

ONE IN FOUR

Ending the trauma of childhood sexual abuse

The Victim Experience in Focus

**An empirical study into the experiences of
sexual crime complainants in the criminal
justice system in Ireland.**

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Comisiún na hÉireann
um Chearta an Duine
agus Comhionannas
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Abbreviations

AGS	An Garda Síochána
CSO	Central Statistics Office
DPP	Director of Public Prosecutions
FGP	Focus group participant
ICCL	Irish Council for Civil Liberties
IHREC	Irish Human Rights and Equality Commission
IIP	Individual interview participant
NWCI	National Women’s Council of Ireland
VSAC	Victim Support at Court

Executive Summary

Chapter 1 Introduction

One in Four provides psychotherapy and advocacy services to adults who have experienced childhood sexual abuse and their families. Our services also include a prevention programme for those who have engaged in sexually harmful behaviour.

One in Four also engages with government and other agencies to work towards greater awareness and improved responses to the issues of sexual violence and child protection.

This project was made possible through funding awarded to One in Four by the Irish Human Rights and Equality Commission (IHREC) grant scheme for 2020-21. The theme of the grant scheme was 'Access to Rights, Access to Justice'.

In the past decade, Ireland has experienced both legislative and policy progression regarding victims' rights and visibility in the criminal justice system. However, despite possessing an entirely unique insight into the system, there still exists a dearth of empirical research of the victim/survivor's experience of the system. This research has addressed that deficiency by presenting the views and experiences of fifteen individuals who have engaged with the justice process at varying levels in Ireland. This research provided the participants with a platform, whereby they could articulate the challenges that face victim stakeholders may face within the system, for the purposes of informing change and reform.

Chapter 2 Methodology

This study was conducted using a mixed method approach to explore the experiences of sexual abuse complainants in the criminal justice system. Their experiences were captured through focus group discussion and semi-structured individual interviews. The study was carried out by an Advocacy Case Manager from One in Four, with experience in accompanying complainants of sexual violence during criminal trials. Participation in this project was entirely voluntary and could be withdrawn at any time without explanation. Any data obtained from the participants is referred to by pseudonym only; 'FGP' for focus group participant and 'IIP' for individual interview participant. Any identifying information was omitted.

Fifteen individuals took part in this research, nine women and six men. The age of the participants ranged from 30-60 years old. The time frame of first report to Gardaí ranged from approx. the year 2000, to approx. 2016.

In this study, over 33% of participants reported experiencing incidents of sexual abuse from more than one perpetrator throughout their lifetime. From this research, 46.15% (n=12) of the abuse was perpetrated by a family member, 46.15% (n=12) involved extra-familial abuse and 7.7% (n=2) involved a member of the clergy/religious order.

In this study, the defendants entered a guilty plea during the criminal process in 6 cases, a conviction was handed down following 4 jury trials and the DPP returned a decision not to prosecute in 5 cases.

Chapter 3

In this chapter, the findings of the research are presented through exploration of key issues within the participants' experiences; Human Rights and the justice system, the participants decision to report the crime, their experience of engaging with An Garda Síochána, the prosecution process and the court process. When discussing their knowledge and understanding of Human Rights, six participants stated they had a 'little knowledge', four participants stated they had 'good knowledge'. When asked if they had ever considered Human Rights in the context of their experience with the criminal justice system, the majority said yes. One participant explained that they had not considered the area of Human Rights interacting with their experience in the system;

"I don't think I did consider it in terms of my own experiences, I think being in a liberal society, we don't relate human rights to our own experiences."

In examining the decision to report, participants shared factors which contributed to their decision. Fear of upsetting or damaging familial relationships was cited as a barrier to reporting;

"I was saying I'm never and I'm taking this to the grave, I was just protecting my mam, I was like no, her life would be ruined, devastated for her." (FGP)

Whereas several participants explained how their mental health played the part of catalyst in deciding to finally report the abuse they experienced;

"... So I can definitely see how people carry it through to 50. Me, myself I think if I didn't let it out when I let it out I'd be dead by now without a shadow" (IIP)

This research offers several differing reports of participants' engagements with An Garda Síochána (AGS). Some participants shared that they found the process painful, yet cathartic. Others describe a process marred by intimidation and humiliation. The gender of the officer(s) involved in the case is an issue which was raised by many participants. For some participants, a gender imbalance triggered a traumatic response;

"...And I said, 'you have to realise that you are a man and I said I'm afraid of you'..." (FGP)

Conversely, another participant reported an experience where the gender dynamics were considered;

"...He [Garda] was good at saying 'would you prefer a female guard?'... He was going 'if you want a female, we can organise that for you'. So I got the option." (IIP)

The research heard reports of how painful and re-traumatising reporting sexual abuse to AGS can be for a victim;

"...it felt very invasive, like I was slicing myself open, showing this person these really dark places that I've never shown anybody....and then nobody helping you put it back together afterwards, you just have to leave..." (IIP)

The stop-start nature of recording a statement by hand and the sterile environment of an interview room were also disclosed as features which added to the difficulty of making a statement.

It was noted that once reported the process of crime investigation and DPP decision making can be one which is lengthy and challenging for the victim, often triggering emotions that are linked to the abuse. Based on the recollection of some of the participants (n=10), the average time between the statement and notification of the decision to prosecute was approximately 2.2 years. Participants reported being profoundly affected by the quality and quantity of communication and updates they received from AGS during this period. The majority of participants reported a lack of regular updates or information from AGS;

"I hate silence. I have been silenced my whole life so to walk out of a room and think 'what happens next?' is like feeling abused again..." (IIP)

"...I remember one time ringing and the Guard was just really annoyed that I was ringing and he said something like 'have you seen the news of how much credit card fraud there's been this week. We don't have time for this...' (FGP)

While others had a positive experience;

"He would check in and just be like, 'hey, I'm just ringing you to say there's no news but I'm just checking in...' (IIP)

One third of the participants (n=5) of this study reported that their criminal complaint resulted in a decision not to prosecute by the DPP, marking the end of their criminal redress process.

"I was so angry and let down, I felt like what was the point..." (IIP)

"I felt very dismissed and felt that my experience of what was going on that I didn't matter again..." (FGP)

On the other hand, participants whose cases were sent forward to court reported feeling relief at being believed;

"It was the being believed. After all of this that I had gone through that I was being believed."(IIP)

The final section in Chapter 3 presents evidence of the impact of the trial on participants. Issues such as; disclosure of counselling records, the court environment, victim impact statements and sentencing hearings are also discussed. Out of ten participants whose cases were sent forward by the DPP, six participant's cases resulted in a conviction and sentence based on a plea of guilty submitted by the accused. The remaining four cases proceeded to a criminal trial process whereby the accused was found guilty by a jury in all four cases.

When asked for their views on the issue of counselling records being disclosed, participants reported feeling that the 'safe place' which has been created in therapy, had been compromised;

"I just felt very fucking exposed, do you know what I mean? I was already pretty exposed. I just felt a bit violated..." (IIP)

Participants shared their views on the environment of the court;

"...microphones are not used to can't hear the judge or solicitors or perpetrators speaking and lots of people in the court room all talking among themselves too, no privacy either." (IIP)

Some participants shared that they found the proximity to the accused, due to the courtroom layout particularly difficult;

"...But I just remember sitting there and having him behind me... He still is kind of nearly behind you, towering over you again still. And that was kind of quite hard." (IIP)

When discussing cross examination by a defence council, one participant stated;

"I imagined taking the stand and standing up and going, 'he did this and then he did this and this, and then that and that', and that's just wasn't what happened..." (FGP)

Regarding the issue of sexual experience evidence being used in a trial, one participant cited;

"I do remember before the trial at some time, being told 'make sure I didn't get pregnant.' Because then my sexual activities would be put into question." (IIP)

It has been evidenced in this research that the impact of the crime extends far beyond a court process or a custodial sentence;

"My life will be forever affected by this...My abuser got 8 years in prison which to me is nothing compared to, I got a life sentence..." (IIP)

Chapter 4

Presents a discussion and conclusion of the issues raised by the participants of this research.

Chapter 5

Summarises the possible recommendations and reforms to the criminal justice system in order to limit the re-victimisation of the victim stakeholder, as discussed by the participants. Some of which include;

Specialist trauma informed training is recommended to inform interview approaches within AGS. This training would be mandatory and immediate for all front-line staff.

Specialist training is recommended for judges, barristers, solicitors and all legal professionals working on the front-line. This training which is recommended to be mandatory would focus on the neurobiology of trauma and sexual abuse, and the complexities of the victim/survivor responses

A code of conduct regarding the manner of questioning witnesses during cross examination is recommended for all barristers practicing criminal law, particularly cases involving sexual and domestic crime.

Multiple issues regarding the layout of a courtroom were voiced by the participants of this research. Thus, a reconfiguration of the courtroom layout is recommended. It was also noted that whilst modern courtroom facilities are now available in many cities, it is not consistent across the country. The standardisation of witness facilities in courthouses is recommended.

A 'one-stop shop' model of combined services to deal with adult complainants of sexual abuse is recommended. Adopting a holistic approach where health, medical, therapeutic and policing services are all under one roof could make it easier for victims to engage with authorities like AGS and Tusla, while also accessing mental health and support services.



Introduction

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1.5	Research Focus
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1.1

Introduction

One in Four provides psychotherapy and advocacy services to adults who have experienced childhood sexual abuse and their families. Our services also include a prevention programme for those who have engaged in sexually harmful behaviour.

One in Four also engages with government and other agencies to work towards greater awareness and improved responses to the issues of sexual violence and child protection¹.

Since its establishment in 2003, One in Four has been supporting, informing and empowering clients to navigate the difficult and complex terrain between their private experience of sexual abuse and the criminal justice system. “The main focus of the service is to provide clear and accessible information to survivors so that they can make informed decisions about the options open to them.”²

One in Four’s advocacy department offers practical support and information regarding child protection, the criminal justice system and civil legal processes to anybody who has been affected by childhood sexual abuse in Ireland.

2020 was a challenging year for One in Four. The Covid 19 pandemic meant that the organisation had to close its doors in March and adapt to continue to deliver its advocacy and therapy services remotely. The postponement of jury trials in April 2020 had a detrimental effect on many clients’ journey through the criminal justice system. Despite the difficulties, the Advocacy case managers supported 432

clients throughout the year, 346 of which were new referrals in 2020. The majority of queries received related to requests for information and support in reporting to the Gardaí and the criminal justice process (52.8%).³

As a result of jury trials being halted, only 3 clients were able to avail of the court accompaniment service for trial in 2020, in stark contrast with the 34 clients who were supported by Advocacy case managers as their criminal case progressed through the courts.⁴

¹ July Brown, Damien McKenna, Edel O’Kennedy, “Only a Witness The experiences of clients of One in Four in the criminal justice system” (2006) <https://www.oneinfour.ie/Handlers/Download.ashx?IDMF=491615e8-9c8f-4126-ad86-d057838625a6>

² One in Four, Annual Report 2020, (Dublin: One in Four, 2021).

³ One in Four, Annual Report 2020, (Dublin: One in Four, 2021). Page 7

⁴ One in Four, Annual Report 2019, (Dublin: One in Four, 2020). Page 16

⁵ Kilcommins et al, The inclusion and juridification of victims on the island of Ireland, Routledge Handbook of Irish Criminology (2015), edited by D. Healy, C. Hamilton, Y. Daly, and M. Butler P:7

⁶ Wolhuter et al, Victimology, Victimisation and Victims’ Rights (UK: Routledge-Cavendish, 2008) p141

⁷ Hanly, Conor, review of ‘The Victim in the Irish Criminal Process ‘ by Shane Kilcommins, Susan Leahy, Kathleen Moore-Walsh & Eimear Spain, Irish Judicial Studies Journal Vol 3 [2019], 133-135 (p133)

⁸ O’Malley, Criminal Law (Sexual Offences) Act 2017 – The Offence Provisions, (Dublin: Annual National Prosecutors’ Conference, 2017).

⁹ McDonald, Guide for Lawyers to the Victims Directive & the Criminal Justice (Victims of Crime) Act 2017,(Dublin: ICCL, 2017)

¹⁰ O’Malley, Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences, (Dublin: Department of Justice and Equality, 2020). Para 2.25 P23

¹¹ O’Malley, Criminal Law (Sexual Offences) Act 2017 – The Offence Provisions, (Dublin: Annual National Prosecutors’ Conference, 2017). Para 2.31 P27

1.2

Background to the project

In recent years Ireland has welcomed legislative and policy advances related to victims' rights and sexual offenses legislation.⁵ In particular, the past five years have seen an effort to improve the criminal justice system for victims of crime and to develop the way in which the system views the victim stakeholder. As Wolhuter noted, "Victims were seen as 'mere consumers of services, rather than holders of rights'".⁶ With the introduction of legislation such as; The Criminal Law (Sexual Offences) Act 2017, The Criminal Justice Victims of Crime Act 2017 and the establishment of the working group for The Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offense, it is evident that the legislature is cognisant of the increased vulnerability and needs of the victim of sexual crime.

There has been a notable concerted effort to place victims of crime, especially those of sexual crime, at 'the heart' of the criminal proceedings. However, it has been pointed out that whilst the sentiment is positive and certainly progress has been made, "the heart of the criminal process is the investigation and prosecution of criminal acts, in which the victim formally remains merely a witness."⁷

The legislative and policy advances shall be discussed in further detail below.

The Criminal Law (Sexual Offences) Act enacted in March 2017 aimed to modernise and update the laws related to child sexual abuse, to reflect an understanding of the increased use of information and communication technology in the sexual exploitation of children. A key development as outlined by Tom O'Malley BL in his 2017 paper, Criminal Law (Sexual Offences) Act 2017 – The Offence Provisions is the broadening definition of what constitutes an authority figure in relation to the dynamics of sexual abuse. The 'person of authority' outlined in the 2017 act now incorporates academic teachers, coaches and caregivers "who were persons in authority in respect of the child at some time in the past, though not necessarily when the offence was committed."⁸ The Criminal Law (Sexual Offences) Act 2017 also provided, for the first time in Irish legislation a statutory definition of consent (s.48).

Shortly after the codification of The Criminal Law (Sexual Offences) Act, the 2015 European Union Directive on the minimum rights, supports and protections of victims of crime was transposed into Irish law as The Criminal Justice Victims of Crime Act 2017. This act laid out the statutory rights for victims of crime related to information, support services and the right to avoid re-victimisation.

The Act is a broad document stemming from consultation with a number of state and non-state stakeholders in the criminal arena.⁹ The defining feature of the act is the legislative rights it has imparted onto victims of crime.¹⁰

The Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences (hereafter the O'Malley Review) published in July of 2020, was the culmination of research undertaken by a working group appointed by the Minister for Justice and Equality in August 2018. The impetus for The O'Malley Review was the occurrence of a high profile sexual violence criminal trial which took place in the Belfast Crown Court earlier that year. The widespread media attention and commentary put the manner in which rape trials are conducted across the entire island of Ireland into focus. This prompted the commission of an independent review, led by Sir John Gillen into the prosecution of sexual offenses in Northern Ireland; 'Report into the law and procedures in serious sexual offenses in Northern Ireland' (hereafter referred to as the Gillen Review.)

The O'Malley Review was chaired by Tom O'Malley, a barrister and senior law lecturer in the National University of Ireland Galway. The working group included representatives from the various stakeholders within the criminal justice system; An Garda Síochána, The Director of Public Prosecutions, The Courts Service and The Probation Service.

