

Irish Human Rights and Equality Commission

Observations on the Criminal Justice (Victims of Crime) Bill 2016

February 2017



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

Contents

Introduction	3
1. Transposition of the Victims' Directive	4
1.1. Recognising a victim of crime	5
1.2. Personal characteristics	5
1.3. Special measures	6
1.4. Information on making a complaint in respect of a breach of rights or obligations	6
1.5. Restorative justice	7
2. Implementing the rights of victims of crime in practice.....	8
2.1. Under-reporting of crimes.....	8
2.2. Provision of timely, meaningful and accessible information.....	9
2.3. Consistency of practice in providing high-quality victim supports	10
2.4. Protection against repeat and secondary victimisation and effective remedies	12

Introduction

The Irish Human Rights and Equality Commission ('IHREC' or the 'Commission') was established by the *Irish Human Rights and Equality Commission Act 2014* (the '2014 Act').¹ The Commission has a statutory remit to protect and promote human rights and equality in the State, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, to encourage good practice in intercultural relations and to work towards the elimination of human rights abuses and discrimination.² The Commission's functions include the examination of any legislative proposal and reporting its views on any implications for human rights and equality.³

The Commission welcomes the publication of the *Criminal Justice (Victims of Crime) Bill 2016* (the 'Bill') as the first proposal to comprehensively set out the rights of victims of crime in primary law.

In Part 1 of these observations, the Commission provides views on the specific wording in the Bill and Ireland's obligations to transpose the *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA* (the 'Victims' Directive').

In Part 2, the Commission draws attention to a number of areas which have been identified as particularly challenging in advancing victims' rights in Ireland and where reports of negative experiences by victims in the criminal justice system evidence gaps in protection for victims.

The Commission's observations draw on guidance published by the European Commission on transposing the Directive (the 'European Commission Guidance Document')⁴ as well as commentary from academic and civil society sources to inform best practice in implementing the Victims' Directive to improve the experience and outcomes for victims of crime.

¹ The *Irish Human Rights and Equality Commission Act 2014* merged the former Irish Human Rights Commission and the former Equality Authority into a single enhanced body.

² Section 10(1)(a)–(e) of the 2014 Act.

³ Section 10(2)(c) of the 2014 Act.

⁴ See European Commission (2013) *DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, available at: http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf

1. Transposition of the Victims' Directive

In this part, the Commission draws attention to specific aspects of the Bill which raise issues in terms of fully reflecting the objectives of the Victims' Directive.

Enactment of the Bill is required to transpose the Victims' Directive. The deadline for transposition of the Victims' Directive was 16 November 2015, from which date the Directive has had direct effect *vis-à-vis* the State. While a number of implementing measures have been put in place following the passing of the transposition deadline, it is vital that all of the protections and supports are put on a statutory footing in order to secure the required protections for victims of crime.

The Commission welcomes the steps already taken to implement the Directive by the Office of the Director of Public Prosecution (the 'DPP'), for example in establishing a new Communications and Victim Liaison Unit and to implement rights under the Victims' Directive pending transposition in law.⁵ The Commission further welcomes establishment of a Protective Services Bureau and the Garda Victim Service Offices by An Garda Síochána, the increased funding allocated by the Victims of Crime Office to victim support services,⁶ training and other initiatives which anticipate transposition of the Directive.⁷

The Commission highlights the importance of adequate transposition of the Victims' Directive without further delay,⁸ as it represents the minimum protections required to be implemented by EU Member States. Transposition of the Victims' Directive should respect the general principles of EU law (including equality and non-discrimination), the jurisprudence of the European Court of Human Rights and relevant standards developed by the United Nations and the Council of Europe. The Charter of Fundamental Rights of the EU applies to Ireland in its implementation of the Victims' Directive,⁹ and the Directive should also be read in light of the UN Convention on the Rights of Persons with Disabilities, to which the EU is a state party.¹⁰

⁵ In relation to all decisions made after 16 November 2015, a victim of crime can request a right to a summary of reasons for a decision not to prosecute. Previously (from 2008) this right was available in relation to fatal cases only. The right under the Directive to an independent review of that decision will 'underpin the policy which my Office has adopted for many years of giving victims the opportunity to ask for a review of a decision not to prosecute'. See Claire Loftus (2015) *Statement by Claire Loftus, Director of Public Prosecutions, on the EU Victims Directive* [press release], 16 November 2015, available at: https://www.dppireland.ie/filestore/documents/Press_Release_re_EU_Victims_Directive_2015.11.16.pdf

⁶ See An Tánaiste, Frances Fitzgerald (2016) *Tánaiste announces funding of €1.712 million for organisations supporting victims of crime*, 30 December 2016, available at: <http://www.justice.ie/en/JELR/Pages/PR16000405>

⁷ See An Tánaiste, Frances Fitzgerald (2015) *Minister Fitzgerald welcomes nationwide network of Garda Victim Service Offices* [press release] 13 November 2015, available at: <http://www.justice.ie/en/JELR/Pages/PR15000590>

