

Sexual Trauma and Abuse: Restorative and Transformative Possibilities?

**A Collaborative Study on the
potential of Restorative Justice in
Sexual Crime in Ireland**

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UNIVERSITY COLLEGE DUBLIN

This report is based on the results of a collaborative study between Facing Forward, Ms Bernadette Fahy and Dr Marie Keenan.

The Research Assistant Interns who helped with data analysis [supported by the Government JobBridge Scheme] also made a significant contribution to this research and sincere thanks are due to Cian O' Concubhair, Olive Lyons, Graham Loftus, Martin Mulrennan, Hannah Gilmartin, Andrea Kennedy, Patrice Reilly and Chris Kelly. Cian O'Concubhair's written work on accountability mechanisms in legal systems enormously enhanced particular sections of this report. Thanks are due to UCD's Geary Institute for providing office accommodation for the Research Assistant Interns during their time working on the project.

ISBN 978-1-905254-90-3

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Title: Sexual Trauma and Abuse: Restorative and Transformative Possibilities?

Publishing School: School of Applied Social Science, University College Dublin, Ireland

Date: November 27th 2014



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Acknowledgements

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The Research Steering Group would like to acknowledge the many people who contributed to the research culminating in this report on ‘Sexual Trauma and Abuse: Restorative and Transformative Possibilities?’

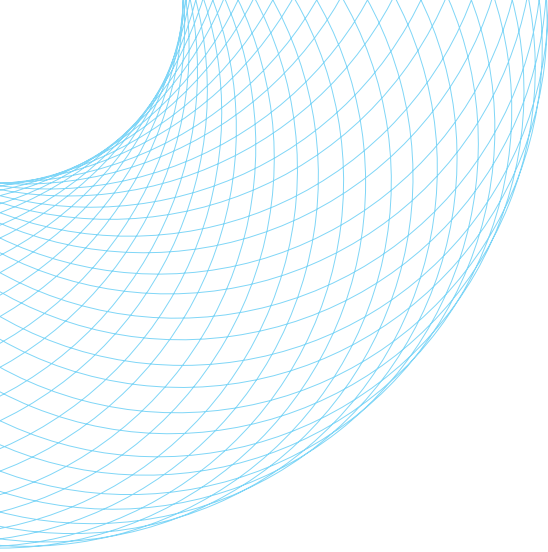
We are very grateful for the initial advice received from those working with individuals impacted by sexual violence as we began to explore the feasibility of this study, especially the Dublin Rape Crisis Centre, The Rape Crisis Network of Ireland, One in Four, Forensic Psychological Services, Towards Healing, National Counselling Service, Arbour Hill Prison Service, the Irish Penal Reform Trust and the Irish Council for Civil Liberties.

The following members of the research team conducted research interviews on a voluntarily basis and we wish to thank them sincerely: Frank Butler, John Curran, Jacinta De Paor, PJ Mc Gowan, Catherine O’Connell, Nadette Foley, Marie Williams, Bernadette Fahy, Niamh Joyce, Martin Mulrennan, Aoife Fennelly, Barbara Walshe, Marie Keenan and Ingrid Colvin.

We thank Bernadette Fahy for sharing the training of the research interviewers with Marie Keenan and Sr. Geraldine Smyth, OP for her advice. We thank the paid and unpaid transcribers of all of the 100 interviews, involving 149 people.

The Research Assistant Interns who helped with data analysis [supported by the Government JobBridge Scheme] also made a significant contribution to this research and sincere thanks are due to Cian O’ Concubhair, Olive Lyons, Graham Loftus, Martin Mulrennan, Hannah Gilmartin, Andrea Kennedy, Patrice Reilly and Chris Kelly, Cian O’Concubhair’s written work on accountability mechanisms in legal systems enormously enhanced particular sections of this report.

We acknowledge Dr Niamh Flanagan for her expertise in qualitative methods and for sharing the training of the Research Assistant Interns with Dr Marie Keenan. We thank Dr Caroline O’Nolan for her all-round support and willingness to help. We thank Naoimh Mc Namee for her



organisational expertise and Rebecca Graydon, Barrister at Law for sharing her knowledge of the Irish legal system with us.

To the many individuals, professionals and associations who offered psychological backup to our research participants we offer our sincere thanks. We acknowledge the hard work of the Facing Forward Management Committee, especially Barbara Walshe, in securing funding to continue the project and we thank our funders, University College Dublin (seed funding), the St Stephen's Green Trust, Sheehan and Partners Solicitors and the Tony Ryan Trust, whose financial support made this research and report possible.

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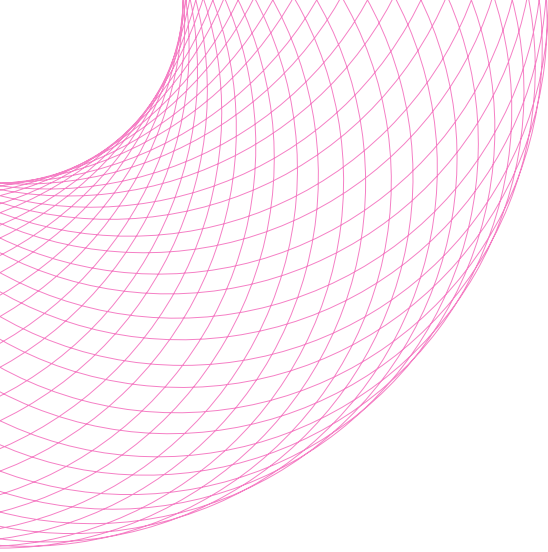
Most importantly this research would not have been possible without the participants in this study; those who have been harmed by sexual violence and those who have caused such harm, all of whom shared their experiences with us, experiences that were at times harrowing to recount. We are grateful to you and hope this research does justice to your stories and experiences. We also sincerely thank the families of victims and offenders, judges, legal professionals, Gardaí, Irish Prison Service management, prison therapists and psychologists, prison chaplains, Probation officers, therapists from NGOs and therapy centres, members of the print and broadcast media, bishops and members of religious orders, mediators and politicians from both houses of the Oireachtas. Our hope is that the findings of this study will further the knowledge of restorative justice and sexual violence in Ireland and encourage the development of a pilot project for restorative justice in cases of sexual violence in Ireland as a matter of urgent public concern.

Executive Summary

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At the time the National Commission on Restorative Justice reported in 2009, it said “While no offence should in principle be excluded from the restorative process, certain serious offences such as sexual assaults should be excluded from the initial phases of implementation” (NCRJ2009, p. 81). The evidence from the research presented in this study indicates that this cautious approach to restorative justice in sexual crime is now no longer appropriate. Based on the international literature examined, the international programmes contacted during the course of this study, and (most importantly) the views of 30 victims of sexual crime, 23 sexual offenders and a total of 149 research participants, a number of important issues became apparent:

- Victims and offenders of sexual crime experience unacceptable and at times debilitating delays in the administration of justice in Ireland.
- Information gaps and deficits regarding the processing of their cases through the criminal justice system added to the trauma for victims of sexual crime who felt peripheral to the criminal proceedings.
- The current adversarial justice system and punitive approaches taken in public social life towards convicted sexual offenders has the effect that offenders are willing to deny responsibility for their sexual offences and take the risk of forcing the state to prove the case against them.
- Victims of sexual crime experience unacceptable delays in the administration of civil justice mechanisms for redress in Ireland, which are also costly and adversarial.
- All cohorts of participants in this study report significant gaps in current justice provision for victims of sexual crime in Ireland.
- All cohorts of participants in this study see the need for additional justice mechanisms for victims of sexual crime, including for restorative justice.



Based on the research presented in this study the following recommendations are made:

1. That the provision of Restorative Justice Services to respond to the needs of those impacted by sexual crime be included in the forthcoming second Cosc National Strategy for 2015-2020.
2. That a three-year pilot project of Restorative Justice in certain cases of sexual violence be established in Ireland as a matter of urgency, with a specified agency established for this purpose
 - That a small team of appropriately trained and experienced staff in sexual trauma and sexual violence and Restorative Justice be appointed to this pilot project;
 - That the pilot project be managed by a suitably qualified Project Director, with appropriate administrative back-up appointed to the team;
 - That the designated agency be allocated an appropriate building in which to carry out its work;
 - That the agency be subject to review on an annual basis, with a fuller review and evaluation after three years;
 - That the pilot project be confined to cases at the post-adjudication stage of the criminal justice process, including retrospective cases that have been adjudicated in the criminal courts in the past, including cases where the offender is currently incarcerated;
 - That the designated agency develops a procedure immediately for informing all victims and offenders at the post-conviction stage of the criminal justice process of the possibility of restorative justice in their cases;
 - That the designated agency accepts requests from victims of sexual crime for restorative justice once their cases has been adjudicated in the criminal courts;

- That victim requests for restorative justice are processed immediately with follow-up meetings and preparatory conversations initiated;
- That offender requests (post-conviction) for restorative justice be carefully logged by the designated agency, but not initiated unless the victim in the case requests restorative justice;
- That the designated agency accepts referrals from all agencies for restorative justice for relevant cases – post-conviction;
- That the designated agency be state funded;
- That the designated agency work in collaboration with all justice, health, child protection and welfare agencies in the state in carrying out its mission;
- That the designated agency be charged with establishing a select committee (of judges, legal professionals, therapeutic services and NGOs) to advise the Minister for Justice and Equality and other relevant Ministers on the legal, social and procedural infrastructure required to consider restorative justice being extended in other types to sexual violence cases;

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- That the select committee be charged with delivering a report to the Minister for Justice and Equality and other relevant Ministers within eighteen months from the date of its formation;
 - That the designated agency be charged with initiating a public campaign of restorative justice for all levels of crime forthwith;
 - That the designated agency be charged with logging a record of all requests for restorative justice, including those that do not fit the criteria and to conduct consultation and research as necessary to assess further community need and interest.
3. That In line with article 12 of the ‘EU Directive 2012/29/EU to establish and protect minimum standards on the rights, support and protection of victims of crime’, victims of sexual crime need to be informed about available restorative justice services, as these are developed to meet their specific needs over the coming years.
 4. That State funded support and legal advocacy services be developed nationally to avoid regional differences in the availability and standards of services for all victims of sexual crime who report their victimisation to the Gardaí, the HSE or other specialist services. Victims of sexual abuse and violence need prompt access to information on the operation of the criminal justice process.
 5. That in line with the ‘EU Directive 2012/29/EU to establish and protect minimum standards on the rights, support and protection of victims of crime’, that the Garda Síochána establish specifically trained Victim

Liaison Officers to be available nationally to offer a support service to complainants who report a sexual crime to them. This specialist Gardaí would accompany complainants through the investigative and criminal process, offering them support and keeping them informed of all developments in their cases. This service will fulfil the State's responsibility to these victims with 'specific protection needs' and should be accompanied by increased funding for the complementary independent services already offered by the Rape Crisis Network Ireland, One in Four, and the Dublin Rape Crisis Centre and other advocacy services for victims of sexual violence, which cover attendance at the Sexual Assault Treatment Units, Garda stations and Court hearings.

6. To recognise the need to focus on the ripple effects of crime, that new and existing Victim Support Services for victims of sexual crime be extended to the families of complainants and to all secondary victims of sexual crime, including the families of persons accused of sexual offences
7. That current Government policy on reducing the unacceptable delays in criminal investigations in sexual crime be expedited with the necessary resources and infrastructure allocated to an Garda Síochána, the Office of the Director of Public Prosecutions and the Courts Services as a matter of justice for victims and accused persons.
8. That the Irish Prison Service expand their restorative initiatives in Irish prisons to include restorative circles for incarcerated offenders, with the input of victims of similar crimes, to be modelled on international best practice.

Bios

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Marie Keenan is a Systemic Psychotherapist, Restorative Justice Practitioner, Researcher and Lecturer at the School of Applied Social Science, University College Dublin and a member of the Advisory Board of UCD's Criminology Institute. She is joint principal investigator with Dr Estelle Zinsstag, KU Leuven, on a European Commission funded Daphne III project on "*Developing integrated responses to sexual violence: An interdisciplinary research project on the potential of restorative justice*".

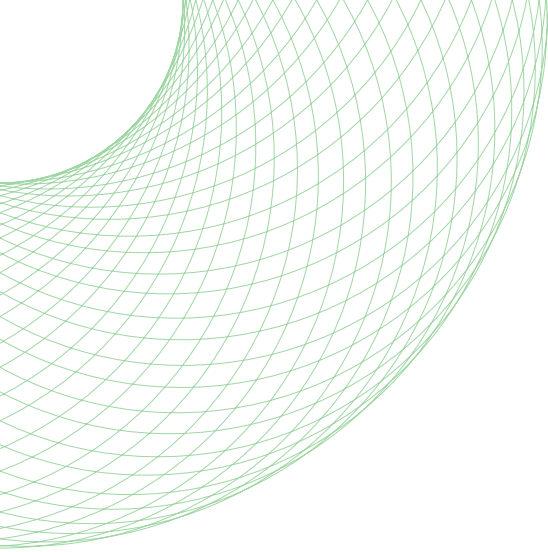
Before taking up a teaching and research position at UCD she worked for more than twenty years, initially as a social worker and later as a forensic and systemic psychotherapist. While currently lecturing and doing research she also practices as a systemic and forensic psychotherapist and restorative justice practitioner. Her recent publications include *Child Sexual Abuse in the Catholic Church: Gender, Power and Organizational Culture*, (2012) Oxford University Press, and *Broken Faith: Why Hope Matters* (2013) Oxford: Lang, with Pat Claffey and Joe Egan (Eds).

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Bernadette Fahy M.Sc. is a Counselling Psychologist. She is an advocate for former residents of Industrial Schools and Magdalen Laundries. She is the author of '*Freedom of Angels*', a memoir of her childhood spent in Goldenbridge Industrial School. Bernadette has also conducted research on the subject of '*The Role of Counselling in the lives of People Raised in Care in Ireland*',

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Facing Forward

Facing Forward brings together people who recognise the potential of Restorative Justice. They believe there is a space in Ireland to develop restorative work that responds to the needs of people impacted by serious crime. It is a voluntary organisation without paid staff, which was set up in 2005. Facing Forward is comprised of practitioners with expertise in restorative processes, mediation, conflict resolution, youth offending, criminal justice and trauma counselling. Key objectives include research, training, practice and advocacy in Restorative Justice in Ireland. Further information: www.facingforward.ie

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Research Steering Group

Barbara Walshe: Project Co-ordinator

Bernadette Fahy: Consultant to the Research

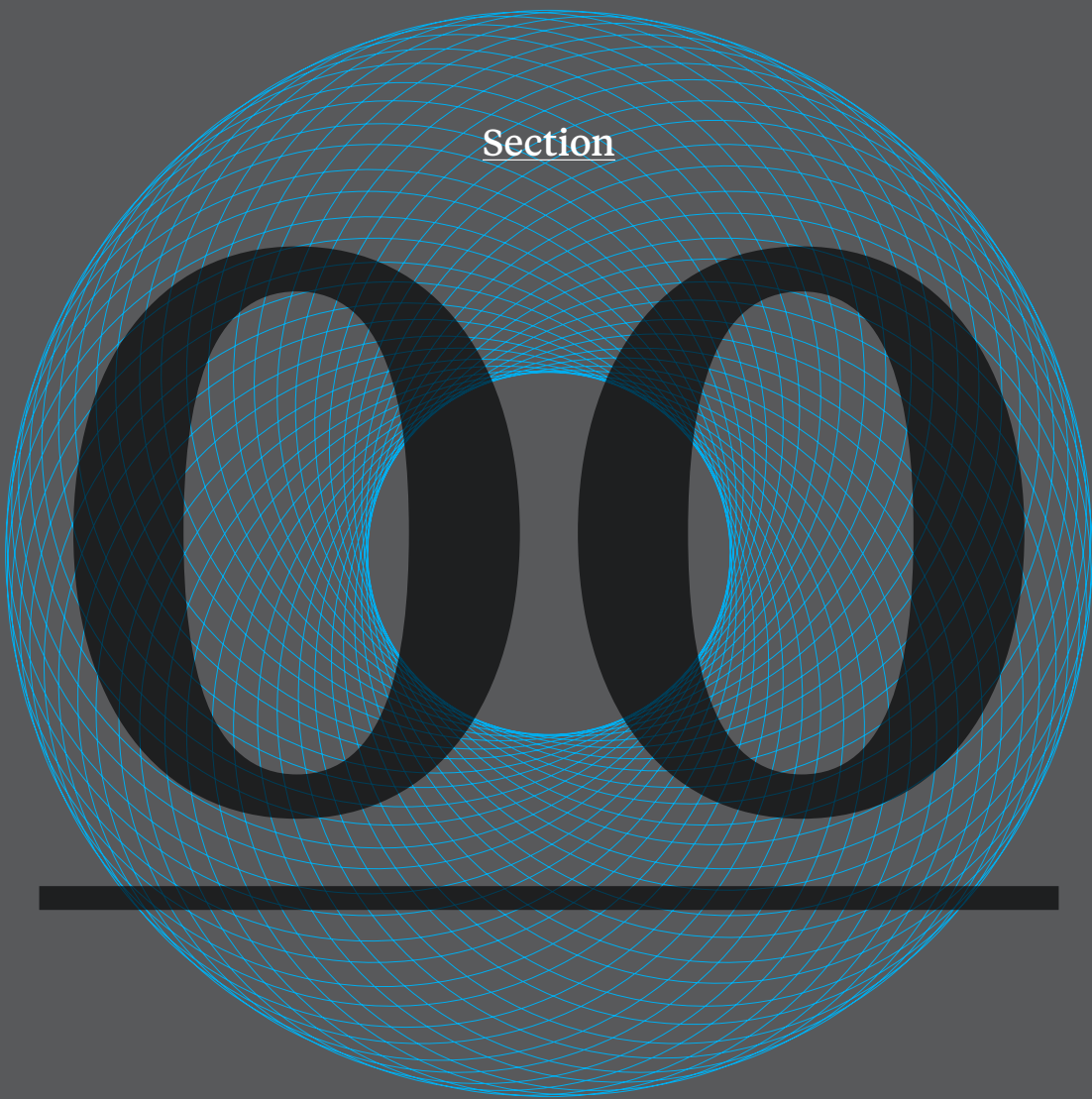
Marie Williams

Nadette Foley

Ingrid Colvin

Marie Keenan, Principal Investigator

Section



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Scope, Methodology and Parameters

∞

The Context

In formulating this report and its recommendations it is important to outline the research on which the report is based. By way of setting the scene I will describe a little of that early background that went into what has turned out to be an incredible journey. To begin, Facing Forward was a group of people who came together several times a year around a common interest: to foster development in restorative justice in Ireland. In 2008 I attended a couple of Facing Forward meetings and found the unstructured dialogue interesting and stimulating. I learned that the 'group' – or loose consortium – had had several international restorative justice trainers to Ireland to provide training and I learned that one such international expert had consulted with the then newly formed Commission on restorative justice, at the behest of Facing Forward. The steering group of Facing Forward was also working behind the scenes in discussion with various sections of the criminal justice system to develop interest in restorative justice.

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At one of the meetings which again took the format of a loose dialogue, frustration at all the talk was rising and someone asked if we could just proceed and establish a programme and see what happens. When I became part of a small group to consider this proposal I reverted to what had always guided my professional life: let us go to those who know – those who have been harmed and those who have committed the harm. And so the research journey began. I proposed that we focus our research on restorative justice in cases of sexual violence, believing that if we could open that door then others would follow more easily. To be truthful, I saw the greatest need for restorative justice to be in cases of sexual violence and in the aftermath of homicide. My guiding interest was in justice in sexual violence cases and having been involved in many cases that were involved with the criminal justice system I believed the need for additional justice mechanisms for victims of sexual crime was ever present. Being familiar with the literature I was also of the view that the greater the violence the greater the potential gain from such a restorative initiative. However, that idea had to be tested and only the individuals who had experienced sexual violence or those who had perpetrated it would know whether they wanted or needed such a service

Needless to say, the contours of influence for what was to become the final endeavour spread far and wide, since as well as becoming the Principal Investigator on this project I was invited to become co-principal investigator on a European Daphne III funded project on the related topic of developing integrated responses for sexual violence: the role of restorative justice. The EU funded research was to take me to many parts of Europe and to corresponding and meeting with colleagues from the entire world in relation to restorative justice and sexual violence and so what started out as a small project in Dublin, now had an international companion.

Before embarking on a study of such a sensitive nature, ethical approval had to be sought and a small steering committee was eventually formed - after about two years - to begin to think seriously about this research. Ethical approval was secured by University College Dublin Human Science Ethics Committee and from the Irish Prison Service. Later when we wished to extend the parameters of the study to include not only victims of sexual crime and sexual offenders and their families but members of the judiciary, legal professionals, members of An Garda Síochána, prison officers and prison management, prison therapists, psychologists and chaplains, Bishops and religious, therapists and NGOs for victims and for offenders, mediators, members of both houses of the Oireachtas and members of the print and broadcast media, permission was very generously given by the Commissioner of An Garda Síochána for the research team to interview members of An Garda.

Having secured ethical approval the steering group comprising myself and three members of Facing Forward took two very important decisions; Barbara Walshe of Facing Forward was appointed as the Project Co-Ordinator and we approached Bernadette Fahy, herself a survivor of sexual abuse in Goldenbridge Industrial School, an advocate on behalf of victims of the industrial and reformatory schools and a counselling psychologist if she would be willing to become a consultant to the research. When Bernadette agreed the steering committee was now comprised of five people. My 'half' suggestion to also invite a former offender to join the steering committee was met with incredulity. I regret that I did not pursue such an incredulous idea [but will on my next study].

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As we then began to consider seriously identifying possible participants for the research, we recognised the need to have initial discussions with stakeholder groups for victims and offenders who had significant knowledge of the area. Having worked myself with victims and offenders of sexual crime for more than two decades it was heartening to note the warmth with which the steering committee was met from colleagues in this field as the steering group, minus myself began to meet with the various NGO and therapists and Prison Psychologists in Arbour Hill Prison. These consultations were invaluable and not only did these colleagues agree to participate in stakeholder research dialogue groups, they also recruited participants for the study and they acted as back up support for research participants who may have needed help following a research interview. We are enormously grateful to colleagues in the field for their help and support for this research. These colleagues then received a full outline of the research and all the research documents for their comment and appraisal.

Following these consultations the interview guides were developed with three main questions underpinning the research:

1. Were there unmet needs following involvement in the criminal justice and other systems [such as therapy, commissions of investigation, redress boards etc]

2. Was there a need for Restorative Justice in Cases of Sexual Violence in Ireland
3. If a programme for Restorative Justice were to be established in Ireland in cases of sexual violence, what from the perspective of the respondent ought we consider carefully.

With €4000 seed funding from UCD seed funding research awards and €2000 grant from the St Stephens Green Trust the research was now ready to proceed. Later funding recieved from Sheehan and Partners Solicitors and from the Tony Ryan Trust further consolidated the research budget.

Data Generation

Between April and June 2011 ten voluntary researchers, recruited from mediation services and by word of mouth began a period of training in the art of interviewing on sensitive topics. The average age of the researchers was 50 years old. Many were retired from careers as teachers or other professionals and had time on hand to devote to this task. The training was provided by Bernadette Fahy and myself in University College Dublin. And in a simultaneous snowballing fashion we began to get word from stakeholders of potential research participants – at this stage victims and offenders and their families. All potential research participants at this point were then contacted by letter, explaining the details of the project, explaining briefly what was meant by restorative justice, an offer to participate in an individual interview or a group dialogue group, a form about individual confidentiality and the protection of data, a form regarding group confidentiality and a form and telephone number for further inquiry if the person wished to participate in the study.

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victims of sexual crime including victims of intra-familial sexual abuse; victims of Catholic clergy; Victims who were sexually abused within the industrial schools and reformatories; a victims of partner rape, a victim of stranger rape and a miscellaneous group of victims who were sexually assaulted by employers or employees known to their family.

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offenders who comprised seven imprisoned men for rape of an adult; six imprisoned men for sexual abuse of a child and ten men charged with sexual offences of minors or of internet pornography who were attending a community treatment facility.

01

mother of a child who was abused by a young relative

01

mother of a young man who sexually abused a young person

01 mother [who was herself a victim of sexual abuse by a Catholic priest] whose husband had committed incest with their daughter

As we extended the parameters of the research we also interviewed the following participants:

16 therapists and stakeholders for victims

15 therapists and stakeholders for offenders

02 Mediators

09 bishops and members of religious communities – 8 of whom were Catholic and one of whom was Church of Ireland

09 members of the print and broadcast media

07 judges

15

06 politicians

05 legal professionals

08 juvenile liaison officers, members of An Garda Síochána

12 staff members of the Irish Prison Service

04 members of the Irish Probation Service

In total 149 people were interviewed for this study

Between December 2011 and September 2013 the 149 face-to-face interviews were conducted mainly individually, but in a small number of cases interviews were conducted in groups. Interviews were designed to allow the participants to tell their stories chronologically from the point of their involvement in the criminal justice system up until today and their ongoing lives and indeed where respondents wished to tell their story of abuse time was allocated for this to occur. On average, the interviews lasted two to three hours, although there were some with legislators that were briefer and more specifically focused and lasted one hour. Victims and offenders and their families were generally eager to talk and in many cases to 'unload' what had been an incredible journey for them. Professional respondents were keen to talk as they respected the importance of the topic and often had people and particular stories in mind that brought the personal into their learned and valued opinions.

The amount of time given to each topic was determined by the particular details of each individual's story, and the personal salience of particular issues. The interviews were relaxed, conducted in conversational style, and produced an audio tape and case notes for each interview. Although it is impossible to determine the extent to which subjects withheld information - particularly given the sensitivity of the central topic - my impression is that the respondents were remarkably candid about their experiences and the meanings they held for them. In general, there was a high level of rapport between the researchers and the respondents. In the interviews I read - and I read all of them - I felt I was 'bearing witness.' The interviews were often emotional and intense for both researchers and participants, and many participants expressed gratitude for the opportunity to tell their stories. Researchers contacted the victims in the day following the interview but support services were available for both victims and offenders if they needed such. Researchers were supported by the research co-ordinator and the consultant to the project.

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Data Analysis

All research interviews were audio recorded and transcribed by research interns to the project and eventually by a small group of professional transcribers when further funding was secured from the Tony Ryan Trust and from Sheehan and Partners Law Firm. For reasons of confidentiality names of interviewees were de-coupled from each transcription which was given a code name. Managing the transcriptions became the task of a Research Assistant Intern. All transcribed material was then read by me as Principal Investigator. With the help of seven Research Assistant Interns - all recipients of the Government JobBridge programme - the research data were coded using Atlas ti, a qualitative software package that helps to store and code large volumes of qualitative data. Inter-rater reliability measures were worked through systematically with the research Assistant interns to ensure that they were coding in the same manner. A coding book was generated from the first transcripts analysed. The coding book

developed further as time went on and became the responsibility of one person to manage the book as the coded material was made ready for further analysis. I am grateful to Dr Niamh Flanagan of UCD who helped me train the Research Assistant Interns in the use of qualitative software.

When all the data were coded then the analysis continued with the research assistant interns under my guidance. What is presented in this report today is the culmination of this enormous effort with the support of this new generation of young researchers who come from the fields of law, philosophy, social policy, equality studies and psychology. As the material was worked and re-worked and discussed and debated the process of writing up the analysis begun. This has been largely my work with the aid of my three current research assistant interns and my research assistant on the European project, Dr Caroline O’Nolan who was willing to write section drafts of chapters two and three with and for me and to look over some material.

In analysing empirical data one does not do so in a vacuum and this is very much an interactive process of reading and writing and engaging with the theoretical and empirical literature in a back and forth movement until the final interpretation is produced. In therefore formulating this report and its conclusions and recommendations, and the analysis on which it is based, extensive national and international literature and justice responses and systems have been studied and reviewed. What I believe has emerged from such a collective effort is a Report that cannot be ignored and of which I am very proud. Is a limitation of the study is that we did not investigate sex trafficking or war-time sexual violence. I take complete responsibility for the contents of this report and I hope that I have managed to represent the views of our participants in the manner in which they wished. It is my earnest hope that I have done justice to the incredible stories that were shared with me and my team.

Marie Keenan

November 2014

On Forgiveness (survivor of sexual abuse)

For very long time, I used to get very angry when I heard people suggest that in order to heal, I had to forgive. I actually, still do. I still want to rant and roar and scream and shout and tell people to 'f off' when I hear that crap... because I... I think that there is a tendency to see a tidy resolution by suggesting that forgiveness is where it is all at and it may well be, but let's not impose that on anybody. Any individual experience of abuse or of crime and the trauma that results from crime is a very individual experience and we may have and we may be absolutely right in our view that there is a road to be travelled and there are points along on the road and we might imagine, we can prescribe them. The problem with prescribing them is, we drive the journey rather than facilitate and accompany an individual on their journey.

So, for me, I would absolutely reject the notion that an outcome of any process should be to move the survivor and the perpetrator to a place where the survivor feels that they can forgive the perpetrator. I think that's an abusive dynamic to inflict upon a survivor. I think that it is potentially, very damaging and counter-therapeutic. I think that it distorts the process utterly and that it is not based... on an understanding or explanation of this individual's needs, but of the need of society or the system or the professional to find a resolution that allows them to feel that they have succeeded in their efforts. It's not about their efforts...

...that was a very personal journey and for me, it also became terribly important because I knew for years my understanding of forgiveness was really confused and wrapped up in and corrupted and perverted by that Catholic understanding of forgiveness based on the notion of absolution. That somehow if I said 'I forgive you', I'm saying 'that it is ok'. It is not ok. It's never ok. So, in the same way, I talk about looking in that mirror with as much searing honesty and compassion as I can. I can look at my own actions and look at things in and beyond and through and despite and because of those experiences of abuse and I can be deeply uncomfortable with myself in it and it's not ok, that I tolerated or accepted the level of abuse that I did. It's not ok that I went on to perpetrate that abuse on myself for years to come, in so many different ways. It's not ok. It will never be ok. It will never be anything other than an appalling tragedy and an incredible wrong, but I understand that and I accept it. I can't make it ok, but I can accept it for what it is and love and respect myself in... in... absolutely, in and beyond it. I am no longer frightened to look at myself and see myself in it and have understanding and compassion for myself and accept myself and then, move beyond it. So, that's for me what forgiveness meant.

Introduction and Context

1. Introduction

Over the past 20 years, since the publication of the Report of the Kilkenny Incest Investigation¹ Irish society has begun to come to terms with the prevalence of sexual violence due to a succession of revelations about sexual crime perpetrated in families, institutions and in communities. In 2002, a ground-breaking study commissioned by the Dublin Rape Crisis Centre and undertaken by the Royal College of Surgeons provided a wider picture of the extent and nature of sexual violence in Ireland. The SAVI Report² produced the first ever profile of those who had experienced sexual abuse and violence in Ireland, regardless of whether they had ever disclosed that abuse or reported it to the authorities. Up until then, the only figures available were based on the number of people seeking counselling or reporting to the Gardaí. SAVI³ showed that 42% of Irish women and 28% of Irish men reported some form of sexual abuse or assault in their lifetime. It showed further that 30.4% of women and 23.6% of men experienced sexual abuse in childhood and that 25.6% of women and 12.4% of men experienced sexual assault in adulthood. While the Irish rate of sexual abuse for females is in line with international trends, the high rate of sexual abuse of young males in the Irish figures is notable.

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Sexual crime is an inherently different type of crime from others, with clinical experience showing distinguishing features which differentiate it from other violent crime in a number of ways; Victims of sexual crime often experience potent and debilitating self-blame, the perpetrator in the majority of cases is someone known to the victim and the process of reporting the crime and pursuing justice through the criminal justice system is often experienced as extremely traumatic by victims and their families [and by offenders and their families too]. High attrition rates, of which we will discuss later in this chapter, also marks sexual crime out for particular concern; all of which lead to the conclusion that sexual crime requires specialised and tailored ‘justice’ responses, which are not being met by the current criminal justice system. This is one of the reasons why we have undertaken the current study; to test this hypothesis and to consider additional justice responses.

For the vast majority of victims of sexual crime a gulf exists between what the criminal justice system seems to promise and what it can actually deliver. This is in part because, at its core, the criminal justice system was established to ensure a fair trial for an accused, to gather and test the state’s evidence against an accused, to punish wrongdoing and rehabilitate offenders, and not to directly address the harm caused to victims. In the Irish criminal law, like in other Common Law jurisdictions, the most serious crimes, such as sexual crimes, require proof not only of the act, but also proof of the offender’s intent (*mens rea*) regarding

the act. The criminal law's concern over the intent of the offender is motivated by a series of underlying values, most significantly the proper use of the state's power to impose severe penalties on a wrongdoer, and a desire to avoid miscarriages of justice¹. These underlying concerns of our criminal justice system result in a criminal trial format that is highly adversarial, extremely strict on the kinds of evidence that can be adduced by the prosecution against the offender, and the evidential threshold on the prosecution is to prove guilt "beyond reasonable doubt". This process is extremely difficult for victims, as the criminal trial sees the state take complete ownership over the process, and marginalizes the victim to the role of a complainant and at times a witness. The criminal trial's primary focus on the state of mind of the offender during the assault leaves little space for the personal account of the victim's experience and trauma as a result of that assault. The Victim Impact Statement now offers a victim some direct input into the process, but it is only presented after a conviction has been secured and is limited in its remit.

The criminal law as the state's mechanism of holding the offender to account for wrongdoing, with the victim playing an instrumental role in bringing that about, is poorly understood by many and by victims of sexual crime, who are disappointed and further traumatised when proceedings fail to produce a guilty verdict. Furthermore, the system effectively discourages truth-telling and inadvertently discourages offenders from acknowledging responsibility for their crime, as the system itself punishes truth-telling and affords limited opportunities to offenders to act on their responsibilities to the victim in concrete ways⁴. Due process encourages private secrecy, public denial of guilt, and a culture of secrecy regarding past offending that puts the onus on the state [and indirectly on the victim] to 'prove' the offense and the intent of the offender 'beyond reasonable doubt'⁵. Evidence presented in this study supports this claim. Increased criminalization and stigmatization of offenders also adds to this situation, whereby offenders are willing to deny responsibility and take the risk of forcing the state to prove the case against them. The fact that public policy responses in some common law jurisdictions encourage increasingly severe penalties for a guilty verdict, the public naming and shaming of sex offenders and additional penalties, such as extended supervision orders and registration schemes that act as 'a life sentence' and 'no life' for many convicted of sexual offences, it ought be no surprise to the enlightened that public and legal systems are actually working against themselves and victims in trying to prosecute sexual crime and make society safer. In addition, these measures perpetuate the myth of the dangerous, predatory, stranger sexual offender, while those known to the victim, which are the majority, go largely unchecked⁶.

¹ For a fuller discussion of legal systems of accountability see O'Concubhair, Cian (2013) Restorative Justice in Cases of Sexual Violence: Power, Accountability and Corrective Justice (and, maybe, Democracy) accessed 10/11/2014 available at https://www.academia.edu/7374825/Restorative_Justice_and_Sexual_Violence_Power_Accountability_and_Corrective_Justice_and_maybe_Democracy_

Despite the many improvements that have taken place in improving the criminal justice process, the criminal justice system is not about doing right by the victim but rather about prosecuting the offender. The needs and views of victims are largely irrelevant to this core dynamic. As our research indicates, the criminal justice system is unconcerned with whether the victim feels they received justice or accountability, despite the particular kindness and personal interest shown to them by particular individual police or members of the judiciary. Therefore something else must be done – and this is the function of this report.

2. The Prevalence and Reality of Sexual Crime

This study shows that the nature of sexual crime is not particularly well understood in the wider community, and victims and offenders both express a desire for this to change. Offenders argued that nobody wants to hear their explanations as they are thought to be justifying or making excuses for their actions. They also reported that sometimes they don't understand their motivations themselves. Victims and their families desperately want to know why. Why did it happen? Why me? And why would anyone commit a sexual offence? The need for public and community education is great.

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The prevalence of sexual crime is not well understood in the wider community either. Contrary to public perceptions, most sexual offending is not committed by unknown predators, but in private settings where the offender is either a family member or an acquaintance known to the victim. Increasingly we are witnessing revelations of sexual crime against young people by coaches and trainers involved in sport⁷. The power dynamics make such abuses possible, as well of course as other features of sexual offenders⁸. Many sexual offences are also committed by young people, with studies indicating that between one third and one quarter of all sexual crime is perpetrated by young people under the age of 17 years⁹.

Before considering the research that is presented in this report and considering some developments required in the justice system's response to sexual crime, it is important to outline some of the prevalence and attrition rates for sexual crime as context for the discussions that will follow.

As the SAVI¹⁰ indicated 42% of Irish women and 28% of Irish men reported some form of sexual abuse or assault in their lifetime. It showed further that 30.4% of women and 23.6% of men experienced sexual abuse in childhood and that 25.6% of women and 12.4% of men experienced sexual assault in adulthood. Australian research indicated that 12% of women and 4.5% of men experienced sexual abuse before reaching the age of 15 years¹¹ and further that 17% of women and 4% of men over the age of eighteen years had experienced sexual assault from the age of 15 years onwards¹². As in Ireland, Australian research indicated that sexual

crime is a highly under-reported form of personal violence¹³ and therefore the true prevalence of sexual crime is unknown.

High levels of attrition in sexual offense cases within the criminal justice system have been of concern to academics and practitioners across a range of disciplines for some time¹⁴ marking the complex nature of sexual crime. Attrition rates in the context of sexual crime relate to the reduction or decrease in cases at each point in the criminal justice process. Attrition rates between low reporting, few prosecutions and even fewer convictions are high in all sexual crime across the world. Victims are understandably unwilling in many cases to report their abuse or assault to the police because they see other victims suffer by lengthy adversarial police investigations and court proceedings as evidenced by this research. In addition, the nature of sexual offending is not particularly well understood in most societies, with most sexual offending being committed not by unknown predators but in private settings where the offender is either a family member or an acquaintance known to the victim. This has an impact on the reporting practices of many intra familial victims. At the same time there are very few other options open to victims of sexual crime who require vindication and validation, and who do not wish to initiate criminal proceedings, as civil proceedings are costly and lengthy and therefore not a realistic possibility for the majority of victims.

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Non-reporting constitutes the largest source of attrition with only one in ten rapes and cases of sexual abuse reported to the police¹⁵. In addition, high rates of attrition are also documented within the criminal justice system itself¹⁶. For many years, NGOs working with victims of sexual violence have criticised delays in the criminal justice system and the negative impact on victims of sexual crime of these delays and the shortcomings in the investigative process. They have called for the specialisation of the investigative process, consistent standards and national uniformity in the investigation of sexual crime. According to one Irish study just under one-third of all prosecutable rape cases¹⁷ were prosecuted and of those, two-fifths resulted in a criminal conviction¹⁸. An international comparative study on rape in Europe found that eight out of 100 Irish rape cases reviewed as part of a case-tracking sample¹⁹ resulted in conviction²⁰. For those victims of sexual violence whose cases proceed to court, individual experiences varies but the evidence produced in this study suggests that the process marginalises and disempowers victims and leaves many of them further traumatised.

SAVI prompted a national realisation of the prevalence of sexual violence in Ireland and the imperative to respond strategically. In 2007 the Government established Cosc (The National Office for the prevention of Domestic, Sexual and Gender-based Violence) to begin the process of coordinating action between Government Departments, statutory agencies and NGOs to respond at a national level to the challenge of

sexual violence in Ireland. Following an extensive consultation process from 2008, in its first National Strategy 2010-2014²¹, Cosc acknowledged the need for inter-agency coordination²². In this strategy, the Irish Government committed to a complete review of all the legislation concerning/relating to sexual violence and to working towards more effective enforcement of these new laws.

3. Terminology and Definitions

Restorative Justice:

Restorative justice is often considered as a paradigm shift in the way that crime and wrongdoing is considered. Rather than considering crime as an offence against the state, restorative justice returns the focus to the harm done to individuals, their families, and the communities in which they live. Restorative justice is concerned about the harm that crime does to people and relationships, and is engaged using various methodologies in considering the ways in which the harm can be repaired. While Chapter Four in Part two of this report considers restorative justice in considerable depth, it is useful at the outset to think of restorative justice in sexual crime as being concerned about a number of issues that can be formulated as a set of questions:

What harm has been done and to whom [including the ripple effect of crime on secondary victims, such as family and community]?

What needs have arisen based on that harm?

Whose responsibility is it to repair the harm, such as offender and community?

How can a methodology be prepared and facilitated in a manner that gives the power back to the main protagonists and not to professionals for voluntary participation in a restorative process?

How can safe procedure be ensured for all; to avoid any re-victimization of the victim?

How can the due process rights of the offender be protected while admission of wrong-doing is a necessary pre-condition for offender participation?

Is a reparation agreement required and who will ensure the follow-through and monitoring of the terms of the agreement?

When a sexual crime occurs, the traditional criminal justice approach is concerned with different issues and with a different set of questions:

What law has been broken?

Who is responsible for breaking it?

Was the offender of right mind in committing this offence – what was his/her motivation and intent?

Was there Consent to the sexual act or acts?

How do we punish the wrongdoer?

How do we protect the community and the public?

How do we rehabilitate the wrongdoer?

How do we ensure fair procedure and avoid miscarriages of justice?

Sexual Violence / Sexual Crime / Sexual Abuse

The World Health Organisation²³ promotes a broad definition of ‘violence’, describing it as ‘the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation’. Cosc’s National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014²⁴ defines sexual violence as “assaults that have an explicit sexual content and includes a variety of forms including rape, sexual assault and sexual harassment. These forms of sexual violence can be perpetrated by family members, current and former sexual partners, other relatives and friends, acquaintances (including colleagues and clients), those in a variety of authority positions, and strangers”. We use the Cosc definition of sexual violence throughout this report but in this report we broaden our understanding of sexual crime / sexual abuse and sexual violence to encompass many types of sexual acts including contact and non-contact child sexual abuse, sexual assault, rape, and sexual violence perpetrated through the use of communication technology. While we use the terms sexual crime mostly throughout this report, where the terms sexual violence, sexual abuse, sexual assault or rape occur we are using the terms to describe sexual crime in its particular manifestation. As research demonstrates that the majority of incidents of sexual violence are either not reported nor proceed to full criminal trial, we use the terms ‘sexual violence’, ‘sexual abuse’ and ‘sexual crime’ to cover a wider prevalence than the term ‘sexual offences’ might convey if interpreted as being limited to those cases which have been reported and processed by the criminal justice system. Chapter one of this report further elaborates the legal definitions and frameworks for approaching sexual crime in Ireland. A limitation of the study is that we did not investigate sex trafficking, or war-time sexual violence.

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4. Philosophy of this Report and Approach taken to the Study

The Limitations of “Victim” and “Offender”

Beyond serving the important function of providing a language for legal proceedings and of giving emphasise to the criminal aspects of the behaviour of sexual abuse and violence that has hitherto gone in the main unrecognised, the language of victim and offender is actually a limiting one, acting as a constraint and barrier in any endeavour to understand

the complex issues involved in sexual crime, and also in relation to a way forward. When can one stop being cast as a victim, or is this always the description that accompanies one through life? When is the attribution of these descriptions something personal and when is it a public process? When does one stop being cast as an offender, one year, ten years, forty years after the offence?

Modern popular culture appears to accept that there are unjust limitations imposed on individuals who have experienced abuse, when their identities are totalised as victims, and in response to calls from victims themselves, society accepts some of the other descriptions of such individuals, such as “survivor”. However, these labels do not always do justice to the complexities and richness of the lives of victims of sexual crime. In the public domain we all too often focus on the negative effects of trauma. This is of course important and must be highlighted time and time again, as is evidenced throughout this report. However, we usually do so without ever considering the importance of the individual’s “response” to trauma and what this shows about the wisdom and bravery of abuse victims, as is also evidenced loudly in this study. We know from the trauma literature that everywhere there is a story of oppression, there is a parallel story of resistance, and it is in these small maybe even ordinary or neglected stories of resistance that we see the bravery and “agency” of even the smallest child, who took on the offender in the most skilful of ways²⁵. In neglecting to focus on human responses to trauma and the enormous steps that individuals, including children, take to prevent abuse and to resist its after-effects, we are disqualifying or rendering invisible huge reserves in the human spirit. I have long been persuaded by the work of Michael White, and Australian psychotherapist, who tells us that the ways in which people respond to trauma are based on what they give value to, or what they hold precious²⁶. What is really striking in this study is how individuals who were traumatised by sexual violence continue to privilege certain values in life and to preserve what is precious to them, such as love or justice, despite everything they have been through. So what is required is actually a double listening to victims of sexual crime; listening for the effects of trauma and being open to their responses to trauma too²⁷. By having an open ear for both we are not just listening for disempowerment, but for personal agency, in the magnificent and incredible ways all victims of sexual trauma try to resist, prevent or modify its effects. We must listen when they say they want to meet their offender; they want restorative justice, and they do not want professionals to dictate what is ‘right’ for them. Sometimes the language of “victim” neglects or omits to capture the vital skills, wisdom and bravery of people who have been harmed by sexual violence.

However, in this report we tend to rely on the term victim to describe the respondents in our study who have been sexually harmed, not to negate the qualities and wisdom described above, but because we are primarily

located in the area of law and criminology in this report and victim is a term most familiar in that literature.

Whatever the problems are with the broad acceptance of the limited view that identifies and totalises victims of abuse as “victims”, popular culture is even less prepared to even think about its own black spots when it comes to defining “offenders”. By so doing it renders invisible aspects of the men’s lives that either stand in contrast to the abuse that they perpetrated or that bears testimony to an otherwise life of good works, as some of the families of offenders mention in this study. The public discourse on sexual offenders presents the offenders as “embodied evil” and research is often unfairly cited to confirm a view that sex offenders are fundamentally different from the rest of mankind²⁸. Despite the best of intentions of therapists and do-gooders, so the argument goes, no help in the world can change these men. The common belief and perception of offenders is that they are fundamentally flawed and fundamentally bad; they just managed to hide that fact for a long time. Public belief rests on the premise that “once a child sexual offender; always a child sexual offender”, “once a rapist always a rapist”.

While nobody would wish to deny the risk of recidivism and risk factors that empirical research has uncovered over many years now in the sex offender field²⁹ the idea of “flawed nature” dominates reports and public debate. In the paradigm of criminal essentialism³⁰ the sexual offender who is bad, cannot ever be good. Reductionist models of explanation and intervention are en vogue. In the rush to condemn some things get noticed but even more gets missed. The stage is set for extremes of hate. In the world of good versus evil, the good are allowed the occasional mistake, but “the essentially evil” deserve no consideration whatsoever. In the current climate, men who have perpetrated sexual abuse and who have been ‘caught’ are largely seen and treated as a cast of unreformable men. They have almost become “untouchables”, total outcasts. This is totally against the spirit of restorative justice, where the belief is that everyone can benefit through the process even when as in our approach to the project, restorative justice is a victim-centred approach. While the use of the term offender is a limiting one as noted in the above discussion, for reasons similar to the use of the term victim in this report, we have opted to rely on the term offender to describe the respondents in our study who have sexually offended, not to negate their qualities as outlined by their families or themselves, but because we are primarily located in the area of law and criminology in this report and the term offender is the one most used in that literature when discussing men who have perpetrated sexual crime.