The O'Malley Review has identified areas for legislative and procedural reform to enhance the criminal justice experience for victims of sexual crime in Ireland. The working group recommended the development of awareness campaigns focused on victims' rights legislation in Ireland to ensure that if victimised, a person will be aware of the rights to which they are afforded, and how to claim them. Further, a more consistent approach to service provision and standards of victim/vulnerable witness facilities in courthouses across the country was posited.

Finally, the O'Malley Review noted that a critical recommendation is increased education regarding the issue of consent, "our main recommendation, as far as prevention is concerned, is that determined efforts should be made to educate members of the public about the necessity and meaning of consent in relation to sexual activity."¹¹ As consent or lack thereof, can be the defining criminal element in a sexual act, comprehensive and clear information should be available to all citizens.

One of the recommendations of The O'Malley Review was the continued development of the specialist crime units of An Garda Síochána, 'Divisional Protective Service Units' (DPSU).

In September 2020, An Garda Síochána implemented this recommendation with a further DPSU rollout, bringing the total to 27 units across the country.

This expansion meant that there was now a DPSU in every Garda division. DPSU's are tasked with the investigation of specialist crime including; sexual violence, domestic violence, child abuse and trafficking. Due to the bespoke training given to the staff in these units, an expectation has been set that victims can expect a consistent, trauma informed and victim centred service. "As of 2020, DPSU's are established in all 19 Garda Divisions¹² with approximately 15 fully trained An Garda Síochána members appointed per unit".¹³

Another advancement of victim visibility and rights in 2020 was the publication of the newly expanded Victims' charter by the Department of Justice. The updated document outlined the newly endowed rights as set out in the Victims of Crime Act 2017.¹⁴ Following this, the Minister for Justice also launched a redesigned website in 2021 which housed the Charter, information regarding the rights of victims, support services available and detailed information outlining the criminal justice process. It is noted that sexual violence has been given a separate section acknowledging the unique and specific needs and rights of sexual violence victims.¹⁵

Research conducted by Dr. Susan Leahy, senior lecturer in law at the University of Limerick, into the reality of rape trials in Ireland, spoke to the issue of consent following the enactment of the legal definition. Leahy's *The Realities of Rape Trials in Ireland: Perspectives from Practice* published in 2021, provided us with an exploration into how recent legislative advances have impacted the operation of rape trials through the lens of the professional stakeholder. Leahy undertook interviews with legal professionals recruited via the Bar Council of Ireland and the Office of the Director of Public Prosecutions. Court accompaniment workers were sourced from the Dublin Rape Crisis Centre and Victim Support at Court (V-SAC). Both groups have first-hand experience of working within the context of an Irish rape trial.

This research examined how salient issues such as; the definition of consent, judicial direction, sexual experience evidence and disclosure of counselling records are played out in the context of a real courtroom experience. As mentioned above, one such example was how the two stakeholder groups have responded to the definition of consent as amended by The Criminal Law (Sexual Offences) Act 2017. Several of the legal professionals expressed ambivalence as to the effect it may have on a trial. Conversely, the court accompaniment workers appeared to take a more societal view, noting the effectiveness of public awareness campaigns regarding consent and how that can affect perceptions of potential jurors.¹⁶

This data provides us with an inside look at how policy and legislative development operate within the criminal justice system from the experiences of professional stakeholders. Whilst this insight is invaluable, Ireland still lags behind our UK counterparts in terms of variety of data available. As Leahy points out, the absence of studies such as mock jury trials and trial observations create an information deficit and can act as a barrier to informed reform.¹⁷

1.3

Aims of the project

To provide the focus group participants with a platform to influence legislation and policy development for other victims/survivors, affect positive change and increase accountability of the duty bearers. This will be achieved by encouraging participants to engage in decision making that directly affects the actualization of the victims/survivors human rights within the criminal and child protection systems.

To provide victims/survivors with a forum, whereby they can grow their capacity to articulate the challenges that face victim stakeholders may face within the criminal justice system. Victims/survivors have a unique insight and expertise for which the criminal system does not currently account for. By establishing a forum, we will create a symbiotic environment that genuinely benefits both future rights holders and duty bearers.

Another aim is to provide the focus group participants with the knowledge and skills to understand victims' rights in the context of the Irish criminal justice system and how those rights should be claimed.

¹² An Garda Síochána, Annual Report 2020 (Dublin: Department of Justice, 2021) p22

¹³ An Garda Síochána, Four new divisional protective service units go live, 2017 <<https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/press-releases/2017/june/four-new-divisional-protective-services-units-go-live.html>>

¹⁴ "Rights & The Law", Victims Charter, 2021 <<https://www.victimscharter.ie/>>

1.4

Objectives of the project

Create a place of support and conversation based on a person centred participation model, where the voice of the victim/survivor can be given a platform to be heard and their experience valued.

Provide victims/survivors with an increased awareness of rights and equality. Build on their existing knowledge and skills to frame their experience against a Human Rights background. Therefore progressing the discourse regarding future crime victimization from a needs based approach to an empowered rights based concept.

Amplify the voices and experiences of the focus group participants to influence Irish legislation, public policy and practice for future victim stakeholders in the criminal justice and child protection systems.

Protect the rights of vulnerable rights holders; victims and survivors of childhood sexual abuse and work towards alleviating the secondary re-victimisation often associated with engaging in a reporting process.

Create a comprehensive report of the main issues faced by victims/survivors from different geographical and socio-demographic backgrounds, at every stage of the criminal justice system.

1.5

Research Focus

As outlined above, Ireland has experienced both legislative and policy advancements relating to the area of victims' rights and visibility in the criminal process over the past decade. Reviews have been published on both sides of the border, documenting the reality of how the criminal justice system prosecutes sex crime. Reports have presented us with a look behind the courtroom door, through the professional lens of a barrister, solicitor, and court accompaniment worker. This research project however, is focused on the experiences of fifteen individuals from across the country, who have interacted with the Irish criminal justice system to varying degrees as victims of sexual violence.

Despite possessing an entirely unique insight into the system, the perspective of the victim stakeholder is one which is rarely captured. This project aims to amplify the voice of the expert – the men and women who, as victims/survivors of sexual violence, have participated in the criminal process.

1.6

Report Structure

The balance of this report is structured into set chapters,

Chapter 2 outlines the qualitative methodology used in this research, the recruitment process of participants and the demographic profile of participants selected. The method of data collection/analysis and the ethical considerations of the project are also included in this chapter.

Chapter 3 presents the findings of the research. This chapter discusses participant experiences of various stages of the criminal justice system and is sectioned accordingly. The sections include; participant's decision to report the crime, participant's experience of engaging with An Garda Síochána, the prosecution and the court process.

Chapter 4 concludes the report.

Chapter 5 summarises the possible recommendations and reforms to the criminal justice system in order to limit the re-victimisation of the victim stakeholder, as discussed by the participants.

¹⁵ Department of Justice, Minister Mcentee Launches New Victims Charter Website, 2021 <<https://www.gov.ie/en/press-release/c27eb-minister-mcentee-launches-new-victims-charter-website/>>

¹⁶ Leahy, *The Realities of Rape Trials in Ireland: Perspectives from Practice*, (Limerick: University of Limerick, 2021). P16

¹⁷ Leahy, *The Realities of Rape Trials in Ireland: Perspectives from Practice*, (Limerick: University of Limerick, 2021). P4.



Methodology and profile of participants

2.1	Methodology
2.2	Profile of participants
2.3	Ethical considerations
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2.1

Methodology

This study was conducted using a mixed method approach to explore the experiences of childhood sexual abuse complainants¹⁸ in the criminal justice system. Their experiences were captured through focus group discussion and semi-structured individual interviews.¹⁹ The study was carried out by an Advocacy Case Manager from One in Four, with experience in accompanying complainants of sexual violence during criminal trials.

A focus group has been defined as “a carefully planned discussion whose objective is to learn about the perceptions, feelings, attitudes and ideas of the group participating in the discussion with respect to a defined area of interest.”²⁰ The use of this method allowed for the organic discussion of commonalities between complainants, experienced in the process.

The focus group discussion guide and the individual interview questions were drafted in consultation with the One in Four advocacy team, so as to ensure that the areas of enquiry were relevant and informed by the experience and knowledge of the team. This structure allowed the researcher to focus on key themes while also providing the opportunity for other discussion points to emerge during the course of the interview. Questions focused on issues such as the participants’ decision to report the abuse, the experience of reporting to An Garda Síochána (AGS), the prosecution process and the court process. Six individuals took part in the focus group discussion which was held over two days. The focus groups were moderated by the researcher, an advocacy case manager and a psychotherapist with One in Four. A further eight were interviewed individually and one submitted a written document.

¹⁸ One participant presented their experience of the prosecution of an adult rape, rather than a childhood sexual abuse experience.

¹⁹ One participant engaged in the study via written submission as opposed to interview.

²⁰ James P. Kahan, “Focus Groups As A Tool For Policy Analysis”, *Analyses Of Social Issues And Public Policy*, 1.1 (2001), 129-146 <<https://doi.org/10.1111/1530-2415.00007>>.P129

2.2

Participant recruitment

Funding for this project was awarded by the Irish Human Rights and Equality Commission (IHREC) grant scheme 2020-21. In December 2020, One in Four advertised the 'Survivors' forum' in a call to action published on the organisation's website and across all social media platforms. This document outlined the aim and objectives of the project and encouraged anybody who had engaged at any level with the criminal justice system in Ireland to reach out. A video recording was also produced and promoted online to reach a wide and inclusive demographic. The project was open to men or women whose case went to trial, those whose case ended in a guilty plea, a guilty verdict, a not guilty verdict, an appeal and those whose initial statement to the Gardaí never reached court. A total of 55 expressions of interest were received.

Following this, a specific questionnaire was designed. A survey sampling method was adopted to identify suitable participants based on the following criteria:

- Possible participants were aged 18 or over
- They had experienced child sexual abuse
- They had engaged in some manner with the criminal justice system in Ireland
- Their engagement with the criminal justice system had completely finished
- They agreed in principal to participate in the research in a completely voluntary capacity.

A follow up telephone interview was conducted with candidates to further assess eligibility. Fifteen candidates were approached and agreed to take part in the project.

Due to the nature of the Covid-19 pandemic and the dynamic nature of the Government public health guidelines regarding social distancing in 2020 and 2021, the project was forced to amend the structure and delay commencement dates. Eligible candidates were given the opportunity to be interviewed individually, either online or in person, or to participate in a Focus Group.

Six individuals agreed to participate in an in-person focus group, eight agreed to take part in an audio recorded, semi-structured interview with the researcher and one participated via written submission.

2.3

Ethical considerations

The ethical requirements involved in this project were given a great deal of consideration and collaborative discussion within One in Four. There was a keen awareness of the need, particularly given the backdrop of a global pandemic, to ensure the safety and wellbeing of all participants'.

This required the researcher create a comprehensive suite of documents to safeguard the integrity of the project and the welfare of all involved.

Firstly, an information briefing document was sent to participants prior to interview/focus group convening, which outlined the purpose and aims of the project. A comprehensive informed consent process for participation was also developed which discussed confidentiality, anonymity, voluntary participation, associated risks and outlined a grievance procedure. The informed consent document provided the researcher permission to record the interview and engage an external transcription service to transcribe. These forms were signed by each participant and the researcher

At the start of each interview/focus group session, the participants were each given a 'participant information sheet' which restated the pertinent information of the project and a 'participant distress protocol', outlining the steps which can be taken if any distress is caused during the interview. Included was the provision for an external specialist therapy service to be engaged, at the project's cost, should the participant wish.

At the conclusion of each focus group session, participants were given an anonymous feedback form related to the content and facilitation of the group. All participants were also provided with information on support if any issues had arisen for them during the interview and were advised that the researcher would make contact to offer debrief. Reimbursement of travel expenses were offered to participants travelling to an in-person interview/focus group session. A co-facilitator was also present at both focus group dates to observe the participants' from a wellbeing perspective and offer individual support if needed.

Refreshments were provided for participants during the focus group sessions, with a €25 gift voucher for the venue's refreshments provided to participants of the in-person interviews.

2.4

Profile of Participants

Fifteen individuals took part in this project, nine women and six men. The age of the participant's ranged from 30-60 years old. Participants' who reported experiences of childhood sexual abuse were under the age of 18 when the abuse first began, although some of their abuse continued into adulthood. The time frame of first report to Gardaí ranged from approx. the year 2000, to approx. 2016, meaning that the crimes would have been classified as 'historic' when reported as they occurred more than one year prior. According to recent Central Statistics Office (CSO) figures, 43.5% of sexual violence complaints made to Gardaí in 2020 were of a historic nature.²¹

The participant's lived in 7 different counties around the country. As seen in Table 1, the majority of participant's, 53.33% (n=8) listed Dublin as their location.²²

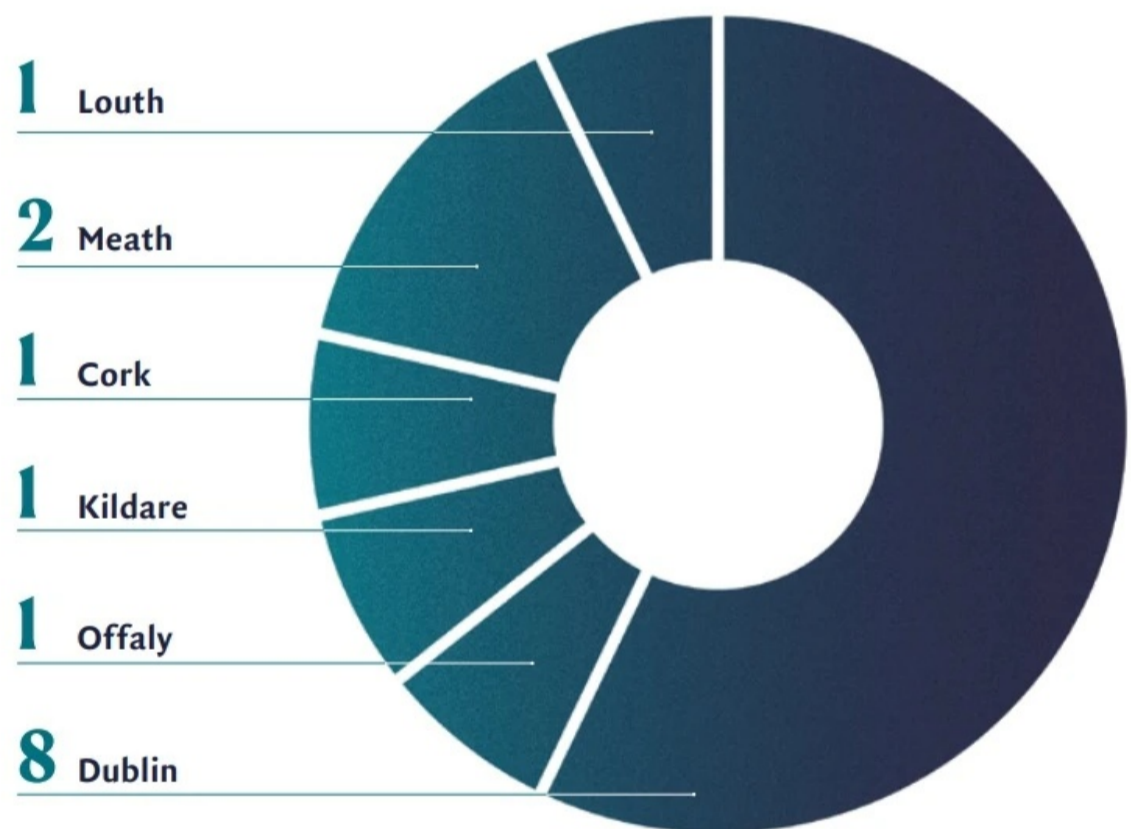


Table 1
Location of participant
 (n = 15)

²¹ Central Statistics Office, Recorded Crime Victims 2020 And Suspected Offenders 2019 (2021) <<https://www.cso.ie/en/releasesand-publications/ep/p-rcvo/recordedcrimevictims2020andsuspectedoffenders2019/record-edvictims2020/>>

²² The location listed by participant may not be the location in which the crime was initially reported.

