission by the offender of further sexual offences, and

(d) the need to rehabilitate or further rehabilitate the offender...”

3.4 Head 17: Other reports that may be requested: RCNI welcomes this provision, as in our view, the more expert information available to the sentencing judge, the better s/he can work out a sentencing regime which addresses the risks of re-offending by a sex offender.

RCNI recommends that in the case of sex offenders at least, that any report prepared under this Head should refer explicitly to the risk of re-offending and the report’s author should make any recommendations which seem appropriate, to address this risk.

3.5 Heads 20 and 21: These two sections taken together enable certain reports for the court relating to convicted offenders to be made available to each party and to “any other person whom the court considers to have a proper interest in receiving a copy of the report”. In our respectful submission, victims of sexual crimes (and other victims) are always to be considered persons having “a proper interest in receiving a copy of the report”, as the report will include much material about their own most distressing and intimate experiences, and particularly if they could be summoned by the judge to give evidence in order to assist him/her on sentencing.

RCNI recommends that Head 20 be reworded so that victims are named as a class of people entitled to see copies of reports under that Part, unless there are exceptional circumstances in a particular case which mean that the judge should not allow this.

Part 5

Heads 30 and 31: Reparation Fund and Reparation Orders respectively: RCNI broadly welcomes both sets of provisions, which replace the current Poor Box system. It seems to us that the proposed Reparation Fund is a much fairer way to distribute money for the “compensation, reparation and assistance” of victims of crime than the existing system. We note that it is proposed to use existing structures to distribute Reparation Fund revenue,

³ see Section 28 (2) of the Sex Offenders Act 2001 as amended

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rather than incur the cost of a new structure, and that it is proposed to divide the amount available between the Commission for the Support of Victims of Crime and the Criminal Injuries Compensation Tribunal.

“Assistance for the victims of crime”: The existing Commission structure is simple and very well-administered, and any victim support organisation can apply to it for funding to assist victims in a wide variety of ways. RCNI itself has benefited from this funding for Court and Garda Accompaniment and associated training, over the years, and the RCNI office organises and administers expenses payments for accompaniment and training for its own members, (and just training and related expenses, for non-member Centres). Any victim of sexual violence (not simply existing clients) can ask a Rape Crisis Centre funded by the Commission (they all are) for free accompaniment services. However, we are well aware that Commission funding should not be used for any other purpose which might help victims, other than that already applied for and approved in advance, and funding applications are considered only once a year⁴. RCNI regularly receives requests for small amounts of funding for a specific purpose to help a victim, such as Refugee Appeal Tribunal accompaniment, travel costs to access counselling sessions, child care costs to enable clients to attend sessions, (to name but three recent examples), for which a local Centre might have no or no adequate funding. In our submission, it would be great to be able to apply for some funding to assist individual victims with small amounts of money on an ad hoc basis as the need arises, whatever that need is, without having to name it as a “project” – and/or to provide much-needed services as the need arises, such as a local Centre being asked to come talk to secondary school pupils about sexual violence, consent and so on, but lacking the resources to pay for travel and/or cost of materials (a very worthwhile task in terms of prevention of future sexual violence but one which costs money to complete).

In summary, the RCNI point of view is that this element of the Reparation Fund has the potential to provide assistance directly to victims quickly and simply, and thankfully the structures are already pretty well in place to ensure that does happen. The State should ensure that it is well publicised so that victims know to whom they can apply and how, and both State and recipient organisations should ensure that any system is as simple to access as it can be.

“Compensation, Reparation...for the victims of crime”: With regard to the proposal to allocate some part of the Reparation Fund to the Criminal Injuries Tribunal, RCNI would point out that the existing CICT rules exclude a great number of victims as they stand. This cannot be the intention of Head 30. If victims are to be compensated and reparation made to them through the CICT, it should no longer be allowed to operate to exclude:

- (a) any victim who was living with the perpetrator of the crime at the time of the crime;
- (b) any victim who makes an application to it later than three months after the crime;
- (c) any victim who fails to make a report to the Guards soon after the crime;
- (d) any victim who wishes to make a claim for pain and suffering endured as a result of the crime (at the very least victims who have no chance of being compensated in the civil courts should be able to apply to CICT);
- (e) any victim whose actions were held to “cause or contribute to the crime”, and
- (f) any victim in whose case CICT is satisfied that “the conduct of the victim, his character or his way of life make it inappropriate”

⁴ That is not to say that the Commission is entirely inflexible in their attitude – far from it - but we must always seek special permission if we wish to use their funding for a slightly different (but related) purpose.