We believe that the power of restorative justice lies in its humanising potential and that the terms we use to describe or categorise people can impede a restorative view. Labels such as ‘victim’ and ‘offender’ can have the effect of reducing those to which they are applied to a single element

of their identity, and our position is that this single identity description reduces their humanity and distinctiveness. In this research, we have attempted to use language that respects the dignity of each individual. In the research process, we have spoken of 'those who have experienced sexual violence' and 'those who have been responsible for sexual violence' rather than 'victims' and 'offenders'. However, for the sake of brevity in this written report, and because these are familiar terms in the area of law and criminology we will use these shorthand terms of 'victim' and 'offender' throughout the report but occasionally we will use 'victim' and 'survivor' interchangeably.

In our approach to this research and this report we take also taken the position that whilst not all sexual crime is overtly violent in its content, many victims experience it as violent in its impact. We also take the approach that the impact of sexual crime is wholly a subjective experience: while one victim may experience lasting emotional and psychological consequences resulting from the sexual violation, another person may not. We believe the experiences and responses for all victims of sexual crime are completely unique to them and must be treated as such. Our position is that sexual violence is a crime regardless of whether it is ever prosecuted.

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A Victim- Centred Approach

This report is based on an extensive national and international literature review and an empirical study involving 1-3 hour qualitative interviews with one hundred and forty nine individuals. The report therefore is of the view that the research speaks for itself and its conclusion are clear: there is need for a victim-centred restorative justice programme for victims of sexual crime in Ireland that will meet their need for participation, voice, an opportunity to tell their story, for validation and vindication, to ask their questions, for offender accountability, for protection for children and vulnerable adults, and for recompense where desired. How the specifics of such a programme could be progressed are offered in the recommendations section of this report, but what is very clear from the research undertaken for this report is that victims' justice needs and interests should be prioritised through adopting a victim-centred approach to restorative justice. That is the orientation of this report.

The other needs of victims and offenders for more information about the criminal process, for a timely response to their complaints, for the treatment, rehabilitation and punishment of the offender and for public disapproval of sexual crime, can all be initiated as reforms to the conventional criminal justice process without much pain, save investment in resources.

The need expressed by victims and offenders for public education on the nature of sexual offending and a public education programme for restorative justice could be met by political will.

The results of this study suggests that victims must have the final say in whether to engage in a restorative or criminal justice process or both and they must have a degree of control and choice over how their justice needs are to be met. While the criminal justice system will and should always remain society's principal response to sexual offending, in taking an impartial role in holding wrong-doers to account and upholding offender rights, it is time for the system to allow some innovative justice responses to accompany the contemporary criminal justice system responses, and allow victims a greater degree of choice, flexibility and opportunity to participate in having the wrongs done to them through sexual crime righted.

5. Reconciling Restorative Justice and Criminal Justice Systems

Having determined that there is a need for a hybrid system of justice that encompasses elements of both restorative justice and conventional justice, including civil and criminal law, it is clear that there are significant questions of law and practical aspects of how a hybrid system could work, with particular focus on the challenging relationship between criminal justice and restorative justice systems. While it is beyond the remit of this report to go into details of such considerations interested readers are referred to a forthcoming paper which addresses these concerns³¹. It is important to remember that due process considerations including the presumption of innocence, the right against self-incrimination and the right to a fair trial are issues that would have to be addressed were restorative justice to be given as an option in sexual violence cases other than those that are post-trial. The impact of restorative justice on sentencing principles and on the right to legal representation and confidentiality are also issues that would have to be satisfactorily addressed.

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However, while not wishing to understate the significance of such issues, national and international instruments such as the 2002 UN document³² on the basic principles on the use of restorative justice programs in criminal matters offers useful suggestions. Some of the basic principles include the following:

'The victim and the offender should normally agree on the fundamental facts of a case as the basis for their participation in a restorative process. Participation of the offender shall not be used as evidence of admission of guilt in subsequent legal proceedings' (Clause 8)

'Fundamental procedural safeguards guaranteeing fairness to the offender and the victim should be applied to restorative justice programs ... including the victim and the offender having the right to consult with legal counsel concerning the restorative process and... minors should have the right to the assistance of a parent or guardian' (Clause 13 (a) – (c)).

‘Before agreeing to participate in restorative processes, the parties should be fully informed of their rights, the nature of the process and the possible consequences of their decision’ (Clause 13 (b)).

In the recommendations section of this report we suggest a way to proceed with restorative justice in cases of sexual crime on a phased basis as a pilot project in which many of the concerns highlighted above can be considered.

6. Outline of the Report

This report is presented as follows:

The introduction sets out the context of the study, the scope limits and methodology and the executive summary.

Part One consists of three chapters:

Chapter One outlines and discusses the legislative and child protection frameworks operative in Ireland in relation to sexual crime.

Chapter Two presents the victims and their families’ experiences of the criminal justice system and other justice systems in Ireland.

Chapter Three presents the offenders and their families’ experiences of the criminal justice system in Ireland.

Part Two presents the research on Restorative Justice:

Chapter Four presents an international context for the work of restorative justice in cases of sexual violence internationally.

Chapter Five presents the views of victims and their families on restorative justice in sexual violence cases, including the opportunities and challenges.

Chapter Six presents the views of offenders and their families on restorative justice in sexual violence cases, including the opportunities and challenges.

Chapter Seven presents the views of legislators and criminal justice personnel on restorative justice in sexual violence cases, including the opportunities and challenges

Chapter Eight presents the views of therapists and NGOs for victims and offenders, mediators, bishops and religious and media personnel on restorative justice in sexual violence cases, including the opportunities and challenges

Chapter Nine offers recommendations and conclusions

End Notes

- 1 McGuinness, C. (1993). Report of the Kilkenny Incest Investigation. Dublin: Stationery Office,
- 2 McGee, H., Garavan, R., de Barra, M., Byrne, J. and Conroy, R. (2002) The SAVI Report: Sexual Abuse and Violence in Ireland. Dublin: The Liffey Press in association with Dublin Rape Crisis Centre.
- 3 McGee, H., Garavan, R., de Barra, M., Byrne, J. and Conroy, R. (2002) The SAVI Report: Sexual Abuse and Violence in Ireland. Dublin: The Liffey Press in association with Dublin Rape Crisis Centre. (p xxxiii)
- 4 Zehr, H.(1985). Retributive justice, restorative justice. New perspectives on crime and justice. Akron, PA: Menno-nite Central Committee Office of Criminal Justice, p. 14
- 5 (Keenan, M. (2012). Child Sexual Abuse and the Catholic Church: Gender, Power and Organizational Culture. New York: Oxford University Press, p. 105)
- 6 Naylor, B. (2010). Effective justice for victims of sexual assault: taking up the debate on alternative pathways. University of New South Wales Law Journal, 33(2), 662–684.
- 7 Kirby, S. Greaves, L. & Hankivsky, O.(2000). The dome of silence: sexual harassment and abuse in sport. Halifax, NS: Fernwood Publishing
- 8 See Keenan, M. (2012). Child Sexual Abuse and the Catholic Church: Gender, Power and Organizational Culture. New York: Oxford University Press
- 9 Young offenders stats
- 10 (McGee et al. 2002: xxxiii).
- 11 See Australian Bureau of Statistics, (2005). 'Personal Safety Survey Australia' Accessed on April 4th 2014 at [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/056A404DAA576AE6CA2571D00080E985/\\$-File/49060_2005%20\(reissue\).pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/056A404DAA576AE6CA2571D00080E985/$-File/49060_2005%20(reissue).pdf)
- 12 See Australian Bureau of Statistics, (2005). 'Personal Safety Survey Australia' Accessed on April 4th 2014 at <http://www.ausstats.abs.gov.au/ausstats/abs@nsf/Look-up/4906.0Chapter5002012>
- 13 See Lievore, D. (2003). Non-Reporting and Hidden Recording of Sexual Assault in Australia Australian Institute of Criminology. Accessed April 4th 2014 at http://www.aic.gov.au/media_library/conferences/policewomen3/lievore.pdf, 3
- 14 Lea, S., Lanvers, U. & Shaw, S. (2003). Attrition in rape cases. Developing a profile and identifying relevant factors. British Journal of Criminology, 43(3), 583-599, p. 583
- 15 Lovett, J. and Kelly, L. (2009). Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe. London: Child and Women Abuse Studies Unit, London Metropolitan University, p 17; Hanly, C., Healy, D. and Scriver. S. (2010) Rape and Justice in Ireland. Dublin: The Liffey Press (p.139); McGee et al. 2002.
- 16 Kelly, L., Lovett, J., and Regan, L. (2005). A gap or a chasm? Attrition in reported rape cases. Home Office Research Study 293 London: Home Office Research, Development and Statistics Directorate,
- 17 The study defines 'prosecutable cases' as the total number of cases excluding those cases in which the complainant had withdrawn the complaint. Over one-quarter of rape complainants withdrew their complaints
- 18 (Hanly, Healy and Scriver 2010: 365).
- 19 The case tracking sample is drawn from across the Republic of Ireland as a whole, which has a population of 4.25 million. Between April and September 2004, 100 cases were selected sequentially from a sample of cases originally reported as rape generated by the police data system, PULSE.
- 20 (Lovett and Kelly 2009: 74).
- 21 The National Strategy on Domestic, Sexual and Gender-based Violence 2010 - 2014 available at <http://www.cosc.ie/en/COSC/Pages/WP08000096> accessed 01/11/2014
- 22 See The National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014 "a disjointed system does not provide adequate protection to the victim, nor does it properly confront and deal with the perpetrator. Families suffer, communities suffer and society in general suffers." (p.20) available at <http://www.cosc.ie/en/COSC/Pages/WP08000096> accessed 01/11/2014
- 23 World Health Organisation (1996), WHO Global Consultation on Violence and Health. Violence: A Public Health Priority. Geneva (document WHO/EHA/SPI.POA. 2).
- 24 The National Strategy on Domestic, Sexual and Gender-based Violence 2010 - 2014 available at <http://www.cosc.ie/en/COSC/Pages/WP08000096> accessed 01/11/2014
- 25 Wade, A. (1997). Small Acts of Living: everyday resistance to violence and other forms of oppression. Journal of Contemporary Family Therapy, 19 (1), 23-39; White, M. (2000), Re- engaging with history. The absent but implicit. Reflections on Narrative Practice: Interviews and Essays. Dulwich: In Dulwich Centre Publications; White, M. (2004) Working with people who are suffering the consequences of multiple trauma: A narrative perspective. International Journal of Narrative Therapy and Community Work, 1, 45-76).
- 26 (White, 2004, p. 48).
- 27 White (2004, p. 48).
- 28 Keenan, M. (2009). "Them and Us": The Clerical Child Sex Offender as "Other". In T. Flannery (Ed). Responding to the Ryan Report (pp. 180 -231). Dublin: Columba Press
- 29 Hanson, R.K. & Morton-Bourgon, K.E. (2005). The Characteristics of persistent sexual offenders: A meta-analysis of recidivism studies. Journal of Consulting and Clinical Psychology, 73, 1154-1163.
- 30 Lofland, J. (1969). Deviance and Identity. Englewood Cliffs, NJ: Praeger; Maruna, S. (2001). Making Good. How Ex-Convicts Reform and Rebuild their Lives. Washington, DC: America Psychological Association, p. 5)
- 31 Joyce-Wojtas, N & Keenan, M. (2014). Is Restorative Justice for Sexual Crime Compatible with Various Criminal Justice Systems? Contemporary Justice Review (Forthcoming December)
- 32 United Nations. (1985). UN declaration of basic principles of justice for victims of crime and abuse of power, Geneva, (General Assembly Resolution 40/34)

Section

01





Sexual
Offences and
the Law
in Ireland



Sexual Offences and the Law in Ireland

Introduction

The law on sexual offences in Ireland has changed considerably over time, prompted by constitutional challenges, lacuna in existing legislation, statutory interpretation, campaigning and lobbying groups, the need to clarify law, recommendations by the Law Reform Commission, and stated Government policy to review certain offences. The Cosc /Department of Justice and Equality National Strategy on Domestic, Sexual and Gender-Based Violence 2010-2014 states as two key objectives the ongoing review and improvement of legislative provisions on sexual offences and the minimisation of attrition. An increasing emphasis on the needs and rights of victims within the criminal justice system is evident as the implications of the EU Victims Directive are debated before being transposed into national law in 2015.

Research findings on the reporting of sexual crime are not encouraging. Evidence from the SAVI¹ research in 2002 showed that only 1 % of men and just under 8% of women who suffered adult sexual assault reported their experiences to the Gardaí. This shows that most victims of sexual crime have little or no involvement with the criminal justice system. The research on attrition² commissioned by the Rape Crisis Network Ireland investigated the views of victims of sexual violence on reporting, what happened to sexual violence cases when they were reported to the Gardaí, and the victims' experience of files being sent to the Director of Public Prosecutions. They found that most people were raped by someone they knew and that many assaults happened in the victim's or the offender's home. However, these assaults were less likely to be prosecuted than the less common rape carried out by a stranger. Victims with mental illness were more likely than other complainants to withdraw their statements and, where the complainant had a psychiatric illness, the Director of Public Prosecutions prosecuted just 2 out of 78 cases. Forthcoming research by One in Four entitled 'Only a Witness'³, undertaken with clients of their advocacy service, explores the reality of being a 'Complainant' in sexual offence cases where the Director of Public Prosecutions has decided to prosecute.

This chapter will outline definitions of sexual offence types, relevant and forthcoming legislation on sexual crime in Ireland and the challenges and constraints associated with the legislation. The EU Victims Directive will also be considered.

A. The Criminal Law and Sexual Offences

1. Definition of Rape: The Criminal Law (Rape) Act, 1981 as amended by the Criminal Law (Rape) (Amendment) Act, 1990

A man commits rape if:

- a. He has sexual intercourse with a woman who at the time does not consent to it, and
- b. At that time he knows that she does not consent to the intercourse or is reckless as to whether she does or does not consent to it

At a trial for a rape offence the jury has to consider whether a man believed that the woman was consenting to sexual intercourse, and the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard. The maximum penalty for conviction of rape is life imprisonment.

2. Marital Rape

Rape in marriage is an offence. The Criminal Law (Rape) (Amendment) Act, 1990 abolished the old marital exemption from a charge of rape of a husband. This was on the basis of his alleged unconditional “marital right” to intercourse at will regardless of his wife’s consent.

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3. Rape under Section 4 the Criminal Law (Rape) (Amendment) Act 1990

Sexual assault is defined as:

- c. Penetration (however slight) of the anus or mouth by the penis, or
- d. Penetration (however slight) of the vagina by any object held or manipulated by another person

A person guilty of rape under section 4 shall be liable on conviction on indictment to a maximum sentence of life imprisonment. Section 9 of the 1990 Act makes clear that the absence of resistance does not equate with consent.

4. Aggravated Sexual Assault is defined as: (Section 3)

“Sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted.”

Aggravated sexual assault was created by section 3 of the Criminal Law (Rape) (Amendment) Act 1990 and renamed what was previously indecent assault. It carries a maximum sentence of life imprisonment.

Indecent assault is defined as: an assault accompanied by indecency and could be committed upon either a male or upon a female.

5. Defilement Offences: Criminal Law (Sexual Offences) Act 2006 as amended, (Sections 2 and 3)

“Defilement” is a sexual act with a female child who is under the age of fifteen years or a male child under the age of seventeen years , and includes sexual intercourse, buggery, aggravated sexual assault or rape under section 4. The Criminal Law (Sexual Offences) Act, 2006 was passed to address the lacuna left by the Supreme Court in the C.C. case⁴ and introduced the defence of mistake regarding age. These offences now exist as defilement of a child whereby a person engages in a sexual act with a child who is under the age of 15 or under the age of 17. The Act provides for a defence where there is a belief at the time of commission of the offence that the child has attained the relevant age (15 or 17). The belief must be honest and the court shall have regard to the presence or absence of reasonable grounds for the perpetrator so believing. It remains that consent provides no defence to these offences.

6. Incest: Punishment of Incest Act 1908 as amended

A male who has sexual intercourse with a female person who is, to his knowledge, his grand-daughter, daughter, sister or mother is guilty of the offence of incest. Incest also occurs where a female of, or over, the age of 17 has sexual intercourse with a male relative of one of the same classes of consanguine relationships. Consent is not a defence.

7. Child Trafficking and Pornography Act, 1998

This Act prohibits trafficking in, or the use of, children for the purposes of their sexual exploitation and the production, dissemination, handling or possession of child pornography. Offences of child sexual exploitation carry a maximum penalty of 14 years in prison and the organising of travel or accommodation for the purposes of child exploitation carries a maximum penalty of life imprisonment.

8. Sex Offenders Act 2001

This Act brought in the power to make sex offender and post-release supervision orders of up to 5 years’ duration or longer if the court decides. Part 5 (sections 27-33) especially section 30,2(b) is of particular interest: “there may be included in a sentence that includes post-release supervision ‘a condition requiring the sex offender to receive psychological counselling or other appropriate treatment provided by the probation and welfare service or any other body which it appears to the court, having regard to any submissions made to it on behalf of the probation and welfare service, is an appropriate body to provide such counselling or treatment.’

9. Criminal Law (Sexual Offences) (Amendment) Act 2007

This Act deals with offences of meeting or travelling to meet a child for the purposes of sexual exploitation and carries penalties from 3 to 10 years.

10. Children Act 2001

The Children Act 2001 is the main legislation covering children and the criminal justice system. This Act focuses on preventing criminal behaviour, diversion from the criminal justice system and rehabilitation. The use of detention for a child is to be a last resort: the Act requires that all avenues be explored before it is used.

B. Child Protection Policies and Legislation and Sexual Offences

1. The Children First Bill, 2014

This Bill will put elements of Children First: National Guidance for the Protection and Welfare of Children (2011) on a statutory footing and was published by the Houses of the Oireachtas on 14 April 2014 (Children First Bill 2014). The introduction of this legislation will form part of a suite of child protection legislative measures which already include the National Vetting Bureau (Children and Vulnerable Persons) Act, 2012 and the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012. The objectives are to raise awareness of child abuse and neglect; to provide for mandatory reporting by key professionals; to improve child protection arrangements in organisations providing services to children; and to provide for inter-agency working and information-sharing in relation to assessments by the Agency.

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2. Criminal Justice (Community Sanctions) Bill 2014

The heads of the Criminal Justice (Community Sanctions) Bill (2014) have been discussed at the Oireachtas Committee on Justice in recent months. It will introduce a restorative justice element to summary offences by offering offenders the opportunity to provide reparation to their victims with the requirement that the 'person in respect of whom the offence was committed is willing to accept the reparation'. This is as a statutory recognition of the voice of the victim, which can be seen as facilitating the victim's right to be heard as specified in Article 10 of the EU Victims Directive 2012/29/EU of the European Parliament and of the European Council establishing minimum standards on the rights, support and protection of victims of crime.

It also represents another crucial step in putting restorative justice on a statutory footing for low tariff crimes committed by adult offenders.

C. The Victim and the Criminal Justice system

1. Criminal Procedure

There are many difficulties that arise for victims during the course of a criminal trial, some of which are unique to a trial involving sexual offences. The intimate and intensely personal nature of sexual crime being adjudicated in a public adversarial forum, with moral overtones, judgements and blame creates a difficult environment for a just outcome. Some such difficulties concern the inclusion of evidence of the victim's prior sexual history, cross-examination of the victim, judicial warnings regarding uncorroborated evidence and limitations on a victim's role in sentencing when the accused is found guilty of the offence, though the latter is not unique or confined to offences of a sexual nature.

2. Consent

The issue of consent is key to all sexual offences. Usually where consent is present there will be no offence, except in the case of children under 17 years of age and in some other specific circumstances. In Irish law there is no statutory definition of consent. The Criminal Law (Rape) (Amendment) Act 1990 removed the common law requirement of utmost resistance on the part of the victim and this applies to all sexual assault offences. Court judgements have held that consent obtained through threats or force is not true consent for the purposes of the law. Where the victim has consumed an intoxicant to the extent that that person has lost their capacity to choose, then consent cannot be regarded as operative.

3. Evidence of "other sexual experience" of the Complainant

The Criminal Law (Rape) Act, 1981 prevents the defence from cross-examining the complainant on previous sexual experience except by leave of the court so an application to the judge is necessary. This request may or may not be acceded to.

This was largely in response to a controversial UK case, *R v Morgan*⁵. These provisions are generally referred to as rape shield provisions. The restrictions were broadened by the Criminal Law (Rape Amendment) Act, 1990, which states that it is not permissible to ask questions of or cross-examine a complainant regarding their sexual experience in evidence, including that with the accused, outside of the incident complained of, unless leave to do so is granted by the trial judge. Application to do so may be made to the trial judge in the absence of the jury and the judge shall give leave only if satisfied that it would be unfair to the defendant to refuse to do so. This may occur where, if that question or evidence was not put to the jury, they may be satisfied beyond reasonable doubt as to the defendant's guilt, and where, by allowing it they may not be so satisfied. The restrictions apply in cases of rape, sexual assault, aggravated sexual assault, defilement, and offences of contempt. Nevertheless, where an application is successful a complainant may lose

these protections and be subjected to cross-examination on their sexual history, including that with the defendant if the defendant is someone with whom the complainant had a relationship or prior involvement with. However, in such circumstances the witness [in this case the victim] is permitted to have his or her own legal representation by counsel that is separate to the state's legal team.

4. Corroboration

Section 7 of the Criminal Law (Rape) (Amendment) Act, 1990 gives a discretion to the trial judge as to whether or not to give a corroboration warning. The practice in trials of sexual offences whereby a trial judge informs the jury that, while it is open to the jury to convict an accused person on the uncorroborated evidence of the victim, but he warns them of the dangers of doing so, is customarily referred to as "a corroboration warning." Corroborative evidence is evidence independent of the victim's evidence which tends to show that the offence was committed and that the accused committed it.⁶

Prior to section 7 of the 1990 Act it was mandatory in the trial of offences of a sexual nature for trial judges to give this warning to the jury. The warning is no longer mandatory, but there are cases in which it would be considered desirable to do so.⁷ Undoubtedly it is very difficult for victims of sexual offences to hear such a warning being delivered to the jury by a trial judge.

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5. A Victim's Right to provide a Victim Impact Statement

In the event of either a guilty plea or a guilty verdict, the difficulties experienced by a victim surrounding a criminal trial may be compounded by their role in sentencing, which is limited to the provision of victim impact evidence. This is generally tendered by way of a Victim Impact Statement, the purpose of which is to describe the effect of the offence on the victim and the victim's life.⁸ Victim Impact Statements were first introduced into statute law by the Criminal Justice Act, 1993. The victim may be examined and cross-examined on this evidence and professional evidence may also be given. Although the decision in *People (DPP) v Donoghue*⁹ pre-dates the amendments, in 2010 the Court of Appeal highlighted the importance of procedural fairness in this process. Victim Impact Statements must be furnished to the trial judge and legal representatives in advance, and departures from the content of the statement may give rise to proceedings for contempt of court.

6. Delays

Delay poses enormous difficulty in criminal proceedings. Delay in criminal proceedings differs from civil proceedings, primarily because the prosecution of an offence to be tried on indictment before a jury is not subjected to the statutory time limits that civil proceedings are. Having said that, Article 38 of the Constitution provides that no person

shall be tried save in due course of law, and this constitutional imperative includes the right to a fair trial and to a trial within reasonable expedition. The courts have said that “... a person charged with a criminal offence is entitled, as part of his right to be tried in due course of law, to a trial with reasonable expedition”.¹⁰

The right to trial with reasonable expedition exists to protect a defendant against loss of liberty and anxiety and concern whilst a trial is pending, and to protect against the impairment of the defence. Distinction is made between complainant delay and prosecutorial delay. Complainant delay occurs where there is significant delay between the time of the alleged offences or abuse, and the time at which the victim complained of or reported the sexual offences or abuse, often such delay being many years.

In such cases, a defendant may be in a position to argue that an unfair trial may occur and where the accused has grounds for advancing that argument he or she may seek judicial review to prohibit their trial. There is, however, a high threshold required to demonstrate that there is a real risk of an unfair trial, which cannot be avoided by appropriate warnings and rulings by the judge presiding over the trial. The question to be asked is whether the delay has resulted in prejudice to an accused so as to give rise to a real or serious risk of an unfair trial and whether there may be “wholly exceptional circumstances” making it unfair to proceed with a trial.¹¹ Jurisprudence on this issue has developed such that less weight is attached to the reasons for delay by the victim in reporting or complaining of the offences or abuse.¹² Nevertheless, in circumstances where a defendant successfully raises these arguments, the trial may be prohibited, which may be devastating to a complainant.

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7. Compensation Orders

Section 6 of the Criminal Justice Act, 1993 provides for Compensation Orders whereby upon conviction a judge may order that the convicted offender pay compensation in respect of any personal injury or loss resulting from that offence. This may be in addition to or instead of other punishment(s). In July 2012 Anthony Lyons was convicted of sexual assault and sentenced to six years imprisonment with five and a half years suspended. He was also ordered by the trial court to pay €75,000 in compensation to the victim of the sexual assault. The DPP appealed against the sentence on the basis of undue leniency whilst the offender was released from prison in December 2012 having served a six month custodial sentence. Due to the serious illness of one of the members of the judiciary of the original appeal court, the appeal was heard for a second time before a re-constituted appeal court in May and July 2014. In the meantime, the convicted offender had paid almost €200,000 (inclusive of legal costs) to the victim in settlement of separate civil proceedings. The Court of Criminal Appeal increased the sentence imposed to six years imprisonment, with four suspended and the offender was returned to prison to serve the balance of the sentence. The court

ruled that civil compensation would have no bearing on decisions on compensation in criminal cases, save in exceptional cases.

8. Appeals

Research has shown that victims of sexual crime find the length of the legal process challenging and it is also possible that an appeal process may prolong the timescale. After a trial or sentencing hearing, the convicted person has a right of appeal in respect of both the sentence handed down by the court and if there was a 'not guilty plea' and a full trial, the conviction at trial. The prosecution also has limited rights of appeal, but the complainant as a witness, has no right of appeal. If the matter was heard in the District Court, there is a full right of appeal to the Circuit Court, and a right of appeal based on a transcript of the evidence against conviction or sentence from the Circuit Criminal Court, the Special Criminal Court or the Central Criminal Court to the Court of Criminal Appeal. In some cases the accused may further appeal from the Court of Criminal Appeal to the Supreme Court. From the lower courts i.e. the District and the Circuit Courts the accused may also seek a judicial review or seek to have a case stated.

D. The Victim and Civil Justice System

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1. Criminal Injuries Compensation Tribunal / Scheme

The Criminal Injuries Compensation Tribunal administers a Scheme of Compensation for Personal Injuries Criminally Inflicted. The Scheme was established in 1974 as an ex gratia (non-statutory) board or body established to consider and assess applications from victims who suffer personal injuries as a result of a crime of violence. Applications must be made within three months after the date of the incident, but the Board has discretion to extend this time where exceptional reason can be shown. The compensation awarded is entirely different to the awards of the court discussed above. Since 1986 the Board cannot award compensation by way of general damages for pain and suffering for injuries sustained and awards are limited to financial loss including loss of earnings, medical expenses, medication, and out of pocket expenses that are documented and the crime must have been reported to An Garda Síochána without delay.

2. Civil Redress for Sexual Abuse

Civil proceedings may be brought by victims of sexual abuse against the offender or an organisation or institution having legal responsibility at the relevant time for acts of the offender; these may be brought under principles of Tort¹³ law which provides the framework for remedies and redress in civil law. Actions in negligence and breach of duty may be brought, particularly where there was a known propensity of the offender, or their propensity ought to have been known. Civil actions may also be brought for negligence, breach of duty, assault, battery,

trespass to the person, breach of Constitutional rights and in some instances false imprisonment. Because of the statute of limitations in initiating civil proceedings for redress in the aftermath of sexual crime, victims of sexual crime often have to undergo psychiatric evaluation to provide the necessary evidence as to their state of mind in the intervening years between the committal of the offence and the initiation of civil proceedings, in accordance with the terms of the Statute of Limitations Act, 1957, and the Statute of Limitations Amendment Act (2000) [see below]. Application must first be submitted to the Criminal Injuries Compensations Board [above] who will decide whether or not to permit the applicant to proceed with the application to the courts.

3. Statute of Limitations

In civil law proceedings where a plaintiff seeks redress or damages a defendant may argue that the claim brought by the victim is statute barred. The operation of the Statute of Limitations means that civil actions shall not be brought on the expiration of certain specified time limits. The purpose of this is to provide certainty so that actions cannot be brought other than within reasonable time limits and to prevent prejudice to defendants in having to defend legal proceedings extraordinary periods of time after the events concerned. The time limits are imposed by the Statute of Limitations Act 1957. This principal act has been amended on a number of occasions. For personal injuries the time limit is now two years. However, for cases arising from torts of assault and battery and trespass to the person (intentional torts) the time limit is six years.

The 1957 Act provides, however, for the extension of this period in the case of “persons under a disability”, and sets out a limited range of circumstances constituting such disability, including that a person is an infant, or of unsound mind. In 2000 an Amendment Act¹⁴ extended the grounds of disability to cover certain persons who brought actions in tort in respect of acts of sexual abuse committed against them before they had reached full age, and who suffered psychological injury as a result, in whole or in part, of those acts of sexual abuse, which injury is of such significance that their will or ability to make a reasoned decision to bring such action was substantially impaired. The Act allows a period of one year within which such claims can be brought where certain conditions are met. The legislation also contains a specific saver that provides that nothing in the extension of time will affect the power of a court to dismiss an action if there was such delay between the acts complained of and the bringing of the case that, in the interests of justice, dismissal is warranted.

E. Additional Legislation

1. Residential Institutions Redress Act, 2002

In 2002 the Residential Institutions Redress Act was passed with the purpose of making financial awards to assist in the recovery of certain persons who, as children, were resident in certain institutions in the State and who have or have had injuries that are consistent with abuse received while so resident. The abuse envisaged included sexual abuse defined as “the use of the child by a person for sexual arousal or sexual gratification of that person or another person,” and injury was defined as including “physical or psychological injury and injury that has occurred in the past or

currently exists.” The act also established the Residential Institutions Redress Board.

2. Statute of Limitations (Amendment) Act, 2000

The Statute of Limitations (Amendment) Act, 2000 was passed with the purpose of affording an amnesty to certain persons who would be considered to have been under legal disability, thereby preventing them from bringing civil proceedings relating to acts of sexual abuse committed against them before they reached the age of majority.

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F. Relevant Case Law

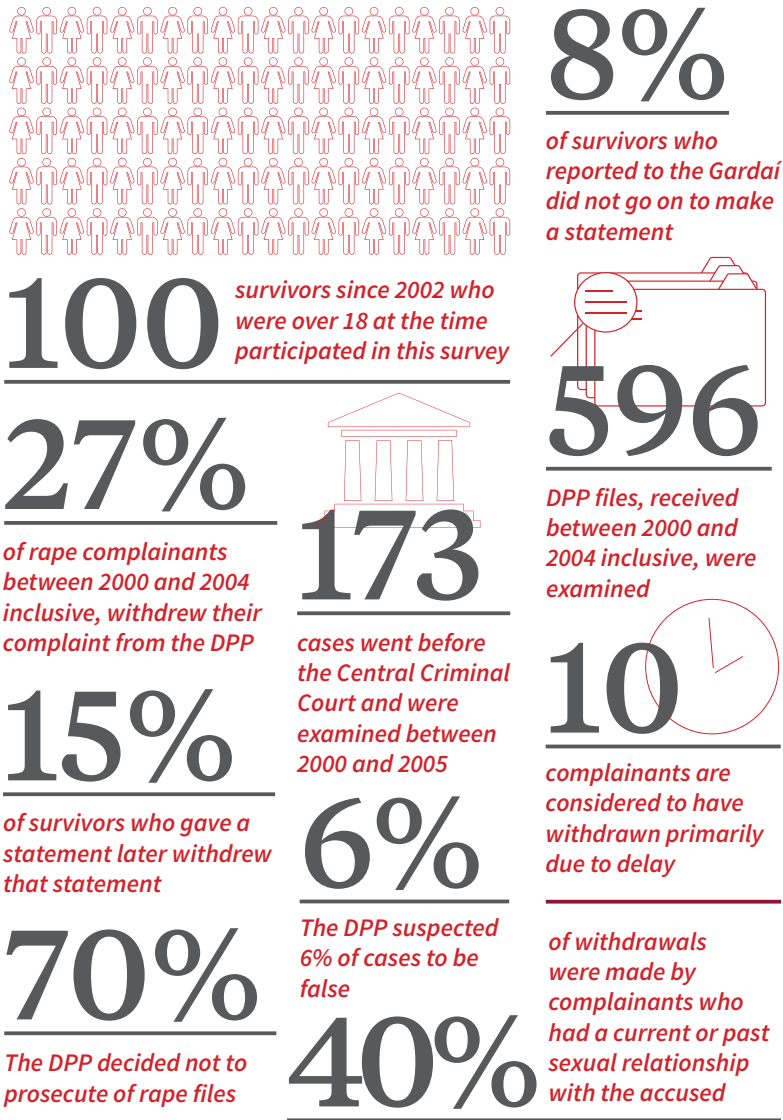
Looking at relevant cases such as *M.N. v S.M.*¹⁵ and *Noctor v Ireland & Others*¹⁶ we find that the range of compensation awarded in serious child sexual abuse cases is from around €300,000 to €400,000 depending on the facts of the case.

1. O`Keefe v Ireland¹⁷

In this case the plaintiff had been sexually abused by her school principal whilst in national school in the 1970s. He was prosecuted for historic sex abuse against pupils and pleaded guilty to a number of sample charges in 1998. The plaintiff brought civil proceedings against the offender who was ordered to pay damages in the sum of €305,104. The offender did not have the means to pay and was then required to pay a monthly amount for the remainder of his life. Ms. O`Keefe also sought and obtained redress from the Criminal Injuries Compensation Tribunal in the sum of €53,000. She then brought proceedings against the State defendants claiming that the State had liability for the acts of the offender on the basis of a legal principle referred to as vicarious liability. The case examined the extent of State responsibility for the abuse committed by a primary school principal in circumstances where the school was run, not by the State, but by a religious patron. In 2008 the Supreme Court dismissed proceedings against the State, finding that, on normal principles, the State has no vicarious liability for the acts of a teacher appointed by the manager of a national school under the

system of management of national schools. The plaintiff thereafter took the case to the European Court of Human Rights and the European Court held that her rights had been violated under article three (and article 13 which gives rise to an effective remedy before a national authority) of the European Convention on Human Rights which prohibits inhuman and degrading treatment. This is a crucial judgement as it puts responsibility for any abuse which happens in State funded institutions squarely on the State.

Below are some statistics provided by the report, Rape and Justice in Ireland, commissioned by the Rape Crisis Network of Ireland.¹⁸ The research looked at three populations/sets of materials:



G. Victim Visibility

Traditionally, the criminal justice system has focused on the difficulty that alleged offenders who are accused of committing criminal offences with victims of crime find in achieving recognition of a place in the system. The role of the victim of crime generally has two aspects: to deliver evidence for the prosecution regarding the offence during the course of the trial and, if the accused is found guilty, to deliver a Victim Impact Statement at the sentencing hearing. The Victims Charter, the EU Victim's Directive and a growing interest in Restorative Justice has, over time, marked a shift towards a more victim-centred approach and a growing movement in favour of victim empowerment and policy change.

1. The Victims Charter

The Victims Charter was first published by the Department of Justice, Equality and Law Reform in 1999. Although not enforceable in a court of law, it has guided agencies towards a greater understanding of victim issues and has given rise to a call for a Victims' Ombudsman's Office.

Each of the nine organisations below has developed their own charters.

1. Crime Victims Helpline Victims Charter (voluntary sector organisation)
2. An Garda Síochána Victims Charter
3. Courts Service Victims Charter
4. The Office of the Director of Public Prosecutions Victims Charter
5. Probation Service Victims Charter
6. Prison Service Victims Charter
7. Legal Aid Board Victims Charter
8. Coroner Service Victims Charter
9. Criminal Injuries Compensation Tribunal Victims Charter

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2. EU Victims Directive 2012/29/EU

The EU Victims Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime obliges Governments to examine how legislation can improve protection for victims. It aims to improve the real, day-to-day situation of millions of victims of crime across Europe to the greatest extent possible and is described as far-reaching.¹⁹ Member states are directed that it must be transposed into law by 16th November 2015.

Relevant Articles of the EU Victims Directive 2012/29/EU

Article 1 requires Member States to ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner in all contact with Victim Support, Restorative

Justice Services or a competent authority operating in the context of criminal proceedings.

Article 2 provides relevant definitions including those of victim and Restorative Justice. Restorative Justice is defined as any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence with the help of an impartial third party.

Article 3 provides for the right to understand and to be understood.

Article 4 provides for a right to receive information from the first contact, and Member States must ensure that victims are offered the following information, without unnecessary delay, after their first contact:

- the type of support they can obtain and from whom, including basic information about access to medical support, and any specialist support, including psychological support and alternative accommodation
- the procedures for making complaints in criminal offences and the victim's role in connection with such procedures
- how and under what conditions they can obtain protection, including protection measures; access legal advice, legal aid and any other sort of advice; access compensation; entitlements to interpretation and translation;
- available procedures for making complaints where their rights are not respected
- contact details for communications about their case
- the available Restorative Justice services
- how and under what conditions expenses incurred as a result of their participation in criminal proceedings can be reimbursed

Article 5 provides for very specific rights of victims when making complaints.

Article 6 provides for the right of a victim to receive information about their case.

Article 7 provides for rights to interpretation and translation.

Article 8 provides for the right to access victim support services.

Article 9 provides for a right of support from victim support services.

Article 10 provides for the right to be heard. This is to ensure that victims may be heard during criminal proceedings and may provide evidence. Procedural rules under which this will be done shall be determined by national law.

Article 11 provides for rights in the event of a decision not to prosecute.

Article 12 provides for rights to safeguards in the context of restorative justice services.

Explanatory note on Article 12:

“Restorative Justice services encompass a range of services whether attached to, running prior to, in parallel with or after criminal proceedings. They may be available in relation to certain types of crime or only in relation to adult or child offenders and include for example victim-offender mediation/ dialogue, family group conferencing, sentencing circles and restorative circles.

The purpose of this Article is to ensure that where such services are provided, safeguards are in place to ensure the victim is not further victimised as a result of the process. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Participation of the victim should be voluntary which also implies that the victim has sufficient knowledge of the risks and benefits of restorative justice in order to make an informed choice.

It also means that factors such as power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim’s ability to make an informed choice, or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case for restorative justice and in conducting a restorative process.

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Whilst private proceedings should in general be confidential, unless agreed otherwise by the parties, factors such as threats made during the process may be considered as requiring disclosure in the public interest. Ultimately any agreement between the parties should be reached voluntarily.

Full Text of Article 12 - Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

- a. the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim’s free and informed consent, which may be withdrawn at any time;
- b. before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

- c. the offender has acknowledged the basic facts of the case;
- d. any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;
- e. discussions in restorative justice processes that are not conducted in public, are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

Article 13 provides for a right to legal aid.

Article 14 provides for the possibility of reimbursement where victims actively participate in criminal proceedings in accordance with their role in the relevant criminal justice system. This may include travel costs of a minimum daily amount for loss of earnings.

Article 15 provides for the return of property that has been seized in the course of criminal proceedings without delay, unless required for the purposes of those criminal proceedings.

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Article 16 provides a right to a decision of compensation from the offender in the course of criminal proceedings and provides that Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Article 22 provides for individual assessment of victims to identify specific protection needs

This article provides for an individual assessment of need to identify victims with ‘specific protection needs’ to take into account:

- a. the personal characteristics of the victim;
- b. the the type or nature of the crime; and
- c. the circumstances of the crime.

It refers to victims whose relationship to and dependence on the offender make them particularly vulnerable and to victims of human trafficking, gender-based violence, violence in a close relationship, sexual violence and exploitation or hate crime, and victims with disabilities.

Article 25 refers to the training of practitioners working with victims

This article obliges States to consider what level of training may be appropriate for service providers including those involved in Restorative Justice provision as follows:

“Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim

support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.”

2.2 Requirement to provide Restorative Justice:

Of particular relevance to this research report is the section of the Guidelines on the Victims Directive which state “The Article does not oblige the Member States to introduce restorative justice services if they do not have such a mechanism in place in national law. Indeed, the Court of Justice of the EU has confirmed that Member States are not obliged to use mediation/restorative justice for all offences.”²⁰

Conclusion

Dealing with sexual crime is particularly complex, and given the profound psychological issues and consequences it often calls for a more flexible approach to justice than is available in the current adversarial criminal justice system, which is by design offender focused, with the imperative to gather evidence, to prosecute law breaking and to punish law breakers. In this approach to criminal justice the victim of the crime is instrumental to the process of prosecuting wrongdoing and reduced to the role of witness for the state. For victims of sexual crime whose lives and personhood are often vandalized by the crime the role of State witness is frustrating as it provides little opportunity to describe what they had to endure and it offers little opportunity to them to explain the impact of the sexual crime on their lives, except through the constraining lens of the victim impact statement.

Despite substantial legislative frameworks being available to deal with sexual crime and an ongoing commitment by government to address gender-based violence through multi-agency structures, the adversarial nature of the criminal justice system is inherently ill-equipped by design and function to address some of the challenges posed by sexual crime particularly for the victims. This is even more profound a situation when one considers the high rates of attrition that are involved in sexual crime.

Withdrawals of complaints, case delays and high evidential thresholds for prosecuting cases beyond reasonable doubt have resulted in almost 70% of cases of sexual crime in Ireland failing to reach prosecution. This is an international phenomenon, requiring international and national solutions. One such consideration must be restorative justice. According to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), victims of sexual violence are entitled

“to access the mechanisms of justice and to prompt redress”, to “fair restitution from offenders” and to be treated with compassion and respect for their dignity. As restorative justice is an innovative form of justice delivery (Daly 2011), it offers flexibility with regard to helping victims obtain justice as a complementary approach to the criminal justice system for all victims and not just those whose cases have been adjudicated in the criminal courts. In the following chapters we consider the experiences of victims of sexual crime and of sexual offenders of the criminal justice system and we explore with them and with a range of pertinent professionals the possibilities for innovative as well as conventional reforms to the justice delivery for victims of sexual crime; of which restorative justice is one such innovation.

End Notes

1 McGee, H., Garavan, R., de Barra, M., Byrne, J. and Conroy, R. (2002) The SAVI Report: Sexual Abuse and Violence in Ireland. Dublin: The Liffey Press in association with Dublin Rape Crisis Centre.

2 Rape and Justice in Ireland Handbook (2010), Rape Crisis Network Ireland

3 Brown J., McKenna, D. and O'Kennedy, E. (Forthcoming). Only a Witness. Dublin: One in Four

4 CC v Ireland, the Attorney General and the DPP in 2006

5 [1976] AC 182

6 'Independent evidence of material circumstances tending to implicate the accused in the commission of the crime with which he was charged' (per Sullivan C.J. in Attorney General v. Williams [1940] I.R. 195 at p. 200) cited in The People (Attorney General) v Trayers [1956] IR 110 at page 114.

7 The People (DPP) v Reid [1993] 2 IR 186 at page 197

8 The Criminal Justice Act, 1993, section 5 amended by section 4 of the Criminal Procedure Act, 2010

9 [2007] 2 IR 336 at 359

10 State (O'Connell) v Fawsitt [1986] IR 362 Finlay CJ at 378

11 H v DPP [2006] 3 IR 575 at 620, Supreme Court, and (E) K v Moran [2010] IEHC 23

12 H v DPP [2006] 3 IR 575

13 Tort refers to a wrongful act or infringement other than a breach of contract which causes harm or loss to another, whether it be their person, their property, or their reputation

14 The Statute of Limitations (Amendment) Act, 2000

15 [2005] 4 IR 461

16 [2005] 1 IR 433

17 O'Keefe v Hickey and the Minister for Education and Science, Ireland and the Attorney General [2009] 2 IR 302, O'Keefe v Ireland 35810/09, Strasbourg, 28th January 2014

18 Rape and Justice in Ireland Handbook (2010), Rape Crisis Network Ireland

19 European Commission, DG Justice December 2013 page 3

20 CJEU rulings in cases C-205/09 Eredics and Joined Cases C-483/09 and C-1/10 Gueye/Sanchez³⁵ interpreting Article 10 FD on mediation.

Section

02





Victims and their
Families: Their
Experiences of the
Criminal Justice and
other 'Justice' Systems



Introduction

In the following section we consider victims' and their families' experiences of the Irish criminal justice system and alternative justice processes including Civil Courts and the Residential Institutions Redress Board (RIRB). Before reflecting on these experiences it is useful to point out that in Ireland as in other jurisdictions the majority of victims of sexual crimes do not report their experiences to the police and such victims therefore have no contact with the criminal justice system. The SAVI report revealed that just 1% of Irish male victims of adult sexual assault had reported their experiences to An Gardaí. The reporting rate for Irish female victims of adult sexual assault was higher (7.8%) but still very low¹. The same research found that child sexual abuse was reported to An Gardaí by just 1% of male victims and 10% of female victims. An average reporting rate for sexual violence of 14% has been found for other common law jurisdictions².

Cultural and legislative changes have encouraged a larger proportion of victims to report sexual violence, now than in the past. Research on rape cases in Europe points to a widespread and marked increase in recent decades in the number of cases of rape reported to the police and an especially marked increase in the number of cases of rape reported in Ireland³. We can also point to statistics that suggest that the reporting rate to police of sexual violence may have increased since the date of the SAVI report; in 2007 18% of Rape Crisis Network Ireland (RCNI) service users made a report to the police, in 2009 the proportion of service users making a police report increased to 27%⁴ and in 2011 this proportion increased again to 30%⁵. It should be remembered however that not all victims of sexual violence will use a service such as the RCNI.

Irish research indicates that adults are more likely to report serious sexual assaults than minor sexual assaults but for victims of child sexual abuse the reporting rate of less serious offences such as indecent exposure is higher than that for penetrative sexual assault⁶. Research findings indicate that the age at which the abuse occurred and concerns about upsetting the family are more likely to influence police reporting when the abuse is inflicted on a child rather than an adult⁷.

It should also be borne in mind that high attrition rates are common for sexual crimes. In practice this means that only a minority of those who report their experience of sexual violence to the police will ultimately find that the report leads to a criminal prosecution and an even smaller proportion will find that the perpetrator is convicted of a criminal offence. Attention has focused in particular on the reporting of rape, the most serious sexual crime. In Ireland the increase in the number of reported rape cases has been accompanied by a decline in the proportion of cases prosecuted. In 1977, 73% of reported rape cases were prosecuted whereas in 2007, 20% of rapes reported to An Garda Síochána were prosecuted⁸. Recent statistics indicate that the number of sexual crimes

recorded by An Garda Síochána increased by over 50% between 2008 and 2012. Relevant proceedings were taken for 317 of the 2117 (15%) sexual offences recorded in 2012;⁹. The proportion of Garda recorded sexual offences leading to court proceedings declined markedly during the period 2003-2012, the largest decline was in the proportion of recorded sexual assaults leading to court proceedings; sexual assaults are the largest category of sexual offences¹⁰

Research has indicated that conviction rates for rape in Ireland are low; in 2006 Ireland ranked 20 out of 22 European countries in terms of conviction rates for rape with only England and Wales and Scotland having lower conviction rates¹¹. Case tracking of a sample of 100 Irish cases of rape revealed that although in three quarters of the cases a suspect was identified only 18 suspects were charged and only 16 proceeded to trial of which 8 were ultimately convicted. When a suspect had been identified cases failed to proceed primarily because of evidential deficits or because the case was withdrawn by the victim. Evidential deficits were especially common in situations when the victim had consumed alcohol, the victim had a mental illness and/or the suspect was known to the victim¹². Research by Hanly et al. also highlighted that a very significant proportion of both complainants and suspects in cases of sexual violence had consumed alcohol prior to the offence and most of these had been 'binge drinking'. The same research found that only 2 complaints (out of 78) of rape made by persons with a mental illness were prosecuted and no convictions were secured¹³.