²³ One in Four, Annual Report 2020, (Dublin: One in Four, 202) P10-11

²⁴ Office of the Director of Public Prosecutions, Annual Report 2020, (Dublin: Director of Public Prosecutions, 2021). P17

Table 2 demonstrates the context in which the sexual abuse of the participant's took place. In this study, over 33% of participants reported experiencing incidents of sexual abuse from more than one perpetrator throughout their lifetime; therefore the total context of abuse number is 26. Not all of the disclosed abuse was reported to An Garda Síochána thus, not relevant for examination in this research.

From this research, 46.15% (n=12) of the abuse was perpetrated by a family member, 46.15% (n=12) involved extra-familial abuse and 7.7% (n=2) involved a member of the clergy/religious order. In contrast, recent statistics published by One in Four found that 22.4% of clients in 2020 presented having suffered abuse in a familial context.²³ This variance can potentially be owing to a reduced sample size.



Table 2
Context of sexual abuse
(n = 26)

Table 3 exhibits the various outcomes of a complaint which has been reported to the Gardaí. The outcomes listed are;

- The Director of Public Prosecutions (DPP), after considering the case file directs a decision not to prosecute.
- A conviction occurring whereby a guilty plea is entered by the defendant.
- A conviction occurring whereby a guilty verdict is returned by a jury.
- An acquittal whereby a not guilty verdict is returned by a jury.

According to the most recent figures published by the DPP, in the year 2020 there was 5598 decisions not to prosecute directed out of a total of 16,158 files.²⁴

In this study, the defendants entered a guilty plea during the criminal process in 6 cases, a conviction was handed down following 4 jury trials and the DPP returned a decision not to prosecute in 5 cases.

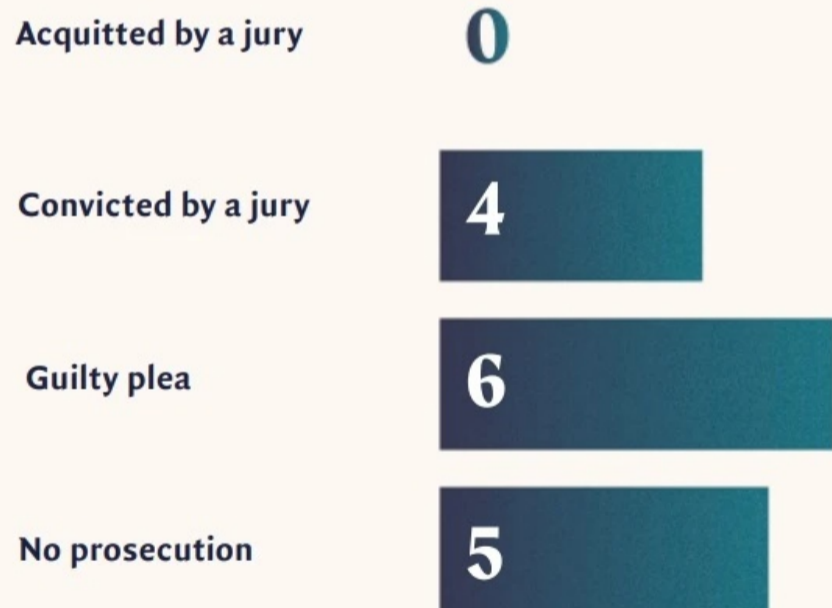


Table 3
Outcome of complaint
(n = 15)

2.5

Data collection

The focus group sessions took place over two dates between August and September 2021 with the same six participants. The individual interviews were conducted either in person or online between September and December 2021. The interviews were audio recorded with the consent of the participant. One participant's contribution was via written submission.

The in-person sessions, both of a focus group or interview model took place in a meeting/conference room of a hotel, so as to ensure a neutral and safe environment. Effort was made by the researcher to travel to a convenient location for each participant engaging via individual interview, so as to lessen the strain and remove any possible barrier to engagement. The average length of the individual interview was approx.2 hours.

Participation in this project was entirely voluntary and could be withdrawn at any time without explanation. Anonymity was guaranteed. All references to data obtained from the participants within the report shall be referred to by pseudonym only; 'FGP' for focus group participant and 'IIP' for individual interview participant.

2.6

Data analysis

The audio recording files were transcribed verbatim for the purpose of analysis by an external professional transcribing service. The analysis of the transcripts from both the individual interviews and the focus groups, were centred on the key themes as outlined in the interview structure; decision to report, engaging with An Garda Síochána, the prosecution process and the court process. The transcripts were coded using manual analysis.



Findings

This chapter presents the findings of the research in a structured fashion by referencing the five key themes posed to participants separately. The views and experiences of the participant's shall be discussed under the headings of:

- Human Rights and the Criminal Justice System
- The participants' decision to report
- The experience of reporting a crime to An Garda Síochána
- The prosecution process
- The court process

3.1	Human Rights and the Criminal Justice System
3.2	Decision to Report
3.3	Engaging with An Garda Síochána
3.4	The Prosecution Process
3.5	The Court Process

3.1

Human Rights and the Criminal Justice System

Prior to the interviews/focus groups conveying, some participants were invited to attend online discussions regarding Human Rights, in order to build on their existing knowledge to frame their experience against a Human Rights background, as set out in the objectives of this project (n=10).

The aim was to provide participants with an increased awareness of rights and equality. Initially participants were asked questions to establish their baseline knowledge of human rights, and their application in the context of the criminal justice system. The discussion then proceeded to how we can shift and reframe the general dialogue which surrounds victims in the criminal justice system, from a needs based approach, to an empowered rights based approach.

When asked how they would assess their current knowledge of human rights, six participants stated they had a 'little knowledge', four participants stated they had 'good knowledge'.

"It's something that I would have given zero consideration to for a long time... I have become more aware of what we should be looking at from a human rights perspective."

When asked what comes to mind when thinking of human rights, participants stated;

"Clothes, food, being safe, that kind of thing."

"I just generally think of war when I think of human rights."

"Safety, the right to feel safe in your home, your community and have the same level of safety and protection afforded to you as your peers."

When asked what comes to mind when considering the issue of human rights in Ireland, the most common answers were direct provision, homelessness, under-resourcing of essential medical and mental health services leading to a lack of access to healthcare.

When asked who needs the protection of human rights, several participants suggested that children, vulnerable adults and people with disabilities should enjoy the protection of human rights;

"Children and vulnerable adults, basically people who cannot protect themselves."

Other participants flagged that they feel it is more universal;

"Everybody."

"For me, it is everybody because any of us could be a vulnerable adult on any given day."

When asked if they felt that everybody enjoys the same basic human rights, all ten participants said no. When asked who they felt received less access to basic human rights, participants answered;

"People who aren't as financially stable."

"Marginalised groups in society, minorities, disadvantaged backgrounds, members of the travelling community."

Conversely, two participants identified groups who they felt received more access to human rights;

"People in power."

"People with money."

When asked if they had ever considered human rights in the context of their experience with the criminal justice system, the majority said yes. One participant explained that they had not considered the area of human rights interacting with their experience in the system;

"I don't think I did consider it in terms of my own experiences, I think being in a liberal society, we don't relate human rights to our own experiences."

One participant stated;

"The right to protection is relevant; you're afforded protection when you're useful to the system. As a

victim, you're a witness so as a witness you're offered protection...but after, you're on your own. You're listened to while it is helpful to the system."

One participant stated that they felt the right to information was relevant to their experience within the justice system. Another participant shared;

"Lack of protection from persecution and fear...and in some ways during the process, it can almost feel like another abuse."

In a separate online session, a participant stated that the abuse they experienced prompted them to feel that their rights had been alienated and that victimisation in itself is a denial of basic human rights;

"Human rights feel abstract, it feels like they should apply to me, because I am a human being and also because of what I've been through in my life, but it feels like they don't apply to me because of how I've been treated."

"I think that when you enter into the justice system, you take it for granted that you're going to have rights, and you're going to be looked after, and you're just not."

When asked if they could recall any professional in the criminal justice process providing any information/discussing human rights, all ten participants said no.

During discussion which centred on how we can re-frame the narrative around human rights and their connection to the victim stakeholder experience, a valid point was raised. Several participants spoke of a shared experience where other professional stakeholders in the system adopted language that was considered damaging and eroding of intrinsic human rights. Participants shared incidents where professionals would claim that the victim was 'lucky' to have gotten so far in the criminal process or 'lucky' to have not had to partake in a criminal trial. This rhetoric appears to strip the victim of their rights and instead bestows a 'fortunate' position on them for which they should be grateful. Adopting this 'lucky' rhetoric, places a responsibility on the victim, rather a responsibility on the justice system to function effectively as per its obligations. It could be posited that this language automatically disempowers a victim from being able to acknowledge and access their rights. One participant stated;

"Speaking of luck negates the whole premise of the justice system."

Another participant added;

"It makes you feel like you should give up fighting and just accept it, even though you know what you're getting isn't access to proper justice, you're told you could end up in a worse position."

The discussions concluded with a reflection on how to consider human rights in the context of daily life, and how to claim them. One participant stated,

"I think it's really interesting to think about those experiences in an explicit human rights framework, I never did before."

The Public Sector Equality and Human Rights Duty ('the Duty') places a statutory obligation on public bodies to have regard to the need to eliminate discrimination, promote equality of opportunity and protect the human rights of service users/staff when carrying out their daily work. It puts equality and human rights in the mainstream of how public bodies execute their functions. It has the potential to positively transform how public bodies engage with members of the public, and their own staff.

IHREC have a guidance role in relation to the Duty and have recommended an evidence based approach to inform each stage of the implementation of the Duty, including consultation with a diversity of service users and consulting key sources of information and reports from civil society organisations.²⁵

²⁵ <https://www.ihrec.ie/our-work/public-sector-duty/>

3.2

The participants' decision to report

Many factors may influence a person's decision to report a historic sexual crime to police. In her 2003 report, 'Non-reporting and Hidden Recording of Sexual Assault, An International Literature Review', Lievore presented the barriers to reporting as fitting into two categories; personal factors and criminal justice factors.

The personal factors outlined relate to the shame, self-blame and low self-esteem associated with victims of sexual crime. The criminal justice factors are predominantly fear based; fear of not being believed by the police, a fear of the legal process and its treatment and a lack of knowledge of how to report.²⁶ This subsection shall explore the various factors which influenced the participants of this study to report their experience to An Garda Síochána.

"So what was I thinking at the time? I was thinking, I don't want this to happen to anybody else. My entire thing was I don't want this to happen to anybody else... I knew it was the right thing to do and I knew I couldn't live with myself if I didn't do something. If I just left it go and I found out that something happened to somebody else, I would not be able to live with myself...I knew I had to do something because nobody else was going to. So if I didn't, who would?" (FGP)

"So really the aim for me was to acknowledge that this had happened to me and that something could be done to the person who did it to me... it was another point in the acknowledging that this had happened. So that's really why I wanted to do something about it. I think I would've felt I would've let myself down if I just let it go." (FGP)

"All I wanted was for somebody else to know. I wanted it to be taken out of my hands where I knew I couldn't do anymore than what I'd already done. And it just be given to somebody else who could do something. I didn't know what they could do, I didn't know what would happen, I just wanted it to be with somebody who could do something." (FGP)

Some of the participant's discussed fear of upsetting or damaging familial relationships as being a factor in deciding to report their abuse. In her landmark text 'Trauma and Recovery' Judith Herman, professor of clinical psychiatry at Harvard Medical School, presents familial dynamics as a deterrent to reporting; "Survivors often hesitate to

disclose to family members, not only because they fear they will not be understood but also because they fear that the reaction of family members will overshadow their own."²⁷

"...So I had always thought about reporting it, like I'm sure so many people do, and the usual things held me back, fear. Fear of repercussions from family, friends, neighbours, coming from a small a town where everyone knows everyone's business. That usually held me back." (IIP)

"The thought at the time was one of readiness, I knew myself I was ready at the time...why did it take me so long? It just did. Wasn't ready to tell the story to anybody other than very close friends....Then it just started kind of resonating inside me, why am I living my life according to him, why is he deciding whether I have kids or not? And that's what started the whole loop, I started to go, ok I'm going to go do something about this." (FGP)

"...I think part of me not reporting was probably to protect my mother as well. I didn't want her to find out. Yet, she did, amazing... even though I was saying I was protecting her, but I actually think I was protecting myself really, realistically" (IIP)

"I was saying I'm never and I'm taking this to the grave, I was just protecting my mam, I was like no, her life would be ruined, devastated for her." (FGP)

"I suppose everything for me was trying to protect my family and then I had complete fear. My dad put the fear of God in me that everything could happen to me if I told. So when that's said to you enough times over the years you just want to escape." (IIP)

The criminal justice system was presented as either a motivating reason to report, or a deterrent against it.

One participant cited a fear of the outcome of the adversarial criminal justice system; the idea of winning versus losing a case.

“...And I think the biggest thing I was afraid of was, if he had won at that case and then what was I going to do?... That was a massive fear, if we go to court and they say no, you know he hasn’t done anything and where does that leave me?” (IIP)

“I really believed in the institution of the guards and the justice system, so that’s why I wanted to go to the guards, that was the main thing, I felt like they could do something...I also wanted him to know that I knew, because we were still in the social situations from time to time.” (IIP)

“I didn’t want other people, I didn’t want it to happen to anyone else, I wanted to be able to do something that would stop the abusers. And I thought I’d get some healing in the end of it, and being honest with myself I also wanted to get two fingers to the family as well.” (FGP)

Several participants explained how their mental health played the part of catalyst in deciding to finally report the abuse they experienced;

“... So I can definitely see how people carry it through to 50. Me, myself I think if I didn’t let it out when I let it out I’d be dead by now without a shadow” (IIP)

“I suppose how I came to it in the end, I’d obviously thought about it for years and I just never really, I just assumed people really didn’t care. Which to be fair, that was kind of all that I was shown... I just kind of got the courage up and I thought I knew in my own head that it was something that I wanted to do; something that I needed to do and that actually it did matter. I knew that it was just going to kill me if I didn’t.” (IIP)

“I actually remember I left Pieta House, my last session. On the next day I went straight into the Garda station. I hadn’t planned it or anything. I had in my head I suppose. I just knew, I woke up that morning and I just knew that that what it was doing that day.” (IIP)

“I’d get that courage where I would go’ right, I really need to do this for me’, it was ‘it’s going to be taken out of my hands and I don’t know if I’m ready for that’ part. So that held me back, but this was just, I just hit that point where I went, ‘I can’t hold it in anymore and I shouldn’t have to hold it in any more. I was a child’. And then everything came rushing back. I was having flashbacks. It was like I couldn’t stop thinking about it then.” (IIP)

Research published in 2010 by Kathleen Daly and Brigitte Bouhours, provided a wide comparative analysis of rape and attrition in the legal landscape across five common law countries; Australia, Canada, England & Wales, Scotland, and the United States.