⁸ The consequence of inadequate transposition of EU law in Ireland has in recent years resulted in victims of crime being subject to further victimisation and being denied assistance and support measures, in a case involving human trafficking. The Commission previously highlighted the incomplete transposition of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims in its *amicus curiae* Outline Submissions in *P v The Chief Superintendent of the Garda National Immigration Bureau & Ors* [2015] IEHC 232. At paragraph 36 of the Commission's Outline Submissions it stated that: 'Ireland has not put in place any legislative measures to transpose Article 11 of the Directive. Moreover, whereas various aspects of human trafficking have been made criminal offences under the national legislation, there is no express definition provided for under national legislation of "victim"'. The Outline Submissions are available: <https://www.ihrec.ie/documents/p-v-chief-superintendent-of-the-garda-national-immigration-bureau-ors/>. The High Court ultimately found the mechanism adopted for the determination of the applicant's status as a victim of human trafficking to be inadequate in terms of the transposition of the Directive. See paragraphs 196-205 of the judgment, available at: <http://www.courts.ie/Judgments.nsf/0/1E249494B215FC4380257E2A004BC932>.

⁹ The Charter of Fundamental Rights of the EU protects, amongst other matters: the right to integrity (Article 3), liberty and security (Article 6), respect for private and family life (Article 7), the right to property (Article 17), the principle of non-discrimination (Article 21), the principle of equality between women and men (Article 23), the rights of the child (Article 24), the rights of the elderly (Article 25) the rights of persons with disabilities (Article 26) and the right to an effective remedy and to a fair trial (Article 47).

¹⁰ See the Joined Cases *Ring v Dansk almennyttigt Boligselskab*, April 2013, CJEU (C-335/11 & C-337/11).

1.1. Recognising a victim of crime

Section 2 of the Bill defines a ‘victim’ as a ‘natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by an offence’. The term victim extends to a family member where the death of a victim is caused directly by an offence. The Commission welcomes the introduction of an overarching definition of ‘victim’ in Irish law,¹¹ which is aligned to the definition in the Victims’ Directive.

The Victims’ Directive requires states to ensure that access to victim support services be facilitated at the earliest point following a crime and that access is not dependent on a victim making a formal complaint nor is it dependent on a formal investigation being launched.¹² Recital 19 of the Victims’ Directive elaborates that a victim enjoys this status ‘regardless of whether an offender is identified, apprehended, prosecuted or convicted’ and regardless of the relationship between [the offender and the victim]’.

Amending the definition of victim to reflect Recital 19 of the Victims’ Directive may assist in clarifying that supports are available to victims in the absence of formal criminal proceedings being initiated.

The Commission recommends expanding the definition of ‘victim’ to ensure, for the avoidance of doubt, that an individual may be considered a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the relationship between the offender and the victim.

1.2. Personal characteristics

The Victims’ Directive requires individual assessments to be carried out¹³ so that victims have their specific needs protected during criminal proceedings.¹⁴ The requirement to take account of victims’ individual needs on a case-by-case basis is crucial.¹⁵ The assessment will, for example, have a bearing on the extent and scope of questioning to which the victim is exposed. Individual assessments should determine whether a victim is particularly vulnerable to secondary and repeat victimisation, intimidation and retaliation.

Section 14(2)(d) of the Bill lists, non-exhaustively, the personal characteristics of the victim that must be taken into account in any assessment. The Commission welcomes the inclusive approach in this regard.

¹¹ The term ‘victim’ has previously been defined in specific contexts, including under the *Criminal Justice (Location of Victims’ Remains) Act 1999* and the *Children Act 2001* as amended by the *Criminal Justice Act 2006*.

¹² The European Commission Guidance Document reports that early intervention can reduce the medium and long-term consequences of crime for an individual and for society as a whole, particularly regarding the decision to report a crime (see p.24 and p.26).

¹³ Article 22 of the Victims’ Directive.

¹⁴ See Article 23 of the Victims’ Directive. Children are always considered to have specific protection needs. In his 9th Report, Special Rapporteur Geoffrey Shannon highlighted that ‘child-sensitive interviewing should be a requirement for child victims of crime. Children should be properly informed in advance of the interview process [and] should not be interviewed repeatedly or inappropriately’. In addition, ‘information on support services should be adequately communicated to children and parents’. See p.15 Geoffrey Shannon (2016) *Ninth Report of the Special Rapporteur on Child Protection*, available at:

http://www.dcy.gov.ie/viewdoc.asp?fn=/documents/Child_Welfare_Protection/SpecialRapporteurChildProtection.htm

¹⁵ Although the assessment has an individual focus and is adaptable according to specific needs, member states should nonetheless develop ‘clear objective procedures’ to determine the scrutiny required to assess the victim of crime and for example, the extent to which expert risk assessment is required, see European Commission Guidance Document p. 45.

Section 14(2)(e) of the Bill relates to instances where crimes appear to have been committed with bias or a discriminatory motive. This sub-section directly cross-refers to the list of personal characteristics set out in section 14(2)(d). This formulation may be interpreted as limiting potential hate crime to an exhaustive list of personal characteristics, as set out in Section 14(2)(d), to the potential exclusion of other personal characteristics.¹⁶

The Commission recommends amendment of section 14(2)(e) of the Bill to clarify that the basis of hate crime is not limited to the personal characteristics listed in section 14(2)(d) of the Bill and may relate to other characteristics.