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When a criminal conviction is secured for a sexual offence the punishment imposed will depend on the gravity of the offence and relevant mitigating and aggravating factors. In Ireland except in 'wholly exceptional' cases a conviction of rape will attract a custodial sentence and indeed 'a sentence of less than three years is highly unusual in the context of rape even where the accused pleaded guilty at an early stage'¹⁴. Research indicates that the median tariff imposed for rape is a sentence of 3-8 years imprisonment with punishments above the mean ranging from 9-14 years and for crimes of exceptional gravity from 15 years to life imprisonment¹⁵. These findings are broadly consistent with the findings of earlier research which indicated that the average length of sentence for rape in Ireland was 9 years and 3 months¹⁶. Rape is the most serious sexual offence and we can expect that less serious offences will attract a lower tariff.

Due to legal and ethical considerations this research could only engage with victims of sexual violence who had reported their experiences to An Garda Síochána or who had previously disclosed their experiences to other professionals and been advised that a criminal prosecution was not viable.

Victims of Sexual Crime and Family Members

Criminal Processes and Proceedings

Thirty men and women who experienced sexual violence were interviewed for this study. All of the interviewees were interviewed individually apart from three siblings of intra-familial sexual abuse and who wished to be interviewed together.

The interviews conducted reveal that victims' experiences of the criminal justice system vary greatly. Criminal justice outcomes significantly affected victims' experiences of the criminal justice system. For some victims engagement with the criminal justice system culminated in a 'guilty' verdict but other outcomes also included charges not proceeding; charges being struck out; and a verdict of 'not guilty'. Some charges were still ongoing at the time of interview and the outcome was not yet known. Victim's experiences of the criminal justice system are analysed under the following themes: 1. Reason for engagement with the criminal justice system; 2. position of the victim within the criminal justice system; 3. experience of An Garda Síochána; 4. information deficits and misinformation; 5. delays in criminal proceedings; 6. criminal charges; 7. court processes; 8. outcomes and 9. contact with the probation service.

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2.1. Reason for engagement with the criminal justice system

While some victims who engage with the criminal justice system may have a positive experience and feel vindicated, moral satisfaction, and an increased sense of trust in the legal system, other victims may find their experience disappointing or even psychologically damaging. A number of studies have found that a significant proportion (52%-43%) of victims of sexual violence who had contact with the legal system considered that their experience was unhelpful or hurtful¹⁷. American research also points to negative psychological health impact identified by survivors of rape as a result of their contact with the legal system¹⁸.

As noted earlier a minority of victims of sexual abuse will report their experiences to the police and it must be acknowledged that many concerns may result in victims of sexual crimes feeling ambivalent about the involvement of the police and the possible consequences of that involvement both for themselves and for the offender. It may be more instructive therefore to consider why victims opt to disclose offences to the police rather than why they do not.

Some victims explained their decision to report their experience of sexual violence as a means of passing on the burden of the sexual abuse to someone else. Hence, victims saw reporting the abuse as a means of freeing themselves of the responsibility for addressing the sexual violence; this sentiment is captured in the extract set out below.

VSC2: For me, from day one going to the Gardaí, I recognised eventually, was ultimately about me saying ‘I can’t carry this around anymore. I need to put this some place. This is not mine. Why the hell am I carrying around something that was done to me that I am not responsible for? I need to give it to the court. I need to give it back to him. And then, I need to be able to just walk away free. I don’t want to carry this anymore’.

Some victims of intra-familial abuse also wanted to pass on the responsibility for the abuse to someone else, but tried other avenues before turning to the criminal justice system. Three family members who were all victims of intra-familial sexual abuse were interviewed together. They described their reluctance to deal with the abuse through the criminal justice system and how ultimately they felt the only choice available to them was to make a police complaint.

VSF1a: We wouldn’t have gone to court, we were forced.

Interviewer: There was no other option?

VSF1b: There was no other option. We had no other option and everyone said ‘you are really brave’, we weren’t.

VSF1c: There’s millions walking around now that do not ever want to bring their perpetrator to court. They don’t ever want to do that.

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These siblings recounted how they had sought the assistance of the Catholic Church and their family doctor before reporting their abuse to the police. Like VSC2 these victims refer to the need to pass on the responsibility for dealing with the abuse to someone else.

VSF1a: Before we decided to charge Dad, we called everybody to see what we could do with him. He was out of the door⁹, but we didn’t want the responsibility. The Priest told Mammy to take him back, that he was sixty-nine and what harm can he do. The Doctor, we wanted to commit my Dad, he said ‘it’s not possible’.

VSF1b spoke of her anger when the family’s request for assistance from the church was responded to by providing her father with a flat overlooking a school and a job in the school working directly with children.

VSF1a: concluded: ... we had no choice but to charge him.

The mother of a victim of intra-familial sexual abuse also reflected on the difficulty of reporting the abuse to the police. She described how the revelation of the abuse had resulted in the break-up of what had been a close family as family members had aligned themselves with the victim or with the offender. She said ‘I’ve lost my family in this’ but added ‘the one thing that helps me sleep and helps me get up in the morning and function as a mother is I know I’ve done the best for [my daughter] (FVSM).

However one legal professional interviewed commented on the difficult situation that parents of children who have been sexually abused find themselves in and concluded that he would not like himself or his children to be caught up in the criminal justice process.

LP3: The button has been pressed for the prosecution, it can't be stopped and I've certainly seen situations where eh I felt for the parents as a prosecutor and a defender, as a human reaction, to the plight of the parents and saying to myself "I wouldn't like to see, first of all anything like that happen to my own children, and secondly, I wouldn't like to see myself – us caught in this process which is now unstoppable".

When the victim of sexual violence is a child even if the child indicates that they want to withdraw their complaint, the Director of Public Prosecutions may consider that it is in the public interest to continue with the prosecution. Therefore withdrawing an allegation of sexual abuse may not be an option when the victim is a child; this explains the comment by LP3 that the case 'can't be stopped'. In such circumstances the statement given by the victim when making their complaint to the Gardaí would be presented as evidence in court proceedings. Although it is possible for the DPP to adopt a similar approach for adult victims this is not the norm²⁰ⁱⁱ.

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Concerns that the perpetrator may still pose a danger prompted some victims to report their abuse to the police. VSC1 a victim of clerical sexual abuse was initially reluctant to make a criminal complaint but made the decision to proceed when he became aware that other claims of abuse had been made against the same perpetrator.

VSC1: For years I had a sort of... an attitude that if he had not abused anybody else, then, I didn't want him to be punished too much... When you learned there were lots of other people, it made it more serious

A police investigation of the sexual abuse experienced by one victim as a child was initiated when the victim approached the police because she wanted them to be aware that a man who had abused her as a child, and who might represent a danger to children, was living in the vicinity.

VSM6: When I went to the police station in England, in London, I didn't go in there to report a crime. Not at all. I went in there to tell them that there was a paedophile living in the area. They ran with it, I had no intention of doing this. None, whatsoever. I went into a pure blind panic when it started to run. .And I couldn't stop it.

For this victim disclosure of her own abuse was unintended and it set in train a process of which she was not in control and found terrifying. Another victim also related that she had not sought to report her experience of sexual violence to the police but found herself in a police investigation after she contacted a support service for victims of clerical sexual abuse. The support service reported the abuse to An Gardaí. This

victim was unprepared for the involvement of the police and was shocked when they arrived unannounced at her home.

VSC6: I didn't realise they were going to be contacting the HSE and the Guards and I didn't realise the impact of it. So it was very shocking for me then. It was my daughter's confirmation day and two Guards arrived up to the house and my father didn't know, yeah, and I was never going to tell him that I had been abused by a priest. It was a horrible experience, you know, just having the call like that.

VSM6 and VSC6 both found themselves caught up in a police investigation without having made a conscious decision to report their abuse to the police. Their accounts suggest that in such circumstances victims may feel wholly overwhelmed and struggle to engage with the process.

VSC6: when the Guards came to me afterwards and they said about needing to make a statement, I'd say it was my first time in a very, very long time of actually feeling virtually suicidal at that stage. I didn't know how I was going to make that statement and the disgrace it would bring on my family. You know, it was just massive.

VSM6: ... I never felt so alone in all my life.

In cases of intra-familial sexual violence concern that other family members may be the subject of abuse can prompt victims to report the perpetrator to the police. The key concern may be to stop the abuse or prevent further abuse rather than to punish the perpetrator. VSF2 reported her abuse to the police on two occasions. She first made a complaint when her daughter reached the age of three, the age at which her father had started to abuse her. Following this report a decision was made by the DPP not to prosecute the case. This decision left VSF2 feeling alone and unsupported.

She decided then that: 'I was going to bury this again, that it was a lot easier, life would be a lot easier if I bury it and just to get on with things, and to cope with this as best I could .. And that's what I did for the last twenty something years...

Some twenty years after making the initial report to the police about the abuse she had suffered concern that her father might re-offend again prompted VSF2 to contact the police again. This time the trigger which prompted her to report the abuse to the police was her grand-daughter reaching the age of three. VSF2 was encouraged by her doctor to report the abuse to An Gardaí but was afraid of the response she would receive:

VSF2: I was terrified the same thing would happen that's happened before... if they just dropped it, that's twice I'll have gone to the Guards, twice they wouldn't have taken the prosecution and that would have looked worse for me, because then everyone would just believe that look it, the Guards, there's no way he did that. She must be lying. So it was a big chance, but it was a chance I had to take for

the protection of [my granddaughter]. So, I did. I rang, I actually rang the Rape Crisis Centre first of all, because I didn't know who to ring and they told me to ring Harcourt Street.

The complex nature of intra – familial abuse was highlighted throughout this research; the difficulties embodied in initiating criminal charges against a family member are layered and complex. The complex relational network of division and pain that almost always ensued added to the difficulties of seeking justice through the courts; an awareness of the potential for such division and pain sometimes explained why victims were reluctant to take this route. Intra-familial sexual abuse victims were also likely to speak of their fluctuating feelings of love and anger towards the offender and their inner conflict which is embedded in striving for some form of justice against a person who is a family member.

VSF2: It was my father so I have feelings for my father as a father and yet this man did all this wrong to me, which is two separate things. For people who weren't abused or for people where it wasn't incest it would be a different issue, they wouldn't have the father feelings or the love for the person so I can understand for a certain amount of people for it not to be helpful and for them to not want it, but for somebody like myself that it was my father that abused—it was a family member. The love and the feelings you have for that family member are very hard to handle while you are trying to take them through the process of justice. And it's frightening because you get to a stage where you're almost afraid to say to people, "I still love my da."

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Here, justice was not viewed in linear terms, but rather as a complex relational and interpersonal process that involved emotional turmoil and complexity at every turn. In many families enmeshed in intra-familial sexual abuse, victims of historical abuse were not always believed by their immediate family of origin and as a result were ostracised and alienated. In some instances, mothers choose to champion their spouses who had abused rather than their children. In all instances involving intra-familial child sexual abuse, victims report that their own children and spouses were supportive of them in initiating criminal proceedings and they proved to be their greatest allies.

Another intra – familial survivor interviewed never confronted the father who abused her and noted that her mother's denial compounded her struggle to report her father:

VSF5: But I do feel strongly about, as a child, as a young woman, I would never have been able to shop my father. And you know when people say that—and I know there are other movements, there's the Stop It Now movement, and there's other things like that. One of the most crucial things for me is I wish—and I've got to a place where I can see my father didn't want to be how he was—okay, I've got to that place. That's as far as I can go. I'm happy for God to forgive him. And I have forgiven him. But I don't dwell on them or anything like that

We can see from the above extracts that victims may reluctantly make the choice to report sexual violence to the police and in some instances the reporting of sexual abuse to the police is not an active choice by the victim. Victims may also use police reporting as a strategy to prevent further abuse. For other victims it is a means of unburdening themselves of their perceived responsibility for dealing with the abuse and the abuser.

2.2 Position of the Victim within the Criminal Justice System

The Irish criminal justice system is an adversarial system; the most fundamental tenet of the system is the presumption of the innocence of the accused. Criminal prosecutions are taken by the state which must establish the guilt of the accused person ‘beyond a reasonable doubt’ in order to secure a conviction. The state’s priority should not be securing a conviction but rather ensuring that justice is done. This means that any failure to ensure fair procedures are applied or any infringement of the rights of the accused can result in a criminal charge failing. In this system a person reporting a crime, is a complainant and will only be recognised by the criminal justice system as a victim if a conviction is secured. The peripheral position afforded to victims by the criminal justice system can be especially problematic for victims of sexual crimes because of the personal and intimate nature of the crime and the ensuing harm. One of the legal professionals interviewed acknowledged that the adversarial nature of the criminal justice system throws up particular difficulties for victims of sexual violence and commented: *the complainant in this process I think finds it bewildering eh, the sense of disempowerment... and eh, a sense, well, coming from that sense of disempowerment a feeling that events are moving almost without regard to them (LP3)*. In recent years the need to respect the dignity and uphold the rights of victims together with an awareness of the reliance of criminal justice systems on the trust and co-operation of victims of crime have prompted a number of initiatives including the recent EU Directive on victims’ rights²¹ⁱⁱⁱ.

VSC2’s reflections on his role in the criminal justice system show a good understanding of the peripheral position of the victim within the criminal justice system:

VSC2: ‘I understood reasonably quickly actually that the Criminal Justice System was not about in any way me having an opportunity for my own sake to say what had happened to me; rather it was about me as a witness in an investigation... whose evidence was required in order for the State to be able to prosecute successfully, the case.

He added:

‘I might have on one level gone into this process thinking that I was going to have my day in court. Well, it’s not ‘our day in court’. If you’re a victim of crime, you’re a witness in a prosecution taken by the State against the alleged perpetrator or against the defendant and you’re not at the centre of this. So, I realised that relatively quickly.’

VSC6 also recognised the significance of the orientation of the criminal justice system and concluded that ‘the truth of what actually happened to me was in no way significant’.

VSSR quickly came to the realisation that ‘the criminal proceedings were completely devoid of any acknowledgement or consideration of the human aspect to of a crime against a person – the person being me in this instance’.

However, other victims seemed puzzled and disempowered at their lack of involvement:

VSF3: For two years, going through the district court, and the circuit court, I had absolutely no input in the case whatsoever

VSF1a: Once we gave our statements which was fairly traumatic, it was taken out of our hands. We really felt excluded from there on in. Nobody asked us how we felt or what we needed to know.

VSF1b: “Right up until, the actual day of the court case, we were unaware of anybody actually being on our side. We felt surplus to requirements; excluded; in the way. We felt on the day of court... they had mentioned to us that we were very likely not to be allowed in, because there were so many of us and... um... we felt apologetic and mouse like in our approach to it as well, because we were still in victim mode. So, no. It was horrendous”.

FVSM: ... as the victim, you’re just not involved. It’s just, it all goes on out there, you’ve no say. You’ve no say.

Interviewer: Right

FVSM: And that’s just what really has affected me – oh my God.

Interviewer: yes, you’re just sort of powerless in the system?

FVSM : Absolutely Powerless yes and I feel like a Nobody!

VSF3 expressed the view that sexual offences are not ‘ordinary crimes’ and a frustration that the criminal justice system fails to recognise this.

VSF3: Sexual offences in this country are treated like burglaries, car theft, drug offences—it’s a completely different ballgame. I mean, if somebody’s house gets robbed, okay, there is sentimental value for things, and there’s a bit of stress and—it can affect people in terrible ways, but if you’re sexually abused, there’s nothing—it’s nowhere near on the same level, but that’s the way it’s treated. You’re just treated like another—decision that the jury has to make. You know?

In considering the position of the victim in the criminal justice system one must consider the difficulties that are raised in cases of historic sexual abuse, intra-familial sexual abuse, and the frailty of human memory. These highly complex and individual experiences of sexual violence do not fit with the needs of the criminal justice system to get concrete,

clear and detailed accounts of individual instances of sexual violence in order to pursue a criminal investigation and prosecution, as some of our research participants indicate.

VSF1b: Again, those statements we made. We all worked off our own strongest memories. We may have had four or five memories that were horrific and we recounted them and... um... he got to look at our statements and say, eventually, after being worked on by... we found out afterwards, by talking to the Detective who was in charge of our... because, he previously, knew my father and he worked on him and worked on him until, he got him to admit, but he admitted to no more and no less than what was in each of our statements.

VSF1c: You have to take into account, it was [year] This was new. Probably, one of the first cases, because we did succeed in... And it was ten years past since the last memory we had of him abusing us, when we made our statement... So, we were kind of told that's an issue... because of the time that had lapsed?... considering the length of time and it was because, we corroborated one another's stories and he planked it eventually...

VSF2: ... how do you put what happened to you, all those years, how do you put that in a piece of paper... ,?

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A victim of clerical abuse who had a poor response to an earlier disclosure to another cleric disclose her abuse some ten years later when she felt able and strong enough to do so.

VSC3: So, it was another ten years before I went and reported it a second time. When I felt able to and strong enough. And... um... it was very soon after... it was only then, that I really began to remember the abuse and when I say 'remember it' actually... what happened then, was that it started playing over and over in my head like a video.

But interestingly this victim notes, something that other victims reported, she even then could not describe every detail of the abuse to an Garda .

VSC3: When I gave a statement which was very, very early on in the whole procedure... I realised afterwards... I still hadn't got to the point where I felt able to give all the details of what had happened. So, my statement didn't include some of the maybe, more serious aspects of what the perpetrator had done to me physically... This was in the late nineties, but I realised afterwards and particularly, when it went to court that I had not gone into enough detail in my statement. At that point, I really hadn't come to terms with myself and it was too difficult. I didn't deliberately not go into detail. I just don't think at that point I was able to. When it came to court... ah... the perpetrator... my abuser... was charged with two cases of indecent assault... um... he could have been charged with digital

rape... um... but again, because I hadn't gone into that detail and because the case was so old...

Even when victims of rape and sexual assault report sexual violence in the immediate aftermath of the experience they still may only have a partial memory of the event or are in shock and may be unable to give a complete account when making a statement to the police, as happened to one of the respondents in this study. VSSR, a victim of a stranger rape reflected on her inability to fully recount the violent attack she experienced in her police statement.

VSSR: I gave a single statement to the Gardaí several hours after the attack took place. They were under pressure to ensure they got a fresh statement from me so that I would not forget anything, but in actuality, it was counterproductive on the basis that they were rushing and I was so overwhelmed that I could not recount everything in one go. I still have a copy of my statement and several things that occurred which I would deem to be significant were not included. Perhaps if they had taken an additional statement at a later point, these facts would have been included in the Book of Evidence but they were never noted by the Court.

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Some cases were prosecuted without the victim realising or wanting this to happen. The following quote from VSM6 illustrates the lack of control or ownership many victims feel over their cases once it gets its way into the criminal justice system.

VSM6: I wished they had told me what was going to happen because I might have done it differently had I know what was actually going to happen... it snowballed... Because when I went into them I said "I know you can't do anything about this now because it happened 20 years ago. But I just want to tell you that if a child is hurt in this area, there's a guy you can look at. And I thought I'd be able to walk out the door! Jesus".

Research indicates the importance of being believed by victims of sexual abuse²² and this finding was also exemplified by the victims who participated in this study. Every one of the thirty victims interviewed demonstrated the importance of being believed on disclosure, especially by family and friends, and as a later discussion will demonstrate, by the police and wider community. The response of family and friends to the abuse disclosures were etched on the hearts and memory of victims for a long time and made a difference for good or ill in how they were to proceed in their healing. Victims, above all, do not want to be judged, just supported and believed. However, the fear of this is ever more compounded when one is raped in an intimate relationship, such as a marriage or stable partnership²³.

2.3. Experience of An Garda Síochána

It was common for victims to voice positive sentiments regarding the individual members of An Garda Síochána that they had come into contact with. VSC2 described the Garda who dealt with him as *'fantastic'* and added *'He was a great guy and was brilliant throughout it'*. VSC6 described a Detective Garda as *'wonderful... an absolute gentleman'* even though *'he could do nothing for me'*. Similarly VSF2 described another Garda as a *'lovely woman'*. FVSM described the two Gardaí who dealt with her daughter as *'brilliant at listening; they were brilliant at... understanding'*. She also had praise for *'how they dealt with her and also how they were there – to believe her, first and foremost'*. A number of important themes are worthy of note when it came to the victim survivors' experience of and engagement with An Garda Síochána.

The first issue to emerge in relation to the victims' experience of An Garda Síochána was whether the victim was, or perceived that he or she was, believed or not by the investigating Gardaí. Being believed by the Gardaí (a public agent with significant authority and legitimacy) validated the experiences of the victim. There are accounts from many victims of the intimate emotional involvement of Gardaí in their cases; this involvement was both reassuring and empowering for victims. This seems to be a crucial dynamic, whereby a positive experience by the victim in their various dealings with the Gardaí was experienced as extremely empowering, and a negative experience traumatic and re-victimising.

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VSF5: "I felt everyone that dealt with me believed me, and that was very good. That was a good, good feeling. And everybody dealt with it as a crime that I met professionally. And that was good. That was affirming".

VSC3: "She [the Garda] did believe right from the beginning and that was really important and I knew she believed me. I knew she wasn't just going through the motions. I knew she believed me and that was hugely important... I don't think I would have been able to really make a statement and follow through, if I hadn't of got that from her that she did believe me"

VSC3: "Being believed was extremely important. Um... that's why I think when he pleaded guilty and when I saw him sentenced in court, I realised the court had believed me. The court... he had admitted it because it had happened and therefore, it was true. But the belief... um... came initially, from the Police... the Gardaí that interviewed me. The two female Police Officers..."

The mother of a recent victim of child sexual abuse appreciated the sensitivity of the police in dealing with her young daughter who she felt might withdraw from the process as she was very upset. She recounted how one Garda said to her daughter: *"this is your gig., you want to do it, fine. If not, leave it till another time, when you want to do it"* and concluded *'so they were very good'*.

Not being believed or being unsure as to whether the Gardaí believed the victim was experienced as traumatic by the victim where this occurred. This resulted in a collapse in trust and faith in the criminal justice system and the state's capacity to act as an arbiter in the pursuit of justice. This moral 'bind' for the Garda is complex in sexual crime cases as the Gardaí are called upon to simultaneously be both supportive of the victim and adopt an independent investigative stance in the exercise of their duties.

A victim of partner rape who lived in a small town where both she and her partner were known to everybody including the police describes some of her reflections on this situation and what subsequently transcribed.

VSPR: Personally, I found that... let's say the Garda who was actually over the case, she knew both me and my attacker, personally. So, looking back now, I should have gone to someone who wasn't that close. I wouldn't say close to both of us, but who didn't know both of us, because I almost felt like she was saying... she said a lot of times 'I can't believe he would have done that to you'. So, it just, for me, it was very hard. It threw up an awful lot of emotions with it. I remember her saying 'oh, sure he probably, still loves you'. You don't say that to a person after getting raped.

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Often the giving of a statement to the police is the first and only opportunity the victim has to publicly disclose the details of his or her experiences. This makes specialist Garda training when taking statements especially important. While specialist sex offending units in An Garda Síochána in Ireland are staffed by well-trained and experienced Gardaí, our research suggests that local stations in some parts of the country may not have such specialist trained staff to take the statements from victims of sexual crime. It is important to bear in mind that some victims' experiences with criminal justice processes date back to the mid to late 1990s and there is likely to have been some improvement in recent years in how Gardaí deal with these cases but much remains to be done.

VSF1a: That would have been the first... like we hadn't really even opened up to each other. So, that was our first time to give a detailed account of something that had happened to us...

VSF1b: I remember at that time having a sense that I had to mind your woman [the Garda]. She was so shocked by what we were saying. We felt... we really brushed over... we didn't go into great detail. We gave very little... She wasn't from a sexual assault unit or a specialist unit?... If she was she wasn't qualified. She was lovely now, but she definitely wasn't qualified. She was cringing of the idea of it and we were brushing over... we did not go into detail. It's very difficult to get your life on paper. In our case, it was incest over years and you are trying to put that on a piece of paper like...

VSF1a: ... and I'm not saying everybody wouldn't be horrified by it, but the person who is taking the statement needs to keep their shit

together and not be shocked or horrified by what you are saying. That doesn't mean they won't have compassion for you, but she actually would have... I felt you would have held back a bit, because of her reaction. Don't forget, at the time you are feeling all the shame and the guilt and she is asking you to put it all on paper. It's not an easy thing to do.

The giving of statements is also problematic as the victim is alone and can be traumatic if handled poorly. Victims may not appreciate that probing questions on the part of the police may stem from their knowledge of the level of proof required by the court for a case to be proven 'beyond reasonable doubt', rather than for any other motivation.

While many victims appreciated the initial sympathetic approach adopted by An Gardaí some also voiced criticisms. The extract set out below highlights how the failure of the police to provide updates on the progression of the case and their apparent inaction caused the victim and her family to view the sensitivity displayed by individual Gardaí as being somewhat cynical and meaningless.

FVSM: The first time they came, em my dog was after having pups. And they were looking at the pups and they went out the back and you know and when they went she [daughter and victim] goes "Oh my God, Mam, weren't they lovely! Like, you wouldn't think that they were police women, sure you wouldn't?" And I said "Why? What did you think that they were going to have horns?" and she said "No, but just they were so nice", it's cause they were so friendly, so understanding, and their language, they used around her. But I remember her saying to me a couple of weeks later, "Did you ever hear from them? And I went "No love". And that's when she said to me "God, and you think at the time that they care about you!"

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This woman highlights what we have heard from almost every victim who participated in this research:

FVSM: But it's then they're gone, and you're left with this (big sigh) – did that really happen? You know it's just, you don't get any feedback! And it's like, they've been part of your life, they've heard the most painful thing that can happen to you. And it's like smoke, you know they've just gone through a puff of smoke and they're gone!!! .And it's like you know I thought like, in January I got a phone call from the detectives, and the police to say that they wanted to see me and they brought me down to the police station to tell me that they had, I don't know if they said "arrested" or just "questioned" – but they'd gone up to my sister's house and brought my nephew in for questioning and eh were saying like eh "He's denying it". And I thought well, I would have assumed that, I can't imagine that he was going to admit it... That was January! This is now April. I have no idea, what's happened since then. And it just catches you – like it's not a day that goes by – like yesterday

morning, in the hall, hovering all the hairs off the carpet – and I just drop it and it's just, it's just – soooo heavy, SO overpowering, and that ..if you just got a phone call from them to know – that it's not that you've being forgotten... But there's nothing, nothing happening but this case is still going on!.. even to connect in... , you're here, and myself and my daughter, we were sobbing; we were so upset and if you just got a phone call, and even me saying this out loud, there's a part of me that feels really childish saying it; but if they just even made a phone call and said, "How are you and your daughter doing?"

The desire of victims to be kept informed and in the information loop regarding the progression of their case places significant burdens on the Gardaí to act as an advocate and partisan support for victim survivors. The victim's charter of an Garda Síochána does make a commitment to keep victims informed about the criminal investigation, but victims who participated in this study felt like they were intruding upon the Gardaí when trying to find out about the progression of their case. Some victims were unaware that this was part of the Gardaí's role, and identified the need for a state-appointed and funded independent advocate and victim support service attached to the Gardaí^{24iv} to update the victim and to advise and guide them through the criminal justice process. However, in the absence of any advocate or victim support persons linked to the police, victims continue to turn to the Gardaí for such information and comfort.

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VSC1: "... You have no legal representation and because there is nobody advising you, you know. I mean, the Garda was advising me, but it is not his job to advise me and he got his advice wrong. He did his job which was investigating the offender and bringing a case. He did that very well and... um... but the advice he gave me was incorrect. So, that was unfortunate.

Some victims were also critical of the work of the police and felt that it may have impacted the outcome in the criminal case. VSF5 commented: I wish they had investigated it properly. Yes, I would have liked it to have been investigated properly. The criminal complaint made by this victim did not result in a criminal prosecution. Other victims thought the evidence given by a Guard in the criminal trial was not sufficiently detailed and appeared to minimise and trivialise the abuse.

VSC3: The Garda gave evidence as to what had happened. She was quite young and I think, very nervous. I don't know. I never knew if it was her first case or something.

Interviewer: Could have been.

VSC3: She gave quite a... I would... she tried to give a résumé of what had happened, but she hadn't got all the details, because I had never given all the details really and also on the other hand...

also, she didn't... she actually said something which, was only the precursor to the abuse, which sounded as though, I was making a complaint about something quite innocent. She never went onto what had happened after that. So, I felt as if, anyone sitting in the court listening to what she was describing would have said 'that's not really abuse'... you know. But, she didn't go on to give any of the detail at all. Even, the detail I had given in my statement. I found that frustrating and a little difficult. I understood that she... she seemed, as I say, nervous and she was young.

Other victims pointed out that it is inappropriate for victims of sexual violence to have to make their complaint to guards who lack experience or training. Three siblings described their experience of giving a statement to the police as 'traumatic'

VSF1a: I remember at that time having a sense that I had to mind your woman. She was so shocked by what we were saying. We felt... we really brushed over... we didn't go into great detail.

VSF1b: We gave very little.

Interviewer: She wasn't from a sexual assault unit or a specialist unit?

VSF1a: She could have been. If she was she wasn't qualified. She was lovely now, but she definitely wasn't qualified. She was cringing of the idea of it and we were brushing over... we did not go into detail

However, the same victims reflected on the presence of guards in the courtroom when their offender was ultimately sentenced.

VSF1a: Gardaí from that station that were there even on their day off had turned up out of uniform. We didn't understand. We didn't know that they were there for us, until the sentence was passed...

VSF1b: There were Policemen lining the room when we went in. It was a fairly big case, at the time...

VSF1c: Setting a precedent. It was the first of its kind.

VSF1c: We were still victims and when the sentence was read out, we didn't understand it. It was in legal jargon, but the Policemen knew. The room burst into applause, by everyone in the room. We were all looking at each other going 'what? What? What? What happened?'

VSF1a: 'He was found guilty, he was found guilty'. That was all we got.

Other victims were aware that individual Guards had stepped outside their investigative role and treated them in a partisan fashion.

VSF2: He was an amazing man and he gave me information that could possibly have got him into trouble. You know I put him on the spot in some occasions and asked for stuff and he did part with some of it.

The mother of a child who was abused by her husband whose case is still being investigated was also a victim of abuse herself by a priest and found the Gardaí to be really helpful, even when the DPP decided not to prosecute the offender:

FO2MW: I was abused as a child, as a teenager and I got the courage from somewhere just to report my own abuse to the Gardaí in the area that I lived in and I came across a very nice Bean Garda, which I really wanted to deal with a woman rather than a man, em, because my trust in men had really gone very, very low after I was abused and I found she was great. She did everything that she could to help me, em, I made statements and all all against this man. He's still alive, he's an old man now but he's still alive and he was brought in for questioning, and he remembered me alright but he couldn't remember anything else, conveniently of course you know. Em the result of that, the DPP, in the course decided not to go ahead and bring me in for to take the stand. Em he wasn't actually charged with anything because there was no witnesses, which there never is really, if we're going to be truthful, with life events, especially in sexual em abuse. I do remember making the statements, leaving it in their hands, in her hands mostly because I dealt with her, and I did get a lot of support from her. And it was left like that for about a year because between me making statements and everything going together it took that time to go to the DPP and all that, but I do remember when she came back, you know, and got in touch with me and said 'look I'm really sorry but the DPP has decided not to go ahead with this, it's nothing you've said or done or anything like that, it's just that he doesn't think it would be fair to put you through the courts and not for you to win the case in the end'. And I have to say I was very angry, not with her but with the system. You know I went in there looking for justice because I felt that I was ready, being 45, 46 years of age and it took me so long to pluck up the courage and go and do something about it and then for it backlash on me. However, em, I came to terms with it anyway ...

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This lady, FO2MW had a very different experience of the Gardaí when her husband admitted to abusing their child and she recounts this experience in chapter four.

In another instance a victim recounted how a complaint was made by Church authorities after a Garda divulged information to her.

VSC3: She[Garda] became very much... um... an ally and a supporter and worked very hard to get the case brought to court and seemed... ah... very invested in the fact that it should be prosecuted because, she did believe me... ah... and I think she had a great effect and I've always appreciated that. I remember, thanking her afterwards and I really meant it. She actually suffered for supporting me because at one point.. he (a church representative) had made a complaint about

her to the police authorities, because she had divulged the fact that he hadn't made a statement. And I found out years later that she was disciplined and it had an effect on her career.

In the many instances where the Gardaí do perform this role as partisan advocate for the victim this is carried out in an ad hoc and informal manner.

These extracts can serve to remind us that police officers may find it emotionally and psychologically difficult to deal with cases of sexual violence, and that it may be difficult to combine a sympathetic and sensitive approach to victims while maintaining an appropriate objective investigative stance. However, there is a danger that an unduly partisan approach could lead to a breach of procedures which might make it more difficult to secure a prosecution. However, it should be borne in mind, that the incoming Victim Rights Directive is expected to have a significant impact in formalising and codifying many aspects of this partisan advocate role of the Gardaí, placing a number of obligations on Gardaí to keep victims abreast of any developments in any criminal investigation or prosecution.

2.4. Information Deficits and Misinformation

Previous research has identified information deficits as a key concern of all victims of crime^{25v}. Similar findings have been reported by research focused on victims of domestic violence and sexual crime^{26vi}. Lack of information can lead victims to feel powerless and unimportant and may even prompt some to disengage with criminal justice proceedings. The current study found that dissatisfaction with the provision of information was voiced by almost all victims of sexual crime who were or had been involved in a criminal prosecution. The dissatisfaction expressed related to the inadequate provision of information about both the progression of the case and criminal justice processes and procedures and in some instances concerned the provision of inaccurate information.

VSF1b: Any time my father was up in court... the only way we found out was by accidentally coming across it in a newspaper or somebody mentioning it to us

VSF2: ... all the way through I felt that I wasn't given information that I was requesting

Interviewer: So what would you have liked to happen for you in the course of the criminal proceedings?

VSF3: To be kept informed, they didn't give-nobody kept me informed

VSF3: There was no communication, no correspondence at any stage, no documentation from the courts, from dates, times, nothing. I was relying on the guard to tell me what day I was in court

Some of the perceived information deficits related to the protection of the rights of the offender:

VSF3: The probation service! I rang them up one day to find out what my perpetrator's probation .. was—what was it? What were the particulars of his probation.. I asked them .. and they wouldn't—they wouldn't return any calls.

Interviewer: So nothing from them.

VSF3: I rang the DPP, I spoke to a guy and he said to me, that's third-party information and you're not entitled to know anything about it. I don't know exactly who it was—I should have looked .. and I spoke to somebody at the desk, and they said—no third-party information you're not entitled to that. And I explained to them that I was the victim, and so on and so forth. And they still—I rang the courts looking for the documents in relation to what was said .. and they don't.

Victims also commented on the absence and inadequacy of information regarding criminal justice processes. Lack of information added to the stress of the criminal proceedings.

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VSC3: ... and I didn't know whether I was going to have to get up and speak. Even that first time, I had no idea whether I was going to have to give evidence or... um... if I was going to be asked questions or if he was going to be able to ask me questions or whether I'd have to talk to him. I had no idea. Absolutely none. And... um... I was in such a state at the time that it was very, very difficult. But, all that happened was, as these things do, I think, that it was put back to another date whenever.

Some victims contrasted the provision of information to the offender with their treatment as victims within the criminal justice system. The three siblings who had been abused by their father reflected on how his admission of guilt was shaped by his knowledge of their statements while they had no access to his statement until immediately before the trial.

VSF1a: He admitted to no more and no less than what was in each of our statements

VSF1b: We didn't see his statements until, the day we were in court

Interviewer: So, you didn't know he was pleading..

VSF1a: Oh, we knew he had pleaded guilty, but we didn't realise that before he pleaded guilty, he was shown our statements. We were never shown his and we saw it in court by accident, just because I happened to mention...

VSF1c: It was VSF1a. VSF1a said 'it's fair. He has seen our statements'. They said 'would you like to see his statement'... So, we all got a look at the statements at the eleventh hour and only as an aside. There wasn't even a thought given to it.

Other victims pointed out that they had been misinformed. One noted that he had been told that sex offenders do not qualify for any remission when a custodial sentence is imposed and was upset when he found out that his abuser was in fact entitled to remission of 25% of his sentence. Another was not told that the defence are provided with a copy of the Victim Impact Statement and may object to its contents.

VSC1: I was also told, that I could read my Victim Impact Statement... So, that was misinformation because it wasn't until I was sitting and I was the only one doing it... and it wasn't until I was sitting in what felt like the dock, but was actually, the witness thing... um... and the Judge said 'hold on a second, has the defence seen your statement?' I said 'no' and he said 'well, you can't read a statement, if the Defence haven't seen it first'. So, that was very inappropriate. I had been misinformed and now, was being corrected in front of everybody...

Another victim contrasted the information made available to the offender with the information deficit she experienced.

VSSR: ... the Offender in my case had access to the Book of Evidence, and yet, I was never afforded this opportunity. The Book of Evidence would have contained photos of the injuries all over my body – and yet I was never provided with the opportunity to see this, although the offender did. To me, there is something intrinsically wrong with that

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This misinformation runs a high risk of adding to the trauma, humiliation, disempowerment and victimization of the victim survivor in their interaction with the criminal justice system.

Some victims reflected on how the information deficits they identified could be addressed. Several victims noted that they did not have legal representation and would have liked to have had access to an independent legal adviser or an appropriate advocacy service.

VSF2: I should have had my own legal representative with me, you know that? I think it's called a hearing solicitor or a standing solicitor... there's a name on it where a solicitor appears on your behalf and just listens to everything, you know, because I'd never dealt with the court system before and there was a lot being said and a lot of requests being made and words being thrown around that I didn't have a clue about. And you walk away feeling quite stupid and you know?

VSC2: I do think that appropriate advocacy support for people is crucially important. It would have been helpful to have somebody talk to me in the early stages of this and to help me to understand and appreciate where I was in this process and what I might expect from it. It would have been much better to have somebody sit me down and say 'look, this is the process.

It may be useful to point out that in Ireland legal representation is not afforded by the state to victims of sexual violence unless the prosecution seek to enter evidence regarding the previous sexual history of the complainant. Such evidence can only be entered if the accused person claims that sexual intercourse was consensual and the previous sexual history of the complainant is relevant to the issue of whether she consented or would be likely to have consented to sexual intercourse. The victim can contest the prosecution's request to enter evidence regarding his or her previous sexual history and is entitled to legal representation to contest the request²⁷. The hearing regarding the admissibility of the complainant's previous sexual history is conducted in the absence of the jury²⁸.

Another victim suggested that the provision of a Victim Liaison Officer would have been helpful.

VSC1: I think what really would have been appropriate is for... um... maybe, when a case is going to court that at that time, you are notified of a Victim Liaison Officer. Their name and their number and if you have any queries, that this is the person you contact and that that person be contactable, they are available to meet you, they are available to do whatever you need them to do, within reason obviously. So, that your queries about all proceedings... um... and you are given correct information, if you have any questions and if you needed somebody

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Family liaison officers (FLOs) are provided by An Garda Síochána in cases of serious crimes²⁹. Murder and false imprisonment are noted as examples of serious crimes and it is not clear how many victims of sexual violence are likely to be provided with a FLO. The role of the FLO is to keep victims informed during the investigation and to provide victims with appropriate support information. The FLO's role may therefore not extend to the provision of information regarding court proceedings. The Courts Service provides Customer Liaison Officers who can arrange access to witness suites and reserve seating for family members in murder and manslaughter cases³⁰. Our research indicates that not all victims of sexual violence are put in contact with a liaison officer and not all are aware that such services exist.

VSC1: I had never been told about a Victim Liaison Officer. I thought 'how can you speak to the Victim Liaison Officer, if no one has told you such a person exists?' So, that was that. I wasn't notified

2.5. Delays in Criminal Proceedings

Victims found the turgid pace at which criminal charges progressed difficult to deal with particularly when coupled with the information deficits already highlighted. Delay in criminal proceedings has previously been linked to complaints being withdrawn by victims of sexual violence^{31vii}. One victim (VSC3) described herself as being 'in a limbo'

during the period of the criminal justice process. The slow pace of criminal proceedings was also noted by LP5, a solicitor with extensive experience of sexual offences.

LP5: It's slow. The procedure is very slow. The Garda investigation takes a year. The DPP takes 6 months to a year to decide to prosecute so the minimum length of time for a sexual offence apart from child pornography is 18 months to 2 years. Child pornography cases take so long to analyse that you can be waiting from the time of search to the time of sentence 4 to 5 years.

Comments by victims were consistent with the timeframe indicated by LP5.

Interviewer: And when did this first start?

FVSM: A year, over a year ago

Interviewer: Over a year ago, so early 2012.

FVSM: And in saying that, it was a year before he was spoke – a year before my nephew, the police went to my nephew, a year later

Interviewer: So, early 2012 is when you went to the police and it was early 2013 that the police interviewed your nephew.

FVSM: Yeah [case is ongoing]

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The gap between the initial police report and further action was also commented on by VSF2 who said: They came, they took my statement, they came with a social worker... took a statement off me and I never saw them again for about a year and a half later.

Even when a case reaches court progress can be slow:

VSC1: it started with the Gardaí in '95 that whole process: statements, District Court and all that stuff too up to the end of '97. October, '97 I think it was. The date was set for early January for the trial, because he pleaded not guilty. So, we went back in January for the trial. I had been told... oh yeah, the trial... five minutes before it started, he pleaded guilty... I think the sentence was in June. He pleaded guilty in January, the sentencing hearing was... it could have been in April, I'll have to check and then, he was sentenced in June.

VSF3: You go through all the arraignments and he goes through this and he has to take this report and that report, and this and—they put it back four weeks, and they put it back another four weeks, and they put it back three months.

VSC2: one of the terrible downsides... which is the length that these processes can take. I mean, it had been four years. Almost, four years and a month roughly, from the time that I had made the first criminal complaint to when it got into the first day of trial.

In the latter case the prosecution was particularly elongated as the decision of the High Court to prosecute was appealed, unsuccessfully, to the Supreme Court.

2.6. Dissatisfaction with Criminal Charges

Dissatisfaction with criminal charges arose when (i) no criminal charges were made following a complaint and (ii) when the criminal charges were considered to have minimised the experience of sexual violence.

One group of victims who had experienced intra-familial sexual abuse spoke of their frustration with the decision not to include a complaint made by their sister in the charges brought against their father.

VSF1a: We have an older sister who he denied... because she is ten years older than me, we couldn't corroborate... we couldn't support her. She was told that she was jumping on the bandwagon and they were saying 'look, it's not worth the hassle'. I mean, she's so badly affected, even now. So badly...

VSC6 struggled to understand why her experience of repeated sexual abuse over a period of years was distilled down into one single criminal charge. Her disappointment was heightened when this criminal prosecution failed to secure a conviction.

VSC6: The DPP turned away my file and decided that it would not be prosecuted and then I was notified that they were going to go ahead with my file but the DPP was only allowing this one day out of a three year period, I was not entitled to any explanation and I found from the moment that I was told, I was relieved it was going ahead because it meant at least that there was going to be one case going ahead. We couldn't understand why all of the others had been turned away, but there was no one to give us answers as to why out of over three years of abuse he had narrowed it down to only one day

When complaints relate to historical offences perpetrators may be charged under legislation that was in force at the time of the offence. This can result in offences being referred to by different terms and attracting lesser penalties. VSF3 explained that he objected to the charges preferred against his abuser.

VSF3: I actually lost the plot in the district court with the state solicitor. I said to him, hang on a second. This—these charges are being made look less because of the wording. And he addressed that with the judge and he changed it.

VSC2 was approached on a number of occasions and asked whether he was amenable to the state accepting guilty pleas on lesser charges. VSC2 made it clear that he was strenuously opposed to any plea bargain and was prepared to publicly voice his opposition if necessary. The state did not accept the plea bargain in this instance. The extract set out below makes it clear how important it was to VSC2 that the charges brought

to bear against his abuser accurately reflected the seriousness and the nature of the abuse that had taken place.

VSC2: I was made aware then, that he was trying to negotiate again and he was looking for a plea bargain. I was asked to meet with Senior and Junior Counsel for the State, who told me that... um... he was again, offering to plead guilty to lesser charges and at this stage, he was indicating that he would plead guilty to attempted buggery, but not to buggery and that whilst it was for the State to decide whether or not to accept that plea and they didn't have to refer it to me, it was for them to decide, they would be mindful of how I might respond or feel about that.

I had a couple of responses, a large number of responses. My first was I don't understand what you are asking me, because what you are asking me is would I accept him... would I accept a plea bargain that did not reflect what had happened. What you are saying is, would I agree to him pleading guilty to something that didn't happen? He didn't attempt to rape me. He raped me. There was no attempt and what does that mean? When you talk about 'attempted' is there a degree of penetration that is acceptable? What does mean exactly? Ah... I was quite angry and upset about it and I made it clear to them that not only would I be vehemently opposed to them accepting such a charge that I'd be very vocal in my opposition to it. They then, said 'ok' and they didn't accept the plea bargain and it went into trial and he was presented with... the prosecution was going to continue on the basis of all of the charges.

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2.7. Court Processes

Bacik et al. note the importance attributed to the trial in the Irish adversarial criminal justice system. This means that the judge or jury charged with arriving at the verdict should have *'the benefit of hearing the accounts of witnesses first hand, and of observing their demeanour when testifying, particularly in response to adversarial questioning'*^{732viii}. In cases of sexual violence the key and often only witness is the victim who must be prepared to provide an account of the offence in court under oath, and to have that account cross-examined by the defence counsel. This is likely to be an intimidating and daunting prospect for most victims.

A large proportion of sexual offences will be disposed of by the Circuit or the Central Criminal Court which deal with offences of moderate and serious gravity respectively. Only minor offences will be disposed of by the District Court. Even when offences are ultimately disposed of by a higher court the initial court appearance will always be in the District Court and the case is likely to be listed on several occasions before the Book of Evidence is completed and the case is sent forward for trial to the Circuit or Criminal Court. Victims do not have to attend these initial court appearances and for some victims the stress of the criminal justice process could have been reduced if they had been better informed about

the process and in particular the fact that they had the option not to attend court appearances in advance of the trial.

VSF3: I was in court several days and there was no reason for me to be there. And because my perpetrator was there, and he was standing here, and I was standing there—I was traumatising myself.

However for other victims attendance at court hearings can provide them with validation. VSSR was aware that she was not required to attend District Court hearings but opted to attend because ‘I needed to witness some form of justice take place, just to have the acknowledgement at some level of the suffering I was enduring’.

Victims were critical of their experience of the District Court finding it crowded, confusing and difficult to hear the proceedings.

VSF3: The district court... I was there three times, things moved fairly quick, and a huge criticism I have, and for something that's so small—you can't hear what's going on! It's like a cattle market.

The microphones, they won't speak into them. There's supposed to be a system in place when someone is called—it doesn't matter what the crime is, whether it's for burglary, sexual assault, drugs offences, grand theft ..—if the defendant is there on the day, he's supposed to step into the dock. That's the way it's supposed to operate. But they don't—they're shouting from the corridor 'I'm here, your honour.' He says, or—and then they don't talk, so people can't hear what's going on. .. in the district court for me on one occasion, and only she went to the guard afterwards, that was assisting, we would never have known what even happened. Because you couldn't hear.