This study examined how the fear of not being believed, of not being supported by the police is a factor in deciding to report and may cause the victim to delay in reporting the matter. It has been suggested that this can then result in a self-fulfilling prophesy wherein “The police, in turn, may interpret delay as a sign that the assault was not especially serious or that the victim is not being fully truthful.”²⁸

One participant outlined how a lack of information regarding the first steps of the reporting process was a deterrent in making a complaint of historic sexual abuse to An Garda Siochana:

“I pulled up outside a Garda station so many times and went just go in and do it and I sat outside, and I don’t even know what to do. Someone’s looking for their passport to be stamped and I’m like ‘sorry I want to report something’. I didn’t know how it worked and that’s the only time I’ve been in a garda station was to get my photo stamped.” (IIP)

The Gillen Report referred to in 1.2 also presents other factors which may influence an individual’s decision to report to police; “People from Black, Asian and minority ethnic communities and members of the Traveller community may have experienced racism or prejudice and may fear that they will not be believed or not be treated properly.... People with learning difficulties or mental health problems may feel that they will not be believed if they report being raped.... People with Disabilities may fear reporting rape if the offender is a carer.”²⁹

²⁶ Dr. Denise Lievore, Non-Reporting And Hidden Recording Of Sexual Assault: An International Literature Review (Australia: Commonwealth Office of the Status of Women, 2003), p.28.

²⁷ Judith Herman, Trauma And Recovery, The Aftermath Of Violence - From Domestic Abuse To Political Terror, 3rd edn (New York: Basic Books, 1992). P65

²⁸ Kathleen Daly and Brigitte Bouhours, “Rape And Attrition In The Legal Process: A Comparative Analysis Of Five Countries”, Crime And Justice, 39.1 (2010), 565-650. P572

²⁹ Sir John Gillen, Report Into The Law And Procedures In Serious Sexual Offences In Northern Ireland (Belfast, 2019).P80 Para 2.53.

3.3

Experience of reporting a crime to An Garda Síochána

An individual's first disclosure to the police can greatly affect both the likelihood of a successful prosecution, and the likelihood of re-victimisation. If a victim feels unheard, judged, not believed or not respected in their initial interaction with Gardaí, it can impact their ability to recall traumatic memories. Often, if memories are recalled, a feeling of safety is required to share them.

When operating within an adversarial system whereby the wealth and quality of reliable evidence is integral in securing a prosecution, it is of the utmost importance that the methods of obtaining said evidence need to be skilful and respectful.

In a report submitted to The Canadian Department of Justice in 2019, *The Impact of Trauma on Adult Sexual Assault Victims*, the authors Dr. Lori Haskell and Dr. Melanie Randall examine the traumatic impact of sexual violence on victims and how that trauma can in turn affect the criminal justice process. They propose a 'trauma informed' system and suggest that traditional methods of police investigation and communication can be contributing to re-victimisation.

They state, "Victims' experiences of disclosing sexual assault to police or others is key to the investigation as well as to their recovery."³⁰

This research heard several differing experiences of engaging with the Gardaí and the statement making process. Some participants share that they found the process painful, yet cathartic, through feeling believed by the officers. Others describe a process marred by intimidation and humiliation.

"I was on my own; there was a bangarda there. I think there was another garda there? I didn't know. But even when I was doing the report, because of where I come from, because of my upbringing, I didn't even have the words for what I was trying to describe, or trying to tell them in the statement. So years later when I came and I looked at it, and I'm like, who is this written by? What this the nine year old who wrote this, who said this? Because I didn't have the words, what words were supposed to be used, what they wanted." (FGP)

"So on reflection of doing the report with the guards, it was cathartic because I felt; now I don't have to remember anymore. It's written down and I felt ...

such a release in that it was, you know. I thought I was burdened but I didn't realise that I had a tonne of weight on top of me until after it was gone." (IIP)

"...We went down to the guards and we made the statement... the statement was I talked him through the abuse and I pushed and I said stuff that I'd never said and I never will say again, but I brought everything into it. Anything I could remember I put in. And I could even see when he was taking the statement that he believed me, and he was on my side and he was enraged." (IIP)

"...there is the bit of us that we bring to the guards and we fit their template of, you want evidence from me. And if you go through the criminal justice, you are a witness to them and that's your function for them, and you know the same for TUSLA. And I think that's so dangerous in the context of trauma where that fragments our sense of self, it fragments our memories and everything else." (FGP)

"...there was nothing hard about the statement there was nothing easy about it that type of way. The guard he was 100%, he made you feel comfortable, welcome, didn't intimidate you, didn't look down on you, he was brilliant. I suppose trying to recollect the dates and that was a bit annoying and then not being able to." (IIP)

"The detective... had a gun in his pocket and we were sitting in this really small dimly lit room, it was really jarring, it was really strange." (FGP)

"...So there is a sense that I know that they know what happened to me and that I got to say it all to one person, instead of going to different therapists over the years. And not being able to tell the whole story to one person. There was something in that." (FGP)

“How can they expect people to come in here [Garda station] and make statements? It’s such a sterile environment... it didn’t feel private...it felt not like a safe place to make a statement.” (IIP)

“I didn’t have any information whatsoever, when I walked into the garda station that one day, I had no information, didn’t know what I was doing, I was completely on my own. So I just tried to muddle through everything as best I could.” (FGP)

“We’d organised to go down and she’d [Garda] cancelled last minute. And you know how much it takes for you to kind of build yourself up that, it’s not OK... This happened a few times. One of the occasions I was literally in a taxi outside the fucking Garda station, literally hung up going ... right. I felt like I kept on having to build myself up to do a sky dive. It was just awful... then a couple of weeks later I think I eventually got in, in January. So that was from July to January.” (IIP)

“Actually going into the garda station that day was probably more relaxing and more engaging and I was made feel so at ease that I just gave me whole statement that evening... [Garda] was just so engaging that it was like sharing your story with somebody you really wanted to share a story with, which made that part of it an awful lot easier than I think was the first time I walked away from somewhere going Jesus I feel lighter.” (IIP)

One factor which appears to have a transformative effect on the experience of engaging with the Gardaí is whether or not the victim had linked in with any support or information services prior to making their statement.

After a couple of days of thinking, I finally went out into my car, put on the hands-free and rang One in Four, straight call, googled the number and took it from there. And it was...can’t really fault anything...So when the day came then, it wasn’t too long after the phone call, we went into town, parked the car up, went over to One in Four in the offices and just basically sat down with the detective... So about 5 or 6 pages later and a good 4 or 5 hours later we were kind of through the bulk of it. I said to myself, ‘what you have done now is you’ve taken the first step, you got your statement done with the guards’.” (FGP)

“It was great, it was great for me to be in One in Four offices because not only was it a neutral setting but it was familiar to me because I had been going there for therapy...I felt so looked after...I could imagine myself, if I actually had to do that on my own, make my statement on my own, that I wouldn’t have actually ended up going through the doors and making it.” (IIP)

“I certainly wasn’t prepared properly for making statements. And I didn’t inform myself enough at the time either. So I made some really bad decisions that went against me....So I first of all called Harcourt Street and the woman, the detective that I got, I’m assuming she was a detective answered the phone and said, no you need to go to this station. So I rang that station and they said no you need to go to that station and I rang that station and no go to that station. So at that point then I rang victim support and they said get onto One in Four.” (FGP)

Ronald P. Fisher, a psychology professor in Florida International University is known for developing a protocol known as ‘Cognitive Interview’ to assist police officers to elicit greater recollection from witnesses, especially related to traumatic memories. In discussing ‘interviewing victims and witnesses’, Fisher suggests that the most productive task an officer can do to enhance an investigation, is to focus on how they conduct a witness interview. The author describes a trend of interview style whereby an officer can dominate the conversation by asking brief, often closed questions and/or making frequent interruptions, noting “To compound the problem, police interviewers often discourage witnesses from participating actively by interrupting them frequently.”³¹ In their later research, Haskell and Randall reiterated Fisher’s premise, “Interruptions are a fatal flaw in investigative approach and impede memory retrieval.”³²

This point can be exemplified in the experience of two participants;

“Another thing, I don’t really like about the statement is that they write everything there and then. So you’re like talking, and they’re like ‘hold on, hold on’... I mean, even a laptop would be faster than writing it...I have to stop every 10 seconds and then you’re just sat there with the thoughts of whatever you’ve just said going around your head.” (IIP)

³⁰ Dr. Lori Haskell and Dr. Melanie Randall, *The Impact Of Trauma On Adult Sexual Assault Victims* (Ottawa: Department of Justice Canada, 2019), pp. 1-42. P24

³¹ Ronald P. Fisher, Stephen J. Ross and Brian S. Cahill, “Interviewing Witnesses And Victims”, in *Forensic Psychology In Context, Nordic And International Approaches*, 1st edn (Willan, 2010), pp. 56-74. P59

³² Dr. Lori Haskell and Dr. Melanie Randall, *The Impact Of Trauma On Adult Sexual Assault Victims* (Ottawa: Department of Justice Canada, 2019), pp. 1-42. P26

“So there was the six reports, all handwritten which was, I said can you not record this? He said no we have to hand write. So we’d stop Start, stop and start. So that was over 8 weeks process of one afternoon a week.” (IIP)

It must be noted that often, despite best efforts, an intrinsic power imbalance can exist on opposite sides of the interview table. This imbalance may be caused by the authority inequity between a police officer and civilian or an older interviewee and a younger victim. This imbalance may inadvertently mirror a power dynamic which may have been used in the victim’s abuse and therefore evoke traumatic memories, unexplained emotions or disassociation during the interview. Gender can also be a powerful factor in this dynamic and one that all professionals working with abuse victims/survivors must be cognisant of.

“I had someone with me [as a support person] and I just remember when we came out of it, her saying, ‘oh he [Garda] was flirting with you when he was taking your evidence’. And I was like, ‘oh I thought he was being nice.’ And looking back at it now, fucking hell. I was there reporting multiple rapes and this guy was like, ‘oh are you fit? You look fit, you run? Oh cool, I’d say you’ve good craic on a night out’ and all this kind of stuff.” (FGP)

“I suppose the first thing that kind of sticks in my mind is, anyone I was talking to whether it be One in Four, counsellors or whatever it was all women. And then I got in and made the statement it was a man and I kind of now, he’s 100% ...he’s a really nice man... he made you feel comfortable, welcome, didn’t intimidate you, didn’t look down on you, he was brilliant...And I couldn’t fault it. But just that kind of put me off my game maybe a little bit, it being a man.” (IIP)

“I said like if possible, can you make it be a female detective and not a male detective. Because just at the time I felt I would be more comfortable. In the end then it was one each, which was grand.” (FGP)

“...And I said, ‘you have to realise that you are a man and I said I’m afraid of you’. And that seemed to kind of go through him, I don’t think he realised, I think he might have thought that because I had done so much healing and work that I had done in training and stuff like that, that I was able and that I’d be ok.” (FGP)

“So there was something about the fact that he was male and that he was an authority figure and that he believed me and that he told me that he believed me. I did get something from that... I know for a fact they believed me about my dad... So them saying that to me was helpful to me, you know that they knew.” (FGP)

“She was really, really nice, she was a lovely girl...but you’d know she’d no training in that sense...I think she was probably nearly as embarrassed as I was. She was nearly shaking more than I was. I was going, ‘this is fucking mad’. I almost felt sorry for her... I remember myself being like, ‘I’m so sorry’. Just apologising for even saying it, just being a burden. I’m so sorry for even having you to do this. Just feeling like I was putting everyone through this thing. It was me bringing this forward, I had to make you listen to me.” (IIP)

“...He [Garda] was good at saying ‘would you prefer a female guard?’... He was going ‘if you want a female, we can organise that for you’. So I got the option.” (IIP)

The nexus of neuroscience and law is one which may not be at first apparent. However, if the goal is to ‘put victims at the heart of the criminal justice system’ or to ‘uphold victims’ rights’, it is imperative to at least understand the base at which both disciplines meet.

Behind any prosecution undertaken by the DPP in Ireland, is an investigation undertaken by Gardaí, primarily based on a complainant’s statement of the alleged crime. With many incidents of sexual crime, typical evidence opportunities are not available; CCTV, by-stander witness footage, forensic evidence. Naturally, the likelihood of said evidence is further reduced when investigating historical sexual crime, often leaving only the complainant’s statement as the main evidentiary source. Therefore, knowledge of the way in which traumatic experience is stored, and triggered in a victim witness, would seem advantageous in obtaining the most comprehensive and useful statement.

It has been established that trauma can result in a neurobiological effect on the brain and nervous systems.³³ In short, the memory of a traumatic event is stored differently in the brain and cannot be recollected in the same manner as a non-traumatic event.³⁴

Dr. Bessel Van der Kolk, an authority on traumatic stress, explains that the memory of a traumatic event can be disorganised in its presentation. It can present as chaotic and non-linear in chronology. It may not have the hallmarks of a typical recollection; a beginning, middle or an ending. It can often recall sensory details very clearly; the colour of a curtain, the feel of a carpet or the smell of an abuser, however, other factual information such as dates, times, seasons may evade the victim.³⁵ He states that “memories arrived as images, sensations or intense emotions.”³⁶

“I wasn’t just remembering what happened, I was remembering what happened around me. I was remembering the smells. I was re-living it. It wasn’t just saying ‘when I was 15 this happened’ or ‘when I was 10 this happened’. I was in that spot again... I felt like

I re-lived every moment again. Because when I was being asked to think, I was sitting there closing my eyes and I was back there and that was horrendous. Horrendous to live ten years of that again. Ten years that I had tried to forget and bury away and pretend that never happened. All of a sudden this was re-living it all over again. To be honest like, even since then, that was the hardest part. I had felt like I had let him back in...I could hear him; I could sense him. I could nearly feel him even though he was nowhere near me. That's how much I had re lived it again and that was hard.” (IIP)

A statement taking process which fails to adequately understand the potentially fragmented nature of a traumatic memory may be less likely capture all of the information the victim holds.

Haskell and Randall further argue that the expectation of an interviewer needs to be aligned with the needs of the victim, “It is neither realistic, nor rational, to expect victims of sexual assault to recall all aspects of their traumatic experiences with detailed accuracy from start to finish.”³⁷

Judith Herman, professor of clinical psychiatry, reminds us that engaging with the criminal justice system to seek redress or restitution can often result in secondary re-victimisation when the victim is met with hostility and disbelief. Herman compares the emotional brutality of the adversarial criminal legal process to a battlefield, where psychological rather than physical attack is waged.³⁸

“...it felt very invasive, like I was slicing myself open, showing this person these really dark places that I've never shown anybody....and then nobody helping you put it back together afterwards, you just have to leave. Going into that level of forensic detail is so harmful because you don't even go into that level in therapy; you don't even go into that level privately yourself, in the safety of your own mind.” (IIP)

Through his research of police interviews in sexual and serious crime in Sweden, Holmberg presented that two polarised interview styles emerged; one was characterised as aggressive, unfriendly, impatient and/or brusque. The other regarded as empathetic, friendly, cooperative and/or helpful. The former he coined ‘Dominant’, the latter ‘Humanitarian’.³⁹

Evidence from his research found a correlation between the dominant interview style and a propensity for the victim witness to omit information. Conversely, the humanitarian style was linked to the witness feeling respected and seen, therefore cooperating to the best of their ability by providing full information to the officer.⁴⁰

“...she said, ‘but you, I believe you’. And that was just a very off hand statement. But it was powerful and it was that moment of, ‘well I didn't think you didn't, but thanks for acknowledging that you do.’ I didn't think I needed to hear it until I heard it, which was huge, huge.” (IIP)

“...it was like the garda got me straight away, even my humour. So even when we would have an incident that I would speak about, and he would write it up and then we would take a break, as in not a breakout of the room or anything but he would just change conversation and just bring me back out of where I went. And we'd talk about my family, or my kids or random stuff and then ‘he'd be like O.K. are you ready to go on?’ (IIP)

³³ See Bessel Van Der Kolk, *The Body Keeps The Score*, 1st edn (London: Penguin, 2014) and Judith Herman, *Trauma And Recovery, The Aftermath Of Violence - From Domestic Abuse To Political Terror*, 3rd edn (New York: Basic Books, 1992), in which they discuss how trauma can affect the brain and nervous system.