1.3. Special measures

Section 16 of the Bill outlines the special measures which may be implemented in respect of a victim during interviews in the course of an investigation. These may include measures to ensure that interviews are carried out in adapted premises; that the interviews are carried out by persons specially trained for that purpose; in cases of multiple interviews that the same officer carries out the interview where possible and in cases of sexual violence, gender-based violence or violence in a close relationship, that there is a right for a victim to be interviewed by a person of the same sex as the victim.

While the Bill appears to transpose the Directive's strict requirements in this regard, such special measures *may* be implemented in respect of a victim¹⁷ and are only a statutory requirement where a direction under section 14(8)(b) of the Bill has been issued.¹⁸ Preferably, these special measures would be available, where possible, to all victims of crime as a matter of good practice,¹⁹ to be limited only by the overarching considerations set out in section 16(2)(a)-(d) (i.e. where there are operational or practical constraints, cases of urgency, prejudice or otherwise where they would be contrary to the administration of justice).

The Commission recommends that section 16(1) of the Bill be amended to provide that the special measures *shall* be implemented in respect of victims of crime. The exemptions set out in section 16(2)(a)-(d) would continue to apply to cover instances where invoking such measures is not viable.

1.4. Information on making a complaint in respect of a breach of rights or obligations

Section 6(1)(k) of the Bill provides that victims of crime must be given information on the procedure for making a complaint in respect of any alleged breach of rights or obligations arising under the legislation. This information relates to lodging a complaint to the Garda Síochána, the Garda Síochána Ombudsman Commission (GSOC), the Director of Public Prosecutions (DPP), the Courts Service, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre.²⁰

¹⁶ As noted in the European Commission Guidance Document, States should make sure that the correlation between victims' personal characteristics and the possibility of the occurrence of a crime committed (e.g. with bias or discriminatory motive) is taken into consideration. See p.45 European Commission Guidance Document.

¹⁷ See section 16(1) of the Bill.

¹⁸ In brief, section 14 of the Bill governs the assessment procedure and requires the member of the competent authority in each case to report the results of an assessment to a member of An Garda Síochána not below the rank of superintendent or an authorised officer of GSOC, whereupon that official will issue a direction to implement the necessary protection or special measures.

¹⁹ According to the European Commission Guidance Document (p.47): 'Good practice suggests that the measures listed in [Article 23(2)(a)-(b) of the Directive] should be offered to all victims of crime, not just victims recognised as having specific protection needs.'

²⁰ A designated centre is construed in accordance with the *Criminal Law (Insanity) Act 2006*.

Article (4)(1)(h) of the Victims' Directive requires that victims be able to access information on making a complaint where the victims' rights are not respected by the competent authority operating within the context of criminal proceedings.²¹ The requirement under the Victims Directive is arguably wider. It is not confined to information on complaints in respect of breaches of the *Criminal Justice (Victims of Crime) Act* but may also relate to other breaches arising in criminal proceedings.

The Commission recommends that information with regard to making a complaint should not be limited to breaches of the obligations under the *Criminal Justice (Victims of Crime) Act* and should be extended to instances where victims' rights are not respected more broadly in the context of criminal proceedings.²²

The Commission further notes that the establishment of a single point of contact for victims to register a complaint about their treatment in the criminal justice system would assist in securing greater transparency, consistency and foreseeability of treatment.²³

1.5. Restorative justice

The Bill does not propose to legislate for restorative justice, as had been signalled in the General Scheme of the Bill but the Commission notes the separate legislative proposals in this regard.²⁴ The Victims' Directive requires that where restorative justice services are available, safeguards are put in place to protect against secondary and repeat victimisation, to ensure that victims have access to 'safe and competent restorative justice services' and to ensure that restorative justice schemes are only used if it is 'in the interest of the victim', as required under Article 12 of the Victims' Directive.²⁵

The Commission recommends that where a decision is taken to provide a statutory basis for restorative justice in Ireland, the safeguards of the Victims' Directive are incorporated as necessary.

²¹ Article 4(1)(h) of the Victims' Directive.

²² Relevant statutes in this context might include the *Data Protection Acts 1998 and 2003* or the *Criminal Law (Human Trafficking) Act 2008*. Pre-legislative scrutiny on the General Scheme of the Bill heard calls for the establishment of an independent Victims of Crime Ombudsman to hear complaints from victims of crime.

²³ The establishment of a complaints mechanism has been identified as a particular challenge in transposing the Victims' Directive. See Romyana Grozdanova and Fiona De Londras (2014) *Protection Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Ireland*, Durham Human Rights Centre, Durham University, available at: <http://www.victimprotection.eu/index.php/2014-05-01-19-31-19/jd/finish/16-ie-ireland/121-ir-national-report>.

²⁴ The Commission notes proposals under the General Scheme of the *Criminal Justice (Community Sanctions) Bill* to provide for restorative justice measures in District Court criminal proceedings for minor offences.

²⁵ These safeguards are reflective of principles set out under the UN basic principles on use of restorative justice (2002) and the Council of Europe Recommendation concerning mediation in penal matters, see p.32 European Commission Guidance Document. The voluntary participation of the victim requires that the victim has sufficient and unbiased information about the process and the potential outcomes so that the victim can make an informed choice, and such information should be provided taking into account the subjective characteristics of each victim.