VSC3's case was disposed of by the District Court and the following extract provides a sense of her experience of being in court:

VSC3: ... it was packed and there were people standing around the walls and there were all these other cases going on and I expected I suppose, what you see in TV courtrooms, you know with microphones and everything being very clear of what the Judge was saying and what people... but, it seemed very chaotic and I could only hear some of what was being said and I really had no idea of what was going on. The Garda was very good afterwards, she came over and she said what had happened. Otherwise, I wouldn't have known like that he was being put back for whatever. So, I was at that very first, I suppose, my sense would have been of just confusion and not being sure what happens now.

VSC3 also described how at one of the District Court hearings the offender sat down beside her in the crowded courtroom. She said: I froze. I absolutely froze. I didn't know what to do. She acknowledged that the offender had not been aware of her presence when he sat down but still felt that there should have been some system in place to prevent this happening.

Ultimately the offender pleaded guilty and VSC3 was not called upon to testify. VSC3 found it upsetting that people were prepared to act as Character Witnesses for the offender. She commented: *I thought at the time, 'that's all irrelevant. That doesn't mean he's not a child abuser, just because he is good with finances' or whatever.*

When offences are dealt with by higher courts victims can find it difficult to navigate their way in large busy court complexes especially when they are anxious to avoid meeting the offender.

VSF2: It's a maze first of all and it's just, the whole place is just intimidating. And you had to go and find out what court room you were in and we had to go up the stairs and when we got up the stairs we were right at the coffee shop and next thing... my mother and father are walking out of the coffee shop right in front of me. And you, it's hard to deal with that, you know you prepare yourself to face them in court, but you're not prepared to be facing them outside of court and to be running into them! And then we went and sat outside the court waiting to be called in, as they did. And you know, it's very hard, it's very difficult to handle

Concerns about finding the right court and a desire to know the physical layout of the court prompted one victim (VSC1) to visit the court in advance of the trial. Victims can now make a request through the Customer Liaison Officers provided by the Courts Service to view a courthouse in advance of a trial^{33ix}.

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Space within the courtroom can also be an issue as seating is generally only reserved for family members of victims of murder or manslaughter. This can mean that victims and their families have to stand in the courtroom. This comment by VSC1 highlights this point: *A couple of the days, my family came, my father came and my sister... and... um... so, they were sitting beside me at one stage and then, I noticed that the other Victims were standing at the back. So, I asked my family stand at the back and let the others sit down because I thought this is appalling. So, there was no minding of the people at all. Like, there was nothing.*

It is interesting to note that only one of the victims interviewed was called upon to testify in a criminal case. In most cases the offender pleaded guilty or the charges were withdrawn or struck out. The victim who did give evidence found it a difficult and distressing experience.

VSC6: ... that was so humiliating to be in court and to be cross-examined about things to do with sexual abuse as a teenager, you know, that now, it's almost like giving labour in public, you know going into labour in public, there's nothing left that you can be ashamed of, there was just nothing left.

VSC6: I was so embarrassed, you know, and I know all people are different but for me this was humiliating, really humiliating, and I found it virtually impossible to get into detail. I was there for days

in the end, and, you know, just collapsing each time at the thought of having to think again, because when memory got too hard it was impossible to stay with it so, that part of it, I thought, was absolutely vile and could be addressed. I don't think that that was justice. I don't think that is getting the truth.

When a criminal conviction is secured victims may present a Victim Impact Statement (VIS) to the court prior to sentencing. When an offender has pleaded guilty this is likely to be the only opportunity for victims to have a direct input in the court proceedings.

VSC3 noted that she was given an opportunity to make a VIS and said: *I was grateful for the fact that I did get to speak and he had to sit and listen, which was very important to me.*

Another victim who was also pleased to have the opportunity to make a VIS reflected that ultimately the experience did not deliver any real sense of engagement with the offender. VSSR described how she had ‘a very intense desire for the offender to hear what I had to say about his behaviour towards me’ and welcomed the opportunity to make a VIS but later wondered whether he ‘actually took in anything I said, as I recall he was just facing the ground for the entire duration of my VIS’

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One victim was not able to read the VIS he had prepared because it had not been provided to the defence in advance. VSC1 described what ensued as a ‘sort of question and answer session’ with ‘the state’s legal people asking sort of leading questions’. This meant that: *they were asking what they thought they should ask and I wasn’t ready for their questions. So, then I was flummoxed because I just... I couldn’t read what I had prepared. So, that didn’t go well at all and I didn’t get to say what I wanted to say.*

VSF2 noted that she had received written guidelines which she followed in writing her VIS. She put a great deal of work into the VIS. She wanted to tell the court of the impact the abuse had but she was also conscious that her children would hear her VIS. Prior to presenting her VIS in court she was told that a reference to the effect of the abuse on a family member had been objected to and she had to amend the VIS. VSF2 described the experience of reading her VIS as ‘very emotional’ and added ‘*I think within the first four or five lines I was in tears and fighting through the tears and not being able to look at anybody. I couldn’t look up! Because I knew my children were distressed, I knew my husband was in tears*’. VSF2 recounted that she had not been able to look at her parents when she read her VIS but later ‘*I asked my husband, you know when I was reading out did you look at my parents? And he said yes I did, and he said there was no emotion. Nothing on their faces. They just sat there and stared straight ahead and that was it*’.

Many victims felt that the judiciary understood their need to tell their story and were supportive. Others felt they dismissed them as mere

witnesses and did not give them an adequate opportunity to voice what had happened to them. VSC1 notes his disappointment when giving testimony in court

VSC1: the Judge said 'hold on a second, has the defence seen your statement?' I said 'no' and he said 'well, you can't read a statement, if the Defence hasn't seen it first'. So, that was very inappropriate. I had been misinformed and now, was being corrected in front of everyone".

In this study a resounding feeling shared by victims was that the criminal justice system and specifically, the administrative and procedural mechanisms within the courts service do not address the needs of victims adequately nor are there sufficient facilities within the Court System to help victims of sexual crime when taking a case before the courts.

VSF1c captured these feelings of being let down by court procedures when she noted:

VSF1c: "[w]e didn't really have our 'day in court', even though we were there. Because of the lead up to it and exclusion from it. The fact that I spoke in court; none of that means anything. Our 'day in court' would have been to sit down and say 'listen, this is what you did. Do you understand the impact of what you did?' and for him to say sorry" ... instead, we sat at the back, like mice afraid to open our mouths, crying very quietly".

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Despite the disappointment with some aspects of the court proceedings victims were often heartened by the legitimate authority of the judge in dealing with the offender:

VSF1b: "You know... watching him having somebody higher than him.... all of a sudden, here he is a little... mouse in the court and people believe us. So, that was a wonderful feeling".

However, satisfaction with members of the judiciary was not universally felt. VSF2 discusses feeling nauseous and removed from the process when the judge involved in his or case praised the offender for pleading guilty.

VSF2: "He started to praise my father, about his good character and the fact that he pleaded guilty and that he had a work record and stuff like that. And all of a sudden I felt so physically sick and I remember I deliberately positioned myself in the court so I could look directly at the judge and he never once looked in my direction; never once looked at me".

It should be noted that a number of the victims and survivors who were interviewed come under the heading of having an 'historical case' and that there have been some changes in the services provided to victims recently. While VSF2 was not initially offered support during the hearing of her case, she notes recent improvements in the provision of victim support facilities and mentions specially, being offered the use of a 'witness suite'.

VSF2: “it was a room that is made available to you and your family to sit in as you wait for your court case, and you get allocated a court support person to direct you to this room and I suppose to let you know when you are needed downstairs or whatever, and um... I only, that was only made available to me in January, which I felt was a great help. It was great to, it was great that family members that were with me could just get up and make a cup of coffee, but it was only offered to me in January, where it should have been offered earlier on and I should have been put at ease that this is what’s going to happen when you get to court... We will have this available to you; your family can use it. It would have just made the whole court appearance that little bit easier”.

2.8. Outcomes

As noted earlier outcomes in criminal proceedings varied greatly. The outcome was not known in one case which involved a young victim of intra-familial sexual abuse. The mother of the victim reflected on the fact that because her daughter was not raped the offence may not be prosecuted.

FVSM: ‘I don’t see that this is going to go to court. I don’t think it’s horrific enough for it to go to court’. The abuser in this case is the cousin of the victim. The victim’s mother later added: ‘say that this turns out that they say that there’s not enough to prosecute. Em, my sister will go the rest of her life, well that no, no, didn’t happen, will deny it’.

Most victims of sexual abuse who report the offence to the police will not find that their report leads to a criminal conviction. The above comment highlights that when a criminal complaint does not lead to a criminal prosecution this can be interpreted as a validation of the offender’s denial and thus can undermine rather than empower the victim.

Just one victim had the experience of a prosecution proceeding to a trial by jury which returned a verdict of ‘not guilty’.

VSC6 described the moment when the not guilty verdict was delivered.

VSC6: Then the jury were called in and quite simply it was ‘Not Guilty’ and the judge said very well you may leave. And there were mutterings and everything in the court as if this was just another ordinary day. And it was over thirty years of our lives and there were 4 or 5 other victims sitting behind me and there was me and then all of those people whose lives were destroyed in that one moment of ‘Not guilty’, destroyed.

The offender in this case was later the subject of an action through a Canonical court.

It is interesting to note that even when offenders were found guilty most victims expressed dissatisfaction with the outcome. The dissatisfaction

usually related to the perceived leniency of the sentence.

VSF3 said: *'I did feel let down by the system'*. He commented on the inconsistency in sentencing suggesting that an element of chance had resulted in his perpetrator receiving a suspended sentence.

'He got a two-year suspended sentence .. and .. down in Cork, another judge, right, gave a guy two years for fondling a young man under a table. Now, there's no consistency in the sentencing'

VSC1 was also unhappy because the sentence of imprisonment imposed on his offender was partially suspended. The sentence was appealed by the DPP and the suspended sentence was revoked. While the victim was pleased by the successful appeal he was later disappointed to find out that he had not been notified when the offender was released.

One of three siblings interviewed jointly described her elation when her father was found guilty VSF1: *There was euphoria. We were on a rollercoaster of emotions. We were all over the place.*

But the siblings later expressed a variety of views about the seven year sentence their father had received. One said: *'I wouldn't have cared if he got a f... ing week'*, another said *'we felt that the sentence he got was representative of the crime'* and another commented *'when we heard he was serving seven [years], it was like is that what you think it's worth?'* Further comments made it clear that the siblings' ambivalence about the sentence persists even though their father has been deceased for some years. The siblings noted that they still struggle to understand why the abuse took place and one added later in the interview: *We really, really believe unless, you can research and find out what makes them tick, you can never address the problem. Prison is not the answer. Something has to be, but prison is not the answer.*

While the majority of victims were disappointed with the sentence imposed, many were happy to have merely been believed in the process. Some victims wrote to the DPP expressing their concern and had a sense of disappointment with the leniency of the sentence.

VSC1 having initially, welcomed the sentence wrote a letter to the DPP voicing disappointment after the media coverage of the case.

VSC1: "At the time, I welcomed the sentence. I said... my thing with the media was that I wasn't going to go off and start giving out about the sentence. I had decided I was going to accept whatever the sentence was and... um... but I said 'he is a very lucky man, to be getting away with a two year sentence for all those offences'. That played its course. It got huge media coverage... um... and... ah... the DPP appealed the leniency of the sentence. So, I wrote to the DPP. Actually, I remember going to the Court of Appeal hearing and the offender's people were, there was a team of them and there the guy from the State was sitting there on his own. It was very poor. I

remember writing to the DDP about it. I was very unhappy with the thing, but anyway, it was very successful”.

VSF 1 gave a broader view of the sentence passed in their case, taking into account that while the sentence was lenient, had it not been lenient, their case would not have been given the media attention they desired to name the offender and make the public aware of what had happened.

VSF1: “If that Judge had of locked him away for life, we would have got a headline about it and a mention and then, it’s the end. So, he did a great service unwittingly and to the nation in general, because of the outcry of people, but again, they are not thinking on it”.

VSF2 sums up the mixed emotions many victims feel on sentencing in her summary of the sentence imposed on his or her father. Initially, he or she did not think the sentence was overly important and then, was consumed with emotion when hearing the sentence being passed.

VSF2: “At that stage then it dawned on me how important it was that my father served time that I got justice. And I buried my head in my husband’s shoulder because I don’t know why, I couldn’t look at the judge, and I don’t know maybe he should have seen the horror on my face and the hurt on my face, I just buried my head and I just started crying. And I heard him then take 9 years suspended, suspended 9 years and then 3 years and... that’s all I heard. And I was falling to bits like, and um... I didn’t hear anymore. The Judge continued on speaking, but it wasn’t sinking into me, I was too busy kind of falling apart. When he finished anyway my husband kind of had to help me up. I was devastated. Shocked. And amazed at my reaction, because I wouldn’t be the type of person that shows emotion publicly, or to sit there and to fall apart, because there was a jury and this was I found very insensitive as well, there was a jury brought in for the next case and were left sitting there”.

2.9. Contact with the Probation Service

There was very little commentary pertaining to the Probation service in the victim interviews conducted for this research and on the three occasions that the Probation services was mentioned it was mainly in a negative context. VSC1 contacted the Probation service regarding the release of his offender from prison and he had questions about statutory remission for sex offenders. He reported that he got little help or response from them. VSF3 contacted the Probation service when he wished to know about his offender’s probation period. He reported that he found the probation service to be unhelpful as they would not return his calls. VSSR was involved with the probation service in trying to arrange to meet with her offender. The delays and lack of knowledge by the probation service regarding restorative justice in sexual crime was something that added to her frustration in trying to have her needs met. ‘Nice but ineffective’ was at times the expression that summed up this involvement.

Civil Proceedings

The other, principal legal mechanism of accountability in cases of sexual violence is the personal injuries civil action¹. Civil actions for personal injuries are often taken where a criminal prosecution has failed to secure a conviction, or where the case was not prosecuted as the Director of Public Prosecution feels there is a lack of sufficient evidence to secure a conviction (something which happens far more often than not, unfortunately). In Common Law legal systems these personal civil actions are taken under the Law of Tort. Tort law, is our legal system's attempt to provide a framework through which the injured party can make a claim directly to the perpetrator of that harm, to take responsibility for that harm, and, if possible, repair it. Tort law is, effectively, an instrument to provide direct accountability between the victim and the offender for a violation of their rights or interests. Unlike the criminal justice system's approach to accountability, a violation of corrective justice is asserted by the victim of the harm; it is personal to the victim.

As the threat of coercive state action is not immediately in question (ie there is not normally the risk of imprisonment), civil actions benefit from lower evidential standards, the "balance of probabilities", and a much less onerous burden of proof on the victims of sexual crime. If successful, civil proceedings can result in damages being awarded to the plaintiff. However, payment of damages will depend on the defendant's means. If the action is unsuccessful the complainant may have to pay the costs of the defendant.

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An important difference between criminal and civil systems of accountability, is the civil court's far more expansive focus on the harm suffered by the victim, rather than what the offender intended to do, or what harm he intended to cause. This allows for types of evidence relating to the emotional and physical trauma suffered by the victim and testimony regarding their ongoing sense of shame, fear and disempowerment to be heard as part of the ordinary court proceedings, something not permitted in a criminal trial should a VS take the stand and give testimony.

Persons who engage in civil actions will normally seek legal advice and legal representation. The Irish state provides limited legal aid for civil cases. Legal representation is not provided to complainants in prosecutions for certain sexual offences. Complainants may be able to claim legal aid in respect of legal advice^{34x}. This means that viable civil actions will normally only be possible when the defendant and/or the complainant has very considerable means. It is therefore not surprising to find that very few of our victim participants have actually used the legal mechanism of personal accountability offered by the Law of Tort and it is perhaps not surprising to note therefore that all of the victims interviewed who were engaged in a civil action were victims of clerical sexual abuse.

¹ for a fuller discussion see O'Concubhair (2013)

A large part of the reason for the non-participation of victims in civil action is that there are serious problems with the law of Tort as a mechanism for individual personal accountability. From a procedural perspective, like in criminal trials, the civil legal system is based on the foundational principle that the best way to get to the truth is through an adversarial competition between litigants. This adversarial legal culture, added to the substantial costs at stake (as in our system, the loser usually pays for everyone's legal fees), encourages offenders to challenge all evidence adduced by the victim, and discourages offenders from being honest and forthright. Like its criminal counterpart, the adversarial format in a civil trial can be an extremely traumatic experience for a victim of sexual crime.

Again like its criminal counterpart, indeed like all other areas of the legal system, the rules and regulations of the civil system are dictated to the parties by the state, through decisions by the courts themselves or the legislature. Civil actions may give litigants a form of personal accountability, but one that is still overwhelmingly on the state's terms.

Perhaps most significantly, the only remedial response provided by this legal mechanism of individual personal accountability, involves placing an economic value on the trauma endured. All our legal mechanisms that provide personal accountability by the offender to the victim requires that either one or both parties have substantial economic assets. The only remedy the courts in Ireland, as in many other jurisdictions, are comfortable with is damages (meaning monetary damages), which is extremely difficult, if not impossible and demeaning to the victim, to quantify in monetary terms.

As this quote from VSC2 illustrates the civil trial experience can be deeply unsatisfactory for victims.

VSC2 "Civil litigation usually, ends up with a survivor or victim sitting in a basement room in the Four Courts as the two teams of lawyers move from place to another and then, some cheque being produced at the end of it. You are kind of going 'really, that's the big moment? That's what this is?' That can be quite empty and actually, a quite damaging experience for quite a lot of people".

1. Alternative to Criminal Proceedings or when Criminal Proceedings Fail

However for some victims civil proceedings offer some 'hope' of justice when criminal proceedings are not possible or when they fail. VSC5 recounted that she considered her sexual abuse to be outside the framework of the criminal justice system because it is now almost 30 years since the abuse took place. Additional comments suggested that she viewed the criminal justice system as an inappropriate forum for dealing with cases of sexual violence:

I'm not even sure that abuse should probably make it into the criminal justice system. I think for the victim it's a harrowing experience... The

perpetrator is there and they're named, but they're not ripped apart. They're not exposed. Their personal information is not exposed.

Both VSC1 and VSC 3 noted that they had commenced a civil case against their abusers before deciding to lodge a criminal complaint. VSC3 explained that the civil action was a means of putting pressure on the church to remove the abuser from duties in the parish.

VSC3: I started it before the criminal case, when I wasn't sure if he was going to be charged or not... um... and when I discovered that they weren't taking him out of his Parish, I thought well... I was talking to my Solicitor about it and he suggested taking a civil claim, because he said 'then, you get your day in court' or whatever.

2. Delays in Civil Proceedings Adding to the Trauma

Delays in criminal proceedings have been outlined earlier in this chapter. It is clear however that the pace of civil proceedings can be even more sluggish than that of criminal proceedings.

VSC1 described the claim as being 'dragged out' by the legal representatives of the priest but ultimately the case was settled out of court. He described: *Months between correspondence being replied to and... um... asking, you know, just I thought a lot of game playing and making a very miserly compensation offer.*

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For several victims the process is still ongoing and it is not yet clear how long the process will take. VSC5 noted: *'it will be seven, eight years now. And I'm not... inside yet... I haven't gone into the courtroom yet.'*

VSC4 was a resident in an institution which was excluded from the remit of the redress board. He considers that the state and the Church have used every available mechanism to frustrate his efforts to achieve restitution for the sexual abuse he suffered as a child. He has been engaged for some time in a civil action which despite the passage of time does not appear to be moving closer to a resolution:

VSC4: Here we are 11 or 12 years later from the time I first put pen to paper and I am still waiting in the courts for my case to be either heard, settled, or thrown out. And I find that is an abuse of power...

Experiences of the Residential Institutions Redress Board

Four victims were former residents of industrial schools and had engaged with the RIRB. No criminal proceedings have been instigated against those who abused these victims and it was noted in the interviews that several of the abusers are now deceased. The interviewees did not reflect at length on the reasons why their abuse had not resulted in criminal proceedings. When asked if he would like somebody to be brought to trial for the crimes committed against him one victim simply replied: 'That'll never happen... I don't think, I can never see it happening' (VSIR1). Even though the victims were resigned to the fact that criminal proceedings

would not be taken against their offenders VSIR3 expressed his dismay that this was the case when he said *‘for God’s sake, those people should have been put in prison’* (VSIR3)

The victims expressed a range of views with regard to the RIRB. VSIR1 said that it was important that *‘Someone believed us’*. When he was later asked if the knowledge that he had been believed had helped him to heal he replied: *‘A little, just, a little’*. Another victim reflected on the process and noted that most of the questions were answered by his legal representatives. He noted that there were about 20 people in the room when he appeared before the RIRB and acknowledged that his nervousness affected his ability to represent himself but concluded by saying: *‘Did I get a proper opportunity to explain...?’* No (VSIR3). This victim considered that he would have benefited from a less formal and more humane approach. He said, *‘it would have been nice if someone had a put an arm on your shoulder, an arm around you’* (VSIR3). The victims had received financial compensation through the redress board but this seemed to be an issue of contention rather than something that had helped to heal the harm they had experienced.

VSIR1 said: *‘See I’m convinced that redress was fob you off money... they think by giving you money, everything goes away’*. VSIR4 explained that his engagement with the RIRB had not been motivated by a desire to receive financial compensation but rather a desire to receive an apology and to make public the failure of the state to care for vulnerable children. He commented: *‘As I told the Solicitor that I had when I was going to the Redress Board, I wasn’t interested in claiming any money or anything, I just wanted somebody to say ‘we’re sorry for the way you were treated’, and added, ‘I want the general public to be able to hear what took place, the affect it had on us and the failures of the Government and the system to properly look after those of us particularly who were orphans’* (VSIR4).

When No Form of Legal Proceedings Initiated

Two of the victims interviewed had not instigated any form of legal or quasi-legal action in relation to the sexual abuse they had experienced in the case of one of their abusers. Both had been abused by two different parties. In both cases the abuse was historical child sexual abuse and some of the perpetrators were deceased. VSM4 was sexually abused as a young child by her father also by a Christian Brother and by a group of youths later in her adolescence. The attack by the Christian Brother had taken place when she was four years old and when: *‘... I didn’t have any words at the time’*. She was also the subject of a violent physical attack when she was dragged into a lane and suspects that she may have also been raped on this occasion. VSM4 described how intra-familial sexual violence and the attendant culture of secrecy had been transmitted across generations of her family. She blocked her memories of abuse for decades until a television documentary became the trigger which hurled repressed memories of the abuse she had experienced into her

consciousness; she explained 'I just became just catatonic, stuck to the chair'. VSM4 explained that she hadn't 'engaged with the criminal justice system' because her awareness of her abuse was emerging 'very, very slowly' and because her father and the Christian Brother were both deceased. When asked if she would have liked if criminal proceedings had been taken against the perpetrators she replied:

VSM4: Definitely the Christian Brother one. I would have liked a court case for that. I would definitely have wanted that. The other one was just so murky and shameful, for the family...

This comment highlights the distinction drawn by this victim between extra-familial and intra-familial sexual abuse and in particular the reluctance of this victim to expose her experience of intra-familial sexual abuse to scrutiny because of the ripple effects such exposure would have on other family members.

VSM5 related how she was raped by two men when she was aged 16 years old just a short time after she had left an industrial school and taken up a position in a rural community working for a farmer and his wife. The farmer became aware of the attack some time later and he dealt with it by telling the perpetrator not to come near the farm and warning VSM5 'there will be no talk of this in the house'. VSM5 interpreted this as 'in other words if his wife knew, she'd be on the phone back to the convent and they'd have taken me back'. VSM5 was also the subject of a violent rape just a few weeks after the initial attack by another local man. Some months after the attacks she left the area and moved to London. VSM5 is aware that one of the perpetrators is now dead.

It seems that this young girl's history of being in an industrial school marked her out as a target for a certain cohort within the community. The cloistered life of the industrial school also left her ill-equipped for life in the wider society. She thought everyone in the village were 'horrible monsters' and it is not difficult to understand why she did not consider reporting the attacks to An Gardaí at the time that they occurred. She included details of these attacks in her statement to the Redress Board but has never pursued any criminal or civil actions.

Conclusion

The criminal law is the state's mechanism of holding the offender to account for wrongdoing, with the victim playing an instrumental role in bringing that about. Despite the many improvements that have taken place in improving the criminal justice process, the criminal justice system is not about doing right by the victim but rather about prosecuting the offender. The needs and views of victims are largely irrelevant to this core dynamic. As our research indicates the criminal justice system is unconcerned with whether the victim feels they received justice or accountability, despite the particular personal involvement by particular individual police or members of the judiciary.

As we see in the research quoted above the criminal justice system offers accountability on the state's terms, not on the terms of the victims. The kind of accountability offered by the criminal justice system is impersonal to the victim and any vindication or personal accountability felt by a victim through it – and they often initially do get quite a lot out of it – is merely incidental to the needs of the criminal justice system.

But the criminal justice system cannot provide for the empowerment needs of victims of crime. The victims in our study indicate that while the criminal justice system provided a certain sense of public validation and vindication – most importantly their claims being believed by a legitimate authority figure – (especially should a conviction be secured), there remains an ongoing need for another form of accountability. It is abundantly clear from an understanding of the core dynamics and underlying principles of the criminal justice system that regardless of what improvements are made to the criminal justice system, and many improvements are desirable, at its core it cannot ever effectively provide for therapeutically-sensitive remedy for the acute trauma and disempowerment experienced by many victims of sexual violence. The function of the criminal law is to hold wrongdoers to account.

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Turning attention to the other principal legal mechanism available to victims in cases of sexual crime, the civil law's mechanism of Tort Law, it is not surprising to find in our study that very few of our victim participants have actually used the legal mechanism of personal accountability offered by the Law of Tort because of its costly, lengthy and adversarial nature.

And so, as this chapter has illustrated we are left with a situation where the legal mechanisms of accountability for sexual violence are actually pretty limited at responding to the acute, and distinctly therapeutic accountability and justice needs of victims of sexual violence. There is a serious accountability gap for people who have been subject to appalling victimisation and trauma, and as a result of this gap, there is also a substantial democratic deficit.

This report has come to the conclusion that while refinements are certainly required to the conventional justice system, no amount of reform in that system will ever enable it to offer victims of sexual crime what they require: a victim centred justice response. The reason for this is that criminal justice mechanisms are designed for a different purpose: to gather evidence and to prosecute crime. This is where the potential for restorative justice as an additional justice mechanism becomes most apparent – not only as a response to victims but to offenders and their families and communities. This issue is further explored in part two of this report. In considering the restorative needs of victims and offenders, as well as their families and communities, part two raises wider questions of the relationship between restorative justice and other criminal justice mechanisms. The timing of restorative justice in sexual violence cases will also be considered.

In concluding this chapter it must be borne in mind that An Garda Síochána act as the gateway to the criminal justice system for victims of sexual crime and the police are often the first people to whom victims divulge the detailed account of their experiences. This makes specialist Garda training when taking statements especially important. A significant practical and immediate issue centres on the absence of clearly defined procedures for how Gardaí should support the victim through the criminal justice process while also maintaining an objective investigative stance. It is clear that victims deeply desire to be kept involved in the progress of their case as a matter of importance. At the moment, this need is poorly managed. In this regard we believe the time is long overdue for the provision of a statutory legal advocacy service for victims of sexual crime as a matter of right and for the Garda Síochána to develop a specifically trained and resourced Victim Liaison Officers Service to be available nationally to offer support to complainants who report a sexual crime to them. As well as providing much needed support for victims of serious crime the provision of such services would unburden An Garda Síochána from the very real dangers they face of impartiality in relation to prosecuting sexual crime.

The information deficit that also applies to the courts services could also be addressed by the provision of a legal advocacy service for victims of sexual crime, part of whose brief it would be to guide victims through the criminal process, including keeping them informed of all matters relating to the criminal proceedings. Although there have been improvements in support services to victims of sexual crime by means of a voluntary advocacy service provided by the state, many victims who participate in this study encountered problems in their application. In contrast, the advocacy service provided by One in Four in Ireland was praised by many of the research participants who had used its service.

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The research that is presented in this chapter indicates the need for mandatory training for the judiciary and members of the legal profession in the dynamics of sexual crime and in victim trauma and in the potential for Restorative Justice.

While the expertise of the Sexual Crime Management Unit of An Garda Síochána is praised in this study; the need for similar training of front-line Garda in other stations in the dynamics of sexual crime and in victim trauma must also be a priority.

Finally, the delays that it takes for cases of sexual crime to be investigated by an Garda Síochána, considered by the Director of Public Prosecution and processed through the Criminal Courts is a serious indictment of Ireland's response to sexual crime and an indictment of our modern democracy. The unnecessary suffering and needless pain that such delays are inflicting on victims and accused persons and their families must become an issue of significant public concern. The political will to act and to allocate the necessary resources to an Garda Síochána, the Judiciary,

the office of the DPP and the Courts Services to enable a speedy response to complaints of sexual crime must be considered urgently, as this hidden group of already suffering victims are further victimized by at State that refuses to respond to their needs.

End Notes

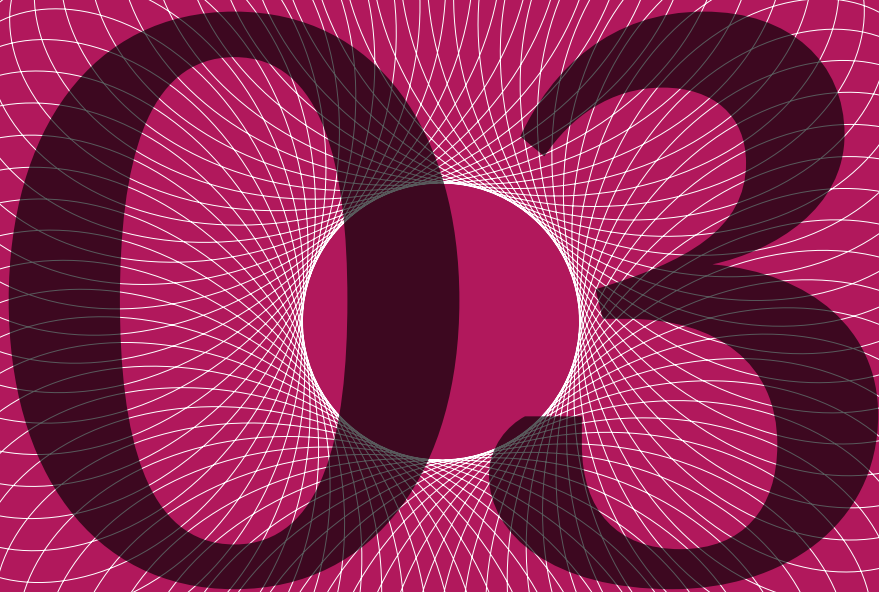
- 1 McGee, H., Garavan, R., de Barra, M., Byrne, J. and Conroy, R. (2002) The SAVI Report: Sexual Abuse and Violence in Ireland. Dublin: The Liffey Press in association with Dublin Rape Crisis Centre. (p. xxvii)
- 2 Daly, K and Bouhours, B. (2010) Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries, In Michael Tonry (ed.) Crime and Justice: A Review of Research (2010). Vol. 39: 565-650. Chicago: University of Chicago Press (pp.565-650). Daly and Bouhours analysed reporting to police of sexual violence using victimisation surveys conducted in 5 countries (Australia, Canada, England and Wales, New Zealand and United States) over a 15 year period and found an average reporting rate of 14% (p.575).
- 3 Lovett, J. and Kelly, L. (2009) Different systems, similar outcomes? Tracking attrition in reported rape cases across Europe. London: Child and Women Abuse Studies Unit, London Metropolitan University.
- 4 Hanly, C., Healy, D. and Scriver, S. (2010) Rape and Justice in Ireland. Dublin: The Liffey Press (p.11).
- 5 Rape Crisis Network Ireland (2012) Guide to the Legal Process for Survivors of Sexual Violence. Dublin: Rape Crisis Network Ireland.
- 6 (McGee et al., 2002, p.x)
- 7 (McGee et al., 2002, pp. 128-131)
- 8 (Lovett and Kelly, 2009).
- 9 Central Statistics Office (2014) Garda Recorded Crime Statistics 2008-2012. Dublin: Government of Ireland. (pp.15-17).
- 10 The proportion of recorded rapes leading to court proceedings declined marginally between 2003 (18.6%) and 2012. In in the same period the decline in the proportion of sexual assault leading to court proceedings was very marked; in 2003 44.2% of recorded sexual assaults led to court proceedings whereas in 2012 just 15.3% of recorded sexual assaults led to court proceedings (CSO <http://www.cso.ie/en/releasesandpublications/crimeandjustice/gardarecordedcrimestatistics2003-2012exceltables/>)
- 11 (Lovett and Kelly, 2009, p.73).
- 12 (Lovett and Kelly, 2009, pp.74-79).
- 13 Hanly, Healy and Scriver, 2010, p.10).
- 14 Ó Cathaoir, K. (2012) Recent Rape Sentencing Analysis: The WD Case & Beyond. Dublin: Judicial Researchers' Office (p.3). Retrieved from: <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222> (accessed 5th August, 2014).
- 15 (Ó Cathaoir, 2012).
- 16 (Hanly, Healy and Scriver, 2010).
- 17 (Campbell, R. (2008) The Psychological Impact of Rape Victims' Experiences With the Legal, Medical, and Mental Health Systems , American Psychologist, November 2008, pp.702-717
- 18 (Campbell, R. (2008) The Psychological Impact of Rape Victims' Experiences With the Legal, Medical, and Mental Health Systems , American Psychologist, November 2008, pp.702-717
- 19 The reference to 'out the door' here means that a woman is living away from the family home
- 20 In general if a victim wished to withdraw a complaint made the Gardaí respected his or her wishes but anecdotal evidence suggests that when a complaint is made and a statement is taken from a victim the Gardaí are increasingly reluctant to leave it at that if the victim wishes to withdraw the complaint. Gardaí have been criticized in the Ferns (2004) and Murphy (2009) Reports for not acting sufficiently on complaints of sexual abuse and these criticisms may be influencing current policy.
- 21 European Union (2012) EU 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. A 'Victims Charter' has also been published by the various pillars of the Irish criminal justice system including An Garda Síochána, the Courts Service, the Office of the Director of Public Prosecutions, the Probation Services, and the Prison Services. The various charters can be accessed at http://www.justice.ie/en/JELR/Pages/Victims_Charter
- 22 Du Mont, J. Miller, K.L. and Myhr, T.L. (2003) The Role of 'Real Rape' and 'Real Victim' Stereotypes in the Police Reporting Practices of Sexually Assaulted Women, Violence Against Women 9(4),pp. 466-486. Jülich, S., McGregor, K., Annan, J., Landon, F., McCarrison, D. and McPhillips, K. (2011). Yes, there is another way! Canterbury Law Journal, 17, pp. 222-228.
- 23 Wall, L. (2012). The many facets of shame in intimate partner sexual violence (Australian Centre for the Study of Sexual Assault Research Summary). Melbourne: Australian Institute of Family Studies. Retrieved online from: <http://www.aifs.gov.au/acssa/pubs/researchsummary/ressum1/ressum1.pdf> (accessed 9th October, 2014).
- 24 See for example in Norway where every complainant of a sexual crime is allocated (1) a victim advocate, always a lawyer, paid for by the state to keep them informed of their rights and protections and (2) has access to a professional state run victim support service, based in the central police station, for information regarding the progress of their case and for therapeutic support throughout the entire period of the investigation and court proceedings.
- 25 Kilcommins, S. et al (2010) The Needs and Concerns of Victims of Crime in Ireland. Dublin: Commission for the Support of Victims of Crime
- 26 (Hanly, Healy and Scriver, 2010).
- 27 (RCNI, 2012, p22-23).
- 28 Murphy, G. (2006) The admissibility of sexual experience in Ireland, Irish Criminal Law Journal, 16 (15).
- 29 See <http://www.garda.ie/Controller.aspx?Page=1662>
- 30 See <http://www.victimsofcrimeoffice.ie/en/vco/Chapter%203.pdf/Files/Chapter%203.pdf>
- 31 (Hanly, Healy and Scriver, 2009, p.248).
- 32 (Bacik et al., 2007, p.42).
- 33 See <http://www.victimsofcrimeoffice.ie/en/vco/Chapter%203.pdf/Files/Chapter%203.pdf>.
- 34 See http://www.flac.ie/download/pdf/flacsheet_on_civil_legal_aid.pdf

On Forgiveness (Another Survivors Perspective)

I have come to the following conclusion regarding forgiveness; I do believe it is essential in order to fully heal from a crime. It is obviously the most difficult thing to do, but I firmly believe that it is in the victim's own interest to forgive the offender. The act of forgiveness helps to free the victim from the crime, because she can let go of the negative emotions that she may have had for so long which, ultimately, were only damaging her and causing the offender no hardship whatsoever. I believe that if you cannot forgive, then the negative emotions will destroy you, or at least damage your life in some manner. I am fortunate in the sense that the crime was committed against me, so it's much easier to forgive because I do not have to remain "loyal" to the victim by staying angry at the offender. I know I would struggle immensely with forgiving someone who hurt someone close to me however.

I lived many years with anger following the assault and this was merely a burden on me – not the offender, as he wasn't even aware I was feeling that way (and realistically wouldn't have cared in the slightest). I know that the anger I felt was not benefitting me, but the only way to diminish the anger for me personally is by seeing the person who offended against me as the damaged person that I know he is. The only way in which I would get the opportunity to see him in this light is through the process of restorative justice. I can only forgive if I have the opportunity or chance to witness this, and in my opinion, the only way I can fully heal is if I forgive. Forgiveness benefits the victim in this way, even more than it benefits the offender. The Criminal Justice system is not concerned with forgiveness and therefore, in its current structure, it helps to keep a victim in a perpetual state of disempowerment.

Section





Offenders and their
Families: Their
Experiences of the
Criminal
Justice System



Introduction

Sex offenders are not a homogenous group and are not distinguishable by social class; ethnicity; religion; or educational attainment¹. A primary distinction is often drawn between rapists and child sex offenders and it is also common to separate child abusers of strangers from child abusers of acquaintances. Other frequently used typologies are juvenile sex offenders; cyber- sex offenders and female sex offenders². However, these distinctions should be not viewed as fixed and may be an oversimplification of the reality³. Research has suggested that a high proportion of adult sex offenders may be 'crossover offenders' who may offend against both children and adults in various relationship categories⁴.

Before turning to consider the views expressed by the 23 sex offenders interviewed as part of this research project it is pertinent to remind ourselves that only a minority of those who perpetrate sexual violence will come to the attention of the criminal justice system and an even smaller proportion will be convicted of sex offences. Criminal prosecutions of contact⁵ sex offences normally rely on victims reporting the offence to the police. The seriousness of the offence is one of the key factors which influences whether victims of crime report the crime to the police; this is also the case for sexual offences⁶ although American research indicates that a majority of victims of rape, will not report the crime to the police⁷. The reasons why victims of sexual violence choose not to report to the police will vary from case to case but research indicates that non-reporting may be linked to victims' self-blame or guilt; shame, embarrassment, or desire to keep the assault a private matter; humiliation or fear of the perpetrator or other individual's perceptions; fear of not being believed; and lack of trust in the criminal justice system⁸.

Very limited statistics are available regarding the gender profile of persons convicted of sexual offences in Ireland but based on the information available it appears that only a very small proportion of convicted sex offenders are female⁹. All offenders interviewed for this research were male. Many of the offenders interviewed had been convicted of sex offences; thirteen were serving a prison sentence at the time of interview and several had committed especially grave sex crimes which had resulted in the imposition of a life sentence. All of the offenders interviewed had either been convicted of a criminal offence or were the subject of a criminal prosecution which was ongoing at the time of the interview. Only adult sex offenders who had perpetrated sexual offences against adults and/or children or who were charged with offenses involving child pornography were interviewed in this study, but it should be noted that research has indicated that one in four perpetrators of child sex abuse in Ireland are children or juveniles¹⁰. The number of young people charged with sexual offences in Ireland has increased significantly in recent years¹¹. Although there has been an increase in the number of

juveniles charged with sex offences our research indicates that there is reluctance on the part of criminal justice professionals to prosecute juveniles in relation to sex offences. A former senior official in the Office of the Director of Public Prosecutions commented in interview that: you know a lot of the cases you'd come across would involve quite young abusers... and the Criminal Justice System is completely unsuitable to deal with 14 year old offender and the like (LP2). The 2001 Children Act also obligates the diversion of young people away from the criminal justice system, in circumstance where this is possible.

The Men who had offended and two Families of Offenders

Twenty- three men who had perpetrated sexual offences were interviewed for this study. Most interviews in the current study were conducted with groups of offenders, one interview involved two men and just one man was interviewed individually. This was in contrast to the victim survivors who wished to be interviewed individually or in one case as a group of siblings. Interviews were conducted with offenders charged/convicted of similar types of sex crimes as it was considered that this would encourage interviewees to speak more freely. Extracts from interviews with five imprisoned men interviewed in a group together on foot of a conviction for contact child sexual offences are coded as O1PP. One man imprisoned for a child sexual offence but who was interviewed alone is coded as O3PP. Extracts from interviews with five imprisoned men on foot of adult rape and sexual assault of an adult, who were interviewed together are coded as O6RP and two men imprisoned on foot of a conviction for rape or sexual assault of an adult who were interviewed together are coded as O4RP. Interview extracts coded as O2MC and O5MC relate to seven and three interviews respectively with ten men in two groups who were attending a community treatment facility. Where more than one person participated in a group interview, individuals were not identified with additional codes. The letters a, b, c, d, e, f and g were randomly applied to group interviews to distinguish one speaker from the next. The offences that these men were accused or convicted of included child sexual offences and possession of child pornography. These men were living in the community and in some instances the criminal proceedings were still ongoing at the date of interview. The families of men who had perpetrated sexual offences are coded as FO1M [the mother of a young man who admitted to a first time sexual offence] and FO2MW [a woman who is herself a victim of abuse by a Catholic priest and the mother of a child who is a victim of incest by the child's father and the woman's husband].

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It is interesting to note that some of the key themes which emerged in the analysis of offender transcripts echoed those noted in interviews with victims. The themes analysed below are: 1. the criminal justice system and the offender; 2. experience of An Garda Síochána; 3. delays in criminal proceedings; 4. Court processes and legal professionals; 5. Victim Impact

Statements; 6. outcomes; 7. special nature of sex offences and sex offenders; 8. prison experiences and 9. Experiences of the Irish Probation service.

3.1. The Criminal Justice System and the Offender

Many of the offenders interviewed did not contest the criminal charges brought against them and pleaded guilty at an early stage of the criminal proceedings and indeed some initiated the criminal charges by voluntarily disclosing their behaviour to the police. However, others referred to the adversarial nature of the system and commented on how this affected their approach to the criminal proceedings. One offender arrested on charges relating to the possession of child pornographic images saw the adversarial nature of the system as almost inviting him to deny the charges. At the date of interview this offender was unsure whether the charges would proceed. The offender's comment set out below also highlights that he considers that the uncertainty regarding the possible sanction for his offending behaviour means that it is in his self-interest to challenge the charges he faces.

O5MCc: The system is adversarial, as I keep saying, and that puts me back on the defensive. In that case, I'm going to try to and fight it. And I know they have to go through the whole stuff but there's no means of... where you can put your hand up and say "look, I've done what I've done, and I'll take the punishment" because you don't know what the punishment is going to be.

Another offender convicted of child sexual abuse related that the advice of his solicitor was to remain silent but his desire to relieve himself of the burden of his guilt meant that he did not follow his solicitor's advice.

O1PPc: Well the solicitor said to me 'don't say anything, keep your mouth shut', and I turned around and I said 'look, I can't keep my mouth shut because the guilt is eating at me, I need to say something'. She says 'well look just keep your mouth shut'. So I got into the room, into the interview room and told them exactly what happened'.

The experience of the criminal justice system was also difficult for the families of offenders. One woman whose husband was convicted of a sexual offence described her experience as follows:

FO1M: For me, the biggest challenge is not ever having had to deal with the justice system before, not knowing what to expect, not knowing., always you know considering the justice system as being very very important, that you have to do everything properly and say everything right, and you're not hiding anything, and in a sense, I'm not saying that I would change anything but there's times when I felt that the victimization increased as a result of being honest and truthful and being open with the justice people.

Families of offenders have also been discussing the inconsistencies in the criminal justice system and have a lot of views about this.

FO1M: One of the big issues that I have found anyway particularly when we were talking in the group is that there's no consistency. We have different people with different situations and in your own mind you kind of rate them as to how serious they may be and then you kind of find that one person, whose offence doesn't seem to be that serious, is being hounded to try and make it out to be almost worse that it is and everything is bang, bang, bang and happening very quickly yet other situations are dragging out forever or not happening at all and they seem to be something that's much more serious and much more threatening to society in a sense, and it's just, it's that lack of, like, we are completely in the unknown. We don't what's going to happen next. And in our house we're afraid to answer the door, every time the doorbell rings and this is a year now this is going on, because so many times, well 5 or 6 times over the year we had a call to the door which hasn't been nice and now there's just a fear all the time with the doorbell ringing, you know.

Interviewer: You mean just people calling to the door?

FO1M: The Gardaí, or the HSE, not that, I don't mean it in the way of you know preparing a statement or making, you know having the house ready, I don't mean it like that, I just mean literally not knowing what to expect next, so, that you can't even look at what has happened and say, well this is the punishment for this, and this is the process that's going to happen, there's no idea.

Interviewer: So what's the biggest challenge for you then as a family member, you know, as a family relation or family member of somebody who's offended, in the criminal justice system?

FO1M: For me, the biggest challenge is not ever having had to deal with the justice system before, not knowing what to expect, not knowing., always you know considering the justice system as being very, very important, that you have to do everything properly and say everything right, and you're not hiding anything, and in a sense, I'm not saying that I would change anything but there's times when I felt that the victimization increased as a result of being honest and truthful and being open with the justice people. And the other part of it is, again, not knowing what to expect and having to deal with people who are supposed to be objective or whatever but being very aggressive and very, what else, what is the word, rude, downright rude, and overstepping the line and you would not trust them at all in terms of confidentiality or any of that so that's been my experience.

Interviewer: and are these are people within the system?

FO1M: Yeah, I'm talking specifically about Gardaí that's what I'm speaking about here. And as I say, not having had to deal., well

I suppose my dealings with them before was where a crime was perpetrated against my son and then, you know, the lack of help we got there, and that just, I let that go, because they persuaded us that was the only way of dealing with something, and then to come back then and be on the other side of the fence, and it's just been strange.

Interviewer: *So what's the biggest challenge for you then as a family member, you know, as a family relation or family member of somebody who's offended, in the criminal justice system?*

FO1M: The biggest challenge? Dealing with fear, dealing with the fear for me. There's the fear of what's going to happen next and what we're talking about here is my son is the offender and he still lives in the house with me and we're trying to get to the bottom of what happened and why and you know, like, the nicest person, the softest gentlest person and yet this has happened, it makes no sense first of all. And then on the other hand, so then now we're put right into this boiling pot of not knowing what's happening next or having to change my life completely, to be, to change my job, change everything, and living in fear and living in fear of my son going to prison, that's my biggest fear

3.2. Experience of An Garda Síochána

Criminal investigations of sex offences may be initiated in a number of different ways. Many will stem from victim reports of sexual violence. Others will follow reports of child protection concerns. The identification and arrest of cyber-sex offenders may depend on police initiated investigations. It should also be noted that some offenders will present themselves to the police and admit their crimes. Such offenders recognise that their behaviour is harmful but are unable to desist.

O1PPa: I went to the Gardaí myself voluntarily before they were aware of anything so I think I'd come to a point in my life where I needed you know, I suppose just to change my life, so when I went to the Gardaí they were very helpful.

