

Good afternoon Madame Chairman, Members of the Judiciary, ACJRD Council Members, Colleagues. Ladies and gentlemen.

I would like to thank the Association of Criminal Justice Research and Development (ACJRD) for inviting me to speak on the implementation of the EU directive on establishing minimum standards on the rights, support and protection of victims of crime.

We are today focussing our attention on the victims of crime and the shift occasioned by the first *legislative* initiative, initially by the EU directive and underpinned by legislation, giving rights to victims engaging with the criminal justice system.

What I hope to do in the time available is to outline how the office of the DPP proposes to respond to these initiatives. Firstly I want to talk about existing measures which already operate within the office and some of which are replicated by the directive. Then I will address insofar as I can those measures which will be new for us under the directive and any legislation.

The question of the standing of victims in criminal proceedings and the mechanisms via which their needs can be accommodated within our bi-partite, adversarial system has been the subject of a great deal of commentary from the academic community and non-governmental organisations, particularly those operating support services for victims.

A number of reports<sup>1</sup> in recent years, including most especially 'The Needs and Concerns of Victims of Crime in Ireland' (2010)<sup>2</sup> by Shane Kilcommins et al highlighted a range of victims' concerns. The authors found that the courtroom environment and court delays can be particularly stressful for victims.

The report also recommended that my Office extend<sup>3</sup> the giving of reasons to other categories of victims, in addition to families of deceased victims. It has been my experience and that of my staff over the many years of receiving phone calls and letters as well as speaking to victim support organisations, that not surprisingly the lack of information or failure to communicate important information to Victims causes great upset.

Before addressing the specifics of how the Victims' Directive will operate in the future, I think it is important to highlight the existing services that we have been providing to victims

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<sup>1</sup> See also : REPORT ON SERVICES AND LEGISLATION PROVIDING SUPPORT FOR VICTIMS OF CRIME Ivana Bacik, Liz Heffernan, Patricia Brazil, Marguerite Woods of Law School, Trinity College Dublin , A Report prepared for The Commission for the Support for Victims of Crime, December 2007

<sup>2</sup> Kilcommins S. & Leane M. (2010). Report for the Commission for the Support of Victims

<sup>3</sup> Kilcommins, S & Leane M. (2010). Report on the Commission for the Support of Victims. 179-180

of crime. Firstly a victim of crime (or a family member of a deceased victim) has had the longstanding right to seek a review of the decision not to prosecute. This is in contrast to other jurisdictions, for example England and Wales, where the Victim Right to Review initiative was only introduced in 2013. This right in Ireland is explained in the publication 'The Role of the DPP' and on our website.

Secondly the Victims' Charter was first published in 1999 and revised in 2010. This details the services and perhaps more importantly the standards that a victim is entitled to expect from the various state agencies in the criminal justice 'family', including of course the Office of the DPP.

Thirdly in 2001 we published Prosecutor's Guidelines formally detailing for the first time how decisions are reached and importantly The Rights of Victims and Victims' Relatives. A commitment is given in paragraph 12.3 of those guidelines to have regard to views expressed by Victims when making decisions whether to prosecute or not, to examine requests for reviews of decisions not to prosecute and to seek to review unduly lenient sentences where it is considered that the sentence is unduly lenient.

Fourthly the provision of clear, accessible and legally accurate information about the Criminal Justice Process, and a victim's role within it, has been a key responsibility of the Communications Unit of my Office, established in 2001. Two publications in particular *Going to Court as a Witness* and *The Role of the DPP* (both texts in clear concise language and approved by the National Adult Literacy Agency in clear concise language) contain extensive information, in 12 languages (and are also available in Braille and audio) about a range of issues of concern to victims including their right to seek a review of the decision not to prosecute, when a victim is entitled to anonymity and on their option to have a pre-trial meeting with the prosecution team. This information hopefully better informs victims or families of victims and helps to prepare them, so far as possible, for what to expect when giving evidence before a Court. We also have a victims' and witnesses section on our website [www.dppireland.ie](http://www.dppireland.ie)

Most recently in 2013, in conjunction with An Garda Síochána and The Victims of Crime Office of the Department of Justice, a guide to preparation of the victim impact statement was also made available to Victims. It was published to inform victims of the expanded categories of persons entitled to make a victim impact statement (including the families of deceased victims) and is a good example as it addressed concerns expressed by Victims about last minute edits being made to their Victim Impact Statements, the reasons for which they did not understand.

The directive to have direct effect on November 16<sup>th</sup>, is an important step establishing rights to assist Victims who have suffered physically, emotionally and financially as a result of a crime. Regardless of whether the Criminal Justice (Victims of Crime) Bill 2013 is enacted before that implementation deadline I wish to stress that my office will give, upon request by the Victim, a summary of the reasons for decisions not to prosecute, in all our decisions not to prosecute, subject to some limited exceptions, made on or after the 16<sup>th</sup> November 2015 subject to some limited exceptions. This is among other reasons to enable the victim to decide whether to request a review of the decision under Article 11 of the EU Directive.

If, following receipt of the reasons for the decision not to prosecute a victim remains dissatisfied with the decision not to prosecute, the victim can request that the decision is reviewed. As applies in the current practice of reviews, this review will be conducted by a separate lawyer to the original decision-maker.