³⁴ Dr. Lori Haskell and Dr. Melanie Randall, *The Impact Of Trauma On Adult Sexual Assault Victims* (Ottawa: Department of Justice Canada, 2019), pp. 1-42. P23

³⁵ Bessel Van Der Kolk, *The Body Keeps The Score*, 1st edn (London: Penguin, 2014). P193

³⁶ Bessel Van Der Kolk, *The Body Keeps The Score*, 1st edn (London: Penguin, 2014). P194

³⁷ Dr. Lori Haskell and Dr. Melanie Randall, *The Impact Of Trauma On Adult Sexual Assault Victims* (Ottawa: Department of Justice Canada, 2019), pp. 1-42. P23

³⁸ Judith Herman, *Trauma And Recovery, The Aftermath Of Violence - From Domestic Abuse To Political Terror*, 3rd edn (New York: Basic Books, 1992). P72

³⁹ Ulf Holmberg, “Crime Victims’ Experiences Of Police Interviews And Their Inclination To Provide Or Omit Information”, *International Journal Of Police Science & Management*, 6.3 (2004), 155-170. P156

⁴⁰ Ulf Holmberg, “Crime Victims’ Experiences Of Police Interviews And Their Inclination To Provide Or Omit Information”, *International Journal Of Police Science & Management*, 6.3 (2004), 155-170. P155

An example of Holmberg's dominant style in police interviews is presented below, where a participant discusses how their disclosure of sexual victimisations by several perpetrators was received;

"I can't remember how it went, but when I tried to say something about what happened, because I repeated the whole pattern that we had had with a few abusive boyfriends and that. And when I went to say that, his response was, well you can't be blaming everybody. So that kind of silenced me about what happened to me as an adult... So I was kind of like knocked back by the guards talking to me like that.

And so I didn't say anything more there at that time... Here they were to me, 'like do you really want to be another 10 years, because you'll be 10 years in court if you go after all these people. Do you really want that and look at you, you're a mess. You know do you really think you'll be able for it. And you are on your own in that house and he has all his family and his family will fight you tooth and nail and all this.' And they were really, I knew then that they were trying to put me off. And but I was too vulnerable mentally and emotionally and being on your own, not having anyone to speak up for me at that time." (FGP)

It has been shown that experiencing childhood sexual abuse can be a risk factor in experiencing sexual crime later in adulthood.⁴¹ In this study, over 33% of participants reported experiencing incidents of sexual abuse from more than one perpetrator throughout their lifetime. Drawing on the research of Haskell and Randall, it is plausible that such

a response could hinder the retrieval of critical information during the interview. In speaking about the treatment a victim/survivor receives when reporting, the authors claim; "If they are not treated with compassion, if their narrative is interrupted, if they receive only expressions of doubt about what they are reporting – they will not be able to recall potentially crucial information that is stored in the brain."⁴²

"I think it was just the one guard as far as I remember... he had come and he had spoken to me about it and he said, 'this is the situation just to let you know, there's no evidence so this is what you are going to be up against'...He knew that my abuser was left, was gone, he knew that something had happened. But still the attitude then was, 'you can do all of this, you can do all of this but your outcome is not going to be good'...When I look back on it now, it was kind of, that suits me, because yet again I'm going to just mask everything and going to move on... I think he struggled always with knowing, because he had to come back 10 years later and then tell me, 'it's happened again'...I always feel that there's that little bit of guilt with him somewhere that they didn't you know, they didn't go further with it the first time." (IIP)

⁴¹ Maxia Dong and others, "The Relationship Of Exposure To Childhood Sexual Abuse To Other Forms Of Abuse, Neglect, And Household Dysfunction During Childhood", *Child Abuse & Neglect*, 27.6 (2003), 625-639. P626

⁴² Dr. Lori Haskell and Dr. Melanie Randall, *The Impact Of Trauma On Adult Sexual Assault Victims* (Ottawa: Department of Justice Canada, 2019), pp. 1-42. P23

3.4

The Prosecution Process

The term “Prosecution Process” is used in this study to refer to the period of time following the participant’s reporting of a crime to the Gardaí encompassing the investigation process, the file being sent to the DPP for decision and the decision being returned from the DPP, whether that be to prosecute the charge(s) or not. It was noted from the experiences of the participants, that once reported, the process of investigation and decision making can be one which is lengthy and challenging for the victim, often triggering emotions that are linked to the abuse;

“It totally feeds into the powerlessness and the feeling that somebody else is having control over what is going to happen to you. I suppose it’s so difficult if those are also the feelings that are tied to the crime.” (IIP)

“I hate silence. I have been silenced my whole life so to walk out of a room and think ‘what happens next?’ is like feeling abused again because there was always that when anything would happen, I would be left wondering ‘what’s happening next or when something is going to happen again’ and I hate that feeling. So I made that clear that I don’t like silence.” (IIP)

Based on the recollection of some of the participants (n=10), the average time between the statement and notification of the decision to prosecute was approximately 2.2 years. Several participants identified that a significant determining factor in their wellbeing during this wait-period was the quantity and quality of communication and information they received.

The European Union Victims Directive 2015 sought to ensure the procedural rights to information, support, protection and participation in criminal justice systems for all victims in EU States. This Directive was implemented into Irish Law with the passing of The Criminal Justice (Victims of Crime) Act 2017.

Within the Act, a provision is made for the Right to Information. This right is qualified as ‘Information on first contact’ (section 7) and ‘Information regarding investigations and criminal proceedings’ (section 8). The right to information on first contact placed an obligation on An Garda Síochána (AGS) or the Ombudsman Commission (GSOC) to offer victims information on support services, the procedure for making a criminal complaint, the role of the victim in the criminal justice process and information related to a previously reported complaint. The extent of the

information provided shall be decided by AGS based on the nature of the alleged crime and the personal circumstances of the victim.

Section 7 further states that information should be communicated to the victim in a manner of their choosing (orally, electronically, in writing) as soon as practical.

Section 8 of the 2017 Act is concerned with information related to important advances in the investigation, including; the arrest of a person; the charging of a person; the release on bail or remand in custody of an accused person. This section also includes the right to request information concerning the decision not to prosecute a person for the alleged offence and a summary of the reasons for the decision.

As suggested by several of the study’s participants, information is power and being informed of the general process, their rights and available supports is empowering. The absence of information about the progressing investigation of their complaint can be re-traumatising.

It is pertinent to note that for many participants, their experience of the prosecution process was determined by a need for regular communication from the investigating officer and whether or not that need was met. Many participants spoke of a desire for communication from the officer in charge, regardless of whether or not there was an official update on the case. The researcher notes that a disparity exists between the victims’ right to information set out in the legislation discussed above and the victims need for regular, informal communication as evidenced below.

“I left the garda station knowing exactly when they would call. He said I’ll check in with you and he checked in with me the next day or the following day to make sure I was o.k. after giving the statement and each time after that... He was in touch even when there wasn’t

news. He was saying ‘we have no news at the moment. I’m keeping you in the loop’. That meant a huge amount to me.” (IIP)

“He would check in and just be like, ‘hey, I’m just ringing you to say there’s no news but I’m just checking in’... it was nice that he actually rang the odd time just to check in. He did that quite a lot and it was, it was very nice.” (IIP)

“The detectives were a deadly team and they were always in contact with me or at the station I would get a call back. Even if it was 10 o’clock at night. They would fill me in. They were deadly. I couldn’t fault whoever was working on the case.... As an investigation I genuinely couldn’t fault the effort that they put in. The dotting the I’s and crossing the T’s. We knew exactly what was happening. We knew the day before they were able to tell us.”(FGP)

“...I would ring every now and again and ask where were things at and I would give it a couple of months. I wouldn’t ring every week. I remember one time ringing and the Guard was just really annoyed that I was ringing and he said something like ‘have you seen the news of how much credit card fraud there’s been this week. We don’t have time for this’ and I was like o.k. because money is more important and so, I was chasing them. (FGP)

“I wasn’t given any updates; I had to actively seek updates myself.” (IIP)

“We take up that responsibility, that’s why we do that, that’s why we take that on, because we feel that no one else is. And it’s almost like, I found for me, it gave me something to focus on and it gave me a purpose. Because that was the only way I could have control in the situation. It was to try and follow things up or to ask more questions, and that’s how made sense of the process. It was to try and do something rather than be passive. Because the idea of being passive or trusting the guards was terrifying.” (FGP)

“I didn’t really hear anything from the detective who was investigating the case. I think my wife may have pushed me to ring her a few times but at the time I remember I was very, I still found it hard to call people. When I was unwell I wasn’t confident about ringing people and I had to be prompted into doing these things. Even just for ordinary things like ringing the bank, so for ringing the detective dealing with this case that was hard as well. So she might have rang me once or twice to keep me updated.” (FGP)

“It was very little communication from the detective. I contact her occasionally but there was very little contact... They never came to my house throughout the entire process... they talked to me on the phone alright. They would tell me that they were going to be interviewing someone and something would happen and they weren’t able to interview that person that day and that would go on... it was constant”. (FGP)

“...when you’re reporting and going through this, I think you need certainty and clarity in the information that you have which isn’t always the case, or it wasn’t always the case for me.” (IIP)

“No matter how many times you would try and contact somebody and I would get no information whatsoever... like I was just an adult at that stage. I was on my own... I didn’t have any support.” (FGP)

“There’s the waiting and there was no real support during that waiting.” (IIP)

“I think just generally, I felt like the biggest pain in their side and that’s the horrible feeling and it kind of invalidates all the reasons that you build yourself up to go through the process. (FGP)

“I had the guards up on this pedestal and I’m going to be a guard and they can do no wrong... you kind of want to give them what they want, trying to like play ball...you’d never question them, that wasn’t a thing, no a guard is a guard.” (FGP)

“... it was around four and a half years I had to wait for any verdict on what was happening...There’s only so much healing you can do until you know what the next step is going to be...I was in this frozen state, almost like in space, just floating through but not actually living or being able to move forward with my life.” (IIP)

According to figures published by the DPP in their 2020 Annual Report, 34% (5598) of files received were finalised with a ‘no prosecution’ direction. This is compared to a figure of 4628 (37%) in 2019 and 4722 (40%) in 2018.⁴³ The main reason for the direction not to prosecute was cited as ‘insufficient evidence’.⁴⁴ Information published by the Director in this regard states; “If there is not enough evidence for the court to be sure beyond a reasonable doubt that a person is guilty, the prosecution will not succeed. It is not enough that the court may believe the victim’s story. It has to be convinced beyond a reasonable doubt.”⁴⁵

Advancements in policy mean that it is now possible to request the reasons for non-prosecution of certain crimes and request a review of the decision from the DPP, if that decision was made post November 2015.⁴⁶

One third of the participants of this study reported that their criminal complaint resulted in a decision not to prosecute by the DPP, marking the end of their criminal redress process. The experiences of all five individuals are presented below;

“I suppose, because some fucking prick sitting in an office is trying to tell me that this didn’t happen. So I wasn’t very happy with it. But yeah just let down I suppose, I didn’t think it was fair...“Bring them all to fucking court and let the courts then decide whether they are guilty or not guilty...”

“... Knowing that that morning he would have to get up, put on a suit and his mother and father would have to have drove him off to some court and meet some solicitor, when he’s going into fucking court to face rape charges. Whether he got convicted or not, that’s a separate thing. But for them few hours and that night before he wouldn’t have fucking slept. You know that type of a way? And I suppose that’s something to me.”

“I just don’t have faith in the guards anymore and TUSLA.” (IIP)

“I was a bit disappointed in that, but I wasn’t surprised because they did make it very clear all along...I don’t know what way they were going to do it or pursue it but I remember thinking, there’s my chance... I was angry in that there were days, I was thinking about this yesterday, thinking, yeah I never got that day in court, never got a chance to have my say.” (IIP)

“...they came back to me at a later stage to say, that the decision had been made that my dad was unwell and I never heard anything... he [Garda] made a comment, ‘oh some people, they just want justice they can’t accept that the case isn’t going ahead.’ And I felt that was on me. And I thought no that’s not it...my dad died in 2019, and then I realised actually you know, I wanted him to just acknowledge that he did it, apologise, want to make up for what he did, that’s all. But he didn’t get that, he didn’t get that.”

“I felt very dismissed and felt that my experience of what was going on that I didn’t matter again. It was always that... it just kind of felt that they are the law and they can do what they want.” (FGP)

“...it was going on a good while and I got a call from the detective saying that the DPP weren’t going to pursue it and take it any further and she said that she wanted to come out to the house... So the detective came out with her sergeant to the house. My wife was there and my parents were there as well and they explained the whole thing saying we thought he had a really strong case and

we were surprised that the DPP didn’t proceed and we just wanted to explain to you that we believe you and we think that it should have gone further and they were just explaining to me that it’s not that we don’t believe you, we do. They were just trying to get that message across.... I was a bit surprised that one or two of the charges weren’t taken but at the same time going into court and hearing what the people have said is just you know... maybe it was for the best but still.”

“The hardest part was hearing that they weren’t going to pursue it any further. It’s kind of hard to take because on some level even though you know that it all happens and you’re going ‘well you’d like to go to court and find him guilty’... in a more functioning system the DPP would have had outlined their reasons for not proceeding with the case but I didn’t get that at all so I’m just left in limbo, it goes back to the whole fact that the church has loads of information on these paedophiles and we don’t have access to it at all... In the church they have all of these people as well and they are well trained in all of this and their whole reasoning is that the church is going to be there for thousands of years and if we just push this out of the way we’ll still be here.” (FGP)

“I was so angry and let down, I felt like what was the point?...It feels like you are just collateral damage in this whole thing and no-one really cares...‘at least its only one damaged person out of this instead of damaging two families’.”

“The whole nature of sexual crime is that it’s your word against them, it doesn’t happen in a public place, it doesn’t happen with witnesses around, it happens privately, its happens via manipulation and grooming and getting you alone and then scaring you into not telling anyone.” (IIP)

On the other hand, the participants whose case was sent forward for prosecution by the DPP report a vastly different experience. They describe a feeling of relief, of being believed and validated through the decision of a professional.

“It was just like, the first time ever that somebody... had actually done something. Somebody in a room somewhere high up in this office has heard about what happened to me and decided, ‘yeah somebody needs to pay for this, something actually needs to be done here’. Do you know what I mean? And that was really nice... I couldn’t even begin to tell you how important that was for healing. And it wasn’t until years after that I actually realised that that was the moment that things had actually started to change for me.” (IIP)

“It was the being believed. After all of this that I had gone through that I was being believed.” (IIP)

“The guard, no matter how lovely he is, cannot decide whether this case goes forward. He has to send this off and wait for the DPP to come back to him and say, yes, we think this is a case, or no. And that was very difficult, you know. I think, especially in my case where you have a lovely guard who’s very, very professional and very caring towards you and understanding as a survivor, and just an all-round general lovely man, you kind of get this false feeling that, oh he’s going to look after me, you know, I’m in safe hands, you know. And you forget, it’s easy to forget that you’re not in that guard’s hands, or your case isn’t. Your case is not in his hands, it’s in the hands of public prosecution as it should be, you know. That’s the way justice works, you know.”

“...the gatekeepers, so to speak, of justice or the deciders, we’ll say, believed me. So that was big.” (IIP)

When asked what the most difficult aspect of the investigation and prosecution process was for them, the participant’s responses reiterated issues previously shared; gender dynamics which may be harmful, lack of reliable and credible information, a lack of regular communication and discontent over the exclusion of evidence or certain charges which the victims felt were important.