By handing himself in to the Gardaí this man was able, with the help of the Gardaí, to prepare his wife and family for what was to come and to manage the situation in a manner that would involve the least amount of trauma for himself and his family.

O1PPa: The Gardaí were helpful, that kind of prepared me beforehand, and I put things in perspective and I explained to my family why I needed to do this and... from my solicitor I got you know very good assistance. I had very good assistance from the Gardaí. So the whole system to me was grand from going to court and... I was more prepared I suppose than being thrust into it, and dragged into it, so I was going I suppose voluntarily, on my own you know”.

He continues:

“When I made my initial complaints you know, they seemed to be very understanding and very... helpful, he gave me assistance, he was encouraging, you know. He did ask for my wellbeing you know at that time, so it was good you know in that regard, so I suppose, it wasn’t a captive case, like, that I was arrested, it wasn’t that. I was asked voluntarily to come to the station on each occasion and when they did arrest me like he was very, they were very polite about it and the whole thing was, so in that regard like...”

Interviewer: So you felt you were treated with respect?

“Well I was, yeah, I think I was, yeah, I was told previously and even when I was sentenced, or... when I pleaded guilty eh... I was to be remanded but the DPP had arranged that I was to go home, you know, so I spent the month at home before I was sentenced so I had all that time, my wife and all and family and all were there, so when the time came... and when I was being sentenced I just packed for prison really like”.

Handing oneself in was generally met with respect by members of An Garda Síochána, who appear to treat offenders who voluntarily approach the Gardaí before a complaint is made with care, respect and compassion. In some instances Gardaí have been proactive in offering advice about help and treatment for the offender but as noted earlier this is not always the case. As the offenders continued to cooperate throughout the prosecution into the Court proceedings by pleading guilty, one benefited from being permitted to go home and prepare for prison despite being remanded to custody pending sentencing.

Other cases offer further illustration of the importance of handing oneself in for some men as a way of stopping the abusive behaviour and as a way of getting the right kind of help by means of the Gardaí, sometimes having taken the long way round the health services.

OIPPb: “In the nineties I went to my family doctor and informed my family doctor of my behaviour and so on and he became aware of it then so then I was given reference to a psychiatrist so when I went to the psychiatrist like I was, they didn’t kind of know, it’s not that they didn’t want to know but I found that the help, I was getting very negative feedback from the psychiatrist, when I explained exactly what my position was and what my abuse was and so on and it wasn’t really kind of helpful and I struggled on then and that’s basically why eventually I went to the Guards myself because I was involved with the HSE for a while, for three or four years ... Yeah but I had been talking to social workers I was explaining to them you know, but they didn’t know, they didn’t seem to know what would move me forward you know ... it wasn’t helpful at all and eventually then I decided well ok I have to take affirmative action and I went to the Guards and

I explained to them and initially they looked at me as if I had, you know...

He explains that when he went first to look for help nobody knew how to help him

“Initially there was no support yeah, initially... and I suppose the abuse would have stopped much, much earlier you know and I suppose I wouldn’t have ended up where I am now”.

For one offender, the intervention of the Gardaí was significant in forcing him to face up to his offending by bringing it to the attention of his family:

O5MCA: “In my case I would... I probably realised I had a problem, but I didn’t know where to go. And it was only when the guards knocked on the door and raided the house, and my wife was there, that my problem was out. Three or four months before that I’d had a bit of a breakdown, I broke down and cried, and I’d had a fight with my brother... and at that point I went to my GP, but he wasn’t there. There was a substitute GP and I couldn’t basically bring myself to talk about the real issue. Because I didn’t feel in a position... to say that what my real problem is what I was doing was on the Internet. I didn’t have the equipment, or the tools, to actually talk to her. It didn’t help that she was a lady, but I didn’t know where to go”.

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Once the criminal investigation has been initiated all suspected sex offenders will be interviewed by the police. Effective police interviewing can encourage an offender to confess which in turn increases the likelihood of securing a conviction, reduces the likelihood that the victim will have to testify in court and reduces the cost of criminal proceedings by avoiding lengthy trials¹². Research indicates that police interviews of suspected sex offenders are more effective when they present accurate evidence. It is important therefore that interviews with suspected sex offenders are conducted after evidence has been gathered¹³. Interviewers should be aware of the importance of interviewing victims/witnesses effectively so that ‘credible and accurate’ evidence can be presented to the suspect which may lead them to confess¹⁴. It may also be useful to impress on the offender how the evidence is likely to be interpreted by a jury or a judge. Research also indicates that police interviews are more effective when they are conducted ethically and when the interviewer displays humanity and does not adopt a dominant aggressive stance¹⁵.

Offenders’ comments on their contact with An Garda Síochána suggest that some Garda interviews follow best practice by seeking to establish a rapport with the offender and eliciting confessions by means of persuasion rather than coercion. A legal professional interviewed (LP5) noted in particular the professional approach adopted by officers in the Sexual Crime Management Unit but pointed out that when his clients are interviewed by other Garda officers he is not allowed to attend and this means that ‘I don’t know what’s been alleged in most of the cases, except

in general terms and what the client can remember from a traumatic experience in a Garda station’.

The following interview extracts present positive comments on offenders’ interactions with An Gardaí.

O2MCb: The second time around again the Gardaí were quite ok. They came around to my flat to search it again like and I mean they arrested me on this occasion but they didn’t handcuff me or anything so I’d say I was treated well, I was... held for 12 hours in the station. I mean the sounds there aren’t exactly comfortable or anything like that but that’s not their fault like... they did treat me well and I was given food like I mean and I wasn’t hassled by them at any stage so all in all like I mean I’d have to say my experience of the system so far was more or less ok. I wasn’t badly treated and it’s the Gardaí’s job like to get a statement from someone and like I said the first occasion maybe they did take advantage of the fact that I was a bit shocked like but they didn’t put any duress on me.

O2MCc: I couldn’t say anything bad about the Guards or anything like that. They treated me fair enough like.

O2Mcd: ... I didn’t feel like they were judging me at all. They were absolutely fine. In fact the detective who I’ve spoken a few times since, when they wanted to take a statement from me, I actually spoke to him a few times after that on the phone and he actually gave me contact details for here, when I was ready to do that. So, I thought they were fine.

O2Mce: Em I’d be similar to all the guys here where it’s just been maybe one or two interactions with the Guards and em they’ve been fine. They treated me with respect. They gave some advice you know about going to see my doctor and going to see a solicitor and so on and going to tell my close partner and so on about what was going on. Em I gave them a statement of my own free will and I think they were very glad that they didn’t have to, that they had all the information in front of them and I think once I did that their attitude changed. After that I’ve had no dealings with them whatsoever because I’m waiting for them to come to me which you know suits me fine and I think that’s a good thing in a way that they’re not hammering at my door every five minutes. But they treated me well. They were respectful when they came out to my house to take stuff from my house, they were respectful of that and I gave some instructions you know as to where they could park their cars and so on and they followed all that firmly so you know there was no embarrassment for myself in my neighbourhood... they were fair... they were fair.

In the above instances, as well as following best practice by seeking to establish a rapport with the offender and eliciting confessions by

means of persuasion rather than coercion, the Gardaí offered advice to the offender on how things would proceed, how they should deal with family and their workplace, where the offender could seek help or treatment, and, interestingly, the Gardaí were sensitive and considerate regarding the potential for the offender to be humiliated in the eyes of his neighbours and local community. These aspects of the work of the Gardaí were appreciated by our interviewees.

Other comments were not positive and suggest that some Garda interviews with sex offenders are not conducted in accordance with best practice or in a manner which is most conducive to eliciting confessions.

O2MCe: they treated me quite badly I think, like they threatened me on numerous times to try and get me to give a statement because I didn't say much to them on the advice of my solicitor, but they tried to provoke me into saying stuff which I didn't like and then when the recorders were off they would say insulting stuff to me eh so yeah so I didn't like that too much.

O1PPe: ... sometimes these detectives, they put the words into your mouth and for the first time, for me to be arrested for the first time in my life, at this late stage in my life, I'd be vulnerable in that room, yes I told them what happened but I was vulnerable, because I hadn't got the brain to think, well no disrespect to other criminals, that they go in there, that they know exactly what to say, what they get away with and all this. You know, people that have been in and out of prison, for more abuse, rape whatever, they know what to say in those rooms, because they're wise

In a small number of interviews offenders criticised the Gardaí because of a perceived lack of awareness or lack of interest in the welfare of the offender or in understanding why the offences had occurred. In the extract below the intervention by the adult son of an offender resulted in the police contacting mental health services on his behalf.

O6RPa: When I was interviewed in the police station, my son came down to see me and he said, "What are you going to do with me Da?" and he says "We're just going to let him go". He says "you can't just let him go, he has to go somewhere. He can't go back to the house, so what are you going to do with him?" He said "we'll just let him go" and my son says, "well I'm telling you now if you let him go and anything happens to him I'm holding you responsible". "What do you mean?" he said. He said "I want him brought to a hospital and make sure he's alright. My father's in shock in there and he's not in his right mind. So I'm holding you responsible when you let him go. So either you get him to hospital ..." and fair enough they did. They sent me down to a psychiatric ward in X and I was there for about three weeks or more. And still trying to get over the shock of things.

In another case in which the offender cooperated with the Gardaí against legal advice, he was disappointed when the focus of the investigation was completely on the sexual abuse he had committed; he had an expectation that there would also be some investigation or acknowledgement of his own personal experiences of sexual abuse. This offender felt further that the Gardaí were acting as an advocate for the victim-survivor. He felt disempowered by the fact that his solicitor was not allowed stay in the room with him while he made his statement.

O1PPd: “when the Guards came they asked me questions I denied it at first because there were children in the house but when I went to the Garda station I did say ‘look I’ll cooperate in any way I can’. But what I found is that when I was given a solicitor, a State solicitor, I felt, well the solicitor said to me ‘don’t say anything, keep your mouth shut’, and I turned around and I said ‘look, I can’t keep my mouth shut because the guilt is eating at me, I need to say something’... So I got into the room, into the interview room and told them exactly what happened... but I felt that the system doesn’t look back into your background to find out, you know, it’s always about the victim. I feel sorry for the victim because the victim didn’t ask for this to happen, in the same way as I was abused when I was a child. I didn’t ask for that to happen to me, so I’m coming from both sides, so I can see the system does not look back and find out... take all of this into account, not shying away that I shouldn’t be punished for what I did, rightly so, but the main fact is that it would make a jury look at it a different way... but what I didn’t like was, in the likes of England they’re allowed have their solicitor in the room with them. Here in Ireland you’re not and to me I feel that that’s, your rights are taken away from you once you go into that room, and you’re on your tod in there. You are on your own inside that room, and no matter what you say is taken down and recorded.

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Following the theme of lack of interest in the welfare or background of the offender one man believed the Gardaí deliberately excluded details of his background that were discussed during questioning in the final statement:

O2MCe: But I think they’re looking for the facts. They’re not looking for the why.. Well they did ask me you know off the record, you know, why did you do that or whatever, they asked me a couple of off the record questions, which I, you know, tried to answer but they didn’t go on my statement at all. And even when I was giving the statement if I put something in about you know my own psychological well-being or anything like that at all it didn’t go into the statement so when they read the statement back to me it wasn’t in there.

Another offender believes that the Gardaí are not interested in offering a professional sympathetic ear in order to bring out what the offender

was feeling and felt more ridiculed than understood when giving his statement. This man misunderstands the role of the Gardaí and may well have been ready to speak about his experiences. It speaks to the need for a Stop It Now Campaign in Ireland to encourage offenders or potential offenders to get help and to come forward with regard to behaviours that is a burden for victims clearly but perhaps for some offenders too.

O1PPb: when you're in the police station you're ridiculed.

The mother of a young man who admitted to a first-time sex offence was critical of what she saw as lack of impartiality on the part of the Gardaí and she was also concerned about Garda confidentiality. As fear of community anger towards the family of sex offenders is a very real fear for families of sex offenders, this woman was very concerned that her son's investigation could be kept as confidential for as long as possible.

FO1M: And the other part of it is, again, not knowing what to expect and having to deal with people who are supposed to be objective or whatever but being very aggressive and very, what else, what is the word, rude, downright rude, and overstepping the line and you would not trust them at all in terms of confidentiality or any of that so that's been my experience.

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Interviewer: And are these people within the system?

FO1M: Yeah, I'm talking specifically about Gardaí, that's what I'm speaking about here. And as I say, not having had to deal., well I suppose my dealings with them before was where a crime was perpetrated against my son and then, you know, the lack of help we got there, and that just, I let that go, because they persuaded us that was the only way of dealing with something, and then to come back then and be on the other side of the fence, and it's just been strange.

Another woman FO2MW whose husband admitted to abusing their daughter had prior experience of the Gardaí that was really positive in circumstance when she disclosed her own sexual abuse by a Catholic priest. In her current circumstance however she found the experience of An Garda to be very different to her earlier experiences.

FO2MW: Em, well I've had dealings with the law before. It came on my own doorstep so to speak and when the abuse with the priests came out, you know with the Murphy Report, it's about 3 years ago now from what I remember, em, I decided I would report my own. [and her experience of the Gardai was very positive as discussed in chapter three]... and then a year and 10 months ago, it came on my own doorstep that my daughter had been abused by her father who is my husband and there were worries then of what's going to happen here. And this year then, eventually, well we'd gotten help, she'd gone for counseling and the whole lot, and I have been counseling to deal with it, but coming up to her, the social workers had encouraged her to make a statement and she did

make a statement, she made a statement in March and again my husband was brought in for questioning and admitted he did do wrong and it's left like that for the moment. Em it's a very different thing I think when the police get in touch with you rather than you going voluntarily to them. I would see a huge difference there. Em, it's very official, I found it anyway. It was very, very official. They're emotionally detached completely, you're an emotional wreck but they're emotionally detached, they're not dealing with the situation, they're just dealing with the person and they're like 'one, two, three', it's like in steps, and the Gardai was dealing with our case, unfortunately, sadly, a very nice Garda in our area, but he is direct and young but knows his stuff. Em, we don't know what to expect, we don't know what will happen so it's very much left in their hands, whereas before when you are dealing with something your own self, in lots of ways it's in your own hands because you're the one who's going ahead with the information, you know what I'm saying? So, so far that would be my experience. I would be very honest and I would be comfortable speaking with Guards, I've no, thank God, criminal background or anything like that. I've done nothing wrong so I've no fear of them in that way. But you don't like to have to deal with the authorities, out of bounds sort of, it's scary stuff, you know.

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FOIM continues how the Gardai have issues knowing how to deal with young adult offenders and their parents as she elaborates her experience.

Interviewer: Have you access to any legal representation, I mean just legal people or advice?

FOIM: Everything happened so quickly... I got a phone call on my way to work 'Mum, I've been picked up by the police', he not knowing what to do, me not knowing what to do, we contacted here to get help. He was already coming here, and they put us in touch with people, but by the time that person got in touch with the station he'd already been grilled, and in his fear he did the usual and said yes to everything... and so when he got the phone call from the solicitor to tell him that he didn't actually have to answer those questions... the questions that he was being asked were ridiculous, that he didn't have to be answering those questions. Then five minutes later he was let go, having been held for four hours, so, for something he was admitting to anyway, he wasn't hiding anything. Like he was a wreck afterwards, a total wreck, but so were we. Like it's trying to survive and you just get over something like that and then you get a call again to the door, or you get another phone call. So that was only the questioning, we didn't even realise, he didn't even know, have I been arrested, have I been, anything. And then he got a phone call to say 'we are now going to arrest you so you need to come, rather than us send a car up for you, you can come down to the station'. So I went down with him, and then we

come out from it and the investigating Garda takes me to the side and wants to have a chat with me and like, why? He's 23. 'Well I'd like to let you know what's going on and let you know, you know, I don't know what he's told you' and I said 'well he's told me a certain amount, he's going to counseling, he's getting help, why do you want to.' and he said 'well I think this is an awful lot worse than you think it is' but I don't think he had any right to tell me any of this. Like on the one hand they wouldn't let me be involved because he's over 18 and on the other hand he's taking me aside to tell me confidential information. Well I think, my son is going to counseling and when he's ready to tell me what's going on that's being done in the proper setting here, you know, not on the steps of the Garda station, you know.

As with the victims experience of the police, the above extracts can serve to remind us that police officers may find it emotionally and psychologically difficult to deal with cases of sexual violence, and to combine a sympathetic and sensitive approach to both victims and offenders while maintaining an appropriate objective investigative stance especially in the face of difficult and troubling accounts of sexual crime. Our analysis suggests a connection between offender cooperation, the nature of the offending and a positive experience of the Gardaí. Those offenders who did not cooperate during questioning and interviewing and those who had committed more serious, violent sexual assaults were more likely to report negative experience. However, where an offender is voluntarily and proactively offering himself to be held to account for his wrongdoing, demonstrating moral awareness of the wrongdoing, guilt, and remorse the Gardaí responded positively. The act of holding oneself responsible, in the knowledge that serious punitive consequences are likely to flow from that act, is, for the Gardaí, worthy of respect and even compassion, even where full-contact sexual violence has taken place, as appears to have been the case with some of our respondents. In other cases perceived lower level sex offenders, even those who did not admit culpability initially, were treated less harshly than were full-contact sex offenders.

Positive experiences can also perhaps be explained by the desire by An Garda to process offenders through the criminal justice system as quickly and easily as possible. An offender who volunteered details of his wrongdoing and cooperated fully with the investigation in essence made the job of the Gardaí easier.

Many interviews highlighted the improved service provided by the Gardaí to victims and offenders of sexual crime, particularly in the specialist units, such as the Sexual Crime Management Unit in Dublin. When the experience of offenders' contact with AGS is reviewed chronologically it is evident that the approach of An Garda Síochána has become more professional over time.

However, they also highlighted the continued limitations. Experiences throughout the country are also not consistent. However it is clear that cases of intra-familial sexual violence are being responded to much more consistently now than hitherto. The interview extract below reveals that disclosures of sexual violence in the past were not always adequately investigated. More recent disclosures were properly followed up and the offender was ultimately convicted and sentenced to a term of imprisonment.

O1PPc: I mean in the eighties I was interviewed by the Guards for what I had done and I sat down with them and admitted everything and I got a slap on the wrist and told to go home, so I mean the system let my daughter down then, and also me then as well, I mean I came along and it was 2010 this came back up again and I mean I had grandchildren, great grandchild, the lot, and I mean everything was gone, you know what I mean [This man is now serving a prison sentence]

One mother of a teenager who was abused by the child's father has an important recommendation for members of an Garda Síochána.

FO2MW: Well I think myself, I think there needs to be with the Gardai, with the police station and all that, there should be people trained I think to deal with the innocent [secondary] victims. Yesterday they were dealing with the perpetrators and the offenders but I think there should be somebody in the law dealing with the wives and children, adults or whatever, in a sensitive way, in this situation. There should be people trained especially and I really think that's very important. Because you're not talking about the normal em crimes like, you know, stealing and robberies of houses and all that, and I know they're horrible and all as they are. This is totally different. It's totally, totally different, and I think there is a lack of thoughts for the people surrounding the offender and the other parts of the lives of the offender, you know. I can understand the police being tough on the offender, but at the same time things happen for reasons and it isn't right that offenders do behave in this way, it's very wrong, but there has to be another way of dealing with them.

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3.3 Delays in Criminal Proceedings

We referred earlier to the sense of powerlessness and frustration that many victims expressed as a result of long delays in criminal justice proceedings. A legal professional interviewed also reflected that defendants do not welcome delays in criminal proceedings and said: (LP5): it's also equally very, very difficult for defendants because they're in the long delays, they're in the adjournments because there isn't a judge to take their case. This view was echoed by many offenders who referred to the long period of time between the initiation of criminal charges and conviction and described it as an especially distressing time.

Interviewer: *What time, you said you got the knock on the door from the Guards, between that time and the time you were in court, what was the...*

O4RPa: *Probably 4 years, more or less 4 years...*

O6RPa: *Mine took a long time to come back from the DPP. I'd be thinking like they were forgetting about it. It took nearly two years, two and a half years to come back from the DPP like, you know.*

O6RPb: *I was waiting nearly two years for a trial date so I was f...ing lonely.*

O1PPa: *Ah it's just the system like I'd say is just slow, I was arrested in 2000 like, and I pleaded guilty right away like but it was four and a half years before it actually reached the Dublin court for sentencing so*

One offender charged with possessing child pornographic images on his computer was still waiting to find out if the charges will proceed at the date of the interview. As noted previously such charges are especially slow to progress and it is standard for a period of 3-4 years to elapse before a decision is made regarding prosecution. Even though the charges may not ultimately proceed, this offender considers that just by being caught up in the criminal justice system he and his family are being punished.

O5MCa: *... the delay, in knowing where you stand... you're stuck. I'm stuck. My family is stuck. In actual fact I feel that me and my family are being punished by the actual delay it takes to get... in moving the process forward*

If I go to my solicitor and ask him to nudge the Gardaí or whatever, am I going to bring a pile of stuff down on top of my head? Or do I just coast along, in denial, or not push the system just carry on regardless of where we are. And this uncertainty is a form of punishment. And I know that's... probably exaggerating, but it feels like we're under sentence and the axe is swinging and the rope is getting lower and lower and lower and lower...

Another offender who was recently sentenced reflected that delay can make the offender dangerously volatile. He also noted the precarious nature of delays with regard to clergy offenders, whose cases had been 'dealt with' by bishops and religious leaders years ago and were then re-opened by the bishops and religious leaders following a change in their policies, sometimes on foot of commissions of investigation and media pressure, when they began to report all cases on their books to the civil authorities.

O5MCb: *"I've felt the delay factor huge. I also felt that, in many ways, my situation was a kind of process that was dealt with before the Ryan Report or anything else but suddenly what was seemingly dealt with now became a totally new issue because child protection*

and church policy and all of that sort of stuff, says that we report everything now to the guards, so we start all over again. So that means that for 7 or 8 years a process is going on without resolution. And that probably doesn't sound very important to the judiciary and people who promote a punitive approach to solving crime, but it actually leaves even the perpetrator in a kind of a dangerous position because he's very volatile at that time. And I would have felt that volatility and lack of, I suppose, I mean to just trust the system was difficult. So I'd have a lot of questions around that."

As noted earlier some offenders lose the support of family and friends when their offending behaviour is revealed. For these offenders the time between the initial criminal charge and the conclusion of the criminal prosecution is a period when support networks they previously relied on are no longer available to them. This can leave them in a very vulnerable position. One offender recounted that he lived on the streets for a period after being charged with child sexual abuse. He said 'I was lost in society, I was hiding away from my shame and my guilt, you know' (O1pe). The disclosure of his crime resulted in the loss of the support of his family and the shame associated with his crime made it very difficult for him to seek help. Eventually he spent a period of time in a psychiatric hospital where 'all they did was give me drugs' (O1PP).

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One O6RP explained that as his victim was known to his family and friends he could not return to his home or to his former employment after he was charged. Initially he lived out of his van but eventually he approached a friend for help. The friend offered to put him up "till you get your head together and see what happens". He ended up staying with this friend for almost two years.

The sentiments of most offenders regarding delays in criminal proceedings are summed up by O5MC in the following comment.

O5MCd: I would like it speeded up an awful lot more. Because there are so many excuses why you can put it off and put it off: the judge doesn't turn up, people are gone for six months, you know, this kind of stuff. The whole system needs a re-jig, it needs to be shaken up, it needs to be managed a lot more efficiently then it is because the time-lag is helping nobody.

3.4. Court Processes and Experience of Legal Professionals

For the most part, solicitors and barristers were seen as totally focused on securing the lowest sentence possible for their clients to the almost exclusion of all other wellbeing or 'justice' matters. Although it may not be strictly their role, legal professionals were not inclined to ask explanatory questions regarding why the offender had acted as he did. There were of course exceptions to this. When the solicitor or barrister built a rapport with the offender and took an interest in his family and welfare this was helpful. Limited contact with counsel in preparation for the court case was part of the problem.

O1PPd: "...for about a year, I was seen twice by this guy [the barrister] and he never discussed anything with me. He never spoke to me about anything and I was sentenced and even not knowing I was going to be sentenced that day..." He went on to note "I suppose, the solicitor never asked me any questions about, you know, how I got to that point or why I committed the offence... I think that would have been important in the case as well. I hadn't a voice really, you know. I'd no voice really. I was just put in the court, stood there. I hadn't any choice to say anything".

One O1PPe noted:

"... solicitors are really vague and that. They're just there to do a job, they're not interested in what you're doing. It's just the outcome that is what they're concerned with; to try and get the sentence down as much as possible like. I mean, okay, they did put good points across as well and did a bit of research into something that they could produce that you have done, but I mean, with six offences you're guilty before your trial..."

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O1PPb was pleased that his barrister had done a lot of research and secured reports from his psychiatrist and counsellors, as well as 'letters of accreditation' and presented them to the judge. However, as noted earlier victims may find it difficult to hear details of their offender's 'good character' being recounted in court.

O1PPb: "So, he done his part I thought anyhow, in such as what he had to work with. The whole thing was to get the sentence down, that there was a life sentence to get that down like, you know the way. He was clear on that. I wasn't expecting miracles, I was happy to hold my hand up and say 'I'm guilty' like, you know that way".

Offender O6RPC: explained that he had built up a relationship with his solicitor and felt therefore that when he wanted to apologise to the victim the logical person to go to was his solicitor. However, in this instance the solicitor discouraged him from doing so.

O6RPC: *Well, you go to your solicitor and they tell you 'well look it, there's no real point'. I mean, I've had me solicitor since I was fifteen/sixteen, when I started getting into trouble. So, he really looks out for me, he does, like you know. They fight your corner the whole lot".*

Many of the offenders interviewed noted a lack of support within the court service and were either misinformed or not informed about important procedural aspects of their court hearings.

The views on the judges who presided over their trials were mixed, with some offenders feeling that they had no voice in the court proceedings when they pleaded guilty [although this was often at the decision of their counsel]. They often wished for an opportunity to explain their history and give an account of their offending and in some cases to apologise

to the victim. Where a judge took an active interest in the offender's wellbeing it was noted by the offender.

O5MCb: "... in fairness to the system... the judges that I've been involved with, have taken on board the reports that have come from this service. And they have been open to them. So, I'm thankful to the system that they have taken on board and they have been fair... with me".

What is interesting in analysing the views of sexual offenders on their court experience is the number who would have liked to be given an opportunity to give an account of themselves during their trial, even in situations where they entered a guilty plea. The need for explanation, for locating their offence in the context of their lives and for human dialogue rather than to be seen as 'other' is striking.

O6RPd: "well, I find the justice system... eh... not... there are... I found that there... I admitted me guilts and then, they brought me through the court system and they get the book of evidence together and then, they just sentence you. As regards to the cause of why or what happened to you, they have no interest. The court system is just to deal with the offence and then, whatever they think suitable for that offence. That's all you get".

O6RPe: "Well, I actually, pleaded guilty. So, I didn't get a chance to share my experience until, I... um... started doing therapeutic work here in the prison".

O6RPC: "I would have loved to explain my whole situation. Why I committed the crime, but I just hadn't got the confidence or nothing in myself to do it and I was just told 'right, you're going out. Just stand up, say this, that and the other and then, sit down and we'll bring you back' and that was it. I was just rushed through".

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3.5. Victim Impact Statements

Victim Impact Statements (VISs) were introduced into Irish law by Section 5 of the Criminal Justice Act 1993. Part 2 of the Criminal Procedures Act 2010 provides for certain amendments to the original legislation. Victims of violent and sexual crimes have the option to present a statement, either orally or in writing, to the court regarding the effect the offence has had on them and the sentencing judge must take account of the effect of the offence on the victim¹⁶. In certain limited circumstances VISs may be presented by family members of the victim. Guidelines on making a VIS were recently published¹⁷. VISs have been described as 'occupying a position somewhere between a procedural right and substantive right' and it is contended that the legislation 'envisages the use of the victim impact report as an aggravating factor for sentence'¹⁸. VISs have not been universally welcomed and concerns have been expressed regarding their effect on sentencing and their possible encroachment on the rights of offenders¹⁹, although others have concluded that they are likely to have very little impact on the sentence imposed²⁰.

During the interviews offenders were asked about their reaction to the victim impact statement (VIS) read out in court prior to sentencing. Several responses indicated that offenders may be under too much stress in court to absorb the contents of the VIS and to appreciate the harm related by the victim.

O6RPa: I don't actually remember hearing the victim impact statement.

Interviewer: Did you hear the victim impact statement?

O6RPb: I did but it just didn't register with me, because I just wanted to get out and get it over and done with

Similarly one O1PP related how he struggled to listen to the VIS.

O1PPb: It was read by the solicitor representing the victim so yeah I was listening, eh, I heard most of it, you know because even though I was very, I suppose through the shame of it I was in shock and I was traumatised but I still managed to listen to it.

In the interview extract above one O1PPb notes that the VIS was read by a solicitor rather than the victim. This O1PPb also pointed out that the VIS was read out by a barrister. This offender considered that the VIS would be more effective if it was delivered directly to the abuser. O1PPb felt that when the VIS was read out in court his main thoughts were in relation to his shame and not the harm related by the victim.

O1PPd: I think they should be took into a room in the courthouse and actually let the victim say their piece directly to their abuser... the shame kicks in when it's being read publicly like... you don't really, you're not getting the true sense of the impact itself in the statement, you know, you're there and you're listening and you're saying oh God everybody's listening to this.

... it could be done through video link of something within the system, you that way that they wouldn't have to be there in the room with you, you know that way because it's not, I mean it's unfair to imagine that you've the right for them to be there to say it to your face, that's more intimidation like, you know that way, that through video link or that is the best way, I mean my daughter, she couldn't read the impact statement in the court herself, she got her barrister to do it you that way, so.

Another offender questioned the authenticity of the VIS and suggested that it had been drafted by a barrister.

O1PPd: Did the victim say all these things? I don't think they do. I'd prefer a victim to get up in their own words, even be with camera, away from everybody else, yes, or without camera, in a room where they can read how they actually feel.

Interviewer: *So you weren't sure whether it was the barrister's words or the victim's words?*

O1PPc: It certainly didn't sound like the victim's words, I'm not putting down the victim in any way.

As a counterpoint to this offender's view it is interesting to note that the guidelines recently published stress that VISs are evidence and are an opportunity for the victim to say in their own words the effect the crime has had on them. The guidelines warn that the statement should not be written by anyone other than the victim and that nobody else should influence what the victim includes in the statement²¹.

One O4RP reflected that when he heard the VIS in court he felt very angry because he knew he was going to prison and told how initially he did not fully accept the veracity of the VIS. However, when he had the opportunity to consider it in prison he realised that in fact the VIS was completely true.

O4RP: My victim took the stand and read her statement. Uh.. in my books it was 75% was right, but the rest of it was wrong... In saying that, when I came into prison 6 months, roughly 6 months into prison...

Interviewer: *Did you come straight into this prison?*

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O4RP: No, I was in another one. I was there and uhh... kept having thoughts and uh went through it in my head and on so... The victim was right. And I was wrong. Simple as that. Absolutely.

One O6RPa initially pleaded not guilty to a charge of rape but changed his plea after hearing the evidence of his victim. He recounted how the experience of hearing his victim give evidence in court was more traumatic than the VIS. This O6RPa had no memory of the rape and it was only when he heard the evidence of his victim that he accepted that he was in fact guilty. This O6RPa found that the VIS helped him to realise the multiple consequences of his actions. This offender also commented that the VIS was more powerful because it was not presented by a barrister.

O6RPa: I heard the victim impact statement. To be honest, the victim impact statement didn't hit me as hard as actual X's [victim's] evidence. But the victim impact statement was eh, to see how you've picked up someone's life that's totally unknown to you, and was going about her business, and just destroyed it, you know. In a sense. I know you can say well you haven't totally destroyed it, she has a choice to get on and move on, you can't take that power away from her. But for that initial, whatever straight after, of course you have, you know what I mean. I'd feel that way if it happened to me, you know what I mean. The loss of relationships, the loss of jobs, having to move. Knowing you've had that, such a negative effect on someone. It kind of... it does kinda I don't think you'd be human if you didn't eh...

Interviewer: *And did you think it helped you to understand the impact on the victim?*

O6RPa: *Yeah, yeah, massively you know, because, you're actually hearing her words, how it's affected, you know. And it's not listening to a barrister; it's not listening to someone up saying "well this is how she feels". It was actually, it was her words, you know, and they carried a lot more weight.*

3.6. Outcome of Proceedings

In Ireland the punishment of sex offenders has generated a great deal of public controversy at times and any perceived leniency is likely to be the subject of considerable public criticism²². Sex offenders convicted of contact offences²³ in Ireland will normally receive a custodial sentence. And²⁴ as noted earlier, lengthy periods of imprisonment are often imposed for serious sex crimes.

Many offenders felt that sex offences are viewed as being particularly heinous. They complained that offenders who committed other serious crimes were not treated with the same disdain by society and did not receive as severe punishments. Offender O6RP claimed: *you're vilified a lot more for these crimes, 'cos they are seen as being the worst crimes'*. A comment in a similar vein was made by O1PP who said *'they would actually brand you for the rest of your life, you might as well have a stamp on your forehead, sex offender, it's something that will never ever leave you until the day you die, and it will carry on after that as well, you know what I mean'*. However, as O'Malley has pointed out, those convicted of serious drug offences in Ireland are liable *'for harsh treatment at least as much as sex offenders'*²⁵.

One O1PP is concerned about the sentence that is imposed on families of offenders, long after the term of imprisonment has been served.

O1PPd: *"it's like mud sticks. When you commit the crime you know that you've done wrong. And the remorse and the guilt and you know you're not only bringing it upon yourself but you're bringing it on your family and then, when you do get out you're doing another life sentence with them. You know you're locked away where nobody can see you. You know, out of sight; out of mind, you know. Your family are embarrassed by you as well and they don't want to come to a place like Arbour Hill where everybody knows... you might as well have a stamp on your forehead, 'sex offender'. It's something that will never ever leave until, the day you die and it will carry on after that as well..."*

Offenders expressed a range of views regarding the sentences they received, with the majority seeing their sentence as fair, even in cases where the man was serving a long sentence including life. Some seemed unconcerned with their sentence and were simply resigned to their fate.

O1PPe: Well I think living with guilt is worse than actually doing the time, when you're living with guilt it's a terrible feeling. When you get sentenced you're sort of relieved it's all over, you can pay for your crime

In response to a question about the fairness of the sentence imposed O6RPc replied:

I don't know how to answer that because prison's been a good thing for me in the sense of eh, it gave me time to think. It gave me time to look back on my life, because out in the world, I was caught in a world where I had a mortgage, rushing around, pressure, and also my alcoholism. I was just drinking to run away from me fears and problems.

For one O1PPb he felt that his family were serving the sentence along with him, highlighting the need for support for families of imprisoned men and for communities of care to support.

"I felt that the that I got... okay, yes it could have been a lot more, but in one sense, I felt it was fair, but in another sense that if they had have known more about me that the sentence wouldn't have been as severe... it was my family and my children that I was more worried about. They're doing the life sentence. They're doing the sentence as well".

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Another offender reflected that over the course of a lengthy sentence it is natural for the offender to feel that the sentence should be shorter. He commented that he tries to consider the fairness of his sentence from the point of view of the victim.

O1PPc: I don't think you can honestly say to yourself it's fair, I think that's human nature, why, on the day, yes, I deserved that, you know, but as time goes by and you look back on it you know you say, especially when the light is way down in the tunnel like, you're trying to get through it, you know that way, but I don't think, the way I look at it, that is a sentence fair for the victim, you know that way, are they happy with that sentence, I think. That's now the way I approach it, in the hopes that it is.

Interviewer: Do you think that they feel that? The victim?

O1PPc: Mine personally? No. No.

An offender serving a life sentence recounted how abhorrence of his crime meant that he initially felt that he should never be released but he now felt that he had changed and would welcome the opportunity to leave the prison at some point in the future.

O6RPd: I thought to myself "I should never be let out". That's the frame of mind I got into because I couldn't handle what I did. So I just I think yeah I deserved a life sentence, and I still do. Now I've changed and I'd just like the opportunity to get out some day.

Another offender also serving a life sentence knew he would be sentenced to life and wanted the sentencing process to be 'over and done with'. The delay in bringing his case to trial was crippling.

O6RPe: "I kind of knew basically, from the very start, that I was going to do a long time... it can be anything from fifteen years to, whatever. It's whenever they decide, they think you've changed to be a better person, they decide to let you out. Some people are in thirty, forty years. It depends on the severity of the case and how bad it was. But for me, I knew I was getting a life sentence... When I went out to the court, I just wanted to get it over and done with".

Several offenders commented on the inconsistency in sentencing. O1PP(b) believes that crimes of similar gravity to his have attracted a considerably lesser tariff. O1PP(b)'s sense of injustice makes it harder to bear the life sentence that he received.

O1PPb: I wholly accept I'm guilty, I'm one hundred per cent guilty or else I wouldn't be here, you know, when you see people nowadays given seven or eight years for the same crime as, it does hurt like.

In contrast however another offender recognised that his sentence could have been harsher.

O4RPa: The sentence I got was 10 years... listening to other cases since I could have gotten life.

One offender considered that sentencing inconsistencies are unhelpful because they distract offenders from thinking about why they are in prison and so shift the focus away from the victim.

O1PPa: I've been here for four and a half years and I've heard similar stories with lesser sentences, or more sentences, and historic inconsistencies, throughout, and people are confused and angry and annoyed, and then they forget about where they're at and why they're here in the first place, and they get distracted because of these situations and I think it takes away from the victims, you know and that's unfortunate, because of the system that's out there, we make the systems and I think the courts need to take more control of that, and be consistent with, similar, alright everybody has different backgrounds but there has to be similar sentences for similar crime.

Two offenders noted that their sentence was the subject of an appeal. In one case the leniency of the sentence was successfully appealed by the DPP. The offender in this case reflected that he was prepared to accept whatever sentence was imposed at the original trial. If a longer sentence had been imposed at this point he would have accepted it. But he found it difficult to accept a longer sentence when it was imposed some considerable time later.

O6RPa: I couldn't believe that I'd done it, but I knew I'd done it, you know that way, from the evidence. And after that I couldn't

care whether it was ten. In the end I got seven, but then two and a half years later I got brought back and I got two. Which is like, it's wrong, in a sense, like don't get me wrong, if they gave me ten on the day, like I said, I didn't care, like you know what I mean. But they leave you a certain amount into your sentence and you have all this "right well I've to do this for this to this to this to get out" and then bang, they give me another two.

One O4RP noted that his sentence is the subject of an ongoing appeal. This offender said he had pleaded guilty against the advice of his barrister in anticipation of a short custodial sentence. When the Judge imposed a nine year sentence O4RP said: *I felt that, and I'm being honest here, I felt I shot myself in the foot. I felt I should have fought the case, my barrister [...] said I should have fought the case, but I decided to take the guilty plea, because I'd no previous and I'd get a lenient sentence.* This case highlights the inherent uncertainty of criminal justice outcomes and the difficulty that some offenders may have in evaluating the advice of legal counsel. It should be noted however that the offender did not claim that he was innocent of the offence.

A convicted offender living in the community pointed out that the sentence imposed is not the only outcome that sex offenders have to live with. His comments highlighted that the designation sex offender brings with it ongoing and life changing impacts.

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O5MCb: ... there is no end to the punishment: so there are certain, you know... your passport, your travel, your employment possibilities, all of these things are seemingly, at the moment, life issues now. Does it have to be like that?

3.7. Special Nature of Sex Offences and Sex Offenders

Many offenders linked their offence to an underlying pathology or addiction. While most offenders did not question the need to punish their behaviour they felt that punishment is not enough and treatment is also necessary.

O1PPa: ... yes I feel for the victim but as the perpetrator there's a reason why the perpetrator has done what they've done. And they're the ones that need help as well, you know what I mean?

Several offenders noted that it may be unproductive for sex offenders to be referred to general support services with no specialist knowledge of sex offending. One offender noted that after being in counselling for three or four years he decided to initiate contact with the police because the counselling provided by social workers was not helpful.

O1PPc: I struggled on then and that's basically why eventually I went to the Guards myself because I was involved with the HSE for a while, for three or four years.

Another offender who attempted to commit suicide after his arrest accessed therapy through a private service after finding the therapy provided through the public mental health services to be inadequate.

O5MCC: I was hospitalized for a suicide [attempt] basically. And that was in reaction to the events that unfolded... when the garda called, and basically being outed... just to my wife and then to my immediate family. And that got me through a crisis, but the problem there is that there simply isn't... they don't have the resources, the mental health services in this country simply don't have the resources to take care of my therapy issues. So I have had to go, basically, private, and that's a mechanism... I mean, if that was... that is a mechanism that needs to be considered by the justice.

Another offender also commented on the lack of community based state funded treatment facilities for sex offenders.

O2MCD: Well mainly I think there's an overall lack of support from the State for us here as offenders. If we, I don't know, if we were drug addicts or if we had committed other types of crime for example the State would be all over us with all sorts of support for us, if we were alcoholics or drug abusers, there are Methadone clinics for drug users and all sorts of other supports for them in themselves and in their communities. But for us, we're just cast aside.

We've all had to come here of our own accord except for one man but even that, he's financing himself and we're all financing being here ourselves. Others have sought help from the HSE financially. It's not forthcoming.

There's no communication between the Gardaí and the Health Service Executive for example. There's no information about facilities like this out there for the HSE to be able to just hand you a leaflet to say here are the places you should go to, you know. These places exist. So I don't know why the authorities don't know about them and why the Health Services don't know about them and don't point you in the right direction and don't help you out as an individual so that you can put your life back on track.

Previous research has highlighted that “the type and range of Irish services [for sex offenders] is geographically inconsistent. Areas of excellent practice exist alongside areas of non-standardised and non-evidence-based practice... Co-ordination and integration between services is similarly inconsistent”²⁶.

Although in the interview extract set out above offender O2MC differentiated sex offenders from alcoholics and drug abusers it is interesting to note that several offenders convicted of rape linked their offending behaviour to an underlying problem with alcohol or substance abuse.

O6RPc: Like alcohol was my problem at the start, like, you know. I went on a right binge and drugs and everything, which I never really did before, the drugs, and I just landed up in that situation at a party, like, you know.

O6RPa: I'd eh no actual memory of it, through drink and drugs, but I knew from the book of evidence, I knew from the... but I just couldn't correlate that with myself.

O4RPb: I know myself my biggest problem and I am working on that department was my alcoholism.

Many offenders, like the victim survivors, spoke of the general lack of knowledge and information about the nature of sex offending in the community. They acknowledged that prior to going for therapy their own understanding of sex offending was very limited.

O2MCe: "Part of the, certainly from my friends and the people I know, the big part for them is they don't understand. And most people just don't understand. There's no knowledge out there as to why people do this... not unless you dig deep into the research, and therefore there's a lack of understanding and there's hysteria. Anyone I've told... they've been supportive but they don't understand. And that's why it's shocked them because it seems like something so far out there. Whereas when you get in here (community-based therapy), I'm not saying it's normal. It's not. But you start to at least to understand how, that it's like a domino effect. And you can't blame them, there's no information out there and the media only want to print the bad stories."

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Because of the nature of sexual offending child protection concerns may mean that attempts by sex offenders to maintain contact with their children are not supported to the extent that they would be for other types of offenders. One offender considered that the attitude of social services had frustrated his efforts to maintain contact with his younger children in the period after his arrest and prior to his conviction.

O1PPc: Another problem I had like was supervised visits, they were dragging their feet like, sometimes with 9 months gap between visits and I'd a 5 year old son and a 6 year old

Interviewer: Where, here?

O1PPc: No outside

Interviewer: Oh when you were waiting to be sentenced

O1PPc: They dragged their feet and all ringing up on the phone saying I can't make it today I've... well they wouldn't say it but there's somewhere else to go. They dragged their feet and in four years I only seen them about 5 or 6 times.

Interviewer: Your children?

O1PPc: I missed my children from 5 up like.

Interviewer: And who was dragging their feet?

O1PPc: Well the social services or child welfare system, what they were trying to do like, they were just trying to separate the family completely, create a barrier between them like and then they could say that their job's done then. That system was wrong.

O1PPb later noted that his youngest son visits him occasionally but this has caused tensions within the family.

Well I have contact with my son and he comes up and he visits. He's 15 and he's the youngest in the family, but he still phones and he comes up and I'm sure like in the background he's under pressure from my older daughters and the rest of the family not to come up, you know, so.

O1PPa: adds that child protection services were effectively focused on separating the family and doing very little else to assist them. He is further concerned that child protection services did little to assist his family once he received a custodial sentence and feels that more help should be given to victims.

O1PPa: "But during that period of time my daughters had very little counselling like, the system wasn't working really towards them. Once they separated the family, their job was done and social welfare was like..."

Interviewer: so they weren't getting any help?

O1PPa: No, they weren't getting any counselling".

O1PPc: ... "Well the social services or child welfare system, what they were trying to do like, they were just trying to separate the family completely, create a barrier between them like and then they could say that their jobs done then. That system was wrong"

OPP1d: "I have been involved with the HSE as well, not through me but through my children's capacity and I've told them several times what has gone on in my past but they weren't interested. Unless somebody is being harmed [at that moment] that's the only time that anyone gets interested".

One offender proposed a supervised visit with his children to the social worker prior to his imprisonment so that he could apologise to the daughters whom he had abused. The social workers would not agree and never put the proposed meeting of apology to his children.

O1PPe: "I was trying to like get a meeting organised to apologise but they wouldn't hear tell of it. They said you can't have any contact during that period, if you see them on the street you avoid them.

Thankfully I was living well away and I didn't meet them. They [the social workers] would never ever agree to it".

Social workers were also seen by some of these men to be more interested in checking facts and ensuring that everything is reported than in any effective engagement with the problems that families, victims and offenders present. In O2MC (a)'s case he was called to a meeting with social workers in child protection services who opened up a case on him, contacted the treatment services and verified his attendance there and then closed the case again.

O2MCd: "Even in my dealings with the HSE, when I did have, I had one interview with two ladies, again it was about facts, it was pure facts. It was no whys for them either".

One O5MC felt that the victim in his case did not want to make a complaint against him to the police but felt compelled to do so due to child protection procedures, as opposed to her wanting to do so. This of course is the man's account and there was no way of corroborating this statement for the purpose of this research.

Child Protection concerns also manifested themselves in another way in this research for offenders along with concerns about mandatory reporting and how it will impact on therapy for sex offenders.

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O5MCe: The judicial system's approach has to change, but society's approach has to change because at the moment... the political system comes in, has a knee jerk reaction, to a case... and is actually going to compound matters. I think this whole thing of this new Bill [Mandatory Reporting] that's going through is just going to make matters worse. It would certainly discourage anyone in my position not to go and seek medical help. And that's what they need. Because right now, you will not be able to trust the person you're talking to. I mean, even doing this tonight is a difficulty. Because you guys [the interviewers] don't know what that law is going to mean. And we know from talking to our own facilitators that it's up in the air, and it could put this whole psychotherapy business at a stop."

Overall social workers and child protection services are seen in negative terms by the men interviewed in this study as being more focused on separating families once abuse is disclosed than on helping anybody. They are in some cases seen to abandon families and the offender once the initial piece of disclosure work is complete. This contributes to a general sense of distrust of social workers and of the service they provide. The negative perceptions reported have to be considered alongside the onerous child protection responsibilities of social workers.

Sex offenders may lose also the support of their families and friends as a result of their offending behaviour. The research indicates that this is especially likely when the sexual violence is intra-familial, when the victim is a child or when the victim is a family friend or neighbour. In such

cases the offender may be ostracised by his family or friends because they too feel shamed by his behaviour. The loss of family and social networks renders the offender very vulnerable particularly if he has to serve a lengthy custodial sentence.