2. Implementing the rights of victims of crime in practice

Ireland in recent years has seen positive developments in victim-sensitive processes in the criminal justice sphere and the proposed legislation is a welcome further step in the provision of a comprehensive legal framework for victims of crime.

Despite this progress, significant challenges remain and below the Commission outlines a number of areas where difficulties may arise in discharging obligations under the Victims' Directive.

The Commission views the process of implementing the Victims' Directive as an opportunity to consider a number of broader issues requiring action, which may not necessarily find expression in the proposed *Criminal Justice (Victims of Crime) Bill 2016*. The European Commission Guidance Document notes that 'practical and technical implementation to achieve objectives of the Directive might be ensured by appropriate non-legislative measures.'²⁶ These may include the development of processes or guidance together with the implementation of training and awareness-raising initiatives.

The Commission is of the view that the effective systematic implementation of the Victims' Directive provides an opportunity to address a number of challenges faced by victims of crime in the criminal justice system.

2.1. Under-reporting of crimes

The provision of support for victims of crime must not be dependent on victims formally reporting a crime.²⁷ The underreporting of crimes has been identified as a general obstacle to guaranteeing victims' rights.²⁸

In Ireland, a high volume of victims of crime do not engage with the criminal justice system. However these victims 'may need and benefit from support such as the kinds of support provided for in the Victims' Directive'.²⁹ It appears that sexual offences in particular regularly go unreported.³⁰ There is also evidence of under-reporting by persons with disabilities experiencing

²⁶ See p.1 of the European Commission Guidance Document.

²⁷ See Article 8(5) of the Victims' Directive. Recital 40 of the Victims' Directive provides that although protections are not dependent on the victim making a complaint, the competent authority (which may be An Garda Síochána or GSOC as proposed under the Bill) is best placed to provide information to victims.

²⁸ Research carried out by the EU Fundamental Rights Agency has consistently found that: 'under-reporting is a major obstacle to ensuring victims have full access to their rights. Targeted and practical victim support systems are a crucial element of any strategy to increase trust in the authorities and increase reporting rates, without which it's impossible to improve the investigation and prosecution of crime' See EU Fundamental Rights Agency (2015) *November Deadline For New EU Victims' Directive* [press release], available here: <http://emergency-services.ie/wp-content/uploads/2015/04/EU-Crime-Victims-1.pdf>

²⁹ Romyana Grozdanova and Fiona De Londras (2014) *Protection Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Ireland*, Durham Human Rights Centre, Durham University, p.3 available at: <http://www.victimprotection.eu/index.php/2014-05-01-19-31-19/jd/finish/16-ie-ireland/121-ir-national-report>.

³⁰ Noeline Blackwell of Dublin Rape Crisis Centre wrote in May 2016 that: 'Not everyone will go on to report the sexual violence to the police. There is general acceptance that sexual violence is greatly under-reported. The last thorough baseline study in Ireland on the extent of sexual violence, in 2002, reckoned that 13pc of Irish women and 5pc of Irish men have experienced rape or attempted rape over their lifetime. Yet the Courts Service report shows that, in 2015, there were 379 rape verdicts. In the absence of badly needed up-to-date research, it seems we must conclude that only a tiny fraction of those affected by sexual violence will report it.' See Noeline Blackwell (2016) *Opinion Editorial: DRCC's CEO Noeline Blackwell*, 26 July 2016, available at: <http://www.drcc.ie/2016/07/opinion-editorial-drccs-ceo-noeline-blackwell/>

crime.³¹ In addition, recent research shows that victims of hate crime have shown reluctance to report crimes for various reasons, including a perception that the perpetrator would not be detected or a perception that the complainant would not be believed or taken seriously.³² Under-reporting in turn contributes to deficits in data available on the prevalence of crime against particular groups.³³

Reporting of crimes should be encouraged,³⁴ and should be facilitated by reliable support services, modern communication technologies and well-trained practitioners,³⁵ to enable safe and easy reporting.³⁶ Third-party reporting (for example by civil society organisations) should be facilitated.³⁷ Training in restorative justice schemes has also been seen to increase the reporting of crimes.³⁸

The Commission recommends that the State take measures to encourage the reporting of crimes and to ensure that the provision of supports services are made available to victims of crime who do not make a formal complaint to An Garda Síochána/GSOC in relation to a criminal offence.

2.2. Provision of timely, meaningful and accessible information

Research indicates that inconsistencies and insufficiencies in meaningful information provision represent the principal hurdles to improving the position of victims of crime in Ireland.³⁹

The Victims' Directive requires the establishment of processes to guarantee the right of victims to receive accessible information in relation to their case.⁴⁰ The process of information-provision should be clear, transparent and not overly bureaucratic and should not be limited by the victim's

³¹ Research published in 2012 found that while people with disabilities are at a greater risk of being a victim of crime, crimes against people with disabilities is significantly underreported. See Claire Edwards *et al* (2012) *Access to Justice for People with Disabilities as Victims of Crime in Ireland*, Cork: University College Cork, available at: <http://nda.ie/nda-files/Access-to-Justice-for-People-with-Disabilities-as-Victims-of-Crime-in-Ireland1.pdf>