I should say that in the context of a prosecution on behalf of the People of Ireland my obligations are not only to the victims of crime but also to the due process rights of suspects or accused persons.

I make this point to acknowledge that decisions in respect of prosecutions brought on behalf of the People of Ireland may not in all circumstances satisfy all the individual emotional, physical, financial or legal needs of individual victims.

In making decisions to prosecute, my legal staff and I can only direct a prosecution where the evidence supports one, where there is sufficient evidence. If the evidence is insufficient or it is not in the public interest to prosecute, a prosecution cannot be directed. An accused is entitled to the presumption of innocence at all times until a guilty plea is entered, verdict returned or conviction recorded.

The right to the presumption of innocence and the right to one's good name are protected both by our Constitution and also by the EU Charter of Fundamental Rights. Article 7 of the EU charter also protects the right to privacy. I also have to ensure that an accused person receives a fair trial in accordance with Article 38 of the Constitution as do the Judiciary in the exercise of their functions. It is within this context that I have to perform my statutory duties.

I have established a new Unit, the Communications and Victims Liaison Unit, to prepare for and address my obligations under the EU directive and the forthcoming Criminal Justice (Victims of Crime) Bill 2015. This unit will write directly to Victims who request a summary of reasons or seek a review of a decision made on or after the 16 November 2015 not to prosecute. It is staffed by two lawyers at present and supported by the Office

Communications Unit which has been allocated additional staff for this purpose. This unit builds on the work of the Office Communications Unit, over many years, of providing telephone assistance to, and publishing information for victims.

The Directive and published Bill also provide for greater information and procedural rights during a criminal trial. Those rights include a right to information about the charges brought, the date and location of trial dates, appeals and the outcome of prosecutions.

The Bill recognises that some adult victims can be very vulnerable. The Bill provides that in certain circumstances adult victims may give their evidence in accordance with Part III of the Criminal Evidence Act 1992 as amended. Alternatively, the Judge may exclude all persons (with the exception of those directly involved in the proceedings) from the Court when the victim is giving his or her evidence.

These additional options for vulnerable victims will hopefully reduce the stress which victims often feel when faced with giving evidence before a court. It is important to note that while the prosecutor makes the application to the court the decision on whether to grant the application remains a matter for the Judge.

Criminal procedures can be very difficult concepts for non-lawyers to understand. The provision of independent legal advice to Victims is designed to answer other questions that Victims may have during the trial, including any possible civil remedies that may be available. These are questions which prosecutors cannot answer for victims.

Lawyers within my Office and State Solicitors will continue to offer pre-trial meetings to Victims to explain the trial process and to introduce themselves. Hopefully this alleviates a little the stress caused by attending court or giving evidence. The existing restrictions on what can be discussed in such pre-trial meetings will continue. Prosecutors and Solicitors can inform victims of what to expect during the process but cannot discuss the evidence in the case.

Legal constraints do not of course relieve prosecutors of their obligation to treat all victims with respect or to clearly communicate to victims about what to expect during the trial.

All frontline staff, including state solicitors, who meet with victims, already receive training on their obligations to victims. The forthcoming annual prosecutors' conference, to be hosted by my Office next week is largely devoted to discussing our obligations under the Victims Directive. I will be emphasising the continuing need for prosecutors to communicate clearly and sensitively with victims and their families in pre-trial meetings.

In 2014, for example, the Chief Executive of the Dublin Rape Crisis Centre [D.R.C.C.], Ellen O'Malley Dunlop, addressed the Prosecutors' Conference. Their specialised knowledge and experience of dealing with victims of Rape and Sexual Offences gave an invaluable insight into just how difficult it is for such victims to deal with the criminal justice process.

Further training of my staff, State Solicitors and barristers acting on my behalf is a priority.

The co-ordination between criminal justice agencies is a key component of the EU directive and the Criminal Justice (Victims of Crime) Bill 2015. The information obligations under Head 8 of the Bill remain primarily the duty of An Garda Síochána. This requires communication of important developments following the investigation of a complaint and information on relevant dates and outcomes following a prosecution. As investigators of the complaint, the Gardaí are the first contact that a Victim has with the Criminal Justice system.

The Bill does not change this important role played by Gardaí and family liaison officers in keeping victims informed. Rather, the new scheme seeks to build on their experience by creating a roadmap for prosecuting members, family liaison officers and the newly created Victim Services Offices.

It remains my obligation to ensure that Gardaí are advised in a timely fashion of any information that needs to be communicated. My office will continue to use the Garda information networks to ensure that victims are told of significant developments, Court dates, and outcomes

To conclude, the Victims Directive seeks to give formal rights and information to Victims who through unfortunate and often tragic events have to interface with the criminal justice system where a prosecution is considered or brought on behalf of the people of Ireland.

I believe that it has the potential to encourage a compassionate and coherent approach to a wide range of issues, vindicating the rights of victims and their families in a criminal justice system that is fair and effective for all.

I am conscious that victims of crime are the reluctant participants in the criminal justice system. The Directive will increase co-operation and cohesion. Most importantly, it will I hope go a long way to alleviate the difficulties that many victims encounter as they, through no fault of their own, navigate their way through our criminal justice system.