O3RP: I'm very much isolated from family, so I am [this man is serving a life sentence].

For some offenders, time was an important healer. Families were so traumatised and angry to begin that they totally withdrew. Sometimes later they can come back but in other cases family visits diminish over time.

O1PPa: I don't have any family support at the moment because it's too raw, it's too early

Perhaps it is not surprising that families often become divided in the wake of sexual violence and abuse and rifts within the offenders' family are common.

O1PPb: ... my own family is torn asunder like so, I, there's another part of it as well, that you have to carry as well to see your family torn asunder the way it is... they don't know which way to turn, you know, half is for it and half is against and both can't understand, you know that, when as a father it's difficult the love is there and then you know on the other side the love isn't there and they just can't communicate properly.

O1PPc: "Well I have support from the wife and one daughter, and that tears me up as well because they have placed themselves in a position with the rest of the family, the other daughters and sons and the grandchildren as well, so it's good in one sense but at the same time you look at it that they're putting themselves in danger as well"

O1PPd: "I have contact with one son now. My daughters are married and have children, and I never was at their weddings or at their christenings. I have grandchildren which I've never seen, you hear a lot of, I hear stories but... it really pins down what you are or what you were like. I'm a much better person now but I can't undo what I've done so you have to live with the guilt for the rest of your life".

The shame that the offending caused to the families was a source of deep concern for some of the men, who believed their families were serving the life sentence with them.

O1PPd: "Just the whole shame of it, you've nobody that you can turn to, like, from the time that I, I was arrested that night, cut off from society completely, like. Ok I was lucky enough to have the support of the wife, I could ring her with one call and that, but I mean she was going through her problems as well and there was nobody there to take up the slack in the middle like, you know that they'd see what actually was going on both sides like, you know the way, and all I

wanted was the court case over, to be sentenced you know. That's the pure shame of it... ”

O1PPa: “I could do the sentence myself, it's not me. It was really about, it was my family and my children that I was more worried about, they're doing the life sentence, they're doing the sentence as well”

Some offenders had strong feelings of remorse for having let their family down. O4RP (a) is aware of how difficult it must be for his ex-wife to hear the word ‘rape’ in the media. Another man, O4RPb has not seen or spoken to his children since being incarcerated, and does not wish for them to know where he is.

“But even my kids today like, I've hurt them as well, they've no daddy today to wake up to this morning or no daddy at Christmas as well, and it's like that part that I was supposed to be you know participating in in life, I have a feeling I've wrecked that also ... I send them Christmas cards, but I won't write because I don't want them to know where I am...

O6RPa: “my family had me up there on a pedestal... and then you go and do something like this. Like the fallout ... they might get when they're out, you know. It's like things like that. It's much bigger than you'd ever think, you know. And in that way I did let them down. And of course they let me know that I let them down. You know I let everyone down but they've still stood by me, through thick and thin...”

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O4RPa: “... my family are very hurt. My family are ashamed of me. It's tough of course and I don't know. I'd love to talk to them with some help along the way”

Offenders were also aware that their families had very little support to cope with what they had to endure and some offenders regarded their families as secondary victims.

O1PPc: “I was just thinking that my own family never got the support like that and when I was put in the paper and they had to put up with that and with the shame of it and there was never any support for them there ever, and they never got anyone coming to them asking if they needed help with certain things and all...”

O5MCa: “My extended family is victims by default. The system, as it stands, doesn't appear to address..doesn't give them justice. Now I can do what I can to give them justice, but they're also victims of my behaviour. But there's no justice in the present system, I see for them”.

O5MCb: Because we can't live in isolation from our families and in a lot of cases, it's our families that are part of... we need somebody in the middle, we need a dialogue between... as part of the process, we need to re-establish that dialogue in one way or another”.

It is indeed very difficult for families of sex offenders as the families interviewed in this research conveyed in the most poignant terms. No sexual abuse within a family is ever easy. When the abuse involves intra-familial sexual abuse particular dynamics that are harrowing for many, many people become a painful reality, as we have witnessed throughout this research.

Interviewer: What would you see for somebody who's engaged with somebody who's an offender?

FO2MW: Well... we didn't particularly want the Guards involved. I didn't particularly want the Guards involved. Our life has been turned upside down completely. In our situation my husband has left the house and I'm raising the five children on my own, em, three of them are adults now and my daughter who was abused is a teenager. I have a younger daughter as well. So you know really we would have thought the fact that my husband isn't in the house anymore so there's no danger of the cycle continuing. It had stopped already, as it happened, before my daughter told me, a month beforehand, and she told me a month later like. But I think you know the system, you're only trying to get used to the idea of your whole life being turned upside down and then you're at a stage then where if the police get involved it takes on another level completely... I got a phone call before Christmas, the week of Christmas, which would have been the second year on my own with the children, just before, like about three days before Christmas Day and it was the Garda from the station. Like I was just, 'why is he ringing me? This is Christmas, I don't need this at Christmas. But he's ringing up to find out where I was, how things were, and really more or less I says to him, I said look, I'm actually in the village, I'll come around to you and talk to you... I'm not going to talk over the phone like that to a Garda, ... and he said oh that's grand, so I did and he wanted to know if my husband was sticking with the rules, not staying, not coming up to the house, not being around my daughter, like things like that, and I was in bits in the station, I was very upset... I thought it was very bad timing... the reality is we were married a long time, we were married 25 years and this happened and ... you know in their eyes it was like, I felt, well now you know I was just going to ask you is this, that and the other happening and you're left with all the emotional baggage that they're asking you. He can go off and can say 'well I've done my job' you know... I had to literally pull myself together so to speak which I shouldn't have had to do... but I did, I got strength from somewhere before I got home and I was shaking but I went in and I had a cup of tea in a coffee shop and I got myself together. I said it will be ok, it will be grand, and about an hour later I went up and I faced the kids, like who are very protective of me. My adult children are very protective of me, and making sure I'm

alright and I'm looking after myself and you know. But it is, it's like as if your whole life has been taken out of your hands when you're dealing with the law

FO1M: There's no such thing. There's no such thing as normal life anymore, you know, there never will.

In particular, offenders were aware of the effects of media reporting of their crime on their families and friends.

O5MCa: a child pornography internet offender suggests "... And as there is no corporal victim per se, there is no protection offered from the courts, from the media. There's nobody there to waive their right to anonymity and because there is no anonymity, I'm not protected from the media. And therefore my family is not protected from the media. I don't know how we address that one..."

O5MCb: "In my case, indirectly the media was a massive fear for my family... and created huge problems for my family. In actual practice, the media didn't come into it at all, you know, because maybe the level of court, and uh anyway, it never appeared in the papers or anything like that and it was never confronted by the media. But it was by far the biggest fear for my family"

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Support for offenders comes in different ways from their families, with some paying the cost of community treatment for them.

O2MCe: "Anyone I've told has stuck by me, so I'm very conscious of the fact that they must be going through a hard time themselves, because on the one hand they're staying loyal to me, but on the other hand they have no idea what's going on and they have to make sense of it in their own heads and that must be very difficult for them to do. It must be very stressful for them to do you know. I mean my sister and her partner, they went to see somebody because they just had to, they had to get somebody to make sense of this situation for them and thankfully they did. My partner actually came to see a therapist here as well and he helped to make some sense of it for her. So it was a relief for them because you know, when there's something as bad as this that they don't understand"

Release from prison following incarceration for a sex offence also has added stress for victims and for the offender's family and some of the offenders were acutely aware of this.

O1PPb: "I would be more concerned really for my family and for the victims, what impact it would have on them, you know, after so long, me coming out and then it being disclosed or it being publicised again in the papers, or whatever the case may be. My concern would be for my family and for the victims obviously, what impact it would have on them".

The very nature of intra-familial sexual abuse brings with it its own complexities for families, with some offenders having no little contact and neither victim or offender having an opportunity to speak, have questions answered or have explanations or apology. O1PP pleaded guilty straight away and has never had the chance to speak to his daughters:

“... my victims were within my family, my daughters, they never got to say, like, never got a chance to speak their mind like, and that could be important for them too, you know, they’ve no idea why I abused them...”

Another offender O1PP believes his daughter is still very angry with him, many years after him receiving a life sentence and he would really like an opportunity to meet with her if he could.

O1PPc: “Well like my daughter is still very angry with me, she wishes me dead like and this is many years after getting life and I put my hands up to guilt. But there’s never going to be forgiveness till maybe this would happen [a meeting]. Or even if there is no forgiveness I’ll accept it like”

The majority of the offenders interviewed had very few friends as a result of their actions. In most cases their desertion was not thought to have been malicious in any way; friends just simply drifted away. Those that remained were crucial for support. Families and friends were shocked on hearing of the offences; friends were more likely to voice their lack of understanding of sexual offending whereas families were more likely to be upset and hurt. Neither, in any way condoned an offender’s actions.

One of the main ways friends offered support was in creating a sense of normality and providing essential assistance, such as accommodation, when an offender was awaiting the outcome of criminal proceedings, or re-integrating into the community following incarceration. In some cases support was only forthcoming from family and friends because the victim was unknown to any of them.

O6RPe: “... the big thing is people want to be integrated back into the community. I’m lucky that I have all my family and my friends. And I know that the only reason I’m lucky is that the woman I raped is unknown to any of them, you know? The ramifications would have been different if she had been known. And in fairness by the way mine went down it could have been anybody ‘cos I have no recollection of it so therefore it could have been anybody. I was just lucky in that sense that I have family and friends and I probably could integrate a bit easier than other people.”

For many of the men interviewed support from family and friends was also conditional on the offender attending therapy and fully accepting responsibility for his actions.

O2Mcf: “... some family and some friends know. And they’ve been very supportive but a big part of them supporting me is doing

something like this [therapy] also... you know, a sign that I'm taking responsibility."

O6RPe: "My first step was actually, even though I went guilty, for a good eighteen months I was still saying 'You wouldn't do this... I know it's there is black and white but you've never done anything like this before and that's not you down there'. And it was only kinda the acceptance after that... it was family, people that were in court and they're going 'Tommy, look from... from someone's else's point of view. You know you have your tail up about this whatever else that went down with the Guards, but at the end of the day you did do it'. And it was the acceptance of doing it and then getting to somewhere like this [Prison] and talking."

When family and friends were supportive it made a huge difference to the men's lives. The participants in this research were vigilant for every sign of genuineness and equally for condemnation.

O2MCa: "most of the friends I've told about it have been more or less ok. I don't think they understood too much. I think one friend maybe does but then she has a bit of a counselling background as well and that... when she meets me she has often brought along her kids with her. I think it's to send a message that she doesn't see me as any kind of a threat like. And the other friends, I don't think they really understand it. They're supportive alright, some of them anyway, I mean."

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Loss of friends was sometimes linked to the degree of publicity that surrounded the reporting of the criminal case and whether or not the offender remained anonymous. Sensational coverage appeared to have led to negative reactions. In most cases, however, friends just seemed to have dropped away without any confrontation or vindictiveness.

O2MCb: "I was in the paper. I was chased out of the courtroom, photographers after me. So my picture was in the paper and everyone knows. I now have two friends. I used to have loads, girlfriend is gone... I feel pretty bad about being judged."

In one man's case, isolation was self-imposed, as his lack of understanding of his offending behavior and his disgust and self-condemnation led him to ostracize even his closest friends. Therapy was found to be a remedy for these feelings.

O2MCc: "I didn't understand it so nobody else could be expected to... I just took for granted like that I'm just the lowest of the low, I couldn't be any worse, that's how I lived, you know? for years... that was how I saw myself and of course that had it's own effects that rubbed off on this, that and the other... because of paranoia or a very low opinion of myself I lost a lot of friends... I sort of pushed them away. I figured they won't, they don't want to know me..."

Self-condemnation and self-imposed isolation also extended into prison, with some participants being unwilling to accept prison visits due to what they describe as an unhealthy frame of mind.

Interviewer: *“So you don’t see your friends or your family or anyone here, do you?”*

O4RPa: *No, no... I’m on my own.*

Interviewer: *And that’s your own choice?*

O4RPa: *Yes, yes. My brother was on for coming at Christmas and um... and I asked him not to come. I just asked him to send in stuff and... I’m not in the frame of mind... ”*

One man believed his wife had stopped supporting him as a result of negative comments and pressure on her from her friends.

O6RPb: *“We are divorced but we have... contact because of my parents have excellent contact with her actually... Between us is we have contact but it is not the best. I don’t want to push her because she was very supportive for me for eighteen months and then, I think there was influence of other people, friends... “You should leave him”, “You should go”, “He is bad person”... ”*

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Therapeutic environments offered a new experience for friendships that involved open and honest conversations with fellow offenders. This was considered to be very helpful. There was value placed on an atmosphere free from judgment, where offenders could find comfort, support, and perhaps a degree of self-understanding.

O2MCf: *“... the group session... it’s become kind of like a haven. I think we’ve all made very good progress in... whatever roads we’re taking at the moment, so it’s a huge comfort and support. And I’ve got a few friends as well who were there, you know, but here’s a place where you can really just say anything... without fear of being judged.”*

O6RPe: *“... I have a good friend in here... I think some of the guys can engage and talk to certain fellas in here. You can actually have a nice conversation where they’re not going to slag you off, they’re not going to say like you’re this, that and the other.*

O4RPa: *“I saw someone who was here, we had a good thing relation going here, talking privately... a friend here and we were great support to one another. And um... that meant a lot.*

Interviewer: *Is he still here?*

O4RPa: *No, no, no... I got a Christmas card from him. And a letter... I’d like more visits but he can’t, he’s got to go to work. Ya know? He’s a long way away. Well, not that far away.”*

O6RPe: "Once you feel a bit of encouragement from somebody, it actually gives you a nice bit of... it starts to give... it makes you feel good inside. A small bit of self-esteem, it starts... builds up your confidence, your own inner trust. Once... if you lose your inner trust it's a bad thing, but once you can get that back to a nice place, you trust yourself to be open and honest in groups. To talk to the boys and to have a conversation with the therapy crowd and even your own family"

Faith and spirituality were also seen as a source of consolation, comfort and support for offenders, especially in situations where there was no family contact or a loss of social support.

O3RP: "Over the years I have realised that the only friend that I have is the Lord Jesus. That doesn't mean I'm a total Christian, don't misunderstand me. That's my outlook. That's the only friend I have is the Lord Jesus Christ... I no longer have a family around me. My own children are grown up. My children have their own lives and their children. And I'm very much isolated from my family, so I am"

O6RPb: "The greatest support we have is Christian group which is coming here every Sunday mornings for a bible study course. Since I am in this prison I am a member of them and I really feel that is something. I feel that someone accepts me again. Because all prison systems just all the time try to highlight how bad I am, what kind of animal I am and things like that, so it automatically just puts me down. But this group, these people who come in from outside, we are sitting together, we are praying together, we are talking about general things, and I feel they accept me. I feel there is forgiveness so that's with me every time after Sunday for another few days and I feel like someone new, someone who I really know, that's normal, like a normal person. And I'm really happy that this prison allowed these people come into the prison and talk."

O6RPe: "Em... my faith is great support to me because me spiritual advisor, my spiritual need is number one."

The Prison Chaplain was seen as a friend for some of the incarcerated men.

O6RPd: "The priest is great. You can have a laugh with him, you can actually tell him anything... he'll slag you off as much as you slag him off and it's great craic." Further, "it's the likes of psychology here, Fr. Ciaran, that you can talk to them, and they kind of reel you back in, and reign me back in a little bit because that's what I need, you know?"

For some offender's faith seems to be crucial in coming to terms with their life in the aftermath of a crime and in gaining acceptance of their wrongdoing.

O3RP: "Forgiveness is something we all have to ask of the Lord... I believe in my heart that He accepts the fact that I have committed wrongs against others.. I've asked him for forgiveness. He accepts the fact that I've asked, that perhaps those for which I have wronged forgive me for having done it, because unless we all forgive each other... there is no forgiveness... I've forgiven myself as far as God goes. Yes. I have asked for his forgiveness."

The depth of faith is one of the ways by which the men interviewed for this research come to terms with themselves in the aftermath of committing serious sexual crime. Some men have a strong belief in a forgiving, compassionate, and accepting God. Faith is also the moral guide by which some men live.

O6RPb: "I have my faith, that's number one. I'm a Jehovah Witness, that's my faith. They come to see me, spiritual visits, and I do me bible studies every day. Em, my faith is number one 'cos that makes me eh morally responsible so I have to think of my faith as regards to how I behave."

The institutional Catholic Church is not seen as caring for offenders and rather in its desperate need to survive many offenders, especially clerical offenders, feel abandoned by it. They seek support instead in their faith and in their families and friends.

The fact that their crime had given rise to many secondary victims was thought to explain the loss of family and friends, and the need for healing for a wide number of people in the aftermath of sexual crime.

O6RPC: And my family never wavered and the majority of my friends never wavered. But they still... it still did affect them... They are seen with you every day... you are them, they are you... It does rub off. Your actions do rub off on them... And it took something like this, for me to do something like this, for me to realise how important other people are."

O5MCa: "The victims of my crime are not just the immediate person I abused, but it's family, it's society, it's my religious congregation, friends, people who trusted me and now obviously have questions. So, many people have been affected and have gone through a process."

O5MCe: "... the form of this process that are available that we've talked about already is like a therapy for the individual, but our families don't get the benefit of that, and our friends and neighbour's don't get the benefit of that."

O5MCb: "we're still working towards a solution, but the family are there for me. My wife is supporting me, she is as mad as hell. My extended siblings are supporting me, they're as mad as hell and I'm trying to work towards... I'm trying to get to a point where I can actually sit down and explain to them "this is it, this is me" which

is not easy. That's why this whole thing of having a family dialogue together would be helpful... within just your immediate family and the extended family. Because once I can explain to them, I hope I can explain to society, but I don't know if society wants to listen".

A man who had abused several of his children wondered if it would benefit them if they were to meet with him and if he were to offer an explanation, especially as they are now rearing children themselves:

O1PPa: ..they're living with that hate which must be difficult for them, because they're minding families of their own and this is spoiling their system, all this, for the rest of their lives, and I think it would be important to get their say, even if it was a real verbal abuse to the abuser, even if, I'm not looking for reconciliation with them but let them have their say and sit back, say nothing and take it and then get a chance to say, give a sort of an explanation of why you think it actually happened and it wasn't their fault... it's always in the papers but it's not direct... "

O1PPb: "Well with your own children that is very confusing. After you have abused them, they're totally confused between love and hate; that they're still feeling a sort of love there for you but at the same time they want you dead. So I mean that must be horrific for them. You're talking about... our sentences, was it fair and that, you know that, I mean I'm happy enough with what I got, you know that way and I only hope to go that she's happy as well which I doubt at the moment, through lack of communication".

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3.8. Prison Experiences

Thirteen of the twenty three offenders interviewed were in prison at the date of interview. Many of them were serving lengthy sentences including in a number of instances life sentences. At the date of interview all the incarcerated offenders were serving their sentence in the same prison where there were a high number of sex offenders and men serving long sentences but all had previously served a period of time in at least one other prison of a more general nature. All of the offenders recounted negative experiences during the time they had spent in prison prior to coming to the prison that was used to dealing with sex offenders. Several interviewees commented that they had felt unsafe during this period and unable to engage with services that would mark them out as sex offender.

O6RPe: I spent a year and a half in Cloverhill and a year and a half in Wheatfield ... and you can't really do anything, when you're in for one of these crimes unless you want to kinda brass it out, and you go out to the yard and you just you know what I mean, I don't care. Because there isn't ..You can't really be seen to go to see psychology. You can't really be seen because you're leaving yourself open, you know.

O6RPa: I was in Wheatfield.

Interviewee: Alright. Ok.

O6RPa: And you have to watch your back, there's that tension all the time, and you have to ..you're just watching your back all the time.

O6RPb: ... not this prison, but the likes of Cork you'd be lucky to survive. Even the prison officers down there would be out for you like.

O6RPc: You're in these prisons and you can't deal with anything. There's a stigma attached to everything that you do, like. You know "he's a sex offender". After that you're keeping your head down and you can't deal with any issues that you actually want really.

Many offenders were able to access therapeutic supports and counselling services for the first time when they were moved to this prison. Several reflected on the wasted opportunities in the early years of their sentences.

O6RPd: ... the first three years of my sentence, I'm already six years, but first three years somehow was waste of time because nobody even tried to talk to me, nobody you know tried to develop my feelings, how I feel, what I think, what happened in my life. Just was they left me in the cell, that's it.

O6RPd: the first three years of my prison sentence was very, very hard.

A minority of offenders commented that they had the support of their family during their prison term.

O6RPd: Yeah I've been very lucky. Family and friends supported me like you know. Like I've had them say "right you were off the chart there... you were whatever". Like no one condoned or anything could condone what I done, but they all stood by me.

O1PPc: I've great support from my family and my children and so on

Interviewer: So you have support from your family and your children? Ok

O1PPc: I have, I have indeed, yeah. Obviously I'm kind of, I'm one of the lucky ones, I'm thankful for that.

However, some prisoners find it easier to do their prison time without visits from family members.

O4RPa: There's a bit split in my family when I came to prison. The shame, displaced, the whole lot, and you know the part of the family that I did get on with I fell out with them now too, I don't want them to come and see me, I just want as they say to, as they say in jail, do ya wack, ya know? And I don't, especially here, I do have a few that want to come, but I stopped that. I said I don't want them coming here, it's simple as that.

It is notable that those offenders who had received counselling reflected on how productive their sentence is for them in terms of personal growth.

3.9. Contact with the Irish Probation Service

It was interesting in this study to find the limited experience that many of the twenty-three offenders had of the probation service. There was a marked absence of the probation service in the men's lives and rehabilitation. It should be acknowledged however that only a minority of our interviewees were under the supervision of the probation services at the date of interview and none mentioned that they were having therapy provided by the probation service. Within the prison environment the imprisoned men spoke of therapy being provided by the prison psychologists; within the community the men spoke of therapy being provided by an independent therapy agency. The role of the probation service is seen as providing a report for court and for the offenders interviewed in this study the probation report was seen as having much significance in how their cases were adjudicated in court. Otherwise the probation service is seen as monitoring / supervising offenders on release, hearing their story when they are imprisoned and in some cases providing community and welfare assistance with such matters as employment or payment for therapy.

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O2MCa: "I can't get a job as a result of this. I'm on the dole to pay for here [community treatment] and I'm struggling, it's a catch 22. I mean I can come here and pay for it but I'm not able to do anything else. I can't get a job as a result of my criminal conviction so... I have been in contact with the Probation Service so hopefully they can sort something out for me".

O6RPe: "But as regards probably being heard, or maybe your side, I think probably when you're in prison and psychology or what probation deals with you, they might get to hear your true side of the story, but the court system don't, I don't think".

One offender hoped that the probation service would offer him support on his release from prison in order to get established on 'the outside'. However, the imprisoned offenders were generally unsure as to what services the probation service could provide to them on release, often illustrated by discussions in the research dialogue groups about what the probation service can provide. Some men actively avoided contact with probation officers.

Some offenders who sought support found that help was either not forthcoming or limited.

One O2MC's mother rang the probation service seeking help for her son but did not find the service responsive. O3RP has not found the Irish probation service to be helpful and is concerned about the lack of care for offenders on release from prison. He had a positive experience of the

probation staff in another jurisdiction, which he felt were interested in helping him.

O3RP: “Well the probations there [another jurisdiction] seem to operate differently from than in this country. In other words there, there’s a support. And always if you have a problem or if you’re having a hard day, or you can’t cope, you could go down and talk to them”.

He continues:

“I feel here that they are not interested, as interested as their counterparts and are not at all involved. Here they are only interested in you and your offenses. Nothing more, nothing less”.

Misinformation and lack of communication between different branches of the criminal justice system regarding post-release arrangements was evident especially for non-national offenders, who were given different information from different officials. How information regarding the administration of the parole scheme is conveyed by members of the probation service is also carefully scrutinised by the imprisoned men.

O6RPb: “I went to Probation as well and the first thing probation said to me was “Parole Board can do nothing for you. You can’t get anything. The date on the door is what you’re going to have. The date on the door is when you’re going to get out. And therefore don’t try and think you’re going out any earlier than this”... At first, I thought “was it personal” “was it something that he didn’t like sex offenders” you know and all this. But I think he was talking from experience, just letting me know the facts, even though I could have hopes, because we all have hopes”.

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Conclusion

Sex offenders are not a homogenous group and this chapter has presented parts of the stories of twenty- three such men who had perpetrated sexual offences. It has also included the perspectives of a mother of a young first time sex offender and the mother of a child whose husband had committed incest with her. This woman was herself a victim of child sexual abuse by a Catholic priest. Their views were analysed under a number headings which have served to indicate the complexity of their situations, the depth of their pain, the sorrow for past hurts in some cases, and the limitations of the criminal justice system in responding to sexual crime in all its complexity.

Before concluding this chapter it is pertinent to remind ourselves that only a minority of those who perpetrate sexual violence will ever come to the attention of the criminal justice system and an even smaller proportion will be convicted of sex offences. While the reporting of sexual crime is on the increase internationally, because of changing social norms being reflected in legislative changes, increased sensitivity

to victims of sexual crime, public outrage at sexual violations, and increased training for police and other professionals; although much more remains to be done, this rise in reporting is accompanied by marked rise in rates of attrition too. What appears to be now happening is a consistently widening 'justice gap'²⁷ between the number of sexual offenses reported and arrests for these crimes, with conviction rates in a number of common law countries decreasing, despite significant law reform²⁸. In the United States of America, 1 in 4 forcible rapes reported to police in 2008 resulted in an arrest as compared with a ratio of 1 in 2 throughout the 1970s²⁹. Ultimately, there is a remarkably remote chance of a conviction in sexual crime, with some studies estimating this to be as low as or potentially lower than one in a hundred³⁰. While we are socially and morally obligated to be concerned about those victims, offenders and the families of both who come into contact with the criminal justice systems as this chapter and chapter two have demonstrated, it is time for a serious social and moral wake-up call and a realization that a very small minority of victim and offenders of sexual crime ever come into contact with the criminal justice system at all. When are we going to begin to be concerned about the 90% - 99% [if studies are to be believed] who get no justice whatsoever?

While all the calls for increased reporting have begun to take effect; reporting of itself will never meet all or most of the needs of victims and offenders and their families, and nor will it ever meet the needs of the vast majority of victims of sexual crime, who for a variety of reasons – whether we like it or not – do not report. When combined with what we know about the prohibitive nature of taking civil proceedings, both in terms of cost and delay, as discussed in chapter two of this report many victims of sexual crime are relegated to no 'justice' at all – and this is with the social and moral compliance or neglect of the general public. In such circumstance, the case for a third justice response by means of restorative justice is compelling, not in opposition to criminal justice or civil justice but as a complement to it; It is to investigate if there is such a call in Ireland that Part two of this report turns now.

End Notes

- 1 Saleh, F. and Guidry, L.L. (2003) Psychosocial and Biological Treatment Considerations for the Paraphilic and Nonparaphilic Sex Offender. *The Journal of the American Academy of Psychiatry and the Law*, 31, 486–93.
- 2 Robertiello, G. and Terry, K.J. (2007). Can we profile sex offenders? A review of sex offender typologies. *Aggression and Violent Behavior*, 12, 508–518.
- 3 (Saleh and Guidry, 2003). Woessner, G. (2010). Classifying sexual offenders: An empirical model for generating type-specific approaches to intervention. *International Journal of Offender Therapy and Comparative Criminology*, 54(3), 327–345.
- 4 Heil, P., Ahlmeyer, S., & Simons, D. (2003). Crossover sexual offenses. *Sexual Abuse: A Journal of Research and Treatment*, 15(4), 221–236.
- 5 Contact sex offences are offences which involve physical contact between the offender and the victim. Non-contact sex offences include indecent exposure and child pornography offences.
- 6 Ministry of Justice, Home Office and the Office for National Statistics (2013) *An Overview of Sexual Offending in England and Wales Statistics Bulletin*. Retrieved from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf (accessed 13th August, 2014).
- 7 Rennison, C.M. *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, August 2002, NCJ 194530.
- 8 Du Mont, J., Miller, K-L. & Myhr, T. L. (2003). The Role of “Real Rape” and “Real Victim” stereotypes in the Police Reporting Practices of Sexually Assaulted Women. *Violence Against Women*, 9 (4) 466-486. doi: 10.1177/1077801202250960
- 9 Garda Recorded Crime Statistics provide information on the gender of persons convicted of sex offences when the conviction is secured in the same year as the offence is recorded. This will be the case for only a small proportion of sex offences. In 2012 three of the seventy-six persons convicted in relation to sex offences recorded in 2012 were women (CSO, 2014,p.17). In 2011 no women were convicted of sex offences recorded in that year (see Central Statistics Office (2013) *Garda Recorded Crime Statistics 2007–2011*. Dublin: Government of Ireland. p. 17).
- 10 (McGee, H., Garavan, R., de Barra, M., Byrne, J. and Conroy, R. (2002) *The SAVI Report: Sexual Abuse and Violence in Ireland*. Dublin: The Liffey Press in association with Dublin Rape Crisis Centre. (p. xxviii)
- 11 Garda Youth Diversion Office (2013) *Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme*, Dublin: An Garda Síochána, p.25. Retrieved from: <http://www.justice.ie/en/JELR/Monitoring%20Committee%20Annual%20Report%202012%20Final.pdf/Files/Monitoring%20Committee%20Annual%20Report%202012%20Final.pdf> (accessed on 12th August, 2014).
- 12 Kebbell, M., Hurren, E. and Mazerolle, P. (2006) *An Investigation into the Effective and Ethical Interviewing of Suspected Sex Offenders, Final Report CRC 12/03-04*. Retrieved from: <http://www.criminologyresearchcouncil.gov.au/reports/200304-12.pdf> (accessed on 11th August, 2014).
- 13 (Kebbell, Hurren and Mazerolle, 2006).
- 14 (Kebbell, Hurren and Mazerolle, 2006. P.98).
- 15 (Kebbell, Hurren and Mazerolle, 2006). Holmberg, U. and Christianson, S. (2002). Murderers’ and sexual offenders’ experience of police interviews and their inclination to admit or deny crimes. *Behavioral Sciences and the Law*, 20, 31-45.
- 16 Rape Crisis Network Ireland (2011) *Victim Impact Statements/Reports: A Booklet for Victims of Crime*. Dublin: Rape Crisis Network Ireland. Retrieved from: <http://www.rcni.ie/wp-content/uploads/VICTIMIMPACTSTATEMENTSREPORTSABookletforVictimsofCrimeMarch2011.pdf> (accessed on 13th August, 2014).
- 17 An Garda Síochána (2013) *Making a Victim Impact Statement*. Dublin: An Garda Síochána/Victims of Crime Office/ Office of the Director of Public Prosecutions. Retrieved from: <http://www.garda.ie/Documents/User/ENGLISH%20-%20Making%20a%20Victim%20Impact%20Statement%20-%20040613.pdf> (accessed 13th August, 2014).
- 18 Rogan, M. (2006) *Victims’ Rights Theory and Practice-Part II*, *Irish Law Times*, 24,151-155. (p.155).
- 19 Ashworth, A (2002) *Responsibilities, Rights and Restorative Justice*. *British Journal of Criminology*, 42 (3)578. Pemberton, A., & Reynaers, S. (2011). The controversial nature of victim participation: Therapeutic benefits in victim impact statements. In E. Erez, M. Kilchlinh, & J. J. M. Wemmers (Eds.), *Therapeutic jurisprudence and victim participation in justice: International perspectives*. (pp. 229-248). Durham, North Carolina: Carolina Academic Publishing.
- 20 Chalmers, J., Duff, P. and Leverick, F. (2007) *Victim Impact Statements: Can work, do work (for those who bother to make them)*. *Criminal Law Review*, May, 360-379.
- 21 (An Garda Síochána, 2013)
- 22 See inter alia Buckley, D. (2013) *Justice Denied*, *Irish Examiner*, 23rd January 2013. Retrieved from: <http://www.irishexaminer.com/analysis/justice-denied-220366.html> (accessed 13th August, 2014). *Irish Daily Star* (2013) *Victims suffer as sex monsters roam free: It’s time for tougher sentences for sickening sex predators*, *Irish Daily Star*, 12th June 2013. Retrieved from: <http://www.thestar.ie/star/victims-suffer-as-sex-monsters-roam-free-its-time-for-tougher-sentences-for-sickening-sex-predators-27656/> (accessed 13th August, 2014). O’Keeffe, A. (2013) *State to appeal rapist O’Brien’s lenient term*, *Herald*, 15th February 2013. Retrieved from: <http://www.herald.ie/news/courts/state-to-appeal-rapist-obriens-lenient-term-29073807.html> (accessed 13th August, 2014).
- 23 Contact offences are those that involve any kind of touch or physical ‘contact’ with the victim, including with implement. Non-contact sex offences include indecent exposure and child pornography offences. O’Malley, T. (1996) *Sexual Offences, Law Policy and Punishment*, Dublin: Round Hall, Sweet and Maxwell notes that the sentence imposed for possession (as opposed to the distribution or sale) of child pornography is often a fine or a suspended sentence. Harsher sentences may be imposed on those found in possession of large quantities of child pornographic images or images which are considered particularly heinous.

24 O'Malley, T. (2009) Sentencing Recidivist Sex Offenders: A Challenge for Proportionality. In I. Bacik and L. Heffernan (eds) *Criminal Law and Procedure: Current Issues and Emerging Trends* (pp. 106-132) Dublin: FirstLaw.(p. 106)

25 (O'Malley, 2009, p.106)

26 (National Organisation for the Treatment of Abusers (NOTA) (2008) "Closing the Gaps: Services in the Republic of Ireland for Those with Harmful Sexual Behaviour", cited in *One in Four* (2009) A Response

to "The Management of Sex Offenders: A Discussion Document" A Submission to Offender Management Group Department Of Justice, Equality and Law Reform, p.12). Retrieved from http://www.oneinfour.ie/content/resources/One_in_Four_Submission_RE_Sex_Offenders_April_2009.pdf (accessed 11th August 2014).

27 (Temkin & Krahé, Tempkin, J. & Krahé, B. (2008). *Sexual assault and the justice gap: A question of attitude*. Oxford: Hart Publishing. 2008, p. 588)

28 (Daly, K. (2011). *Conventional and Innovative Justice Responses to Sexual Violence*. Australian Centre for the Study of Sexual Assault, p.1

29 Lonsway, K. & Archambault, J. (2012). The "justice gap" for sexual assault cases: Future directions for research and reform. *Violence Against Women*, 18(2), 145– 168, p150.

30 (Gelb, K. (2007). *Recidivism of sex offenders: Research paper*. Sentencing Advisory Council, (January), p. 4 Retrieved on November 6th 2013 from https://sentencing-council.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/recidivism_of_sex_offenders_research_paper.pdf

Rape Crisis Auckland, Rape Crisis Auckland, (2013). *One in One Hundred Sexual Assaults Result in Conviction*. Media Release retrieved on August 13th 2013 at <http://www.scoop.co.nz/stories/PO1308/S00173/one-in-one-hundred-sexual-assaults-result-in-conviction.htm>

Section

041





Restorative Justice
and Sexual Violence:
An Overview of the
International
Context



Introduction

The empirical literature indicates that sexual violence is a significant problem in Ireland¹ and internationally, and much of the empirical data in relation to this problem are presented in the introduction and in Chapters One, Two and Three. Because of an increasing awareness of the inadequacies in the criminal justice system in meeting the needs of victims of sexual crime and of sexual offenders (as has been indicated in Chapter Two of this report), there is a growing movement internationally to suggest the use of alternative forms of ‘justice’ such as restorative justice (RJ) for victims and offenders of sexual crime and for the wider community². However, while restorative justice is often proposed as a diversionary measure for young offenders or for adults involved in low-tariff offences, in cases of sexual crime, restorative justice must be conceived alongside, and not instead of, criminal and civil law proceedings, in those cases where such proceedings are possible³. Some sexual offence cases never result in criminal proceedings for a variety of reasons: the threshold of proof required in proving a case beyond reasonable doubt is not achieved; the victim refuses to make a formal complaint, although the sexual offence might be known to child protection agencies; some families in which there has been intra-familial abuse refuse to engage with criminal proceedings for reasons of fear or shame or loyalty to the family and its members.

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The aim of this chapter is to present an overview of the potential for restorative justice for sexual crime by reviewing the international literature.

What is Sexual Violence?

Before considering the applicability of restorative justice to sexual crimes, it is first necessary to examine what is meant by sexual violence, but (as suggested in the introduction to this report) we accept the World Health Organisation⁴ definition which suggests that violence is “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation.” While many sexual offences may not be considered to be overtly ‘violent’ the underlying philosophy of this report is that all sexual crime is by definition violent in its impact on the person who is victimised, including the children in child pornography situations whose photographs are used for sexual purposes to which they cannot give consent by definition.

Despite the many complex questions that arise in relation to sexual violence, social, political and public forces in many jurisdictions coalesce to have certain sexual and other acts defined and codified in law in accordance with cultural interpretations and normative assumptions. Terms such as sexual assault, sexual abuse and rape emerge from these

codifications. For our purposes, sexual violence is a broad term which encompasses many types of sexual act, including contact and non-contact child sexual abuse, sexual assault, rape and sexual violence perpetrated through the use of communication technology⁵. As none of our research participants was either involved in, or a victim of, sex trafficking or war-time sexual violence, we are excluding these forms of sexual violence from our research report.

What is Restorative Justice?

As the introduction to this chapter noted, since the 1970s restorative justice has developed globally as an approach to crime that focuses on repairing the harm done to people and relationships⁶. Rather than focussing on who is guilty and what punishment is deserved, restorative justice focuses on a number of questions that distinguishes it from retributive justice as evidenced in the criminal justice system. Retributive justice asks:

1. What law has been broken?
2. Who is responsible for breaking it?
3. Was the offender of right mind in committing this offence – what was his/her motivation and intent?
4. Was there consent to the sexual act or acts?
5. How do we punish the wrongdoer?
6. How do we protect the community and the public?
7. How do we rehabilitate the wrongdoer?
8. How do we ensure fair procedure and avoid miscarriages of justice?

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Restorative approaches to justice ask a different set of questions:

1. What harm has been done and to whom ([including the ripple effect of crime on secondary victims, such as family and community])?
2. What needs have arisen based on that harm?
3. Whose responsibility is it to repair the harm, such as offender and community?
4. How can a methodology be prepared and facilitated in a manner that gives the power back to the main protagonists and not to professionals for voluntary participation in a restorative process?
5. How can safe procedure be ensured for all, to avoid any re-victimisation of the victim?

6. How can the due-process rights of the offender be protected while admission of wrong-doing is a necessary pre-condition for offender participation?
7. Is a reparation agreement required and who will ensure the follow-through and monitoring of the terms of the agreement?

Restorative justice has become an internationally accepted method of responding to many forms of crime at nearly every stage of the criminal justice process⁷. Described as a ground-breaking social theory of justice⁸ with tradition-based principles at its core, restorative justice can also be viewed as a new social movement⁹. However, it is also a term that is dogged with conceptual ambiguity. For example, there is much debate regarding the meaning of 'restorative' and 'justice', with large literatures existing on both. When restorative and justice are combined in the same concept, the problems of interpretation and expectations become even more intensified, as the promise of healing or closure or restoration of self or relationship or justice or of trust in the world and the human condition offered by restorative justice become particularly problematic. Participants often wonder what is 'restored' during restorative processes, and in fact whether restoration of the person or of the relationship (if there had been a pre-existing one to the sexual crime) is indeed possible or even desirable. Similarly, participants wonder if justice can ever be restored in the aftermath of events such as sexual assault and rape.

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While the term restorative justice has gained currency in the criminological and social science literature, it is clear that it is a concept that will be subject to much refinement and elaboration as the modern field of restorative justice continues to develop and advance. However, as our introduction suggests, we accept a very basic definition of restorative justice, which mentions the essentials: 'Restorative justice is every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime.'¹⁰ It is a 'process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.'¹¹ We also accept that, while the dialogue aspect of restorative justice is often the most important for victims and offenders, restorative justice can involve a restorative agreement which is reached as a result of a restorative process. The agreement may include agreements as to the social conduct preferred if the parties were to meet in the future, as in the case of intra-familial abuse; some commitments on the part of the offender, such as a commitment never to re-offend; referral to treatment programmes for help, such as sex offender treatment, or anger management, or community services – all aimed at meeting the individual and collective needs and responsibilities of the parties to the restorative event and at working towards the reintegration of the offender and peace for the victim.

Despite the conceptual complexities involved in definitions of restorative justice, it is clear that restorative justice has become a framework for thinking about ways of humanising justice, of bringing victims and offenders together in ways that provide opportunities for victims to receive explanation and reparation, for offenders to be accountable to the victim and the community, and for community members to be meaningfully involved in responding to the needs that have arisen¹². Over the past three decades, many programmes and practices have been implemented that could now fall under the restorative justice rubric¹³. As restorative justice practices have developed¹⁴, a number of core principles have emerged¹⁵ which are best summarised as the following:

1. Crime is fundamentally a violation of people and interpersonal relationships.
2. Violations create obligations and liabilities.
3. Restorative justice seeks to heal and put right the wrongs.
4. Restorative justice is a victim-led approach to justice¹⁶.
5. Participation in restorative justice by victim-survivors and offenders is voluntary¹⁷.
6. The offender must take responsibility for the offence in order to be eligible for participation¹⁸.
7. Safety of all is of paramount importance¹⁹.
8. Preparation is essential²⁰.
9. Training of facilitators in sexual trauma work and in the dynamics of sexual violence, as well as in the skills of facilitating restorative 'events' is essential²¹.

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It is important to note that while restorative justice can be considered as a philosophy or a paradigm, comprising guiding principles and values, there are several different models used in restorative approaches to sexual crime and no one model is seen to be applicable in all cases. In fact, as the research presented in this report indicates, the participants ask for procedural flexibility, yet procedural structure that is professionally designed and delivered with preparation of all parties to the restorative event as key. The most prevalent approaches to restorative justice in sexual violence cases are now outlined.

1. Victim-Offender Mediation/Dialogue

Victim-offender mediation or victim-offender dialogues are often used interchangeably in restorative justice theory and practice. In our report we prefer the term victim-offender dialogue. The reason for this preference is premised on the emphasis on dialogue, and although restorative agreements may be part of the outcome for some of victims and offenders, the victim and offender research participants in this study

emphasised their need for dialogue. Victim-offender dialogue brings victims and offenders together with one or more facilitators (often two, one male and one female), either through direct face-to-face meeting or meetings or indirectly by means of telephone, letter, video-conference or shuttle mediation, in which the parties are in separate rooms and the facilitators go back and forth between the parties 'carrying' the dialogue. The preparation for a victim offender dialogue is extensive, with various operational models available internationally.

Our preference is for the appointed facilitators to meet firstly the victim – to hear of his/her expectations of the restorative event and to listen to his/her needs and desires. Both facilitators then meet the offender in a similar manner. The preparatory meetings are thus conducted back and forth by both facilitators between the victim and the offender, assessing safety needs and what conversation and dialogue may be possible, as well as what topics are agreed to be discussed by the parties, until every detail is prepared and the meeting or restorative event can proceed. A guiding principle is that there can be no surprise questions put on the day. Only topics that have been agreed in advance can be discussed. Preparation times vary, but they can extend from one month to two years. Facilitators are concerned to ensure a safe meeting for both parties in the restorative event and consider the victim's psychological readiness to participate as well as the offender's risk factors (including his or her levels of remorse, sincerity and authenticity). But ultimately, in the spirit of restorative justice, it is the victim and offender (not the facilitators) who decide on their readiness to participate in a meeting; the victim and offender 'own the conflict'²² and restorative justice provides them with an opportunity to deal with it together.

During the actual restorative event, if it involves a face-to-face meeting, facilitators take a background role, providing the necessary dialogical infrastructure for the victim and the offender to speak. The discussion focuses on the issues discussed during the preparation. Victims and offenders may each bring a support person to the restorative meeting, and, whenever possible, the support persons have also been part of the preparatory stage of the process. Follow-up can take place individually for the parties or sometime with both together. If further meetings are indicated, they can be arranged with the same process of preparation as for the initial meeting. This round of preparation and meetings can be repeated as often as is indicated. For most people, however, one meeting is generally sufficient, with one follow-up meeting with the facilitators on an individual basis. However, procedural flexibility is a basic requirement of restorative justice and the processes must be adapted to meet the needs of the parties to the crime, the victim and the offender, and not to any bureaucratic or organisational imperative.

2. Restorative Conferencing

Restorative conferencing brings together all parties impacted by a crime: the victim, the offender and, where appropriate, their families and some community members or representatives. The participants are well prepared, as in victim-offender mediation, and they eventually meet in a facilitated and structured process to discuss what the parties wish to discuss – often the crime and its impact on the victim and the ripple effects on secondary victims and community members. Follow-up is similar to victim-offender mediation.

3. Restorative Circles

Restorative circles provide a distinctive, safe space for victims and offenders and their families and community members to speak about a crime and its aftermath in a circle that is carefully facilitated by one or two facilitators. Built on the Native American tradition of ‘talking circles’, restorative circles bring together victims and surrogate offenders²³, or offenders and surrogate victims²⁴, as well as community members to speak and listen in turn to each other. Questions specifically crafted by the facilitator, based on meetings with all of the individuals who will participate in the circle, provide the structure for the circle meetings. In restorative circles a ‘talking piece’²⁵ is also used to regulate the process, which comprises a symbolic object which is passed from one party to the next as the speaking and listening proceeds. Only the person with the talking piece may speak when the circle is in process.

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Circle participants are prepared in advance for the circle, each participant being met in most cases in advance by the circle facilitators. Some circles can take place over an entire day with carefully focused questions being put into the circle by the facilitators, and to which each participant speaks. The circles can have breaks between the different questions if required. Some circles take place in prisons²⁶ over the course of three full days, during which some of the time is spent with questions forming the core of the activity, but part is also spent on victim testimonies about the impact of the crime on them. Restorative circles can be used to help facilitate healing for a broad range of problems and conflicts²⁷. Follow-up for all victim and offender participants is as with victim-offender dialogues, but for community members debriefing often occurs in a group when the restorative circle has been completed.

The suitability of particular models to particular circumstances and cases has yet to be empirically demonstrated²⁸. It is not yet clear if programme type makes a difference to outcome for different types of cases. At the moment it is left to the facilitators and the victims and offenders to decide what approach is to be taken in each case. Procedural flexibility and excellent preparation are key in all cases, along with sufficient follow-up. The findings from the current study, however, suggest that direct face-to-face meeting between the victim and the offender (or in

certain cases between the victim and a surrogate offender or an offender and a surrogate victim) is the method preferred by the victims and offenders who participated in this study. However, restorative circles offer considerable promise as a restorative initiative in therapy centers for victims or for offenders and certainly in Irish prisons. This is an area requiring further research, particularly in relation to sexual crime.

The Role of Community

The nature and extent of community involvement in restorative justice depends on the types of restorative justice models used²⁹. The word 'community' has been vaguely defined in restorative justice literature³⁰. However, the literature has recently adopted 'a narrower and perhaps more meaningful' definition of community, which is the 'community of care', that which comprises our 'most meaningful personal relationships'³¹. The supporters of victims and offenders are, for example, also referred to as the 'community of care'³², and constitute primary stakeholders in restorative justice processes³³. Local communities and neighborhoods have also played a significant role in the development and application of current restorative justice programmes in many jurisdictions around the world³⁴.