³² These reasons were cited in relation to homophobic and transphobic hate crimes. See Amanda Haynes *et al* (2016) *'Out of the Shadows' Legislating for Hate Crime in Ireland: Preliminary Findings* Research Commissioned by the Irish Council for Civil Liberties, available at: https://ulir.ul.ie/bitstream/handle/10344/4751/Schweppe_2015_shadows.pdf?sequence=2
See also EU Fundamental Rights Agency (2014) *Victims of Crime in the EU: the extent and nature of support for victims*, available at: http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf

³³ A key obstacle in Ireland relates to the absence of data on the prevalence of crime perpetrated against people with disabilities and information on 'how far supports put in place for people with disabilities are working to secure equitable access to justice'. See p.3 Claire Edwards *et al* (2012) *Access to Justice for People with Disabilities as Victims of Crime in Ireland*, University College Cork, available at: <http://nda.ie/nda-files/Access-to-Justice-for-People-with-Disabilities-as-Victims-of-Crime-in-Ireland1.pdf>

³⁴ Recital 63 of the Victims' Directive states that reporting should be encouraged and facilitated in order to break the cycle of repeat victimisation.

³⁵ Reporting of crime can be encouraged by training all staff to deal with victims of crime in an informed and sympathetic manner, see p.13 EU Fundamental Rights Agency (2014) *Victims of Crime in the EU: the extent and nature of support for victims*, available at: http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf

³⁶ See European Commission Guidance Document, p. 26.

³⁷ See Recital 63 of the Victims' Directive.

³⁸ See submission of Ms Claire Casey Oireachtas Committee on Justice, Defence and Equality (2014) *Report on hearings in relation to the Scheme of the Criminal Justice (Community Sanctions) Bill*, available here: <http://www.oireachtas.ie/parliament/mediazone/pressreleases/name-22546-en.html>

³⁹ Romyana Grozdanova and Fiona De Londras (2014) *Protection Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Ireland*, Durham Human Rights Centre, Durham University, available at: <http://www.victimprotection.eu/index.php/2014-05-01-19-31-19/jd/finish/16-ie-ireland/121-ir-national-report>. See also p.8 Claire Edwards *et al* (2012) *Access to Justice for People with Disabilities as Victims of Crime in Ireland*, Cork: University College Cork, available at; <http://nda.ie/nda-files/Access-to-Justice-for-People-with-Disabilities-as-Victims-of-Crime-in-Ireland1.pdf>

⁴⁰ The main challenge, according to the European Commission, is: 'to develop appropriate tools that make different types of information accessible to victims'. See p.14 European Commission Guidance Document.

lack of financial resources.⁴¹ A situation where victims are passed from one agency to another should be avoided.⁴²

Section 7(1) of the Bill transposes the obligation (on a member of An Garda Síochána or a member of GSOC) to inform victims of their right to receive information and of the procedures involved in making a request.⁴³ Thereafter, the onus shifts to the victim under section 7(2) of the Bill to make a request for information from the relevant body which, depending on the stage of proceedings, may be any one or a combination of the following organisations: the Garda Síochána, GSOC, the DPP, the Irish Prison Service, the director of a children detention school or the clinical director of a designated centre.⁴⁴ This involves various agencies and potentially a multiplicity of approaches.

The Commission recommends that where, as is proposed under the Bill, different agencies are responsible for informing the victim about their case, minimum standards regarding the manner and timeframes of information-provision would assist victims in knowing what to expect regarding each update and would facilitate consistency of practice.

Authorities should develop procedures to assess the communication needs and constraints of individual victims through an analysis of all of the factors. The individual-focussed approach of the Victims' Directive means that obligations in terms of information-provision are not discharged through general awareness-raising alone, for example, the publication of information on-line or the dissemination of information leaflets.⁴⁵

The Commission recommends that the State provide the necessary resources and guidance to relevant bodies to satisfy the requirement of providing information, bespoke to the victim in question, on a case-by-case basis.

2.3. Consistency of practice in providing high-quality victim supports

The reported experiences of victims of crime show inconsistencies in treatment by the criminal justice process.⁴⁶ By way of example, a lack of clarity regarding the role of intermediaries has been identified where persons with disabilities are seeking to access justice.⁴⁷ Also, the use of restorative

⁴¹ See p. 31 European Commission Guidance Document. The UK operates a 'track my crime' online facility which is designed to offer greater choice to victims in how they access information, in a faster and more efficient manner and in a way that is convenient for the victim. For information on the facility, see here: <https://trackmycrime.police.uk/about/>

⁴² See p.14, EU Fundamental Rights Agency (2014) *Victims of Crime in the EU: the extent and nature of support for victims*, available at: http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf

⁴³ According to Victims Support Europe: 'victims have a right to receive information, not to be made responsible for its delivery', see p. 23 Victim Support Europe (2013) *Handbook for Implementation of Legislation and Best Practice for Victims of Crime in Europe*.

⁴⁴ A designated centre is construed in accordance with the *Criminal Law (Insanity) Act 2006*.