“From the time the guards came to tell me what was going on to the time I had got to the courts. So it was 3 years. And that’s a long time to have that hanging over you.”

“...not having the support that you need, not that you didn’t have the support, but the support was all male dominated...When you have been dominated by a man as a child. And then you go to a court case which was completely dominated by men as well really.” (IIP)

“The lack of clarity, every time they said something would happen in a particular way and that it never happened that way... Then just the calling and trying ... not getting responses and the lack of follow up or support or understanding what the impact of uncertainty and not knowing has on people.” (FGP)

“I can only deal with my experience and I think everybody wouldn’t have same experience but I really couldn’t fault. The only argument I would have had...would be not being able to include certain evidence. The detectives were brilliant.” (FGP)

“The hardest piece was probably me just not being heard and just saying we won’t charge him with that part... You just feel like screaming it from the rooftops when you don’t get justice or when you don’t get heard...you wouldn’t mind like...like you felt heard and you felt like somebody is fighting your corner and then you come to where you can’t do much more. And they don’t resolve it, that’s grand. If you feel like someone is behind you, but when you don’t even feel that, you feel like, whose there, whose the support? You want somebody...that can tell you what’s what and be clear and be able to say to you, ‘look you mightn’t get the result what you want, but this is what’s going to happen.’” (FGP)

⁴³ Office of the Director of Public Prosecutions, Annual Report 2020, (Dublin: Director of Public Prosecutions, 2021). P17

⁴⁴ Office of the Director of Public Prosecutions, Annual Report 2020, (Dublin: Director of Public Prosecutions, 2021). P18

⁴⁵ “Decision To Prosecute - Office Of The Director Of Public Prosecutions”, Office Of The Director Of Public Prosecutions <<https://www.dppireland.ie/criminal-justice-system/decision-to-prosecute/>> [Accessed 15 November 2021].

⁴⁶ Some participants received a decision prior to the 16th November 2015 and therefore they did not qualify.

3.5

The Court Process

“If one set out to devise a system for provoking intrusive post traumatic symptoms, one could not do better than a court of law.”⁴⁷

Out of the fifteen participants who volunteered to take part in this project, either by engaging in a facilitated focus group or an individual interview; five participant’s cases did not proceed past a DPP decision. Out of the remaining ten participants, six participants cases resulted in a conviction and sentence based on a plea of guilty submitted by the accused. The remaining four cases proceeded to a criminal trial process whereby the accused was found guilty by a jury in all four cases. Custodial sentences were handed down in eight of the cases with the approximate average length of the sentence being 5.96 years. In the cases of two participants, fully suspended sentences were imposed and later appealed. In six cases, an appeal was lodged in respect of the conviction, sentence or both. Two cases resulted in a retrial; both retrials resulted in a guilty verdict. Four participants elected to waive their right to anonymity following the conclusion of the case. When referring to waiving anonymity following the conviction of the offender, one participant stated;

“I always knew I was going to because something...kind of stuck with me, while who exactly is this protecting? I don’t care...I’m not protected. He’s the one that’s being protected.” (FGP)

This section shall present the experiences of those ten individuals through discussion of relevant, topical themes; the disclosure of counselling records, attending court hearings, the submission of a guilty plea, victim impact statements and sentencing hearings, the trial process and giving evidence.

3.5.1 The disclosure of counselling records

The disclosure of counselling records in a sexual violence criminal trial is an evidentiary trend which has become more common in recent years. Section 39 of The Criminal Law (Sexual Offences) Act 2017 introduced a new system to manage how and when the disclosure takes place. This was inserted as way of an amendment in to Section 19A of the Criminal Evidence Act 1992. This new procedure instructs that, save for a complainant volunteering the disclosure of records; the defence must make a written application to the court to request access to the documents.⁴⁸ The complainant may agree or object to their counselling records being released and is entitled to separate legal representation on the issue.⁴⁹ Following this, a hearing can take place whereby the judge will decide if the disclosure should happen or not, balancing

the fair trial rights of the defendant and the privacy of the complainant.⁵⁰ Other factors which may be considered by the court are; the probative value of the notes, the likelihood of additional harm being caused to the complainant and the public interest in encouraging the reporting of sexual crime.⁵¹ This court hearing has been compared to that which applies where an application is made for the admission of evidence of a complainant’s sexual experience.⁵²

When asked for their views on the issue of counselling records being disclosed, participants reported feeling exposed and that the ‘safe place’ which has been created in therapy between the participant and their counsellor, had been compromised. It was also noted that the complainant is being asked to speak to notes which they themselves did not write. One participant highlighted the inherent danger of a counsellor mishearing, misunderstanding or misquoting the complainant.

“I didn’t think it was right because it’s not the only thing you talk about in therapy, so I didn’t think it was fair but for me I just wanted justice. I was willing to do anything. If they told me, I had to do it I would do it. I handed them over from the start.” (IIP)

“I just felt very fucking exposed, do you know what I mean? I was already pretty exposed. I just felt a bit violated, I felt like it was a violation. I felt like they shouldn’t have the right to have things like our counselling notes. Actual intimate information if that makes any sense? Maybe that’s not the right word but you know, really personal information. I just felt like it wasn’t appropriate. Especially the fact that he had admitted to some stuff. So they knew that I was definitely telling some sort of truth and yet they still had to hand over. So they knew I was abused at some way, shape or form, and they still handed over my notes. You don’t know what the counsellor’s notes are. They could be quoting you, they could be saying anything, you don’t know. I mean I know from talking to different counsellors that they all take different types of notes. So you just don’t know what they’re writing.” (IIP)

“...victim is made or convinced to give consent to release of their own counselling session notes etc. which we all think is private and confidential in the counselling session, but no whatever is said in the sessions can be used in court cases which I don’t agree with because we already have trust issues so counselling is supposed to be a safe place to talk in private not public.” (IIP)

“They were looked for and I gave consent for them to be provided however very naively, they weren’t really ripped apart. I am more cautious now.” (IIP)

3.5.2 Attending court hearings

Participants spoke about their experiences of attending court hearings at various stages of the process, whether that is a pre-trial mention, a disclosure hearing or an arraignment. They reported feeling intimidated at the scale and formality of the court and the professionals who work within it, or feeling exposed in the case of a local district court hearing. There was again, a reiteration of the impact gender imbalance can effect on an individual who has experienced abuse. Some participants shared that they found the proximity to the accused particularly difficult.

“...as a victim you don’t really know what’s going on. So there was for me there was nobody there really saying ‘ok, this is how it happens’. So for me, a young mother going in and all these high powered guys, it’s a massive building with an awful lot of men going around and obviously women, but with their wigs...and you really have no idea what to be doing.” (IIP)

“I was a witness and that was, I was no more than that. I was no more than a witness and that’s how I felt.” (IIP)

“I think because it was local and because the stuff in the court would have been driving offences and drunk and disorderly and minor little drug ones, but and then it’s like, this is serious. And especially being local and from that area. Because it was like this court that everyone was sitting, so if you are waiting to hear about something else, so you are listening to the other person” (FGP)

“It was horrendous and the feeling in the heart pumping and every time I seen him. But I knew that each time I had put myself through that, I was preparing for court so I know not everyone could do that but that’s

what I was doing...I think I found the first bit hard because all I knew was my case and I was only talking about my case and everything and then to go into the court room for a mention and it’s like a cattle mart. I couldn’t even hear what anyone was saying, and it was more like a joke.” (IIP)

“...microphones are not used to can’t hear the judge or solicitors or perpetrators speaking and lots of people in the court room all talking among themselves too, no privacy either.” (IIP)

“...But I just remember sitting there and having him behind me, and you just have that kind of, ‘oh my god, it’s not even done now, this is the man that’s done all this to me and you are not even...you aren’t putting me face to face that I can say to him’. He still is kind of nearly behind you, towering over you again still. And that was kind of quite hard.” (IIP)

“I remember standing every single time for that court wondering would it happen and it’s the kind of thing you want it to happen but you don’t want it to happen, so it’s like you’re disappointed that it didn’t but you’re relieved that it didn’t all at the same time...He [accused] was there hovering around... being the man of the place. It was mad how like in the middle of all these people you can still feel intimidated by their presence. And the actions. It was clearly his actions.” (IIP)

“...you are going in here completely blind as to what’s going on with all these very high powered and majority of them are men.” (IIP)

⁴⁷ Judith Herman, *Trauma And Recovery, The Aftermath Of Violence - From Domestic Abuse To Political Terror*, 3rd edn (New York: Basic Books, 1992). P72

⁴⁸ The Criminal Evidence Act 1992, S. 19A(7) (as amended)

⁴⁹ Rape Crisis Network Ireland, *Previous Sexual History Evidence And Separate Legal Representation: RCNI Position Paper* (Dublin: Rape Crisis Network Ireland, 2012) <https://www.rcni.ie/wp-content/uploads/RCNIPreviousSexualHistorySLRPositionPaperMay12.pdf> P.3

⁵⁰ The Criminal Evidence Act 1992, S. 19A(8) (as amended)

⁵¹ The Criminal Evidence Act 1992, S. 19A(10) (as amended)

⁵² Leahy, *The Realities of Rape Trials in Ireland: Perspectives from Practice*, (Limerick: University of Limerick, 2021). P30

3.5.3 The submission of a guilty plea

In six of the ten criminal prosecutions focused on in this research, a guilty plea was entered by the accused at some point in the court process. Four participants shared their thoughts following notice of the guilty plea;

“After the guilty plea was entered and the perpetrator was taken into custody] “I was a little bit shocked. I don’t remember being aware of the fact that he wouldn’t be allowed go home... I was a bit taken aback. So that took me by surprise and it was only then maybe after it when I went home that I realised I can, I can go out in my home town now without running into him.” (IIP)

“Well he pleaded guilty which was, that was fine and the guards in and that was it and then they said obviously he goes off for sentencing. So obviously straight away that was a feeling of relief and then seeing really where it kind of going next.” (IIP)

“...And it was six weeks before it was due to go to trial and the detective rang ...and he just said ‘oh he’s pleaded guilty so there’s no trial’ and that was it and he was like ‘you’re better off, they would have made mince of you on the stand’ and I was like, ‘this is just so inappropriate. That language is so inappropriate. You are totally underestimating me.’” (FGP)

“They say, ‘thank God you didn’t have to go through that.’ But I was ready, and I knew I was telling the truth so I knew that no matter what they do to me, no matter what they say...I’ve nothing to be afraid of. I’m just going to get up there and, whatever. But, no he pled guilty. And that’s the way it was. It wasn’t a bad thing. I know that I was very lucky.” (IIP)

3.5.4 Victim Impact Statements and Sentencing hearings

Following a guilty plea being entered, the offender will be convicted and it is customary for the court to remand sentencing for a later date in order for the court to be in the best position to provide a fair and proportionate sentence. The sentencing process itself can be undertaken across two separate dates; a sentencing hearing date, whereby the court may receive supplementary evidence as to the impact of the offending on the victim⁵³ or information relating to the personal circumstances of the offender, such as a report produced by the Probation Service.

A victim is entitled to read their victim impact statement aloud to the court during a sentencing hearing, if they wish, or elect that the barrister for the prosecution deliver it. This is both optional and voluntary.

As presented below; some participants discussed the difficulty they faced in compiling the impact statement as they have to examine the real effect the crime has had on their lives. Others recount the emotions they felt when their impact statements received scrutiny or redactions from a defence legal team.

“You kind of put your abuse into a filing cabinet in the back of your head with, ‘do not open’, on it...So you kind of have to go through that filing cabinet and decipher everything that you have now encrypted so that it wouldn’t traumatise you through normal life. So going back and trying to visit how you felt because of this abuse and the impact it had on you when you’ve kind of done your best to push the impact of it aside, you know, that’s incredibly difficult.” (IIP)

“I remember when I finished going; there was probably some level of healing in the process. If I realised it could be valuable in increasing his sentence I would have put more time into maybe. Or maybe I wouldn’t have done half as well with it... It’s really hard to identify what has been an impact and what hasn’t because this is your current existence and your whole life has impacted your current existence so to say that this trail of events has created this as opposed to everything else, it’s really difficult. And it’s probably very definitely that it was something I didn’t want to give attention to because I just didn’t want any of this to have affected me at all.” (IIP)

“Taking the stand was a huge moment. Getting the guilty verdict was a huge moment. And meeting with him with a victim impact statement to his face was a huge moment. In the context of the trial I’d say they were the huge moments.” (FGP)

“I remember [Garda] calling me into the office one day and he was like, ‘you can say that you want him to not go to prison but you can’t say that you want him to go to prison.’ I was like, ‘are you joking me?’” (IIP)

“...his barrister says, ‘hold on I’d like to read what she has to say, because it might be incriminating.’ And you are sitting there. So the man that spent years abusing you, was right behind you and you having to sit there, while somebody is reading? Like, this man has already done time for what he has done to somebody else, and this is his second and you are going to say that I’m going to incriminate him?” (IIP)

“One of the most surviving memories I have of all of this, was seeing the defence’s copy of my impact statement. And seeing their marks like crosses through where it’s... it spoke to only the defence trying to just this was tearing shreds out of me...I was ‘no, like we’re already getting a scant view what he did and none of the impact. I’m not watering that down or deleting it’. I really felt like there was a...I could have easily been coerced into just taking the easy road so many times. (FGP)

One participant describes the experience of being cross examined on the evidence within their impact statement by the barrister for the defence.

“...I don’t know, was it the prosecutions job? I don’t know...like an American court room drama where you want someone to step in and I remember looking around and being like, ‘is someone going to help me out there. Or will someone say something because I was just...I don’t know what’s happening here.’” (FGP)

The second date of hearings related to the sentencing is the sentencing judgement date, where the court will deliver her/his judgement. The judge may refer to facts of the case, evidence heard during the court of the proceedings or reference content of the victim’s impact statement. For the purpose of this research, the judge’s comments will be referred to as ‘sentencing remarks.’

“When it came to sentencing [the Judge when speaking to the offender] said, ‘now the best I can do for you today is...’ and I’m just sitting there going, ‘what do you mean the best?’ It was just the way he put it...I just felt a little angry at what he said at that time, it still angers me now, probably a little bit less though.” (FGP)

“...he was really taking into consideration the fact that he pled guilty which meant that I wouldn’t have to face the trauma of the trial and those words will stick with me, ‘I wouldn’t have to face the trauma of a trial’ But it was already traumatic enough being there on my own. Because I didn’t have...there was the garda the

detective was there, but I didn’t know...because I only had phone call conversations with her...didn’t really know her. So I was sitting there on my own.”(FGP)

“I remember in the sentencing remarks... I was really overwhelmed because I thought it was just going to be us. The whole court was full of randomers but I remember him [judge] saying that it was, what was the word that he used? It was ‘harrowing’. I had never thought of it like that. I never thought of it the way he heard it. Because it’s your life, you don’t think, ‘oh I’ve had a terrible, harrowing childhood’. You don’t think those things about yourself. You don’t, you never give yourself that sympathy almost.” (IIP)

Certain mitigating or aggravating factors may be taken in to consideration by the court in deciding an appropriate sentence. An example of mitigation may be; an offender’s early admission of guilt, a lack of previous criminal convictions or an expression of remorse. Aggravating factors may include; breach of trust or the use of violence.

Letters of support or character references may also be submitted to the court on behalf of the offender.