150 International Perspectives on Restorative Justice for Sexual Violence

Theories on the suitability of restorative justice for cases involving sexual violence can be traced back to the 1990s, when scholars such as Hudson³⁵ first began to consider its use for sexual offences. By 2002, the applicability of restorative justice to sexual violence had become the subject of vigorous debate³⁶. In 2006, Daly³⁷ presented empirical evidence on the merits of restorative justice, when compared to adversarial justice approaches, in responding to sexual offences committed by youth³⁸. This ground-breaking comparative study was the first of its kind. However, in spite of the promising findings that emerged from it, Cossins³⁹ asserted that neither the critics of restorative justice nor its proponents had anything more than speculation and counter-speculation at their disposal regarding the viability of restorative justice in cases of sexual crime. Daly⁴⁰ argues to the contrary – that although there are still few places in the world where restorative justice is routinely used for adult or youth sexual assault, empirical evidence for such work does exist and its findings are promising. Indeed, some anecdotal evidence of the success of restorative justice for sexual violence can be traced back to 1995, when restorative mediation for incest cases took place within the prison setting in the United Kingdom⁴¹. In that same year, Roberts⁴² published a comprehensive empirical study of the Victim-Offender Mediation Programme (VOMP) in British Columbia, Canada, in which 18 out of the 39 VOMP cases evaluated involved sexual offence cases and the findings were positive for survivors and offenders.

In more recent years, a number of empirical studies on the use of restorative justice in sexual offence cases have emerged throughout

the world⁴³ and the growth of such programmes is notable. The following restorative justice programmes focus exclusively on sexual crimes: RESTORE in the USA⁴⁴, Project Restore in New Zealand⁴⁵, Guided Dialogues in Norway⁴⁶, Hollow Water Community Holistic Circle Healing (CHCH) in Canada⁴⁷, the Centre for Victims of Sexual Assault in Denmark⁴⁸, and the Phapahami Rape Crisis Counselling Centre in South Africa⁴⁹. Other programmes process a wider number of serious crimes which also include sexual offences, including the South Australian Juvenile Justice Intervention⁵⁰, the AIM project in Manchester⁵¹, Victim-Offence Mediation (VOM) in Belgium⁵², Victim-Offender Mediation Programme (VOMP) in Canada⁵³, Victim-Offender Dialogues (VOD) in Texas and Ohio⁵⁴ and Victims' Voices Heard in the USA⁵⁵. This list is not exhaustive. There are also numerous 'under the radar' restorative justice programmes that process sexual crimes around the world, but whose work does not receive much attention in the international literature. Such programmes include the Oakland Family Therapy Restorative Justice⁵⁶, Facilitated Dialogues in the Waterloo Region in Canada⁵⁷ and the Victim-Offender Dialogue Programme in New York⁵⁸. While it is not the aim of this article to offer a critical analysis of the programmes mentioned above, some of these programmes, which have produced empirical outcomes, will be considered later as we now turn to engage with some critical questions regarding restorative justice and sexual violence.

1. Is Restorative Justice Dangerous for Victims?

Commentators are concerned about the needs and best interests of victims of sexual violence who might enter into restorative justice, arguing that, since restorative justice makes the relationship between the victim and the offender central to the process, it could subject victims to re-victimisation⁵⁹. The power imbalance that sexual violence creates is a major concern for survivor advocates who are concerned that restorative justice processes could provide an opportunity for offenders to re-victimise the victim in the most subtle of ways⁶⁰.

In order to meet this concern a number of procedural safeguards are applied in order to ensure the physical and emotional safety of all participants and to avoid any potential re-victimisation of the victim⁶¹. First, programmes catering for sexual crime have adopted extensive preparation and screening measures for victims to ensure that they are ready psychologically for the processes involved. This sometimes includes risk assessments. Second, in preparing the victim and the offender for the restorative meeting, conference or circle, consideration is given to victim safety and sometimes risk assessment of the offender aids this process⁶². Restorative justice facilitators are encouraged to address distortions of power that affect the survivor-offender relationship during the preparatory stage of the process⁶³ and to anticipate and formulate strategies that can bring about a rebalancing of power within the crime relationship⁶⁴. Third, any questions or topics for discussion at the meeting or conference are set out at the preparation stage of the process so there

are no surprises during the restorative justice meeting for the victim or the offender⁶⁵. Fourth, participants or facilitators can end the meeting at any stage if they consider the process to be unsafe for the victim⁶⁶. Fifth, facilitators of restorative justice processes in cases involving sexual violence must have training that includes an understanding of sexual trauma and the dynamics of sexual violence, as it is the facilitator's responsibility to implement strategies of safety during the meeting itself⁶⁷. Sixth, if during the preparation for the restorative meeting there is an informed judgment that re-victimisation might be a possibility in a direct face-to-face meeting, then an indirect approach to the 'meeting' can be adopted, involving shuttle dialogues between the victim and the offender or correspondence using letters or videos mediated by the facilitator⁶⁸.

Even with all of these procedural safeguards in place, it must be acknowledged that restorative justice cannot guarantee success for the participants. Thus, as part of the preparation stages, when the motivations and expectations of participants are being explored, participants are helped to develop realistic aspirations and expectations of the process. However, restorative justice always puts the needs of victims and offenders at the center of the approach and rather than privileging the professional voice, restorative justice is premised on giving victims and offenders, as the main protagonists to the situation, the final say in whether and how to proceed⁶⁹. The needs of victims in wanting a restorative meeting are always honoured and facilitated within the parameters of best practice in relation to participant safety and in line with the optimum conditions for achieving the best possible outcome for participants.

2. Is Restorative Justice Suitable for Sexual Offenders?

Reservations are often expressed regarding the suitability of restorative justice for perpetrators of sexual violence – for reasons of offender accountability on the one hand⁷⁰ and the due-process rights of offenders on the other⁷¹. Some critics have argued that restorative justice fails to adequately promote offender responsibility and accountability⁷². However, this concern is inconsistent with one of its core principles: that offenders must first acknowledge wrongdoing and take responsibility for the offence as a condition of participation⁷³. Restorative justice advocates and practitioners argue that, unlike the adversarial nature of retributive justice, accountability is a key feature of restorative justice which seeks genuine engagement with offenders to help them more fully acknowledge the consequences of their actions and the ripple effects of harm caused by their offence, including harm to themselves⁷⁴. Offender accountability is a key component of restorative justice in cases of sexual violence and risk assessment of offenders is also important⁷⁵, not necessarily to determine their participation in restorative justice, but rather to realistically assess the offender's attitudes and behaviours in order to help the victim and offender develop realistic expectations, for

the process and potential outcome of restorative justice.

There are two types of accountability that are relevant to restorative justice: (1) accountability prior to entering the process, whereby the offender acknowledges wrongdoing and takes responsibility for the harm caused (referred here as ‘admission’), and (2) deep accountability that emerges during the restorative justice process, whereby the offender comes to understand the harm done to the victim and the ripple effect of his crime on those who have been harmed, including himself. (We call this ‘acknowledgement and acceptance’.) Not all offenders develop deep acceptance and accountability⁷⁶, but the restorative justice process can still be effective for the victim, depending on the needs and expectations set out as part of the preparation phase of the process⁷⁷.

Concerns have been expressed also with respect to the due process⁷⁸ and human rights of offenders taking part in restorative justice⁷⁹. For example, the right to be presumed innocent may be abrogated since the offender is required to acknowledge responsibility for the crime in order to participate in the restorative justice programme⁸⁰. The right against self-incrimination could also be compromised by insufficient confidentiality safeguards, since what is said in the restorative justice process has the potential to be used against the offender in later criminal proceedings, if confidentiality safeguards are not clearly articulated and understood⁸¹. Other concerns center on the rights of offenders to a fair trial and to legal counsel. Consideration of matters relating to the due process rights of offenders is further discussed in the conclusion to this report.

In practice, concerns about due process rights of offenders are largely unfounded⁸² and procedural safeguards are adopted in many programmes to make explicit the confidentiality limits and commitments of all participants in a restorative process. Confidentiality in restorative justice may not be absolute in all cases⁸³, but the limits of such will be made explicit in programmes which develop adequate procedural safeguards for all participants. In 2005, legislation in Belgium on victim-offender mediation (VOM), which covers various types of crimes including serious crimes such as sexual violence, stipulates that victim-offender mediation is confidential, and victims and offenders must agree on the content of any information that would subsequently be shared with the court⁸⁴. Without such agreement, the judge cannot take the information into account. With respect to the right against self-incrimination it is also possible for the participant’s legal representative to be part of the restorative process⁸⁵.

Concerns regarding the personal safety of offenders or possible victimisation of offenders by either parties to the process or by a restorative justice facilitator are rarely debated in the literature, but there is anecdotal evidence in Ireland of some concerns in this regard. Further empirical work is required on this aspect of concern.

3. What is the Best Relationship between Restorative Justice and the Criminal Justice System?

A number of concerns have been raised with respect to the relationship between restorative justice and the criminal justice system and their seemingly divergent responses to sexual violence. A key concern is whether RJ processes should be integrated within the criminal justice system (and if so, at which point: pre-charge, post-charge, pre-sentencing or post-sentencing?) or used alongside or instead of the adversarial justice system⁸⁶. Some commentators argue that restorative justice should be an option for victims of sexual crime at all stages of criminal justice proceedings, as is the practice with VOM in Belgium⁸⁷. Others argue that the work of restorative justice programmes should be integrated into the criminal justice system, but not as a diversionary measure for adult offenders⁸⁸. For example, Project Restore in New Zealand⁸⁹ accepts cases from the criminal justice system at the pre-sentencing stages of criminal proceedings. These cases are then referred back to court for adjudication following the restorative justice process. To what extent the restorative process is taken into account by the sentencing judge is at the judge's discretion. Project Restore also accepts referrals of sexual violence from a range of other sources, involving cases that have not involved criminal proceedings for a variety of reasons⁹⁰. Some programmes, such as VOMP in Canada, operate alongside the criminal justice system, usually within the prison setting⁹¹. Other programmes, such as the VOD programme facilitated by the Centre for Victims of Sexual Assault in Denmark⁹², the Oakland Family Therapy Restorative Justice Project, Michigan⁹³ and the restorative justice processes carried out by Towards Healing and One in Four in Ireland, take place outside of the justice system, within therapy and advocacy services.

While restorative justice should not be viewed in opposition to retributive justice⁹⁴, high rates of attrition in sexual offence cases within the criminal justice system necessitate a more flexible approach to 'justice' that includes restorative justice as both a part of and apart from the criminal justice system. According to the UN⁹⁵, victims of sexual violence are "entitled to access to the mechanisms of justice and to prompt redress", "fair restitution from offenders" and to be treated with compassion and respect for their dignity. As restorative justice is an innovative form of justice delivery⁹⁶, it offers flexibility with regard to helping victims obtain justice as a complementary approach to the criminal justice system for all victims and not just those whose cases have been adjudicated in the criminal courts.

4. How Effective is Restorative Justice for Sexual Violence?

Cossins⁹⁷ depiction of restorative justice for sexual violence as mere speculation is inaccurate in light of the evidence that exists in this area. There is a relatively small, if growing and robust, empirical literature on the outcome of restorative justice in cases involving sexual violence, but such studies often involve a number of limitations. These limitations

include very small sample sizes; insufficient statistical information on outcome; a dearth of recidivism data; self-selection bias with regard to the cases selected for examination; and variations in the outcomes that are measured. While all of these limitations must be taken into account in any analysis of the empirical literature, one can detect trends which must be considered relevant in light of the emerging data. There is also a growing body of qualitative case material on DVDs and in writing, based on the experiences of individuals who have participated in restorative justice processes, which is of interest to researchers and practitioners.

4.1 Outcomes for Victims, Offenders and Communities

A review of the literature indicates that most survivors of sexual crime report high levels of satisfaction⁹⁸ with the restorative justice processes⁹⁹. Umbreit et al.¹⁰⁰ found in the VOD programmes in Texas and Ohio that 95% (19 out of 20) of survivors in Texas and 100% (20) of survivors in Ohio were satisfied with the restorative justice process¹⁰¹. The results of the RESTORE programme in the USA found that 99.99% of survivors considered the restorative justice conference to be a success¹⁰².

Measurements of outcomes for survivors are not confined to satisfaction with the process, but also take into account improvements in the psychological well-being of the victims and lessening of the effects¹⁰³ of the crime on them¹⁰⁴. A number of studies have demonstrated improvements in victim well-being following participation in the restorative justice process¹⁰⁵. Victims of sexual violence participating in the victim-offender mediation programme in British Columbia (Canada) demonstrated a reduction of symptoms of post-traumatic stress disorder¹⁰⁶. Pre- and post- restorative justice psychometric assessments of eleven survivors participating in RESTORE in the USA revealed that 82% of survivors¹⁰⁷ met diagnostic criteria for PTSD at intake compared to 66% at post-conference three months later, but the symptoms were not exasperated for any of the participants by participating in the restorative justice conference, nor was there any significant negative impact on survivors' emotional health¹⁰⁸. Aside from reductions in symptoms of post-traumatic stress disorder, Gustafson states that the restorative justice process enables survivors to achieve therapeutic goals that had eluded them in other processes¹⁰⁹.

Despite concerns regarding the use of restorative justice for sex offenders¹¹⁰, a number of programmes have reported positive outcomes for adult offenders¹¹¹. For example, in the Texas and Ohio VOD programmes, 82%¹¹² of participating offenders said that the RJ process contributed to their rehabilitation, personal growth and healing¹¹³. Similar findings have emerged from VOMP in Canada¹¹⁴, Victims' Voices Heard in the USA¹¹⁵, and the Adult Restorative Justice Conferencing Pilot in Australia¹¹⁶. Similar findings are also reported in other studies¹¹⁷, giving support for the view that restorative justice appears to have a positive effect not only on the rehabilitation of offenders, but also on the

offender's well-being and on his empathy for the victim.

According to McAlinden¹¹⁸, the wider community affected by sexual crimes can also benefit from restorative justice. Community Holistic Circle Healing (CHCH) in Canada exemplifies the power of restorative justice to unite and strengthen communities, as the restorative justice circle effectively 'holds the community together'¹¹⁹. The restorative justice circle is a good starting point for people to use in working towards restoring faith and harmony in the aftermath of sexual crime within the domain of the Catholic Church¹²⁰. The literature demonstrates that the benefits of restorative justice for communities affected by sexual crime are manifold¹²¹. Communities become united and strengthened, which enables support for the survivor and reintegration of the offender, as harmony is restored among the community as a whole. Circles and conferences may also offer an untapped resource for healing in cases of sexual abuse involving families and extended families.

4.2 Recidivism

Funding agencies often require recidivism data as a measure of success of restorative justice as distinct from satisfaction levels or improved well-being of participants¹²². In spite of this fact, the majority of evaluated restorative justice programmes fail to provide information as regards follow-up recidivism data. Daly's¹²³ comparative study of the sexual offences processed by the South Australian Juvenile Justice Intervention, however, suggests that higher levels of recidivism were reported in the cases of offenders who were adjudicated only in court (66%)¹²⁴, as compared to those offenders who had participated in restorative conferencing (48%).¹²⁵ Participation in a therapeutic sex offender programme was, however, associated with the lowest level of re-offending. As a higher number of offenders who participated in an restorative justice conference had also participated in the therapy programme than those who were court-referred, it may have been participation in the therapy, rather than the restorative justice conference, that contributed to the lower rate of recidivism for restorative justice participants¹²⁶, or a combination of both. In the context of restorative justice conferencing and victim-offender-dialogues for sexual violence, Stulberg¹²⁷ found that there were no new instances of reported sexual violence over a twelve-month period. With respect to recidivism in the context of circles, Couture et al.¹²⁸ found that the Community Holistic Circle Healing programme in Canada had a dramatic impact on recidivism, with a rate of only 2%, compared to a national average of 13%. Further research is required to evaluate the relative merits of restorative justice and retributive justice for all categories of sexual offences.

Conclusion

On an international level, many restorative justice scholars argue that restorative justice can provide a range of methodologies and approaches for addressing sexual crimes that can complement the work of the criminal justice system and that the time has come to develop such approaches across jurisdictions, in light of the emerging empirical literature¹²⁹. The results from the in-depth study on restorative and sexual violence in Ireland that is presented in this report suggest that victims of sexual crime see the need for such a service, and that offenders would be willing to participate if requested to do so. Victim advocacy and therapy facilities in several jurisdictions have begun responding to this need. However, when it comes to the statutory services and agents of the criminal justice system such a paradigm shift cannot take place without gathering societal support for the challenging and innovative initiatives that restorative justice brings to victims, offenders and the social bonds¹³⁰. It is to these statutory, social and political forces - including members of the judiciary, legal professionals, the police, the probation services, the political class and members of the print and broadcast media – that the attention of restorative justice advocates must now also turn.

End Notes

1 O'Donnell, I. (2003) p90, 'Sex Crime in Ireland: Extent and Trends'. *Judicial Studies Institute Journal*, 3/1: 89-106.

2 Van Wormer, K. (2009), 'Restorative Justice as Social Justice for Victims of Gendered Violence: A Standpoint Feminist Perspective', *Social Work*, 54/2: 107-116.

3 Keenan, M. (2012), *Child Sex Abuse and the Catholic Church: Gender, Power and Organizational Culture*, Oxford: Oxford University Press.

4 World Health Organisation (1996), WHO global consultation on violence and health. Violence: a public health priority, Geneva, (document WHO/EHA/SPI.POA. 2).

5 Bluet-Boyd, N., Fileborn, B., Quadara, A. and Moore, S. (2013), *The Role of Emerging Communication Technologies in Experiences of Sexual Violence: A New Legal Frontier?* (Research Report No. 23), Melbourne: Australian Institute of Family Studies.

6 Braithwaite, J. (1999), 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts'. *Crime and Justice*, 25: 1-127.

Braithwaite, J. (1989), *Crime, Shame and Re-integration*, Cambridge: Cambridge University Press. McCold, P. and Wachtel, T. (2003), In Pursuit of Paradigm: A Theory of Restorative Justice. Paper presented at the XIII World Congress of Criminology, 10-15 August 2003, Rio de Janeiro.

7 Aertsen, I., Daems, T., Robert, L. (2006), *Institutionalising Restorative Justice*, Cullompton: Willan Publishing; McCold and Wachtel, 2003; Van Ness, D. (2005, April), *An Overview of Restorative Justice Around the World*. Workshop 2: Enhancing Criminal Justice Reform Including Restorative Justice, Item 8(b) of the provisional agenda at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, Thailand; Braithwaite, 1999, 1989).

8 Gavrielides, T. (2007), *Restorative Justice Theory and Practice: Addressing the Discrepancy*, Helsinki: European Institute for Crime Prevention and Control affiliated with the United Nations; Daly, Kathleen & Immarigeon, Russ. (1998) 'The Past, Present, and Future of Restorative Justice: Some Critical Reflections' 1:1 *The Contemporary Justice Review* 21-45.

9 (Daly and Immarigeon, 1998).

10 Bazemore, Gordon & Lode Walgrave. (1999) p.48 "Restorative juvenile justice: In search of fundamentals and an outline for systemic reform" in G. Bazemore & L. Walgrave, eds., *Restorative juvenile justice: Repairing the harm of Youth Crime* Monsey, NY: Criminal Justice Press,

11 Marshall, T. (1999) *Restorative Justice: An Overview*, Home Office, Research, Development and Statistics Directorate

12 see Dignan, J. (2000), *Restorative Justice Options for Northern Ireland: A Comparative Review*, Belfast: The Stationary Office Bookshop; Liebmann, M. (2007). *Restorative justice: how it works*, London: Jessica Kingsley & McCold, P. (2000), 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model', *Contemporary Justice Review*, 3/4:357-414.

13 Daly and Immarigeon 1998

14 Daly and Immarigeon, (1998).

15 Liebmann, (2007).

16 Pali, B. and Madsen, K.S. (2011). *Dangerous liaisons? A feminist and restorative approach to Sexual Assault*. TEMIDA March 2011, 49-65.

17 Koss, M.P. (2014). *The RESTORE Program of Restorative Justice for Sex Crimes: Visions, Process and Outcomes*. *Journal of Interpersonal Violence*, 29 (9), 1623-1660. DOI: 10.1177/0886260513511537.

18 Zehr, H. (1990). *Changing lenses: A new focus for crime*. Waterloo: Herald Press.

19 Koss, M.P. (2014).

20 Julich, SJ, Buttle, J., Cummins, C. & Freeborn, E. (2010). *Project Restore: an exploratory study of restorative justice and sexual violence*. Auckland: AUT University.

21 Keenan, M. and Joyce, N. (2014). *Sexual Crime: The Need for Restorative Responses* (Submitted).

22 Christie, N. (1977). *Conflicts as property*. *British Journal of Criminology*, 17, 1-15

23 A surrogate offender is a person who has committed a sexual crime but whose direct victim is not in the restorative circle.

24 A surrogate victim is a person who is a victim of a sexual crime but whose direct offender is not in the restorative circle.

25 A talking piece can be something symbolic for healing or reconciliation. Examples include a wooden cross or a broken stone or some form of crystal.

26 See Geskie, J. (2014) "Why do I Teach Restorative Justice to Law Students?" *Marquette Law Review* . 89: 2: 328-334; O'Connell C. "Building Bridges: A Restorative Journey at Green Bay Prison" *Online Journal of Mediation and Applied Conflict Analysis*: Edward Kennedy Institute of Conflict Resolution, University of Maynooth.

27 I have been part of healing circle, based on the same principles as restorative circles in a family with mental health difficulties.

28 Shapland, J., Robinson, G. and Sorsby, A. (2011) p190, *Restorative Justice in Practice*, London: Routledge.

29 UN, 2006: 62.

30 Julich & Buttle, (2010) p21.

31 Bolivar (2012) 'Community of Care from a victim – perspective: a qualitative study' *Contemporary Justice Review: Issues in Criminal, Social and Restorative Justice* 15:1; 17 - 37.

32 Bolivar, (2012) p17.

33 Koss, 2013; Julich et al (2010); Mercer, V. (2009), *Restorative Justice and Sexually Harmful Behaviour*, Manchester: AIM Project. Further information available at www.aimproject.org.uk.

34 Koss, M.P. (2013), 'The Restore Program of Restorative Justice for Sex Crimes', *Journal of Interpersonal Violence*. (Accepted); Julich et al (2010); Mercer, (2009).

35 Hudson, B. (2002), 'Restorative Justice and Gendered Violence: Diversion or Effective Justice?' *British Journal of Criminology*, 42/3: 616-34.

36 (Hudson 2002: 621).

37 Daly, K. (2006), 'Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases', *British Journal of Criminology*, 46/2: 334-356

- 38 The study referred to is the Sexual Assault Archival Study. The study's sampling frame was all youth cases in South Australia, having at least one sexual offence at the start of the criminal process, which were finalized by police formal caution, family conference or in the Youth Court from 1 January 1995 to 1 July 2001. Finalized means the case is finished, having been disposed by formal caution, conference or in court by a range of possible outcomes (dismissed, withdrawn, proved - with or without conviction - and found not guilty at trial). In the final sample of cases identified, there were 365 different young people/offenders (YPs) associated with 385 cases: 226 court cases (59 per cent), 118 conference cases (31 per cent) and 41 formal cautions (10 per cent).
- 39 Cossins, A. (2008), 'Restorative Justice and Child Sex Offences: The Theory and the Practice' *British Journal of Criminology*, 48/3: 359-378.
- 40 Daly, K. (2008), 'Setting the Record Straight and a Call for Radical Change: A Reply to Annie Cossins on Restorative Justice and Child Sex Offences', *British Journal of Criminology*, 48/4: 359-378.
- 41 Monk-Shepherd, R. and Nation, D. (1995), 'Mediation in Prison Following Incest', *Probation Journal*, 42: 26-30.
- 42 Roberts, T (1995), Evaluation of the Victim Offender Mediation Project, Langley, British Columbia Final Report Victoria, British Columbia: Tim Roberts Focus Consultants.
- 43 Koss, M.P. and Achilles, M. (2008), Restorative Justice Responses to Sexual Assault VAWnet: National Online Resource Center on Violence Against Women.
- 44 Koss. (2014).
- 45 Julich et al. (2010).
- 46 Hermstad, K. (2011), 'Sexual Offences, Law and Moral - Can Behaviour and Attitudes Be Changed by Legal and Moral Efforts?' *Sexual Offender Treatment*, 6/2.
- 47 Couture, J. et al. (2001), A Cost-Benefit Analysis of Hollow Water's Community Holistic Healing Circle Process Ontario: Solicitor General of Canada.
- 48 Madsen, K.S. (2004), 'Mediation as a Way of Empowering Women Exposed to Sexual Coercion, NORA 1/12: 58-6; Pali, B. and Madsen, K. (2011), 'Dangerous Liaisons? A Feminist and Restorative Approach to Sexual Assault', TEMIDA March 2011.
- 49 Koss and Achilles (2008); Skelton, A., & Batley, M. (2006), Charting Progress, Mapping the Future: Restorative Justice in South Africa, Pretoria, South Africa: Restorative Justice Centre.
- 50 Daly, K. (2006); Daly, K. (2007); Daly, K.(2008); Daly, K. (2012); 'Conferences and Gendered Violence: Practices, Politics and Evidence', in E. Zinnstag and I. Vanfraechem, eds., *Conferencing and Restorative Justice: International Practices and Perspectives*, Oxford: Oxford University Press, 117-135.
- 51 Mercer (2009),
- 52 Buntinx, K., (2007), Victim Offender Mediation in Severe Crimes. Paper presented at a meeting jointly convened by the Probation Service and Facing Forward. Dublin: 30 May 2007.
- 53 Roberts, T (1995), Evaluation of the Victim Offender Mediation Project, Langley, British Columbia Final Report Victoria, British Columbia: Tim Roberts Focus Consultants; Gustafson, D. (2005), 'Exploring Treatment and Trauma Recovery Implications in Facilitating Victim-Offender Encounters in Crimes of Severe Violence: Lessons from the Canadian Experience' in E. Elliot and R. Gordon, eds., *New Directions in Restorative Justice*. Portland, Oregon: Willan Publishing, 193-227.
- 54 Umbreit, M.S., Coates, R.B., Vos, B., & Brown, K. (2003a), *Facing Violence: The Path of Restorative Justice and Dialogue*. Monsey, NY: Criminal Justice Press; Umbreit, M. Coates, R., Vos, B. and Brown, B. (2003b). Victim offender dialogue in violent cases: the Texas and Ohio experience. VOMA No. 14.
- 55 Miller, S. (2011), *After the Crime: The Power of Restorative Justice*, New York and London: New York University Press; Miller, S. and Hefner, K. (2013), 'Procedural justice for victims and offenders? Exploring restorative justice processes in Australia and the US', *Justice Quarterly*, (forthcoming). Madsen, K. (2004),
- 56 Stulberg, T. L. (2011), *The Restorative Justice Program Evaluation*, Washington D.C: U.S Department of Justice, Bureau of Justice Assistance.
- 57 Yantzi, M. (1998) *Sexual Offending and Restoration*, Ontario and Scottsdale, PA: Herald Press.
- 58 Patritti, C. (2010), 'Restoring Human Trafficking Victims Through Victim-Offender Dialogue', *Cardozo Journal of Conflict Resolution*, 12(1), 217-244.
- 59 Hudson, B. (1998), 'Restorative Justice: The Challenge of Racial and Sexual Violence', *Journal of Law and Society*, 25/2: 237-256; Hargovan, H. (2005), 'Restorative Justice for Domestic Violence: Some Exploratory Thoughts', *Agenda*, No. 66 Gender-based Violence Trilogy, 1/1: 48-56; Daly, K. (2002), 'Sexual Assault and Restorative Justice', in H. Strang and J. Braithwaite, eds., *Restorative Justice and Family Violence*, Cambridge: Cambridge University Press.
- 60 Daly (2002) p87.
- 61 Hargovan , (2005).
- 62 Roberts (1995).
- 63 McAlinden, A.M. (2006), 'Managing Risk: From Regulation to the Reintegration of Sexual Offenders', *Criminology and Criminal Justice*, 6(2): 197-218.
- 64 Hudson (1998).
- 65 Julich et al. (2010)
- 66 Umbreit et al. (2003a)
- 67 Hargovan, (2005)
- 68 Roberts (1995); Buntinx (2007).
- 69 Umbreit, M. (2012), *Restorative Dialogues Workshop*. Conference organized by University College Dublin and Facing Forward. University College Dublin, 30th October, 2012.
- 70 McAlinden (2006) p207.
- 71 Johnstone, J. (2003), *A Restorative Justice Reader: texts, sources and context*, Cullompton: Willan Publishing; Hargovan , (2005); Ward. T. (2008) 'Restorative Justice and the Human Rights of Offenders: Convergences and Divergences', *Journal of Aggression and Violent Behaviour*, 13/5: 355-372.
- 72 McAlinden (2006) p207

- 73 Daly (2006); Koss (2013); Julich et al. (2010).
- 74 Hudson (1998); Hudson, B. (2002), 'Restorative Justice and Gendered Violence: Diversion or Effective Justice?' *British Journal of Criminology*, 42/3: 616-34'; Daly (2002); Daly (2006).
- 75 (Koss 2013; Daly 2006; Julich et al. 2010; Couture et al. 2001)
- 76 Koss (2013)
- 77 Umbreit and Armour (2010); Monk-Shepherd and Nation (1995).
- 78 Due process dictates that those accused of crimes have a right to trial without excessive delay and if the case goes to trial the proceedings must be fair and open and the accused must enjoy the presumption of innocence, the right against self-incrimination and the right to the assistance of counsel.
- 79 Ikpa, T. (2007), 'Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System', *Journal of Law and Policy*, 24: 301-325; Bird, K. and Reimund, M. (2001), 'Restorative Justice Dialogue Processes: Are they Confidential? Erosion of Confidentiality in Some Jurisdictions is Cause for Careful Evaluation, VOMA 9; Walgrave, L. (2000), 'How Pure Can a Maximalist Approach to Restorative Justice Remain? Or Can a Purist Model of Restorative Justice Become Maximalist?' *Contemporary Justice Review*, 3/4: 415-432; Van Ness, D. (2005, April), *An Overview of Restorative Justice Around the World. Workshop 2: Enhancing Criminal Justice Reform Including Restorative Justice*, Item 8(b) of the provisional agenda at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, Thailand; Ward, T. (2008) 'Restorative Justice and the Human Rights of Offenders: Convergences and Divergences', *Journal of Aggression and Violent Behaviour*, 13/5: 355-372;
- 80 Ross, R. (2008), 'Issues in Restorative Justice', paper presented at the Queensland Law Society Forum, Law and Order Issues in the 21st Century, Queensland.
- 81 Ikpa, (2007).
- 82 Koss (2014) ; Couture et al. (2001); Roberts (1995); Buntinx (2007).
- 83 Julich and Buttle (2010)
- 84 Buntinx, (2007)
- 85 Our next article ("Restorative Justice, Sexual Crime and the Criminal Justice System") submitted, examines the relationship between restorative justice and the criminal justice system, with a specific focus on sentencing principles, due process and the possibilities of implementing RJ processes within, alongside or outside of the criminal justice system.
- 86 McAlinden, (2006); Daly (2011).
- 87 Buntinx (2007).
- 88 McAlinden, (2006), Joyce, Woitek and Keenan, (2014).
- 89 Julich et al. (2010).
- 90 Often relating to insufficient evidence for criminal proceedings, or lack of interest of victim in becoming involved in criminal proceedings sometimes relating to intra-familial abuse.
- 91 Roberts (1995).
- 92 Pali and Sten Madsen, (2011).
- 93 Stulberg, (2011)
- 94 (Daly (2000); Daly, (2011).
- 95 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)
- 96 Daly, (2011).
- 97 Cossins, (2008).
- 98 "Satisfaction" is a subjective criterion. McCold (2003) submits that there is no accepted standard for measuring participant satisfaction but the primary criteria include the following: participant (victim and offender) satisfaction with the way the case was handled; participant satisfaction with the process; victim and offender satisfaction with the facilitator; fairness of the process and fairness of the outcome; whether participants would recommend the programme and whether they would participate again under similar circumstances.
- 99 Umbreit, (2003); Daly; (2006); Couture, (2001); Julich et al. (2010);, Buntinx, (2007); Roberts, (1995); Pali and Sten Madsen, (2011).
- 100 Umbreit et al (2003a), p. 127, 257.
- 101 For the study conducted by Umbreit et al. (2003) of the VOD programmes in Texas and Ohio, 79 persons who participated in 47 VOD sessions regarding 46 serious and violent crimes were interviewed. Exactly one half of the crimes were murder or manslaughter; the victim died as a result of 65% of the crimes, including both murder/ manslaughter and vehicular homicide. The remaining crimes included felony assault/attempted murder (n=6, 13%), sexual assault (n=8, 17%) and theft/burglary (n=2, 4%). The sample consisted of 20 survivors/family members each from Texas and Ohio and 19 offenders from Texas and 20 from Ohio.
- 102 Koss (2013).
- 103 Psychological effects of RJ include the reduction of post-traumatic stress, improved well-being, and reduction in fear as well as improvement in social and relational life (Shapland, Robinson and Sorsby 2011).
- 104 Koss and Achilles, (2008).
- 105 Sherman, L. W., et al (2005). 'Effects of Face-to-Face Restorative Justice on Victims of Crime in Four Randomized, Controlled Trials', *Journal of Experimental Criminology*, 1: 367-395 Strang, H. (2002), *Repair or Revenge: Victims and Restorative Justice*, Oxford: Clarendon Press.
- 106 Gustafson, (2005) p.221.
- 107 11 survivors actively participating in the RJ conferences were interviewed at intake and 7 post-conference.
- 15 survivors who were absent from the RJ conferences (survivors with minimal participation) were interviewed at intake and 13 were interviewed at the follow-up stage.
- 108 Koss, (2013).
- 109 Gustafson, (2005) p221.
- 110 Morris, A. and Gelsthorpe, L. (2000), 'Re-visioning Men's Violence Against Female Partners'. *The Howard Journal of Criminal Justice*, 39: 412-428; Hudson, (2002).
- 111 Couture, (2001); Julich et al. (2010); Koss, (2013); Roberts, (1995); Umbreit et al., (2003a), Umbreit et al.,(2003b).

112 38 out of the 39 offenders interviewed as part of the study were asked to what extent their meeting with the survivor/family member changed their understanding of how their crime impacted on others. 32(82%) out of the 38 offenders interviewed stated that VOD contributed to their rehabilitation, personal growth and healing.

113 Umbreit et al., (2003b) p16.

114 Roberts, (1995) p.v.vii. ,

115 Miller and Hefner 2013: 7

116 Goldsmith, A., Halsey, M., and Bamford, D (2005) p 34-35:Adult Restorative Justice Conferencing Pilot: An Evaluation, Adelaide: South Australian Courts Administration Authority.

117 Miller and Hefner, (2013); Gustafson, (2005); Koss, (2013).

118 McAlinden, (2005) p386.

119 Couture et al., (2001) p57.

120 Geske, (2007) p658.

121 Couture et al. (2001)

122 Julich and Buttle (2010) p55.

123 Daly (2006) p348.

124 66% (n=76) out of a total of 115 court cases.

125 48% (n=53) out of a total of 111 conferences.

126 Daly (2006) p349; Daly et al. (2013).

127 Stulberg (2011) p22

128 Couture et al. (2001) p5

129 Daly, (2012); Koss, (2008); Julich et al. (2010); Pali and Sten Madsen (2011); Miller and Hefner, (2013).

130 Pali, B. & Pelikan, C., (2007), Building Social Support for Restorative Justice: Media, Civil Society and Citizens, Leuven: European Forum for Restorative Justice.

Section

05





Victim and Their
Families: Restorative
justice in Sexual
Violence Cases,
Opportunities and
Challenges?



Introduction

This chapter examines the perspectives of victims of sexual crime and one mother of a child who was sexually abused by a young nephew on restorative justice in sexual violence cases. The information forming the basis of this chapter is drawn from the transcripts of 30 individual interviews with victims and one individual interview with the mother of the child victim, comprising 31 respondents in all.

The transcripts of the interviewees in this chapter are coded as follows:

Victims of intra-familial child sexual abuse (VSF);

Victims of child sexual abuse by Catholic clergy (VSC);

Victims of sexual abuse within the industrial and reformatory schools (VSIR);

Victims of stranger rape as an adult (VSSR);

Victim of partner rape as an adult (VSPR);

Victims of miscellaneous sexual crime – such as offences perpetrated by an employer or by workers known to the family (VSM).

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The mother of a child who was sexually assaulted by a relative is coded as FVSM.

The analysis for each group will be discussed under the following headings:

- Do we need restorative justice in Cases of Sexual Violence?
- Opportunities and Possibilities
- Challenges and Obstacles
- Other Considerations

The chapter will also offer a summary of the perspectives of the respondents on the practicalities involved in conducting a restorative programme in sexual violence cases in Ireland. The views expressed by the participants in this chapter were considered seriously in drawing up the conclusions and recommendations that are presented in the final part of this report.

5.1. *Do we need restorative justice?*

All victim respondents were supportive of the possibility of employing restorative justice systems and remedies in cases of sexual violence in Ireland. The primary motivations were many and varied with some victims wanting to show the offender they were “*not beat*”, others having questions that only the offender could answer, some wanting “*to humanize the offender*”, “*change the memory card*” “*face fears*” or “*tell the offender of the impact of the abuse*” on them. As VSSR, a young woman a victim of stranger rape describes:

I think that the possibility of a restorative justice programme being established in Ireland is an excellent idea. I believe that there is a huge need for this from both the perspective of the victim and of the offender. I would consider this a vital part in the progression of the Justice system in Ireland, where the focus really needs to shift beyond, merely, the penalisation of an offender for their crime. The Justice system needs to adopt a more holistic view of the implications of criminal activity. If it merely focuses on penalisation of an offender, then the victim's needs can never be met fully, and consequently, they can never heal fully... their suffering is never fully acknowledged in this way... and that, in my opinion, is not justice. If the system merely focuses on penalisation, then the offender's needs can never be fully met, as he/she is never fully rehabilitated by ensuring that they take full responsibility/accountability for his/her actions. That, in my opinion, is also not justic The concept of justice in the context of crime, as we are all aware, demands that there is a balanced equation between two parties, and I consider that there is no real balance within the system currently. Essentially, I believe that restorative justice is the element that will help to balance the criminal justice system. I believe it can assist both victim and offender to have their needs met, as currently, only one aspect of "Justice" is being evoked (i.e. penalisation)... currently there is no direct way to achieve this [restorative justice] in Ireland. There is no agency or organisation that a victim can access or utilise to initiate a process of restorative justice pre-sentencing, during the course of incarceration or post-release, although all of the state agencies have now implemented their "Victims Charter".

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VSC2: I think restorative justice in its broadest sense has a huge amount to offer. As you say, it's not going to be for everybody, but where there is a desire for a restorative justice process to be undertaken, I think that... I was could as far as to say, I think that we have an obligation to make sure that that's possible... um... and that that can be explored. As you say, it's not going to be for everybody, but where that desire exists there is clearly a need, a very deep need, to address or to resolve something and we should respond to that. If not, we're potentially leaving people caught in a space where they are not able to progress or process or move beyond something or complete something. So, I think it's vital.

A number of victims were hesitant about the possibility of themselves communicating with, or meeting with their offender, even in circumstances where they wanted restorative justice to be available for others.

VSIR3: Only if you, I'm just saying for me now, only if I could stomach that. You know it all depends... If it was there yes. If it was there ... I would say so yes, I would say so.

The mother of a young girl who was sexually abused by the girl's cousin and whose case is currently being investigated, and in which the young man is denying the offence, is also in favour of restorative justice as she

hoped it would bring acknowledgement of the wrongdoing and healing for all.

FVSM: I think it would be a fantastic idea. But would it not mean that the perpetrator would have to admit?.. I've thought, you know, down the line how this could be resolved? But I just know for me that my sister [the mother of the offender] would have to know that my daughter was telling the truth. You know, as much as I'd miss her in my life, I couldn't get back talking to my sister unless she knows that Emer was telling the truth and for Emer I think, she'd have to have the same from Robert... I'd love to know how it could help. I'd love to think that it could.

5.2. Opportunities and Possibilities

a) Facing the Offender with Statements

A crucial motivation for many victims in desiring restorative justice is to face the offender: to face their fear of him, to make statements to him and in some instances to ask questions of him that only he can answer. Some victims wish to meet the offender to let him know about the impact of the sexual abuse on their lives in the face of such adversity.

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VSM6: I would want to actually let him know... that for all the time that he was abusing me, and I've thought about this quite a bit, it might have added up to 24 hours. One day. And when he started abusing me I was 7 years old. And I am now 47. And for 40 years that one day has been the biggest part of my life. And I would just want him to know that. That it wasn't just what he was actually doing during that 10 minute session or whatever, it was the 40 years... And it wasn't even the damage, although I did a hell of a lot of that to myself and obviously to my family. But it was the amount of time that it took from my life! You know it was like I could have been doing other things instead of this crap... It's not actually the physical, do you know what I mean... Even this, not that I mind this, this is terrific, this is brilliant. But I shouldn't be here. You shouldn't be here. You know. You and I could be away off shopping over there in TK Max, do you know what I mean?..That's what gets me.

VSSR: I would like him to know exactly what it felt like to be me, the victim, during the course of his assault on me including the intense fear from the belief that he was going to kill me, and the indescribable level of shock and disbelief. I would like him to "hear" exactly how it feels to be in such a powerless position, and how terribly traumatic it is. I state "hear" as he may not care or fully understand this – but I would certainly like him to hear the words coming directly from my mouth, as no one else can really explain this unless they have been in such a position. I believe the offender (all offenders) need to hear what that feels like even if they

only process it at a superficial level. The important thing for me is that he would have at least heard this, directly from me.

VSSR would further like to let the offender know how the assault changed her perception of the world and of the ripple effect of his crime on other people.

VSSR: I would like him to hear exactly how the crime impacted on my life. This would extend to the emotional and psychological trauma, but also the way in which it changed my perception of the world which has taken numerous years to adjust to. Additionally I would like to mention the impact it had on those around me, as the effects of such a crime extend well beyond the Victim herself / himself. I would like to explain to him that, whatever pre-conceived notions of me he had (which relate very closely to his negative attitude towards females in general), that I am not that person he has projected on to me. I am an individual – a human - that had a past and has a future. It is important for me that he would hear this because it is only when he truly sees my humanity, do I believe that he could even begin to understand the impact his behaviour has had. It was evident to me that, during the course of the assault, he was able to de-humanise me in this manner, and I would like the opportunity to “humanise” myself again in his presence.

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Additionally, I would like him to hear how I actually am intending to use the experience that I had to benefit me in the long run. I would like him to hear that, although it has taken some time, I have benefitted from my crime because I have chosen to. He should hear that I am using what I have learned about myself and other people to my advantage and I truly do not believe that I would ever have reached this stage of emotional maturity without experiencing the assault. I would truly like him to hear that.

In the case of a mother whose daughter aged fourteen years was abused by her daughter's cousin, there is also a desire to tell the offender of the pain he has caused the victim.

FVSM: The pain he's caused me how unsure she is of herself (FVSM is crying as she speaks). How he rocked her life and her confidence; His actions, how it made her feel bad. And she did nothing wrong. And how it's left her feeling a lesser person. What's wrong with her that he did that to her. What was wrong with her? That's what she's left with.

A victim of the industrial schools would like the offender and his congregation to know of his strength and to let them know he was not beaten down by the abuse; he was a survivor.

VSIR1: ... yeah, just to see their reaction... they haven't beat me, completely. They have in ways but not totally... Cause I keep trying

new things... I don't think they'll ever totally beat somebody but they have, kind of.

Some victims would want to engage in restorative justice to 'confront' their offender on their own terms, an inversion of the offender's right to have their accuser cross examined in person under the common law criminal justice tradition. Some victims, primarily intra-familial victims of incest, wished to have an intense, adversarial quality to the meeting, where the parties could "thrash it out".

VSF1a: I think I'd be happy knowing that I was able to confront him, because we have never ever done that... I'd love to be able to confront him.

VSF1b: And also, I would like him to know that I had my day and that I had the balls to say something.

VSF1b: you'd be afraid too, only in a structured place like that...

Interviewer: what would that have given you?

VSF1a: Just a feeling that I stood up to him. Just once I stood up to him.

Interviewer: Power?

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VSF1a: Yeah, that I took it back... I couldn't even stand beside him. I think I would have made a big difference to my healing, if I had the opportunity. Even if I crumbled, even if I went in and I fell apart, if I had have made myself go and stand in front of him and did nothing more than that, it would have been enough for me.

In the case of sexual abuse by a Catholic priest one wonders if the following account of a mother's self-blame on hearing of her daughter's abuse as a child when she, the mother was eighty-eight years old, after the priest offender was convicted, would also be something that clerical offender in this case would benefit from hearing about and if the victim would benefit from telling him about the ripple effects of sexual abuse.

VSC3: "I told my mother when she was eighty-eight which was really hard and that was... um... after he was convicted, I told her and she blamed herself, instantly..um... she felt she should have noticed, she should have known... She felt safe that he was looking after me, I suppose. Someone was caring for me... She just felt so reassured that his nice priest was taking an interest in me. I wasn't on my own sort of thing and then, when I had to tell her... um... she was so upset with herself that she didn't see it. I hadn't been able to tell her, of course. Why? was her first question. Why didn't you tell me? And I told her basically, what is absolutely true. I didn't want anyone to know what I had done. I did not think of it as something that had been done to me. You know. So, it wasn't a question of protecting him. I felt I had been very bad and I didn't want anyone to know about it. That's how I stayed for twenty-five years".

b) Facing the Offender with Questions

One of the most common reasons why victims want to participate in restorative justice is to gain answers to questions previously unanswered, such as ‘why me?’ which they wish to put to their offender. No process to date has afforded them such an opportunity.

VSSR: I would ask him... : How were you able to de-humanise me in this manner? How is it possible to be so angry with a person who has never harmed or offended you in any way? How would you feel if someone behaved this way towards your mother?... I would truly like to understand his motivations for it in general.

VSF3: Well the fact that my questions have never really been answered ... in court. He was convicted of sexual assault. He was put on the sex register and continues to be on the sex register. Now it's ten years I think. That's great – it's wonderful that that's there, and it's great that the public know who he is and what he has done. But I haven't got answers. I'm stuck and I still have questions – as a victim you blame yourself for a lot of things, a lot of the time. You do blame yourself and you suffer a lot of shame and disgust and a lot of – you know, a lot of stress... .. But I think each individual is different, I think. So I'd just – I need to know why me?

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A woman who was abused by her brother and later by a member of the clergy when she was a resident in an industrial school has questions she would like to ask her brother:

VSIR5: So, yeah, there'd be loads of questions—so many. And I'd love to even ask him, how he can live with himself, like. How he has just the audacity even to still come into the family home and still try and integrate within the family. He still tries to—he still is manipulating the rest of my family”.

One man, a victim of a Catholic priest, wanted to ‘close off the circle’ by sitting in a room with the offender and asking him questions.

VSC2: I know that for me, even from a very early stage in this, that some point, I had this hope in the back of my head... I might sit down in a room with him and go ‘what was that about? What was that about?’ And I've thought about that a lot over the last nearly twenty years and it wasn't based on a way where I tried to make sense of it or where I could find a way for it to be ok. One of the most important things that happened for me was the realisation that it could never be ok that it happened. It could never be ok and I needed not to try to make it ok, but I was ok. That was the key thing for me to discover. I think that I have... that I had and in some ways, still have a very fundamental desire to resolve that. I think is just a bigger desire that exists in life that something [is] resolved. That we close off those circles... If there wasn't an answer there wasn't an answer.