⁴⁵ See pp. 12-16 European Commission Guidance Document. General information dissemination and awareness raising is also necessary, particularly in the context of crime underreporting. By way of example, research carried out by UCC found that: 'There is a lack of strategic identification of people with disabilities as a specific group within the broader victim constituency, both at a central government policy level and in the practice of organisations' (p.5). Amongst its recommendations, it advised that the State should provide 'individualised support to people with disabilities at all stages of their encounter with the criminal justice system' (p.8), Claire Edwards *et al* (2012) *Access to Justice for People with Disabilities as Victims of Crime in Ireland*, Cork: University College Cork, available at: <http://nda.ie/nda-files/Access-to-Justice-for-People-with-Disabilities-as-Victims-of-Crime-in-Ireland1.pdf>

⁴⁶ See Romyana Grozdanova and Fiona De Londras (2014) *Protection Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial. National Report: Ireland*, Durham Human Rights Centre, Durham University, available at: <http://www.victimprotection.eu/index.php/2014-05-01-19-31-19/jd/finish/16-ie-ireland/121-ir-national-report>.

⁴⁷ See p. 114-115, Claire Edwards *et al* (2012) *Access to Justice for People with Disabilities as Victims of Crime in Ireland*, University College Cork, available at: <http://nda.ie/nda-files/Access-to-Justice-for-People-with-Disabilities-as-Victims-of-Crime-in-Ireland1.pdf>. While the *Criminal Evidence Act 1992* legislated for the use of intermediaries as a support mechanism, inconsistencies appear to arise in their invocation and their effectiveness is also unclear as they appear to be

justice programmes is currently subject to a high degree of judicial discretion such that victims' and offenders' participation in such schemes may not be consistently foreseeable.⁴⁸

It is necessary to foster an environment where victims can expect the provision of minimum supports⁴⁹ and a certain uniformity of treatment. Consistency of practice should not mean that all victims of crime are treated the same, as the individual circumstances of the victim must be considered in each case. An integrated approach requires taking into account the relationship between various actors in the context of the social reality,⁵⁰ so that the needs of victims can be assessed in light of the surrounding circumstances.⁵¹ However, appropriate tools may be implemented to further overall consistency in victims' experiences of the criminal justice system.

The absence of a coordinated system for referring victims to support services is often considered to be a bottleneck for victims requiring support and referrals are sometimes not formalised.⁵² The European Commission Guidance Document recommends a 'horizontal coordinated approach at national level' to increase targeted and integrated support for victims with the possibility of setting up a focal point which would direct victims to the most appropriate service.⁵³

The provision of support services in Ireland is supported through the work of voluntary organisations.⁵⁴ The State however retains the responsibility under the Victims' Directive to ensure that the allocation of resources is evaluated, that consistency in the quality of support is assured and that there is appropriate geographical coverage including over rural and remote areas.⁵⁵

The Commission recommends that State consider the need for coordination where multiple support services are involved and that oversight of service delivery ensures consistency in quality.

Protections under the Victims' Directive are strongly dependent on the victim's interaction with professionals who are equipped to respond to the needs of victims in a 'respectful, sensitive, professional and non-discriminatory manner'.⁵⁶ Professionals in regular contact with victims of crime

used on an 'ad hoc' basis. There thus appears to be disconnect between the legislative basis and the practice in criminal proceedings.

⁴⁸ See p.4, Association for Criminal Justice, Research and Development (2013) *Submission to the Committee on Justice, Defence and Equality*. The General Scheme of the *Criminal Justice (Community Sanctions) Bill* proposed to make provision for restorative justice measures in District Court criminal proceedings for minor offences. During pre-legislative scrutiny of the General Scheme, submissions raised concerns regarding a lack of awareness of restorative justice amongst legal practitioners.

⁴⁹ Victim Support Europe outlines that all victim support services should be free of charge, confidential, victim-centred, independent, accessible, tailored to meet victims' individual needs, delivered by trained, qualified and monitored staff/volunteers, available regardless of whether the victim has reported the crime and available regardless of crime type or personal characteristics of the victim. See p.17-18 Victim Support Europe (2013) *Handbook for Implementation of Legislation and Best Practice for Victims of Crime in Europe*, available at: http://ec.europa.eu/justice/events/assises-justice-2013/files/contributions/51.1.1374573250handbookforimplementationandbestpracticeforvictimsofcrimeineurope_23713_en.pdf

⁵⁰ European Commission Guidance Document, p. 28.

⁵¹ This approach is in line with the Council of Istanbul Convention Action against violence against women and domestic violence.

⁵² Personal data restraints, a lack of information or training or a lack of simple referral protocols are some of the reasons for referral systems not always working. See European Commission Guidance Document, pp. 24-25. See also p. 19 Victim Support Europe (2013) *Handbook for Implementation of Legislation and Best Practice for Victims of Crime in Europe* available at: http://ec.europa.eu/justice/events/assises-justice-2013/files/contributions/51.1.1374573250handbookforimplementationandbestpracticeforvictimsofcrimeineurope_23713_en.pdf

⁵³ European Commission Guidance Document, p. 27.

⁵⁴ See the website of the Commission for the Support of Victims <http://www.csvc.ie/en/csvc/Pages/Funding>

⁵⁵ European Commission Guidance Document, pp. 26-27.