“When he [the judge] mentioned it all I heard was, ‘Apart from this he’s a good guy.’ You know, which is like, what? Apart from raping a child he’s a good guy? Do you know, like, it doesn’t make sense? It might make sense to other people but it certainly doesn’t make sense to an abuse survivor victim.” (IIP)

“It’s like a complete joke, you’re saying because according to law he hasn’t done anything wrong therefore he’s a good man... just because he hasn’t been to court that he was a good man? He was an abusive horrible person to be around for our whole life and yet they were basing it on these references that they had given in that he had done charity work and because of his age.” (IIP)

“There’s a load of strangers in the room, you know, people that aren’t there for your case... there was people sent in character references to the court for this guy... that was incredibly difficult. Because it’s almost like, OK he did this but how can we get as lenient a punishment as possible, you know?” (IIP)

As referred to previously in this chapter, custodial sentences were imposed in eight out of ten cases. An approximate average length of the sentence was calculated to be 5.96 years.

In the cases of two participants, fully suspended sentences were imposed; both were later appealed.

“...like he took three years of my childhood and another 4 years of my adulthood going through that entire process. And then he comes out with what just seems like a slap on the wrist, like be a good boy for the next 18 months and you’ll be fine.” (FGP)

“My life will be forever affected by this...My abuser got 8 years in prison which to me is nothing compared to, I got a life sentence. He gave me a life sentence and most abuse victims get a life sentence...people can think, ‘Jesus, it’s great wasn’t it, you know. He got sent to jail and you know, now you can move on with your life and whatever.’ You can move one with your life to a certain degree. Next year, he’ll be out of prison next year and it’s gone like that!” (IIP)

“I had been proven, not right, but proven to be truthful. And actually all of my crazy was justified. All of the mad shit that had gone on, all of the self-destruction, all of the depression, everything had been...I was vindicated. Justice was done...” (IIP)

“I actually felt bad for him. I’m a nice person, I’m not a horrible person, I’m not heartless, I can’t help how I feel. But I remember his face and I remember just being like, ‘oh my God, I’m after sending [him] to prison’...I’ll never forget his face. It still haunts me. His faced dropped and he made this face that, I felt really bad for him.” (IIP)

“I never cared about the sentence. I never cared about the time... all I wanted was for him to be found guilty I couldn’t care if he did five months or not.” (IIP)

“He wasn’t around. He was in jail. It was great. I can go to the pub and walk in the front door of the pub by myself. I can walk in the drive way when I come home after a night out. I don’t have to run in and wonder where people are around me.” (IIP)

3.5.5 The trial process and giving evidence

As previously presented four of the ten criminal prosecutions concentrated on in this research proceeded to a criminal trial by jury. Three out of the four participants were supported by One in Four Advocacy Case Managers during their court process. The trials took place in either the circuit or central criminal jurisdiction depending on the charges against the accused, listed on the indictment. The participants discussed their experience of being a complainant witness in a trial, and shared some of the difficulties they encountered.

A common issue for participants who experienced a criminal jury trial was the extent of the ‘complainant’s role’. Participants voiced feeling like ‘just a witness’ or ‘a cog in the wheel’ which is a complaint that Advocacy Case Managers in One in Four are familiar with hearing during the course of court accompaniment work. Complainants often communicate that they feel on the periphery of criminal proceedings, which are in fact based on their own traumatic experience. This was also mirrored in the experiences told by our participants with several expressing dissatisfaction with the limited interaction they had with the legal professionals working for the prosecution. The author posits that the expectation a complainant may have of the working relationship between them and the prosecuting solicitor/barrister, may be misaligned with the expectation held by the legal professionals. It is therefore considered fundamental that the role of the prosecuting Solicitor and Barrister, and the boundaries, to which they are rightfully confined, be explicitly conveyed to the complainant in clear language at the earliest opportunity.

“I was just meeting the legal team and they were like ‘look we can’t go over anything’... we can’t talk about anything that I’m going to say, and I found that a bit horrible because he could. He could speak to everybody about what was going to be said and he knew what was in everybody’s statements, I didn’t. I think the first time I realised going that it’s me trying to fight that he’s guilty as opposed to him try get that he was an innocent man. That’s when I realised going this is very unfair this whole court system.” (IIP)

“I would have met them [Prosecuting solicitor and barrister] on false starts and ended up meeting them a few times before we started...It was quite distant. It was like you’re a cog and a wheel... In their head, you’re just a witness so sit down and we will call you when we want you. I see the merit in that as well because their job is to find somebody guilty. It isn’t to provide me with support.” (IIP)

“...The two guards that were involved, their primary concern is gathering enough evidence to convict this

person and that shouldn't be diluted by also being concerned about who is supporting [me] because it would be shit if they put too much of their energy into making sure I'm o.k. and drop the ball over here and lose the fucking case, that would be not o.k." (IIP)

"...Another problem in my own case was at the time of jury selection where the perpetrator was in the court room as well and the judge said out loud to the jury and everyone in the court ... where the victim lived... now we are worried that when the perpetrator gets out of prison soon he will be able to find us and cause more trouble for us like he did in the past." (IIP)

The need for an independent, informed and experienced professional, who can provide support, information and advocacy services, separate to that of AGS or Prosecuting legal professionals was also highlighted.

"They were kind of things that I didn't know and nobody had explained but I can see a missing link in somebody explaining all those pieces... somebody just to keep a check that you know what you're doing, you know what comes next, you know what the system is and have a road map of this happens, this happens, this happens." (IIP)

When discussing giving evidence at a criminal trial, the participants recalled certain key features of their experience; the close physical proximity of the accused to the witness box, the close proximity of the legal team for the accused to the witness box and the often confusing manner of questioning by either side.

"I remember going 'is he [the accused] just going to be here?' he'll be right behind me or adjacent to me? That freaked me out. I thought if he gets inside my head will I be able to say everything and what was hard for me as well was because during the case he kept tutting and saying 'liar, liar' all the whole way through... It was extremely hard to give evidence while you are being called a liar by the person while he is sitting there." (IIP)

"I didn't think my dad would be sitting so close to me and I wasn't expecting that at all and then I thought it was awful that the Defence are actually the nearest to you." (IIP)

"I found that my own barrister was actual trickier to understand. He just wasn't as direct in the way he communicated... so, he would be asking me something but I would be giving the full story or he was trying to get at say one particular charge and then deal with the next charge. Looking back on it, it was very clear what he was trying to do. However sitting on that stand in that moment I was like...'what are you talking about?'" (IIP)

One participant disclosed feeling observed by the jury for the entirety of their evidence, and not wanting to display any behaviour that would appear to be at odds with that of a 'real victim'. This concern speaks to the prevalence of preconceived ideas or attitudes about sexual violence, often referred to as 'rape myths'.

In an article published in 2014 examining the effect of societal attitudes on the conviction rate of rape in Ireland, Leahy states;

"the 'real victim' stereotype generates an image of a genuine or worthy victim, that is, a chaste individual who has not engaged in 'risky' behaviour (e.g. consuming alcohol or illegal drugs or dressing in what is viewed as an inappropriate or 'provocative' manner). If a rape complainant does not conform to the standardized image of a 'real victim', the prosecution may find it difficult to convince jurors who adhere to this imagery that a rape has occurred."⁵⁴

"It's the most surreal thing you will ever do sitting there...it's so silent. It's the facial expressions... when you're sitting up there and you are constantly worried about what people are going to think and you're thinking, 'if I look at the jury they're going to think she's too confident, who would be like that if they're going through that they would be a big ball of a mess.' You're afraid that if you answer back, you think they're like 'oh that's a bit feisty up there'. It was those things. I just couldn't get any of those things out of my head. For the whole time I felt like I was being watched for the full two weeks." (IIP)

As presented throughout his chapter through the testimony of the research participants, the gender dynamics and disparity within the criminal justice system can have a great effect on the experience and comfort of the victim/complainant. One participant noted;

"It's a room predominantly full of men. My junior barrister and senior counsel and solicitor; all men. His side? all men. There was one guard that was involved in whatever capacity that was female and my support person. All the rest were men. Everyone else in the room were men."

When asked, in response, if more female representation in the court room would have made the participant feel different, they replied;

"In a way no, because in a weird way there's a bit of a distance in that you're talking about what was done to your body. So a man can't really connect with that in the same way. So that little bit of distance I liked. They

can understand it was awful or whatever but they don't have the same body parts and say I know what that feels like." (IIP)

When discussing the issue of cross examination, two participants shared differing experiences;

"I imagined taking the stand and standing up and going, 'he did this and then he did this and this, and then that and that', and that's just wasn't what happened. And I suppose if I had of looked at it logically and watched a couple of court room dramas, I probably would have realised that, no you are just going to get cross examined by his defence on only what is in the statement ...they only wanted to trip me up. And I just think that is incredibly unfair. I don't think there's a solution for that, because I think if you were on his side, you would think 'this is fine, you got to question this guy and probe him and see if he's being truthful', which I was...At the end, Jesus it was very hard. Not the questions that I was been asked, I had no problem with that. I had a problem with the way they were asked and the relentless almost badgering, asking the same questions, 6 different ways, expecting me to answer the sixth time in a different way and for them to seize on it then go, 'see, doesn't even remember'. That's all they tried to do, that was literally all... I got incredible angry with that...I just thought it was badgering genuinely. I just thought and he was an awful intimidating sort of a guy. He'd stand with one foot up on a desk like that in front of you." (FGP)

"I had developed zero pre-conceived notions of what it was going to be like. Part of me thought I would never have to do it. So I think maybe that's why the first part of giving evidence was nearly the hardest...I got more comfortable by the time I was being cross examined. I didn't actually find that as hard. I found it was more clear, I was more able to speak and I was able to say what I needed to say in a more confident way if that makes sense but I had no notion as to what it was going to be like." (IIP)

Section 3 of the Criminal Law (Rape) Act 1981 (as amended)⁵⁵ provides that any sexual history of the complainant be excluded from evidence at the trial, other than that which the charge relates to. To admit other sexual history evidence, a defence council must apply to the court, ideally in advance of a trial commencing. However in Leahy's research into the realities of rape trials in Ireland, it was noted that there is a tendency for applications to be made late causing challenges on the day of the trial.⁵⁶

When queried if this issue featured in their trial, a participant cited;

"I do remember before the trial at some time, being told 'make sure I didn't get pregnant.' Because then my sexual activities would be put into question." (IIP)

Finally, the participants articulated how they felt during jury deliberations. One participant cited the issue of closed door deliberations and how group dynamics can affect the outcome of a criminal trial. Another participant shared their relief at a jury's decision to convict the accused in their case.

"So then that got me questioning what happens behind the door, who is there to explain the law terms. It's all normal people... There should be someone in there that can actually explain what legal terms means. Let's face it, if you get someone who thinks they know everything you can throw a whole room." (IIP)

"So they went through every single one of them one at a time. It was only after the first one, once you get that first guilty, you are like, 'yeah!' I could feel my hands, knees tightening; I was like 'fucking yes!' They just go through them all one at a time and by the time you are the sixth or seventh and you are just like 'deadly!'... he was sitting there after having it all read to him. I thought that was, probably one of the few decent parts of the entire process." (FGP)

"I wanted them to come back with a guilty verdict but I didn't want them to come back in case they didn't have a guilty verdict. So yes, it was quite nerve wrecking." (IIP)

I felt like I had been run over by a bus. Every part of me I was physically and mentally and emotionally drained. I thought I can't go through this again...I was in with the doctor on the Monday and he was like you're suffering from post-traumatic stress from the trial and from re-living everything. Everything had just hit. I had done the statement then my evidence and re-lived it all over again. (IIP)

"...And it was just one after another after another and sitting there for 40 counts and I was just bawling my eyes out and I'm going 'oh my god I can't believe it!' It was just that relief that I was believed, I won. I looked over at him and it was like 'you thought I'd never stand up to you and I did and here I am.'" (IIP)

The theme of the IHREC grant scheme for 2020-21 which this research is gratefully in receipt of was 'Access to Rights and Access to Justice'. Discussing accountability and the concept of justice, Judith Herman wrote,

"What seems of paramount importance to most survivors is social validation – that is, public acknowledgement of both the facts, and the harms of the crime. Beyond this, what survivors' desire most is vindication; they want their

communities to take a clear stand in denouncing the crime so that the burdens of shame are lifted from their shoulders and placed on the offenders, where they rightfully belong.”⁵⁷

The word Justice is broad, and may conjure several meanings. Throughout this research, it became apparent that justice can look different to different people. For some participants, justice was a traditional criminal process where the accused was guilty and sentenced. Some shared a desire to be seen and to be heard, to be found truthful or believed by family, Gardaí or the DPP. Others spoke of a desire for a safer life, one free from the intimidation or fear. Of the five participants whose cases did not proceed past a DPP direction, it was clear that many did not feel that they gained access to justice, as their complaint was never put before a court. When asked if they would engage with the system again, two participants’ shared their thoughts;

“The most dangerous thing there is, is hope. You are a bit older now and going through all that shite again is a different story... I just don’t have faith in the guards anymore.” (IIP)

“I just think from start to finish, the whole thing was really difficult and I genuinely wouldn’t recommend anybody doing it, and that’s terrible but that’s the reality... The system is not set up to serve victims of these particular crimes.” (IIP)

The participants were invited to share their concluding remarks and reflections on their experience with the Criminal Justice System in Ireland;

“I know of cases where guilty people got away. And that’s almost difficult as well, like. Why did my case deserve to be guilty, why did I deserve to get justice as opposed to someone else? That to me is difficult to understand. As I say, I know there’s good Gardaí out there. That man that led my case, I couldn’t have asked for a nicer, more professional Gardaí. As I say, he wasn’t only professional; he spoke to me on a human level. He had such compassion and niceness where he wasn’t required, he wasn’t being paid to be nice, but it was there anyway. As I say, I couldn’t have asked for a better person to handle the most vulnerable part of me, I was really lucky there with that.” (IIP)

“So it was just really like the levels of...like...armour that when I think back I had to assume to go in there and do that. I think what they saw was a difficult... women who asked too many questions. But what they didn’t see... But they didn’t see the bit of me that was physically exhausted, tired, sad all that stuff. So I think it was really kind of one dimensional. I don’t think they wanted to see me another way, I think it was really convenient to see me as difficult.” (FGP)

“They prosecuted him and they sent him to prison, but I think there’s a lot of holes in the system. I think there’s a lot of gaps and I think that there’s a lot of room for improvement. I think that there’s a lot of failures, I think there’s a lot of silly little things that probably could change... I remember feeling like I had to settle if that makes sense. And I had to be grateful for what I was getting. It wasn’t everything and it could’ve been a lot more...I definitely look back on my experience of the whole system, as in the criminal justice system and the child protection system and I see so many holes. But I also see then that I’m one of those people that didn’t have it the worst.” (IIP)

“I’m not going to say it’s gone because it will never be gone. That’s one thing that I’m very, very adamant about; unfortunately it does not go away. And that’s why people go to prison for so long for these crimes, because it impacts the rest of your life. But I feel like I’m at a stage now where I can handle it, I don’t feel like it’s going to ruin the rest of my life. I don’t feel like it’s still ruling my life or anything like that.” (IIP)

“...the criminal justice system just says, ‘give me the facts’. And it was really jarring to actually go, ‘oh wow, this was really deeply impactful and actually no one’s really asked me that before’ and I hadn’t gone there, weirdly enough... there’s so many impacts from sexual violence that people don’t talk about. Like not knowing what’s appropriate and what’s not appropriate. Not knowing, ‘did that happen, did it not?’ That self-doubt, how you are in relationships, trust issues, control issues... like, ‘oh well that’s 40 years ago’ but you live with it every single day of your life.” (FGP)

“...there was so much trauma from it, because there was so much trauma. I think what people don’t see is like, I’m 30 years on and the trauma that is still affecting me.” (IIP)

“I don’t feel ashamed anymore. No problem, I didn’t do anything wrong. If you put me in a room full of 50 people, I’ll tell them exactly what happened to me and I wouldn’t flinch. Maybe I might flinch, but it wouldn’t be from shame...I definitely feel like I’m able to sleep a little bit more peacefully.” (IIP)

In the final stages of the focus group sessions, the participants were asked; “What would you say to a victim/survivor considering engaging with the criminal justice system?”