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RCNI recommends:

- (1) **Assistance:**
 - (a) However it is administered, the Reparation Fund structures should have the capacity to be flexible to victims' needs as they arise as far as possible;
 - (b) The application process to the Reparation Fund should be well publicised by the State and
 - (c) It should be simple and easy to understand;
 - (d) It should be easy to administer and account for; and
 - (e) The portion of the Reparation Fund allocated to victim assistance should increase the overall amount of funding available to victims of crime, not replace existing sources of funding

- (2) **Compensation and Reparation:**

The existing Criminal Injuries Compensation Tribunal should have its rules replaced to include all those categories of victims who may now find themselves excluded, listed above under the subheading "Compensation, Reparation for the Victims of Crime".⁵

Part 6

Head 34: Role of Probation Service in relation to court proceedings Subhead (2) provides that a court may request the Probation Service to provide a Victim Impact Statement in relation to a victim of crime. The rationale for this provision is not clear to us. We are concerned that this might be completely unworkable in the case of victims of sexual violence, and that it may have the effect of taking away from all relevant victims one of their few explicit rights in criminal proceedings. The subhead does not make clear in what circumstances the Probation Service may be requested to provide a victim impact statement by the court. We are inclined to believe that the intention of the subhead is not to replace victims' existing right to make a Victim Impact Statement with a power given to the court alone to request one from the Probation Service. If we are wrong and this is indeed the case, we must oppose this very strongly. If the intention is to ask the Probation Service to make a supplemental Victim Impact Statement, in addition to the one provided by or on behalf of the victim, we do not see how it work. In order to be of real use to the court, any such statement would have to be prepared after an in-depth interview with the victim. We cannot imagine that victims of sexual violence would find it appropriate, or easy, to tell their story to any representative from a service associated so closely with offenders and their welfare. It can take months or even years for victims of sexual violence to build up enough trust and confidence to tell a rape crisis counsellor in detail about the violence and its impact on them, let alone a representative of a service whose core role is the supervision and welfare of offenders. While we assume of course that the same Probation Service officer would not prepare both Probation Assessment Report and Victim Impact Statement in the same case, we cannot see that victims would be able and willing to disclose such personal material about the impacts of the sexual violence on their lives, to any Probation Service officer, given the close association between the Probation Service and offenders. If the Statement were to be prepared without any interview with the victim, it is hard to see how it could assist the court, on the other hand. In our view, if a victim wishes to have someone assist her with a Victim Impact Statement, it should be someone with whom s/he already has a good and trusting relationship, such as a rape crisis counsellor, the investigating Guard,

⁵ The Committee may wish to consider the Victim Surcharge system which operates in the UK, details of which may be found online through this weblink: <http://sentencingcouncil.judiciary.gov.uk/sentencing/victim-surcharge.htm>

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a friend or relative – who is already familiar with the facts of the case and its impacts on the victim, who is not associated with offenders in general, and with whom the victim feels entirely comfortable, not least because s/he does not have to explain and/or repeat everything because that person knows all about it already. Having to explain and/or repeat everything in itself to a complete stranger can amount to being re-traumatised.

RCNI would like to make it clear that in making this submission, **no criticism of the great and necessary work of Probation Service officers is intended.**

RCNI recommends that the proposal to allow Probation Service officers to prepare a Victim Impact Statement be scrapped.

Part 8 Amendments of Existing Legislation

Head 44: [Compensation] RCNI welcomes very much the deletion of the words “instead of” from subsection (1) of the original Section 6 of the Criminal Justice Act 1993, as we have already advocated for this, and *it was a LISC recommendation*. We feel it is entirely appropriate to break the link between the payment of compensation and the sentencing of the offender.

RCNI recommends further that if any judge is considering a compensation order, s/he should be obliged to consult the victim of the crime first. Our experience is that some victims of sexual violence are not willing to accept any compensation from an offender, regardless of the circumstances. If the judge found that the victim was indeed unwilling to accept such compensation, should not the judge be able to order that the same amount be paid by the offender to the Reparation Fund?