⁵⁶ See Recital 61 of the Victims' Directive. Persons likely to be involved in individual assessments should receive specific training as this is intrinsic to how an assessment is carried out. Training should be provided to members of the police, court

should be provided with appropriate training, on initial and ongoing bases, which should be both specialist and general in nature.⁵⁷ Training should be gender sensitive and accompanied by guidelines, recommendations and best practice exchanges.⁵⁸ Funding should be made available to victim support services in order for them to benefit from continual training.

The Commission recommends that the State build on current training initiatives to ensure that all professionals in regular contact with victims of crime receive regular training.

2.4. Protection against repeat and secondary victimisation and effective remedies

In this section, the Commission notes certain categories of victims of crime considered to be particularly at risk, potentially deriving from their personal characteristics or from the severity, nature or circumstances of the crime suffered.⁵⁹ Action and resources will be required to mitigate against the possibility of repeat and secondary victimisation, intimidation and retaliation.

- Trafficking in human beings – The current system for the identification of potential victims of trafficking carries the continued risk of repeat and secondary victimisation, as exposed in the *P Case*.⁶⁰ The State does not have an adequate statutory framework to govern the identification and protection of victims of trafficking. Procedures for identification and protection are governed largely by administrative, non-statutory instruments and the Commission has recently called for the State to adopt legislation to ensure that effective, transparent and accessible measures give effect to Ireland’s obligations under the Council of Europe *Convention on Action against Trafficking in Human Beings*.⁶¹

The implementation of the Victims’ Directive should be considered in the proposed review of the identification process highlighted in the *National Action Plan on Trafficking in Human Beings*.⁶² The Commission recently recommended that this review should be subject to clear timelines to indicate when the new identification process will be in place, and that the State outline the protective measures to be applied in the interim.⁶³

- Gender-based violence⁶⁴ – It has been reported that breaches of court orders to protect women from domestic violence ‘go unpunished’ and that ‘discretion and stereotyping is

staff, lawyers, prosecutors, judges (with due regard to the independence of the judiciary), practitioners in victim support services and those involved in restorative justice.

⁵⁷ According to Victim Support Europe: ‘Appropriate training is one of the most vital resources for professionals working with victims of crime’, p. 10 Victim Support Europe (2013) *Handbook for Implementation of Legislation and Best Practice for Victims of Crime in Europe* available at: http://ec.europa.eu/justice/events/assises-justice-2013/files/contributions/51.1.1374573250handbookforimplementationandbestpracticeforvictimsofcrimeineurope_23713_en.pdf

⁵⁸ See Recital 61 of the Victims’ Directive.

⁵⁹ See Recital 55 of the Victims Directive.

⁶⁰ *P v The Chief Superintendent of the Garda National Immigration Bureau & Ors* [2015] IEHC 232. In this case, a victim of trafficking in human beings had spent almost three years in detention in the Dóchas Centre, much of that time waiting for a decision on her application to be recognised as a victim of human trafficking.

⁶¹ See Irish Human Rights and Equality Commission (2016) *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*, 5 September 2016, available at: <https://www.ihrec.ie/app/uploads/2016/12/IHREC-Submission-to-GRETA-2016.pdf>

⁶² See Anti-Human Trafficking Unit (2016) *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*, available at:

http://www.justice.ie/en/JELR/2nd_National_Action_Plan_to_Prevent_and_Combat_Human_Trafficking_in_Ireland.pdf/Files/2nd_National_Action_Plan_to_Prevent_and_Combat_Human_Trafficking_in_Ireland.pdf

⁶³ See Irish Human Rights and Equality Commission (2016) *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*, 5 September 2016, available at: <https://www.ihrec.ie/app/uploads/2016/12/IHREC-Submission-to-GRETA-2016.pdf>

⁶⁴ According to the EU Fundamental Rights Agency: ‘To capture the rights violations suffered by victims of long-lasting domestic violence, [...] law must criminalise more than the single acts of violence. It must also reflect the psychological impact of such a relationship, including the feelings of fear, helplessness and vilification suffered in the long-term’, see

integral to the way in which a women can be viewed and treated’ by the legal system,⁶⁵ pointing to the potential for secondary and repeat victimisation, intimidation and retaliation. In addition, Ireland is not currently fulfilling the minimum requirement to provide shelters or appropriate interim accommodation ‘for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation’,⁶⁶ with reports in 2016 of 4,831 unmet requests for emergency accommodation.⁶⁷ The State has committed to ratifying the Council of Europe *Convention on Preventing and Combating Violence against Women and Domestic Violence* (the ‘Istanbul Convention’) and the outstanding action points required are set out in the *Second National Strategy on Domestic, Sexual and gender-based Violence 2016 - 2021*.⁶⁸ The Commission has recommended execution of the necessary action points to enable the timely ratification of the Istanbul Convention.⁶⁹

- Hate crime⁷⁰ - While hate crime legislation is not required under the Victims’ Directive, deficiencies in the reporting, investigation and prosecution of hate crime in Ireland⁷¹ can make it difficult for the particular vulnerabilities of victims of hate crime to be factored into the prevention of repeat and secondary victimisation.
- Proceedings involving children - Ireland must implement a child-sensitive approach in protecting victims, making the child’s best interests the primary consideration and ensuring that the voice of the child is heard in any victim assessment. The Commission notes concerns raised by the Legal Aid Board in terms of the increased resource challenge which comes with hearing the voice of the child.⁷²