“6 or 7 years ago, I would have said don’t do it...now I would absolutely say do it...as the years went on, I was like, ‘you are so lucky to have gotten all the way to the end.’” (FGP)

“I’d say go for it... but that you know what your rights are and that you know how to exercise them and speak your truth and stand your ground with them, no matter how hard it gets... inform yourself beforehand so that you know to approach it and you know how to stand up for yourself and you know what nonsense not to take. Because I think it is worth it in the end...” (FGP)

“Well it depends on the circumstances of the person. I mean if it was someone like myself who remembered after a great deal of time, or where you have someone who had recently gone through it. I’d just be concerned about their mental wellbeing... you really need someone supporting you or going to One in Four, so I did have that. But I think mentally it took a very big toll on me, I didn’t realise that until probably a few years later. So yeah I’d be...I would be encouraging someone to do it, but I’d want them to be in the right place to do it I suppose.” (FGP)

“...the person needs to be in the right space...because it takes a lot out of you. We have come through the other side and sometimes we forget how tough it was, in the depths of it. How many times have we just almost felt like giving up, but didn’t but almost felt like it. But it’s tough and especially if you don’t have anyone behind you, it’s really tough. So I would want everybody to do it, but I just want to make sure that they were absolutely prepared for it before we take that step.” (FGP)

Finally, the participants were asked them to consider “What, if anything, did you gain from your involvement in the Criminal Justice System?”

“I definitely feel I’ve gained an anxiety disorder from the process.” (IIP)

“Justice I suppose would be one thing. For the 8 years he served I lived the most amazing 8 years, the best 8 years of my life, just the freedom! I wasn’t watching my back... I didn’t realise how brilliant they were until they got out of jail and then you realise, that’s what living was really like. That 8 years that most people can live without who is watching them or where they are going to pop up or what they are going to do which is the way all of us should be able to live. The justice system has not protected me since that, it’s like you’re left to your own devices.” (IIP)

“I know when I had left the court there was like just this weight, but I didn’t even realise was there, it was just like this massive block that had been around my neck at the entire time. So managing to get through the entire lot to the end, was just like...I felt I could breathe the first time I walked out.” (FGP)

“I gained me back to be honest. Having to actually go up and face him...for people to be able to see that I spoke the truth and for him to be found guilty. I gained my life back from it even though it was very hard to get it. As hard as it was going through it all it gave absolute closure to the abuse. My shoulders were buried with the weight from all the lies that I carried and now I don’t have any. I let everything out. That was the whole thing as well with the anonymity. I didn’t want to have one other thing left inside me. I just wanted everything out and I gained that.” (IIP)

“I gained a few things even though my own didn’t go that far. I feel like in the eyes of my family...I have stood up. I showed my strength to them and myself. And in the process even though it wasn’t the best, there was a certain amount of healing gained from it as well. And I did what was right for me.” (FGP)

“I feel like I gained justice from the system. Did I gain healing? At different stages I guess. Definitely the process of giving my statement and the phone call that like he was brought in and he was questioned and he did admit it. That was a step to recovery for me. The trial? Absolutely not. That was just horrific. It felt like the blind leading the blind. I didn’t know where I was supposed to be or what I was doing so it’s really hard to feel like you did your job with any level of conviction when you didn’t know what was expected from you in the first place. I still feel like I could have done a better job giving evidence. Thankfully he got a conviction because if he didn’t I would have found it really hard to accept.” (IIP)

I know this sounds mad but I remember there being a point where I woke up and things were just greener. I was able to see the good in everything. I wasn’t always like that at all. I would’ve been a very negative for a long time... but it’s not really like that anymore. I don’t feel like I would’ve been like that had I not went through that. I think I probably would’ve been in a different position now if I didn’t go through the process...I’m very grateful that he was prosecuted, very, very grateful. I cannot imagine what it’s like for the people who don’t get that. I can’t imagine. (IIP)

“I don’t know if I feel that I gained anything... But one side of it was just knowing that I did all that I could, and I think it would have been worse for me to have never reported and to have constantly sat wondering what might have happened, I think I would have found that unbearable... I think I had a particularly difficult experience through the criminal justice system. But the kind of underside of that has been that it makes me feel really strong about being able to advocate for better

or to do the work that I do and try and stand alongside someone... I think there's something about having been through that experience of feeling caught up in a system and not supported that has made me want to be someone who, when I see that happening, I'll stand with someone or I'll do what I can." (FGP)

Voluntary anonymous feedback forms were given to all six participants of the focus group, inviting comments on their experience of the focus group process. In response they stated;

"The experience has been very worthwhile and I am very glad I participated in it." (FGP)

"Thank you so much for doing this." (FGP)

"Thank you so much for the experience." (FGP)

"Thanks for doing this. It feels good to be part of something that will help others." (FGP)

"The focus group was extremely well run." (FGP)

⁵³ [Criminal Justice Act 1993, S. 5(3)(a) as amended by Criminal Procedure Act 2010, Part 2 S.4]

⁵⁴ Susan Leahy, "Bad Laws Or Bad Attitudes? Assessing The Impact Of Societal Attitudes Upon The Conviction Rate For Rape In Ireland", *Irish Journal Of Applied Social Studies*, 14.1 (2014), 18-28. P19

⁵⁵ [Criminal Law (Rape) Act 1981, S. 3(1) (as amended by the Sex Offenders Act 2001)]

⁵⁶ Leahy, *The Realities of Rape Trials in Ireland: Perspectives from Practice*, (Limerick: University of Limerick, 2021). P24

⁵⁷ Judith Herman, *Trauma And Recovery, The Aftermath Of Violence - From Domestic Abuse To Political Terror*, 3rd edn (New York: Basic Books, 1992). P265

Conclusion

4

Conclusion

This research focused on the experiences of complainants of sexual crime, who have engaged first hand with the criminal justice system, at any level. Fifteen victims/survivors were provided with a platform to share their unique insight and knowledge of how complainants experience the justice process. With all of their complaints finalised, the participants had nothing to gain, except the hope to influence Irish legislation and enrich public policy reform possibilities for future victim stakeholders.

By sharing testimony of their experiences, the participants have provided a key opportunity to learn what is working, what is not, what policies require additional reform and the efficacy of the suite of sexual offences legislation in practice in Ireland. By contributing to this project, the participants have enhanced our understanding of how a complainant's trauma can be impacted at every stage of criminal justice process. It is hoped that the meaningful insight provided in this research allows for further consideration of system reform.

This report noted that Ireland has seen positive legislative advancements with the enactment of The Criminal Law (Sexual Offences) Act and The Criminal Justice (Victims of Crime) Act 2017 and recognition of the need for further policy and legislative reform as presented in The O'Malley Review and Supporting a Victims Journey; the implementation plan published by the Minister for Justice in 2020 which details the plan of action and time lines for delivery of the recommendations included in the O'Malley Review. However as the testimony of the participants demonstrates, a need for further, trauma informed, extra-legal development is required.

It is acknowledged that some of the participants' interaction with the criminal justice system pre-dated the above legislative advancements; therefore certain issues mentioned have now been resolved. Nevertheless, key issues raised show immediate attention and reform is still required.

When examining the decision to report, participants cited their own mental health, concern for other potential victims or a desire for acknowledgement as motivating factors for reporting. Others spoke of how their desire to protect family acted as a deterrent to reporting. It is therefore considered essential that all members of AGS who may interact with a complainant of sexual crime, be aware of the wealth of factors which can contribute to the delay in reporting, and to be receptive to those who do come forward. This

research has also reiterated the need for all professionals to be cognisant of the impact of gender dynamics on sexual trauma, and where possible, to make efforts to canvass and cater to the preference of the complainant.

Participants spoke of the manner in which they were treated by members of AGS in the process of the complaint being made and investigated. Differing experiences were reported which ranged from the participant feeling at ease;

“Actually going into the garda station that day was probably more relaxing and more engaging and I was made feel so at ease that I just gave me whole statement that evening...”

to a participant describing inappropriate conduct from a investigating member;

“...And looking back at it now, fucking hell. I was there reporting multiple rapes and this guy was like, ‘oh are you fit? You look fit, you run? Oh cool, I’d say you’ve good craic on a night out’ and all this kind of stuff.”

The research suggests a correlation between an officer's understanding of trauma and how it may manifest within a complainant (memory recall, presentation and needs) and the quality of evidence elicited in the statement. In response to the O'Malley Report, the Minister for Justice has announced training for front-line members of AGS in the principles and practices for engaging with vulnerable victims and witnesses to be rolled out.⁵⁸

It was established that a determining factor in the wellbeing of the victim/survivor is the quality and quantity of communication they received throughout the investigation and prosecution process. Participants spoke of feeling powerless when they were not presented with a 'roadmap' of the next stages after making a complaint. They disclosed feeling triggered and re-traumatised by the lack of information and communication from AGS after reporting. A disparity

was noted between the need for regular communication and the right to information and updates.

A pivotal moment for five participants of this research was the DPP decision not to prosecute their complaint. They expressed feeling let down, disappointed, not believed, surprised and dismissed. One participant spoke about just wanting it to have been allowed proceed to court, where the accused person would have had to attend. Another spoke of feeling like ‘collateral damage’ in the whole process.

Throughout this research, it has been shown that the trial and court process is one in which the needs and comfort of the complainant is not central. Participants explained feeling intimidated at the courtroom layout and their proximity to the accused and his/her legal counsel. In particular, one participant disclosed that while giving evidence in court, the accused person in their case repeatedly tutted and commented ‘liar, liar’. The issue of courtroom layout⁵⁹ and consistent, victim safe courthouse facilities⁶⁰ is one which has been raised in recent years.

Participants recalled their personal counselling/therapy notes being requested as evidence. They described feeling exposed and violated, emotions often associated with the abuse itself. One participant presented the issue of having to speak to somebody else’s impression of you;

“They all take different types of notes, so you don’t know what they’re writing.”

It is noted that the propensity for counselling notes to be requested in sexual crime cases is higher than in other serious crime.

The manner in which complainants are spoken to or questioned was a feature of several participants’ recollection. They attested to feeling confused by the language, feeling badgered by repetitive questioning and feeling that the system was deeply unfair. There have been calls for a code of conduct to be developed for legal professionals in order to advise best practice regarding the use of accessible language and respectful questioning.⁶¹

Finally, the value of an experienced professional to provide information, support, accompaniment and advocacy services from pre-reporting through to appeal was highlighted throughout this research.

⁵⁸ Department of Justice and Equality, Supporting a Victim’s Journey, A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases (Dublin: Department of Justice and Equality, 2020). P6

⁵⁹ Houses of the Oireachtas Joint Committee on Justice, Report on Victim’s Testimony in Cases of Rape and Sexual Assault (Dublin: Houses of the Oireachtas, 2021). P45

⁶⁰ O’Malley, Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences, (Dublin: Department of Justice and Equality, 2020). Para 2.44 P31.

⁶¹ Houses of the Oireachtas Joint Committee on Justice, Report on Victim’s Testimony in Cases of Rape and Sexual Assault (Dublin: Houses of the Oireachtas, 2021). P14



Recommendations

5

Recommendations

This research provided a platform for the voices and the experiences of the victim stakeholder to be heard. Through twelve hours of focus group sessions and eight individual interviews, the participants disclosed and discussed aspects of their journey through the criminal justice process, from initial interview to appeal. Several areas which warrant further attention and reform were identified and are presented below;

- An information gap was identified related to the participants knowledge and understanding of both victims’ rights and human rights, and how these rights apply in the criminal justice context. Increased public awareness campaigns are recommended to address this gap.
- This research presented testimony of participants who did not feel that their abuse was met with compassion and understanding by members of AGS. Specialist trauma informed training is recommended to inform interview approaches within AGS. This training would be mandatory and immediate for all front-line staff. The document ‘Supporting a victims Journey’⁶² published by the Department of Justice also mirrored this recommendation.
- Reducing the ‘avoidable delay’⁶³ as referenced in the O’Malley Report , in cases being brought before court for trial is an issue which needs to be addressed with immediacy. The detrimental impact of prosecutorial process delay on a complainant is an issue which has been documented in this report. An increase in resources (judges/court facilities) must be prioritised especially given the effect that pandemic related court closures have had on court lists.
- A code of conduct regarding the manner of questioning witnesses during cross examination is recommended for all barristers practicing criminal law, particularly cases involving sexual and domestic crime.
- This report sets out rights holders experience and expertise. It is recommended that public bodies in the Justice sector consider this report as a key source of evidence when implementing their Public Sector Equality and Human Rights Duty as part of an evidence based approach to their statutory obligation.

“I think there could’ve been a lot more support and information, guidance, from the Guards.” (IIP)

⁶² Department of Justice and Equality, Supporting a Victim’s Journey, A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases (Dublin: Department of Justice and Equality, 2020). P6

⁶³ O’Malley, Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences, (Dublin: Department of Justice and Equality, 2020). P112

⁶⁴ Dr. Lori Haskell and Dr. Melanie Randall, The Impact Of Trauma On Adult Sexual Assault Victims (Ottawa: Department of Justice Canada, 2019), pp. 1-42. P27.

⁶⁵ O’Malley, Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences, (Dublin: Department of Justice and Equality, 2020). Para 2.4. P31.

⁶⁶ Department of Justice and Equality, Supporting a Victim’s Journey, A Plan to Help Victims and Vulnerable Witnesses in Sexual Violence Cases (Dublin: Department of Justice and Equality, 2020). P6

- Specialist training is recommended for judges, barristers, solicitors and all legal professionals working on the front-line. This training which is recommended to be mandatory would focus on the neurobiology of trauma and sexual abuse, and the complexities of the victim/survivor responses. As Haskell and Randle argued, “This kind of knowledge is not taught in law schools.”⁶⁴

“I think if people like the judge, if they all had an idea of what it’s like for a victim on every different type of level that there is, it would just give a little bit more hope to the victim sitting in the seat. It’s hard enough after going through it but to feel like you’re being abused again in a court room.” (IIP)
- Multiple issues regarding the layout of a courtroom were voiced by the participants of this research. Thus, a reconfiguration of the courtroom layout is recommended. It was also noted that whilst modern courtroom facilities are now available in many cities, it is not consistent across the country. The standardisation of witness facilities in courthouses is recommended. This point has previously been suggested in the O’Malley Report recommendations.⁶⁵

“The court room itself has way too many people in there, too public not private for these already stressful cases for the victim and embarrassing.” (IIP)
- A ‘one-stop shop’ model of combined services to deal with sexual abuse is recommended. The Barnahaus facility in Galway has piloted a multi-disciplinary approach to child abuse by accommodating; health, medical, therapeutic and policing aspects under one roof.⁶⁶ Adopting a similar holistic approach could make it easier for adult victims/complainants to engage with authorities like AGS and Tusla, while also accessing mental health and support services.

“I think having a one stop shop where you can access all information, because obviously I remembered a lot of what happened to me when I was older, but still it was very hard to navigate everything... It was just very hard to go from one thing to the next” (FGP)
- The benefit of engaging a professional service to provide support, information about the criminal process, referrals to specialist supports and court accompaniment was one which was consistently highlighted throughout this research. This service needs to be offered as early in the process as possible and must be delivered free of cost.

“I think it has to be the right supports, and they have to be put in place from the very beginning and they have to stay in place...you need nearly to have the support worker on your case.” (IIP)

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