4.0 Executive Summary of RCNI Recommendations in relation to the General Scheme of the forthcoming Criminal Justice (Community Sanctions) Bill 2014

RCNI recommends that:

- Compensation in sexual violence cases should never be “instead of” another sentencing option, as this General Scheme proposes at Head 44⁶, and
- The complainant’s own wishes in relation to compensation should also be ascertained and taken into account by the judge before any decision is made on compensation (Head 44 refers), and the onus should be on the sentencing judge to raise the issue of possible compensation at the appropriate stage in proceedings;
- Any judge considering a suspended, or part-suspended sentence, or a sentence including a post-release supervision order, should be obliged to seek a probation assessment report from the Probation Service, as this General Scheme appears to propose at Head 16;
- All Probation Assessment Reports relating to sex offenders should set out the risks of re-offending and where appropriate, make proposals to address these risks;
- Any sex (or other) offender who does not co-operate with the Probation Service in the preparation of a Probation Assessment Report without reasonable cause, should face sanctions (such as by way of increased sentence);
- All revenues from the proposed Reparation Fund should be ring-fenced so that they are only used to provide “compensation, reparation and assistance” for victims of crime, as Head 30 proposes, no matter what the structure for holding and disbursing these revenues is;

⁶ This recommendation was also made by LISC

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- These revenues should be used to **increase**, not **replace**, funding available to victims for their assistance, compensation and reparation;
- Any system for holding and disbursing these revenues should be simple, and easy to understand and access, so that any victims of crime could make an application for payment quickly and easily, without any need to seek legal assistance in order to do so;
- Any system for holding and disbursing these revenues should be flexible enough to provide assistance to individual victims on an ad hoc basis, as and when the need arises;
- Any such system should be well publicised by the State;
- The Criminal Injuries Compensation Tribunal Rules should be amended to allow those victims who may now be barred from making a claim, to make a claim;
- The proposal to allow the court to request the Probation Service to prepare Victim Impact Reports/Statements should be scrapped as unworkable;
- Any judge contemplating a disposal without conviction (discharge order or binding over order) should be obliged to consider the needs of the victim of the crime; and
- Any judge contemplating such a disposal should be obliged to have regard to whether any reparation offered by way of a restorative justice proposal is acceptable to the victim of the crime;
- Reports on sex offenders made under Part 3 should be made available to the victim, unless there are exceptional circumstances in a particular case which render this inappropriate.

**Rape Crisis Network Ireland
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3 April 2014

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Appendix I:

List of RCNI Position Papers and Submissions relevant to this Submission, in chronological order:

1. RCNI Submission on the Management of Sex Offenders (2009): available online at: <http://www.rcni.ie/uploads/RCNIsubmissiononthemanagmentofsexoffenders29thApril2009.pdf>
2. RCNI Submission on the Community and the Criminal Justice System (2011), available online at: <http://www.rcni.ie/uploads/RCNISubmissionOnTheCommunityCriminalJusticeSystemAug11.pdf>
3. RCNI Legal Recommendations Position Paper (2012), available online at: <http://www.rcni.ie/uploads/RCNILEgalRecommendationsPositionPaperMay12.pdf>
4. RCNI Submission to Joint Oireachtas Committee on Justice, Equality and Defence on Sexual Sexual Violence and the Criminal Justice System, available online through this link <http://www.rcni.ie/wp-content/uploads/RCNISubmissiononSexualViolencetoJointOireachtasCommitteeonJusticeEqualityandDefenceJune2013FINAL.pdf>
5. RCNI Submission to the Strategic Review of Penal Policy Working Group (2013), available online through this weblink: <http://www.rcni.ie/wp-content/uploads/RCNI-Submission-SRPP-February-2013-LPD-Final-Word.pdf>

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Appendix II:

LISC composition: The Legal Issues Sub-Committee is a sub-committee of the National Steering Committee on Violence against Women, on whose behalf it conducts research and discussions and formulates agreed recommendations on domestic and sexual violence legal issues, wherever possible and appropriate. It works to an NSC agreed annual Work Plan based on the National Strategy to prevent Domestic, Sexual and Gender-Based Violence⁷, and in addition addresses legal issues whenever requested to do so by NSC. Like the NSC itself, it is a multi-agency body, whose volunteer membership meets quarterly and includes senior and junior representatives from the Law Library, a Law Society representative, a Legal Aid Board representative, domestic and sexual violence NGO representatives (in the case of sexual violence, this means both RCNI and Dublin Rape Crisis Centre), and representatives from An Garda Síochána, the Department of Justice, the Probation Service, and the Courts Service. All members are encouraged to contribute their views, and all recommendations put forward are agreed by LISC members. The variety of experiences, roles and perspectives within LISC has allowed it to make informed and thoughtful recommendations, well grounded in the daily reality of our justice system.

*Its remit is purely **advisory** and non-executive, as is that of the NSC itself.*

⁷ available online in both summary and full form at www.cosc.ie/publications