The Commission recommends that the State give effect to the necessary legislative reforms to protect certain categories of victims of crime. The Commission further recommends that the State ensure adequate investment in practical supports, training initiatives and awareness-raising efforts, in order to yield discernible improvements in the lives of victims of crime and to prevent against repeat and secondary victimisation, intimidation and retaliation.⁷³

pp.26-27 EU Fundamental Rights Agency (2014) *Victims of Crime in the EU: the extent and nature of support for victims*, available at: http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf

⁶⁵ Safe Ireland (2016) *The state we are in 2016: Towards a safe Ireland for women and children*, p. 16, available:

<http://www.safeireland.ie/safeireland-docs/STATE-WE-ARE-IN-SAFE-IRELAND.pdf>

⁶⁶ This is a requirement of Article 9(3) of the Victims Directive.

⁶⁷ Safe Ireland (2016) *The state we are in: Towards a safe Ireland for women and children*, p. 6, 15–16, available at:

<http://www.safeireland.ie/safeireland-docs/STATE-WE-ARE-IN-SAFE-IRELAND.pdf>

The Commission’s 2016 national consultation on the elimination of discrimination against women heard various reports of shortages in emergency accommodation from service providers. This was discussed in depth at each of the regional meetings in Letterkenny, Tralee, Castlebar and Monaghan. This lack of emergency accommodation may put victims of domestic violence at risk of secondary and repeat victimisation, intimidation and retaliation as the dearth of alternative options may compel the victim to return to an unsafe environment. See information on the Commission’s consultation at: <https://www.ihrec.ie/app/uploads/2017/02/What-is-life-like-for-women-in-Ireland-in-2016.pdf>

⁶⁸ The *Second National Strategy on Domestic, Sexual and gender-based Violence 2016 – 2021* together with the Action Plan for implementation are available to download on the website of Cosc at: <http://www.cosc.ie/en/COSC/Pages/WP08000096>

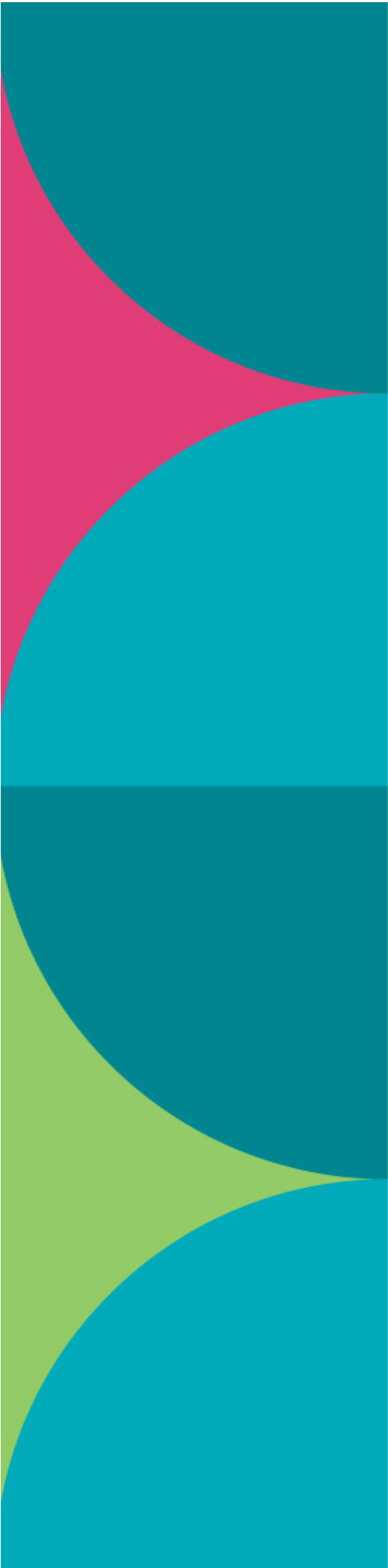
⁶⁹ See Section 6.1, Irish Human Rights and Equality Commission (2017) *Ireland and the Convention on the Elimination of Discrimination Against Women* January 2017, available at: <https://www.ihrec.ie/app/uploads/2017/02/Ireland-and-the-Convention-on-the-Elimination-of-All-Forms-of-Discrimination-Against-Women.pdf>

⁷⁰ According to the EU Fundamental Rights Agency: ‘in the case of violent acts committed with a discriminatory motive, criminal law must not just cover the incidents of violence, it must sufficiently reflect the discriminatory dimension’, see p.27 EU Fundamental Rights Agency (2014) *Victims of Crime in the EU: the extent and nature of support for victims*, available at: http://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf

⁷¹ These have been recently reported by Amanda Haynes et al (2016) ‘*Out of the Shadows’ Legislating for Hate Crime in Ireland: Preliminary Findings* Research Commissioned by the Irish Council for Civil Liberties, available at: https://ulir.ul.ie/bitstream/handle/10344/4751/Schweppe_2015_shadows.pdf?sequence=2


⁷² See Legal Aid Board (2016) *Annual Report 2015* available here <http://www.legalaidboard.ie/en/About-the-Board/Press-Publications/Annual-Reports/Lab-Annual-Report-2015.pdf>

⁷³ See Recital 9 of the Victims Directive.



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