A victim of clerical abuse has very specific questions she wants to ask the priest offender.

VSC3: I would like to ask... , how he reconciled his actions with his position as a priest. Did he have a genuine belief in what he was... his religious beliefs and how did he reconcile them with his actions?.. How he came to where he is at?

The mother of a child victim, whose case is currently being investigated against the child's cousin, says she has questions she would like to ask this young person in a restorative meeting:

FVSM: There's loads I'd love to ask him... why did he do this, why would he do that? He knows that that was wrong. He knows he shouldn't have been going into her room! He absolutely knows it shouldn't have happened, and I'd have loved to ask him why?... You know, why did you go into Emer when she was staying there? You know this was supposed to be the second safest place for her, on this earth.. What did she do to make you hate her that much that you'd go into her room and touch her without her permission?

FVSM says her daughter also has questions she would like to put to her cousin.

Emer has definitely. Emer has said that to me. You know, why me mam? Why did he do it?... you know, why did he come into me when I was staying there?

c) Healing and Ending a Journey

As seen in chapter two of this report, victims identified many unmet needs following their involvement in criminal justice and other systems that they believe only a restorative event can possibly meet. Some victims felt the restorative experience should have their quest for healing at its core. As FVSM pointed out:

FVSM: even when you think of just a little row, just a simple row between two people... I mean there's so much changes when you hear how it impacted on the other person.

VSSR: I have several needs that I believe should be addressed before I truly feel like I will have closure on this very profound experience that I had in my life... I would truly like to hear, directly from the offender in my case, why he committed this crime against me? On the basis that it was a random, unprovoked attack against me, a person unknown to him, I believe that it makes sense that I would wish to understand his motivations for committing it. Nowhere throughout the course of my experience within the criminal justice system or within a therapeutic environment was this question ever considered as relevant. Even if it had been considered, no other person other than the offender could ever answer it.

Some victims also hoped that the offender would gain healing or insight from the experience too:

VSF1: ... if you don't do both as in, if you only focus on the victim and you don't focus on the paedophile or the sex fend, it doesn't matter what you call them, if you don't focus on both of them, you are getting nowhere. You are getting nowhere. You are just going around in f... ing circles. It's like prevention and cure. You have to do both.

VSC3: I also am not averse to being part of a process which has a point for him. If in my own case, the perpetrator as I say, he is very elderly now, so I don't know what his future is. If he was a younger perpetrator and I thought being able to by meeting with him that it might lead to him or be part of his process of recovery or being able to control what he has done and not do it again. To work towards his rehabilitation. I don't think it should all be one way; it should just be the victim who is getting something out of it.

VSC2: If he was still alive and I got a request to meet with him, would I? If I did, I wouldn't be meeting with him for me, I would be meeting with him for him. I have no need or desire or... there's nothing in me that now needs in any way to meet with that individual at all. That's not based on rejection or... in a funny way, I met with members of his family and I've had a number of very long conversations, very often based on their need to meet rather than anything I have had. Um... so, back then, what would I have wanted? I would have wanted to be able to walk away, actually is what I think. For me, this would have been about finally resolving and kind of going 'this is done. This is over. You need to be ok and for me, I would... it not's that I would be happy if you were, but as I would wish for any other human being, I would wish for you that you would find a way to confront the truth of your own actions, to address them and move beyond them. That's up to you. It's got nothing to do with me. This is done. I reject what you did. I reject who you were in it. I reject what you tried to make me in it. I am not that and this is done. If you have something to say to me, I would be open to hearing that'. That is not about looking for something in particular back. I think for me it would be just about ending a whole... ending a journey.

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d) As a Mechanism of Accountability

A number of victims believed that the state owes a debt to the victim to provide them with restorative possibilities and the offender owes a debt to the victim to participate in the restorative justice process to “make things right”. Victims see restorative justice as a mechanism of corrective justice for them.

VSSR: If there is a desire to really help victims, then, in my opinion there should be a way in which victims can empower themselves. I believe restorative justice is the way in which they can achieve this.

The effects of sexual violence, beyond the initial obvious ones, are long lasting as a victim may feel that he/she is in a “perpetual state of disempowerment”. This can be due to the fact that they fear seeing the offender or even due to their inability to really maintain trust with other individuals following the experience. The purpose of an offender acting out in a sexually violent way, as we all know, is to disempower – and this is a feeling that they can evoke within a Victim, that fails to diminish long after the crime has occurred. From my experience, a victim may wish to overcome this feeling in order to fully heal – and I believe that if we were able to access a restorative justice programme within Ireland, we may really be able to achieve this.

While facing the offender plays a key role in the dynamic of empowerment for victims of sexual assaults, establishing an agreement with compensatory elements is also important for some.

VSM6: For me personally, I would like, I would like there to be some way of getting the people who hurt me to pay for what they did without it costing me and my family again... So, there is a chunk that I feel entitled to but I know that I'm never going to get and I just have to live with that and accept that. Now I don't do that with any resentment or anything else because otherwise I wouldn't be able to get on, but I think it's, you know, it would be terrific if I could have that last little step. But, you know...

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Restorative justice meetings between victims and offenders can involve an agreement at the end of the dialogue, as well as the dialogue, and this agreement can be written in the form of a civil legal mediation agreement. As VSC2 explains he has been involved in the agreement part without the dialogue and even that mediated agreement part is preferable to simple civil litigation or civil justice route for many reasons as he explains:

VSC2: I actually, do think that an effective mediation in civil litigation can be enormously healing for victims because civil litigation [purely civil justice mechanism] ultimately, isn't really. Civil litigation [court based civil justice route] usually ends up with a survivor or victim sitting in a basement room in the Four Courts as the two teams of lawyers move from place to another and then, some cheque being produced at the end of it. You are kind going 'really, that's the big moment? That's what this is?' That can be quite empty and actually, a quite damaging experience for quite a lot of people. Whereas, in the civil litigation mediation processes that I have been involved in, what often comes into the room are the really symbolic acknowledgements that become terribly important. So, for instance, I can remember a mediation where what was of vital importance was that a gravestone be changed... The perpetrator was dead and the negotiation was with the agency responsible for the perpetrator.

In another negotiation, an individual had been given the freedom of the city, one of our larger cities, that efforts would be undertaken to remove the name from the roll of honour that existed online, so that that wasn't constantly there. A lot of the needs that survivors might express in a process of mediation are much more about the things that they need to resolve, that may appear practical, but have real importance for them and are actually about them being genuinely heard. I have seen on both sides of that conversation a level of understanding. Particularly, on the side on those who either represent or act for the perpetrator or are the perpetrator, where they kind of go 'I get that. I understand why that is difficult for you. I can see why that's necessary. Absolutely'. There's an open-heartedness that can happen that will not happen in other processes. Particularly, not in court proceedings as opposed to legal mediation proceedings.

Victims desire a rebalancing of the power dynamic that is at the core of sexual violence and see restorative justice as one means of helping with empowerment. Their desire for individual and direct accountability by the offender to them, which is not part of the criminal justice process [whereby the offence is against the state, and the victim is a witness] and which is available for very few victims through civil justice mechanisms as the costs are prohibitive, can be met through restorative justice in the view of many victims, in some cases with a dialogue; in other cases with a mediated agreement and in other cases with both.

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Some victims view offenders as having a strong moral obligation to participate in the restorative justice event, in order to help make amends for their wrongdoing. One victim believed that offenders should be coercively compelled to participate in the event – whether or not they admitted guilt or responsibility which was connected to this victim's need to confront the offender. However, this desire for coercive compelling participation on the part of any party is against the spirit of restorative justice.

VSC5: If it's proven that they are the perpetrator and they are the abuser, I think they should be made come along.

Interviewer: Okay.

VSC5: I think that would be really good. They shouldn't have the power to—they just basically shouldn't have the power to say no.

Many victims were also conscious of the need for the offender to internalise the significance of their wrongdoing and its consequences through the restorative justice event:

VSIR4: ... it would in a way be a type of counselling for prisoners. Again, the serious prisoners... making them realise the consequences of what they have done.

VSSR: . the penalisation of an offender is not enough. If we truly wish to eradicate this type of criminal activity, then perhaps we

should strive to ensure that those who commit sexual offences do not re-offend. I am not sure how the therapy that sexual offenders (sometimes) receive in prison works in any great detail, but I understand that some of it focuses on victim empathy. The goal with this surely is to enhance the offender's ability to understand how their behaviour affects a person – thereby reducing the likelihood of them acting out in such a manner again. I think that the agencies responsible for the rehabilitation of offenders should consider that restorative justice is a very powerful way in which to achieve this very goal. Is there a more profound or powerful way in which to enhance an offender's ability to empathise with their victim then if they sit face-to-face with them and hear their voice? Perhaps if such a restorative justice programme was set up in Ireland, those very agencies could utilise it too?

e) Understanding but Not Excusing Sexual Violence

Questions the victims would like to ask the offender such as, “why me?” “Why did you do this?” “What were your reasons?” also reflect a desire to understand the nature of sexual violence generally, as well as understand the offender as an individual. The desire to understand the offender as an individual has been described by one victim as a need “to humanize the offender”. This sometimes represents for some victims an attempt to address their fears and confront the “fearful monster perception” that they are often left with, particularly following violent sexual assaults. Addressing these fears and “changing the memory card” of the events surrounding the rape and abuse is seen by some victims as “empowerment”. Some victims just wanted to understand why the offender had acted as he did.

VSC2: ... I think at that time, part of where that was coming from for me was a desire to understand and to find a way. Well, a desire to understand, actually. That was important because one of the things that was perhaps, most frightening for me was that I couldn't... this experience had no place in my understanding of the world. It wasn't possible. So, 'how was this possible?' was something I really needed to understand in order to feel like I could exist in the world again, fully...

VSSR: I believe that if I understand why it happened, I would ultimately be able to process it at a very core level in order to essentially accept it and full heal in this manner. The criminal justice system leaves no room to ask very logical question such as the above, thus limiting a victim's opportunity to heal. It is only through restorative justice can these questions be answered.

Some victims were interested in understanding the nature of sex offending, which they hoped some to address to the offender:

VSM6: I want to know really psychologically, what makes them different from me. Who are these people? Why? What are they on

about? Why do they do what they do? I would be I'd be interested just in the big picture.

However, despite having questions for the offender, some victims were not interested in hearing his story or his explanation for the offence, and one victim was emphatic that he did not wish to hear if his offender had been abused himself, as he resents the link that he hears being made between a history of childhood sexual abuse and subsequent offending.

Interviewer: Would you be interested in hearing his story; how he came to commit such a crime?

VSC1: Well, my first thought on that would be no, no. But em, one of the things that used to bother me so much around this was that the abused become abusers. And for me as a survivor, that used to really bother me. And that was one of the reasons why I didn't tell anybody, was because, well, if I tell them that I was abused, they're going to think that I'm actually an abuser... So that was one thing. I don't want to hear him say that, that he was abused, because that almost validates everybody else's opinion that I'm an abuser. So no, I don't want to hear that... The last thing in the world that I would do is hurt a child. And part of that is because maybe I know what it's like to be hurt that way. So it's the last thing in the world I would do. So I don't want to hear him say that that's the reason he did it... So if he's got another story, yeah, absolutely, I'd hear that one. But I don't want to hear that he was abused, no... it's 30, 40 years thinking about these things.

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f) Dealing with Church Authorities when Abuse Disclosure handled Badly

One victim of clerical abuse whose abuse disclosure was poorly handled by the church was keen to meet a priest to whom she had disclosed through a restorative meeting as she thought there would be healing in it for her. She had made overtures already to the priest through friends and although the priest has thus far refused to meet with her, this victim has not given up on her desire to meet with him. She likens such an opportunity to giving a Victim Impact Statement to him on the effects of his response to her.

Interviewer: ... what do you think a meeting with him [the member of the Church who responded badly to the disclosure] would give you?

VSC3: I think I could close the door on it. I don't know that he will ever actually grasp... I don't know that I would ever get him to actually apologise or actually... um... in any way admit that he had behaved any way other than absolutely correctly. I suppose, I would feel a bit like being able to give the Victim Impact Statement in the court with my abuser there, I would be able to say to him 'do you what that did to me? Do you know it put me ten more years that I wasn't able to talk about it?' It left that abuser in place with children, a serial abuser, in place for ten more years.

Interviewer: would you say that would give you back a sense of empowerment? Would you say it is power... given your power back?

VSCC3: I really feel that being able to talk to him face-to-face; it's not what he could give to me in the way of an apology, which would make no difference. The past is the past. But I would like him to know... um... maybe, just shake his complacency up a little bit and be able to say to him 'this is what that did'...

I don't know that he will ever grasp what his response did or didn't do... he should learn what it did to me, but just from me not from anybody else.

g) Family Reconciliation

All victims felt that family reconciliation work in the wake of sexual abuse should be available through restorative justice mechanisms, especially in cases of intra-familial sexual violence. But, like restorative justice in general, some victims felt it could be too late for them, even though it should be available for others.

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One victim who felt strongly about the need for family reconciliation work in the wake of intra familial sexual abuse felt family reconciliation work should be made compulsory. Of course this is against the spirit of restorative justice. However when asked why she would think this VSF2 was clear:

VSF2: Because I have such an issue, there's such an inner conflict going on that um... it was my father so I have feelings for my father as a father and yet this man did all this wrong to me, which is two separate things. For people who weren't abused or for people where it wasn't incest it would be a different issue, they wouldn't have the father feelings or the love for the person so I can understand for a certain amount of people for it not to be helpful and for them to not want it, but for somebody like myself that it was my father that abused—it was a family member... we're in a situation now where my children have lost their cousins, their cousins have turned on them, they've lost their favourite auntie, because their auntie didn't support their mother and called their mother a liar when she knew all along that the mother was telling the truth. So there's big issues there and it's very important that there is some sort of support, family support in, especially in sibling or incest, or you know? Any sort of family abuse.

The mother of a child victim of intra-familial sexual abuse was also very keen for family reconciliation work as the family was torn apart. Neither herself nor her daughter, the victim, wanted there to be a family division as a result of the intra-familial sexual abuse and could not believe the denial that came from the offender and his mother. A particularly difficult breakdown for this interviewee is the extinction of communication

between herself and her sister (the mother of the young offender), who was one of her closest family prior to the abuse disclosure. Mother and child victim desperately wish to reconcile their family ties.

FVSM: God, it would be fantastic... when I listen to my daughter. She's 14 years of age. And I think of how articulate, how she has been through this. You know that she didn't want the family split up... she wanted him to stop, to realise... she has more hope than I have... she'll come to me and say "Do you think we'll ever have Robert up here again Mam... or you know, she'd ask me about, seeing him again and she'd say, you know, "Please God, someday Mam, Someday! Yeah, You know, she would have, she'd have hope.

However, in order for family reconciliation to be at its optimum in this case, there must be an acceptance of guilt on behalf of the offender. In addition, there must be also an acknowledgement of the abuse on behalf of the family. If both sides can't agree upon the circumstances and seriousness of the abuse, family reconciliation will not be possible.

Yes, I would, because in all of this, I've never been out for my nephew's blood. I'm hurt because he also was, I know you shouldn't have favourite nephews, but he was. I was very close to him... I minded him... So we always had that bond... I remember having a conversation with my sister and going, "It was 17, it was 18 Elaine he knows" and she goes, "Teresa, I can't believe it" and I go "She's telling the truth". And she said "But Teresa he has a girlfriend!" And I went oh no God, please. The frustration of that answer.

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The want and desire of the interviewee for her daughter to be believed by her family is so strong that she would like the police to intervene and explain the credibility of her daughter's statements. This gives us a further sense of the need to be believed that the abuse occurred, not only by the victim but by the victim's immediate family.

FVSM: ... because of my concerns around this not going to court and because of my family not believing it, I have this WANT and desire for the police to go to my sister and my nephew and say, you know, she did a credibility, em test, in Our Lady's hospital and that came back 100%. It's like I want the police to fight my battle. I may go through the rest of my life with my family never believing

For restorative justice to take place there must be acknowledgement of harm done by the offender. Another victim of intra-familial abuse who was abused by outside as well as inside her family would love restorative justice to make a difference to the next generation of children in her family.

VSF5: "in regards to the family abuse—I can't even say what the unmet needs are. I think they're so huge. And there's something about—I would love my experience to matter somewhere. Really I would love it to matter, because I see the devastation in the next generation. And nobody is being sexually abused.

h) “Getting out of Relationship” with the Offender

Some victims wanted to “get out of that relationship” that had them tied to the offender since the time of the abuse, even in circumstance where criminal and civil justice mechanisms had been exercised, but which now publicly linked the victim to the offender in the public mind. For these victims, restorative justice offers the opportunity to ‘close the loop’, which had not been achieved through other legal mechanisms of accountability:

VSC2: That last closing of that loop would have been important. In some ways, I think I’ve recognised that what I wanted to do is to get out of relationship with that individual. I wanted to finally, close that and that conversation would have been an important way of closing, of ending that abusive, traumatic relationship that I didn’t choose to enter and that I never felt able to leave because it could never be... it could never be named. It could never... like, it could never be acknowledged what had happened and then, in a funny way because of what I was doing through the prosecution and publicity around that, it meant that I was related to that individual in some way, you know.

i) Apology and Forgiveness

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The question of whether or not a victim would want or like an apology from the offender was not of crucial importance for many who participated in this study, though none were opposed to a genuinely remorseful offender offering an apology. Some victims viewed an apology as a core part of the process of individual accountability by the offender while others had an underlying suspicion about the motives for any an apology, and were concerned that the offender might be seeking to manipulate the victim into forgiving them for selfish rather than genuine reasons. Indicating the entire subjectivity of victim experience and need for flexibility in any response to victims and to restorative justice processes for them, some victims were angry that their offender had not yet apologized for their wrongdoing.

VSIR1: You think they might want to say sorry?

VSIR1: Yeah,

VSIR2: He probably might apologise. But it would be very, very hard for, well for me now to accept an apology.

Interviewer: Would you like to hear it even if you weren’t able to accept it?

VSIR2: Yeah.

Interviewer: Yeah, even if you weren’t able to accept it, it would be something to hear it.

VSIR2: Yeah.

VSF1c: *Our father was the same. He told everyone else he was sorry, but he never told us. Had he have said it, we would have known immediately he doesn't mean or he does mean, but we would have known. I'm not saying it would have made any difference, but it could have... it just would have given us shot. It's like our day in court. We didn't really have our day in court, even though we were there. Because of the lead up to it and exclusion from it. The fact that I spoke in court; none of that means anything. Our day in court would have been to sit down and say listen 'this is what you did. Do you understand the impact of what you did?' and for him to say 'sorry'. Whether he did or not, it would have been nice.*

Interviewer:... *can I just ask on that point... if you were go through a restorative process, where you knew that there was a possibility that your dad in this case, wasn't going to apologise and you weren't going to have that outcome, how would feel about going through that process?*

VSF1c: *I'd still say I'd love for him to know.*

VSF1b: *yeah, because you'd want your opportunity to have your say and let him know how he has affected you.*

VSF1c: *regardless of his response, I would love him to know what he did.*

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Interviewer: : *so, it's more than just about getting the apology, it's about getting to say your story?*

VSF1c: *The apology would be a bonus, but if it doesn't happen, it doesn't happen.*

In relation to forgiveness victims had a lot to say.

VSSR: *I have come to the following conclusion regarding forgiveness; I do believe it is essential in order to fully heal from a crime. It is obviously the most difficult thing to do, but I firmly believe that it is in the victim's own interest to forgive the offender. The act of forgiveness helps to free the victim from the crime, because she can let go of the negative emotions that she may have had for so long which, ultimately, were only damaging her and causing the offender no hardship whatsoever. I believe that if you cannot forgive, then the negative emotions will destroy you, or at least damage your life in some manner. I am fortunate in the sense that the crime was committed against me, so it's much easier to forgive because I do not have to remain "loyal" to the victim by staying angry at the offender. I know I would struggle immensely with forgiving someone who hurt someone close to me however.*

I lived many years with anger following the assault and this was merely a burden on me – not the offender, as he wasn't even aware I was feeling that way (and realistically wouldn't have cared in the

slightest). I know that the anger I felt was not benefitting me, but the only way to diminish the anger for me personally is by seeing the person who offended against me as the damaged person that I know he is. The only way in which I would get the opportunity to see him in this light is through the process of restorative justice. I can only forgive if I have the opportunity or chance to witness this, and in my opinion, the only way I can fully heal is if I forgive. Forgiveness benefits the victim in this way, even more than it benefits the offender. The Criminal Justice system is not concerned with forgiveness and therefore, in its current structure, it helps to keep a victim in a perpetual state of disempowerment.

With a different perspective another victim tells of his journey and thought on forgiveness

VSC2: For very long time, I used to get very angry when I heard people suggest that in order to heal, I had to forgive. I actually, still do. I still want to rant and roar and scream and shout and tell people to 'f. off' when I hear that crap... because I... I think that there is a tendency to see a tidy resolution by suggesting that forgiveness is where it is all at and it may well be, but let's not impose that on anybody. Any individual experience of abuse or of crime and the trauma that results from crime is a very individual experience and we may have and we may be absolutely right in our view that there is a road to be travelled and there are points along on the road and we might imagine, we can prescribe them. The problem with prescribing them is, we drive the journey rather than facilitate and accompany an individual on their journey... So, for me, I would absolutely reject the notion that an outcome of any process should be to move the survivor and the perpetrator to a place where the survivor feels that they can forgive the perpetrator. I think that's an abusive dynamic to inflict upon a survivor. I think that it is potentially, very damaging and counter-therapeutic. I think that it distorts the process utterly and that it is not based... on an understanding or explanation of this individual's needs, but of the need of society or the system or the professional to find a resolution that allows them to feel that they have succeeded in their efforts. It's not about their efforts... ... that was a very personal journey and for me, it also became terribly important because I knew for years my understanding of forgiveness was really confused and wrapped up in and corrupted and perverted by that Catholic understanding of forgiveness based on the notion of absolution. That somehow if I said 'I forgive you', I'm saying 'that it is ok'. It is not ok. It's never ok. So, in the same way, I talk about looking in that mirror with as much shearing honesty and compassion as I can. I can look at my own actions and look at things in and beyond and through and despite and because of those experiences of abuse and I can be deeply uncomfortable with myself in it and it's not ok, that I tolerated or accepted the level of abuse that I did. It's not ok

that I went on to perpetrate that abuse on myself for years to come, in so many different ways. It's not ok. It will never be ok. It will never be anything other than an appalling tragedy and an incredible wrong, but I understand that and I accept it. I can't make it ok, but I can accept it for what it is and love and respect myself in... in... absolutely, in and beyond it. I am no longer frightened to look at myself and see myself in it and have understanding and compassion for myself and accept myself and then, move beyond it. So, that's for me what forgiveness meant.

FVSM, The mother of a child who was sexually abused by the child's cousin would like to think she could forgive the offender:

FVSM: "I think I'd like to think I'd be capable [of forgiveness]... And I think that comes from a faith; that I'd hate to think that I would go to my maker with any unfinished business. That's where that comes from.

What emerges in this research and in the literature is that there are no prescriptions for how restorative justice is best done. Expectations on both parties are explored and their wishes and desires are respected and negotiated with the facilitator in the preparatory sessions. Apologies and forgiveness are by no means part of the process unless either party wishes. It is often the cases that spontaneous apologies emerge in the 'magic' of the restorative event. That does not require a response of forgiveness. It sometimes happens that an apology is conveyed to the facilitator to pass on to the victim in the days following the restorative event. Forgiveness is a completely different matter for the victims, as illustrated above. Neither apologies nor forgiveness are required for a very good outcome of a restorative event.

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5.3. Challenges and Obstacles

a) Fear

Fear was a major obstacle for some victims regarding future participation in a restorative justice event. However, despite their own fears and reluctance to participate in some cases, all of thirty victim participants in this research strongly wanted restorative justice to be available for those victims of sexual crime who desired it. Hesitant victims voiced a variety of reasons for not wishing to participate in a restorative meeting with their offender, such as ongoing fear of him because of the original power dynamics that were involved in the original abuse experience.

VSF2: Yea... yea... I'd have to go to this meeting and there be a constant inner battle in this meeting to not revert back to the inner child, to control, to control myself. You know? Because I mean my dad is a frail old man and I have nothing to be scared of, I'm a very brazen... I would tackle any man! And have done in my line of work, but um... it's a hard battle, and it's scary! It would be very scary...

VSIR3: Well that is the problem. They have controlled our lives... I'd be too afraid, because, they'd that much control over you... I don't think I'd be able

Fear of their own anger towards the offender and of their possible reaction towards him in a restorative encounter, was voiced by some of the male victims who as children had been reared in the reformatory and industrial schools in Ireland.

VSIR2: I would like to but God knows what I'd do to him. I don't know... I even said to my counsellor one day, if he were standing here I'd probably put him through a glass window; she says I know you wouldn't. I know for a fact you wouldn't... That's how much anger that was in me that day, do you know?..I probably wouldn't, I don't know what way I'd react... Yeah, and probably scared as well.

b) The Position of the Offender in the Restorative Event

Some victims were unequivocal in their view that offenders should not be allowed to ask questions, during a restorative event, fearing offender abuse of the process, or manipulation, or potential for the offender to hijack a victim-centred process for their own benefit while other victim were very clear that in the interest of justice and fairness offenders should be permitted to ask questions but that everything is done in the preparation and nothing is left to a surprise on the day of the meeting or restorative event. .

Interviewer: This is a more general question. Should offenders be allowed ask questions in such a process?

VSC2: Only if the survivor has agreed in advance and explored what that might mean for them. I think that the reality for me anyway and of course, I am coming from a less than fully objective perspective here... um... is that the... the... So, I would be quite concerned for... um... a restorative justice process that was not slanted on balance towards the needs of the survivor... I don't think a restorative justice process can be focused on the offender ... I'm very happy, if there are positive outcomes for the perpetrator and I genuinely mean that. I would be very pleased with that, but I don't think that should be its purpose.

Interviewer: do you think your offender should be allowed ask questions in the process?

VSIR3: Oh yes, why not!

Interviewer: They should?

VSIR3: Oh absolutely

Interviewer: So, you would allow them an equal playing field, not that they're just there to answer your questions.

VSIR3: Absolutely, absolutely

Interviewer: *Have you thought about questions that the offender might like to ask of you and would you be interested in hearing these?*

VSC1: Um... I have a very deep, instinctive, quite loud no to that. No. I have no interest in anything that the offender might need from me. I mean and again, that's just my instinctive... it's like no, no, no, no. There's no right at all to look for something because... also, I would not trust a desire that might come from that other.

VSC3: Although, it sounds, as I said earlier, I was worrying about the mediator having that agenda... if the offender wants to ask questions, I think that should be part of it, as long as the questions are not in any way abusive to the victim. You know, that they are going to cause the victim more hurt or harm or whatever or suggestive of guilt on their part, which will set them back. That's from a general viewpoint. From my own viewpoint, I wouldn't have a problem being asked questions, if it was going to be a two-way street and I could ask questions as well. I don't think in either case, it should be one way. I don't think the victim should have the right to answers to questions, if the perpetrator wouldn't have an equal right. I don't believe you can do away with anyone's rights, as long as there is some control in what is being asked. There's fear that the perpetrator would get some kind of a kick out of asking some questions. So, I'd imagine that has to be managed...

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VSSR: I would certainly be open to the offender asking me questions. I would have no issue with this whatsoever as I honestly believe that restorative justice should work to benefit both the victim and the offender and if the offender has needs (i.e. questions to ask) then this should also be met. It is a process based on respect, and even if it is just respect for the process it should entail providing both parties with space to have their needs met. Personally, I cannot imagine what the Offender in my case might want to ask me... I would consider the process to be imbalanced if the offender was not permitted to ask questions. If we are speaking of Justice in some form or another, balance is extremely important to really get the best out of it and therefore the offender cannot be blocked or limited. Obviously I mean that they should be permitted within reason, as they should obviously not be allowed to ask anything that the victim would find offensive! However, if it is a legitimate question that the offender may wish to ask, then I believe it would not be an equal or fair process to curtail them. If it is not fair, all of the trust and respect that goes with restorative justice would be reduced.

FVSM, the mother of a child victim would be happy to answer any questions that her nephew would have. However, the interviewee remarked frequently upon her personal relationship and care

for the offender, in a manner which shows a level of affection that would not be expected if the victim and offender were not related.

FVSM: Yeah. I do and I think maybe I'd feel different, if somebody was to shoot my daughter or take her life, that she wasn't on this earth with me, I don't know whether I'd still be willing, I don't know if I'd want them to have a right to anything. So, but for this, I can, underneath the pain, I know that he's not a bad kid (crying while saying this)... And that I still hang onto, you know that I did love him dearly at one stage... I've heard, you know, from a family member that he is devastated that me, of all people would think that he would do that to my child. Eh, so I've no idea what I would be prepared to answer whatever he wanted...

Interviewer: would you like to hear if there was an explanation?

VSF1a: Well... I'm not saying that I'm right, but my take on it is that say for example, I am raw and I am hurt and all that and I want is my day. I want him to know what he has done to me and he starts questioning me, I kind of think like... no

VSF1c: No, this is for me to get restitution.

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c) Too Much Time had Elapsed

For some victims too much time had simply elapsed since the violence took place, especially in cases related to historic child abuse and the victims had gotten over the trauma of the violence themselves. They were afraid that a restorative justice meeting with their attacker would be unnecessarily traumatic for them and would bring up too much pain at this stage for their family.

VSIR who was abused by her brother as well as a clerical person in the industrial school in which she resided thinks it is simply too late for restorative justice for her family

VSIR5: I think I would have jumped at it. I absolutely would have. I probably even, six or seven years ago. I think I've maybe made too much progress now to actually involve my family in anything again. I think it would be too traumatic for me. Too damaging for me, and I think it would be like drama. I think for me restorative justice, now, would be too late. But I think it would have been absolutely—it would have been what I would have wished for. I would have preferred that, that would have been sufficient for me, than taking the court case. Like, I have to get justice somewhere, and the other thing is the court case is the only option for me. But like, that would have been sufficient justice, restorative justice, like, the whole family .Yeah. Absolutely. And even before I started here, even—I still would have benefitted from it.

d) Potential Risks in the Restorative Meeting

Victims were alert to risks that could occur for them in a restorative event and spoke of the need for safeguards in order to minimize the risk of re-victimization of the victim in the process. Not being believed was one that was uppermost on the mind of many victims. Thus being believed before the process could even begin was a pre-requirement for many victims who would consider it:

VSC5: First of all if I was believed. Hopefully people who are talking about abuse now are believed. Or even they are not entertained in a way until it's confirmed. That they're not all behind doors.

VSC2: The most vulnerable person in that room is going to the survivor and the most easily manipulated. The relationship that exists between the survivor and the perpetrator is such and so dynamic and so powerful, that there is an enormous need to protect the survivor from further manipulation or from any kind of... not simply retriggering, but reactivation of old, destructive, manipulative behaviours and responses that might then, leave the room.

A number of victims were concerned about what the offender might say during a restorative event and while believing that offenders had a right to ask questions of the victim, and, crucially, to benefit from the process, there needed to be some regulation of the restorative meeting and essentially preparation in advance for both parties regarding what would and would not be agreeable for discussion. Most victims were keen that offender questions be carefully screened and as we will see later offenders had similar concerns. Information regulation was therefore seen as an important part of the preparation and of the meeting itself.

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e) Ownership and Control of Decision-Making

Control and ownership over the process was important for victims who were concerned about “well meaning” professionals telling them what was right for them. Some wanted the process to be put on an equal footing between the victim and the offender. Others were also sensitive to the risk that the offender might seek to gain some control or power over them again through the process.

VSF1a: My mind takes a while to work. I'm still caught up on a couple of things. One was if you went to somebody[for restorative justice] and [they said] you were too angry or raw and they try to slow you down a bit, put you off by saying this process will take three or six months. They are trying to assess you as well through the process and calm you down, really formulate, but part of me is really annoyed about that.

VSF1c: Yeah, do you have the right to slow me down?

*VSF1a: I'm thinking who decides that I'm not ready. I want to f...
ingtell him what he's after doing to me. I want my day, I want my say,*

and I don't even care how he takes it. I want him to f... ing know what he has done to me and I am ready. I'm ready now and you're telling me it'll take three to six months, I'll still...

VSF1b: If you are angry, you are entitled to be angry.

VSF1a: That would annoy me. Again, It's somebody else taking control and I don't like that at all.

VSF1c: If you think you ready, whether you are or not and even if you are wrong, so what, it's my life and I'll live with it.

VSF1b: The impact of that is that there is somebody else making a judgement on you, do you know what I mean? To a victim, that's really, really important that you are making a decision on what is right for me and I've had enough of that. I would say, if that's what is happening, just be very, very careful... If you went today and you firmly believed that you were ready and you wanted to do it, the Counsellor or Mediator or whatever can actually say 'no, you're not ready'. It's not you making the decision.

VSF1a: Most people want a voice.

VSF1b: Even the people who are wrong want to be able to say why they think they are right. It's empowering. I

VSF1a: So, when you say victim led, it really should be victim led and nobody should make that decision for the victim, which is very disempowering.

VSF1c: Understandable, because its outsiders thinking they know better, but they don't. Nobody knows better.

f) Confidentiality and Restorative Justice as an Alternative to Criminal Justice in Intra-familial cases?

The question of confidentiality also emerged, with some victims wanting protection of their privacy – particularly in cases of intra-familial sexual violence. They wondered if restorative justice could offer an alternative to the criminal justice process for intra-familial sexual abuse, because of the problems that accompany public exposure, but were teasing out this idea in the course of the interview.

VSF1a: And would they have to bring him to court? They don't have to be the newspaper and stick him behind bars and have him...

VSF1b: The media doesn't have to report it either. This could be a family thing. Even if years of sexual abuse have gone on, but we still were happy with each other, we just want to deal with this problem.

Victims of the industrial and reformatory schools in contrast were anxious that the offender be named and shamed through any process of accountability, in order to gain validation and vindication from the wider public.

g) *Relationship between Criminal Justice and Restorative justice*

Apart from intra-familial cases who wondered about the possibility of restorative justice instead of criminal justice in their family situations, all other victims were concerned about the opposite; and voiced the view clearly that restorative justice must not become an alternative to criminal justice in those cases where there is sufficient evidence to prosecute the offender. In those cases where a trial proceeds then restorative justice could be offered alongside the criminal justice process, they argued. In those cases where the evidence does not exist to prove the case beyond reasonable doubt then restorative justice could provide a justice option that has hitherto being missing from the system.

VSSR: the only concern I would have if it was used pre-sentencing is that it would be used as a tool by the offender to reduce the number of years they spend in prison. I fully believe that, the criminal justice system should operate in conjunction with restorative justice, but they should not intertwine to the extent that justice is not fully achieved in both instances. The use of one form cannot, and should not, affect the other in my opinion. If it was used as a tool by the courts in terms of sentencing it would not benefit the victim or offender for the following reasons:

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Victim: The Victim needs to feel that the offender is penalised for the crime they have committed. A victim would feel that the offender's life needs to be "impacted" in some manner, or else the balance of justice has not been afforded to them as the victim's life may have fallen apart. The victim would look to the state to ensure that the offender is penalised for the crime, so that their suffering is acknowledged by society in general. It may be a simple way of stating it, but if the offender receives a fair sentence for committing the crime against you it does feel like a "stamp" from the state saying – "yes, we acknowledge that you have been wronged and that you are suffering". I believe it is essential for the victim to feel that.

Offender: For the offender, in order to benefit in any capacity from restorative justice, I believe that they will do so in the context of their rehabilitation. If the motivation for engaging in the process is to reduce the penalty, then I do not foresee how they will benefit from restorative justice at all, as they will not be sitting in that chair for the right reasons. I cannot imagine that they would be listening to the victim and most likely they would not be able to answer her questions. This will certainly not help to rehabilitate them. It is only once they have accepted the penalty and admitted that they have committed the crime, that there is any scope for rehabilitation. If the likelihood of an offender partaking in a restorative process is dependent upon "the number of years they get" then I cannot see how it would assist in their rehabilitation at all.

VSC1: I am not saying when I hear this community based stuff that I am dead against it, what I am against is the idea that these offences, broadly speaking, are ones... that anyone might think that they are not ones that need to be brought to the Criminal Justice System and they are not ones that ought to be punished by a custodial sentence, because they are both. Now, it has to be acknowledged that particularly in the context of the family ... the Victim might not want the person prosecuted, but they don't want them not acknowledging what they did, they don't want the rest of family not acknowledging what they did and they don't like the fact that the person now, has their own children or they have access to their nieces or nephews, etc. So, they want the thing out in the open and addressed and the person to deal with their sexual abuse of children. So, if that's what they want, there is no point going to the Gardaí with that cause there is nothing they can do, but that's what the Child Protection Services are for, to... ah... help the victim in that way achieve what they want to achieve...

Interviewer: do you think that restorative justice might have a role here?

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VSC1: There are a few things to be addressed... , what do you do... well, particularly, what do you do with the child protection concern that exists which you are now addressing in the context of restorative justice. If you were going to the civil authorities there would now, be a child protection concern and a judicial aspect. So, if you are ignoring that... um... ah... so, it's important that that's addressed in a restorative justice context. That child protection concerns are formally addressed. If you are a restorative justice administrator and you are learning about A's sexual abuse of B, under legislation now, what are you going to do with this information?

Formalizing the relationship between the criminal justice system and restorative justice is an important issue for victims of sexual crime, for offenders and for the society. As indicated above, restorative justice cannot be offered for victims of serious sexual assaults as an alternative to criminal proceedings but it would rather sit alongside the criminal justice processes, being offered before, during or after proceedings have completed, but while post conviction cases are easy to operationalise pre-sentence or post arrest scenarios pose many more legal and child protection considerations that need to be addressed. However in many intra-familial cases victims of sexual abuse do not wish to take proceedings because of the potential negative impact on the whole family.

VSF5: "But I do feel strongly about, as a child, as a young woman, I would never have been able to shop my father. And you know when people say that—and I know there are other movements, there's the Stop It Now movement, and there's other things like that. One of the

most crucial things for me is I wish—and I've got to a place where I can see my father didn't want to be how he was—okay, I've got to that place. That's as far as I can go. I'm happy for God to forgive him. And I have forgiven him. But I don't dwell on them or anything like that"

In other intra-familial cases even when proceedings have been initiated, restorative meetings arranged pre-sentence or during the investigation stage could have the effect of the victim wishing to drop the proceedings. This would provide for challenges for An Garda Síochána and for the investigation.

As one victim indicates she requested a meeting with her father and mother during the investigation and had it occurred at that stage she believes it might have helped her but also that she might have dropped the charges.

VSF2: I requested... to have a meeting with my parents and um... if they had agreed on it at the time, and this was all in the middle of the investigation and he hadn't admitted it, yet. Um... if I had of seen a bit of remorse from my father and mother, you see, and this is where I'm very upset—we're talking about my father a lot, but my mother, my mother is a major part in this and she was active in my abuse... But if had seen some sort of remorse I would nearly have dropped the charges, I would nearly have backed out. Because that's all I thought at the time I was looking for—so... "

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5.4. Other Considerations for Victims

a) State Support and Legitimacy – Bottom up and Top Down

Alongside the victims' desires for control and ownership of their part in the restorative process they also want a service that is recognized, validated and vindicated by the state and thus believe that restorative justice in sexual violence cases must have a strong commitment from the state to legitimize and resource such an approach to justice. While private individual justice and accountability can be served through a restorative justice mechanism, for many victims the public community function must be served through state support and legitimation. The service must also be evidence-informed as part of securing legitimacy. This is related to the victims' desire for public recognition, vindication and validation of the injustice they have suffered.

VSF1a: "Just like this, just like the restorative practice, I believe there has to be government backing of this. I wouldn't be confident going into something that I didn't feel wasn't backed, if that makes sense... not just evidence based. I want to know that the Government is supporting this... That this just isn't a small group of people taking it upon themselves... I want to know that this is validated from the top... That it's recognised nationally, as being the correct procedure.

VSF1b: Even a procedure, not necessarily the 'correct', as there may be more than one way.

VSF1c: The way forward is that they [the politicians] are making a commitment to doing something; to putting this right... You can't come from the bottom up or the top down, but this should be both. I don't believe we should be dragging this up on our own and fixing this. This should be absolutely recognised and lobbied for.

Other victims are concerned about the need for funding for this service as they have a lot of experience of trying to find the funds for counselling services in many of the designated counselling services for victims of abuse that struggle constantly with budgetary and fiscal constraints. At the same time, victims want this to be a service funded by but independent of political control, as it must speak the truth and not be held hostage to any political agenda or ideology.

VSC1: I suppose, a big thing really is a resources issue because there is a lot of people looking for help and the support organisations are having their budgets slashed and this a problem... Very often and this doesn't happen for everybody, but a lot of people... [survivors] um... they're not living to their full potential and that manifests itself in lots of ways, including that they might not be working and if they are working, they are in low paid jobs, because part of the whole consequence is not striving for success or feeling able or not feeling good enough. So, a lot of people are actually, not high earners, you know what I mean?.. That they can't afford the services, but the reason is that they are very often not high flyers. They are not on high salaries... So, that took up ten or twenty years of their lives,

VSF1a: I would have a problem with the funding. If it goes mainstream and you are getting government funding, I just know looking at different people for different organisations now, how as soon as you are in that funding system are you are relying on funding, you shut up and you don't speak the truth VSF1b: It has to be independent, but it still has to have the government backing.

VSF1c: Yeah, but they have to be free to say what needs to be said without worrying about their funding going to cut.

b) Need to be Kept Well-Informed and In the Information Loop

A major practical consideration of general relevance to RESTORATIVE JUSTICE was the victims' desire to be kept well-informed of the process at all times. This need relates directly to the problem related to lack of information for any victims who were involved with the criminal justice process.

c) Procedural Flexibility

It also speaks to a general desire for procedural flexibility that will operate in the best interests of all.

5.5. Practicalities

1. Methods of Restorative Justice

It was evident that victims who had never experienced restorative justice and knew little about it until they received explanatory documents in advance of the interview had been thinking, imagining and fantasising about questions they wanted answers to from the offender. Although fearful of what the actual event might be and when it could happen, they had a deep need to understand the motivation behind the crime and to confront the offender. They stated that a face to face meeting in their view might be most effective in helping them regain the power they had lost as a result of the crime. While some indicated that time, distance from the event and emotional preparation and support was seen as key to the process, there was a strong sense that it should be the prerogative of the victim to choose where and when. Letter writing was seen as a precursor to a face-to-face meeting.

2. Timing of Restorative Justice

Victims and their families wanted flexibility with regard to the timing of restorative events.

3. Location of Restorative Justice

Important elements when deciding on locations included the need for the space to be safe, to be confidential, to avoid buildings recognised as designated for justice purposes. These were specified as Probation Building because they were identified with offenders. Prisons were also seen as safe. Therapy rooms recognised as places of emotional security was not seen as suitable with most victims expressing the view that the preferred option would be a designated restorative justice building.

4. Skills of Mediator

There were a lot of views expressed by victims about the skills qualities and qualifications required to be a restorative justice practitioner in sexual violence cases. The same concerns about facilitator skills/ qualifications arose again and again. “Impartiality and objectivity”, “compassion”, “ability to listen”, “trustworthiness”, “primary accredited training and qualifications in a psychological, social science and/or legal discipline”, “experience with victims of sexual violence and understanding the effects of sexual trauma”, “have an insight into the depth of pain which accompanies sexual trauma” “understanding of the dynamics of sexual violence”, “professional sensitivity” and “self-reflexivity” Victims stressed that facilitators must have an awareness of the potential risks of the restorative event, such as the physical safety of the victim and the offender and the risk of re-victimization of the victim, but they were also concerned that the facilitators, were they to lack sufficient knowledge of the effects of sexual trauma or the dynamics of sexual violence, that they too could, in their position as facilitators, re-victimise and re-traumatise the victim.

Victim survivors had views on how restorative justice services should be constructed. Most importantly they wanted services that are constructed in such a way that their ethos is client centred. That it is very much about meeting the individual need of the person who accesses the service and seeking to do that rather than a suite of services that people then, have to slot into in some form. Restorative justice services have to be very considered, very careful, very well constructed and subject to constant, ongoing review. The practice also needs to be subject to constant review and revision where necessary.

Conclusion

In concluding this chapter on restorative justice and sexual crime from the victims and their families perspectives it is clear that victims of sexual crime and their families express a need for restorative justice to be available for those victims who need it. Their reasons and considerations must become part of the national suite of justice responses that we make available to victims of crime as they rebuild their lives. It is emphasised in this chapter that restorative justice would not be wanted as an alternative justice system to the criminal justice system by victims of sexual crime, especially extra familial sexual crime, but rather as an additional justice initiative which would offer victims of sexual crime additional justice possibilities and opportunities.

End Notes

1 What kind of information would be included and discussed during the RJ event – contrasted against the strict information regulation in the CJS and Civ JS. An RJ system would have different norms and values underpinning the regulation of information, most importantly VS accountability and healing.

Restorative justice to me, which would hopefully involve face-to-face dialogue with the Offender, would contribute to my healing in numerous ways – both obvious and subtle. However overall, the act of answering or asking questions, as simple as it is, would help to ensure that two people, who had encountered each other on a previous occasion where the concept of humanity was nowhere to be seen, face each other in a humane situation. This is obviously extremely important and would contribute to my healing for the following reasons:

If I see this person in human form, through the act of asking / answering questions, then he no longer remains as this “monster” image that I have in my mind. This image is very damaging and essentially disempowers me as it has and will continue to evoke a feeling of fear within me. If he manages to become more human, even if the human I witness isn’t a particularly nice or pleasant human, then the image fades and I would hope to realise that he is not someone to perpetually fear, even if he is capable of the behaviour that had resulted in those traumatic years I lived. It is a question of deciding not to retain the monster image – because the monster image will certainly not contribute to any form of healing for a Victim.

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Secondly, it will help to ensure that the offender sees me as a human – someone who is capable of asking questions and answering them. If this assists him in seeing me as a human then he is much more likely to be able to understand or process to some degree what I am telling him regarding the impact that the crime had on my life. Therefore, I believe that the more he can view me “in my human form” the more he can truly hear and this will contribute more to my healing.

Overall, the very basic act of sitting down and asking or answering questions would show the Offender that I choose not to fear him any longer. For me this is very empowering, as I had feared him immensely during the assault itself. I had previously considered myself to be a courageous person, so the actual experience was extremely traumatic for me, in the sense that it annihilated that belief I had. However, if I was prepared to sit in a room with the same man who had violently assaulted me and threatened to kill me, then I am choosing to empower myself once again. This to me is a very profound and important step towards my full healing.

Finally, this act of sitting in front of the offender asking him questions will help to replace the memories that I have of him that have lingered in my mind for years. My memories of the violence that I experienced at his hands, and I am referring to physical violence etc., have never faded because I have never encountered him in any other context other than this. If I could sit in his presence, where I know he is not able to behave in this way towards me and knowing also perhaps he

does not wish to either, then those memories may just be replaced. It is a question of maintaining those memories of disempowerment or choosing to create new ones, where you were not disempowered in his presence. This, I know would contribute immensely towards my healing.

“If there is a genuine desire within Irish society to assist Victims of sexual violence overcome their experience, and to fully heal, then I believe that it should be a priority to make restorative justice available to them. From my experience, having gone through the Criminal Justice system and through multiple sessions of Counselling, I can confirm that I still have unmet needs that have prohibited me from fully healing. I fundamentally believe that these needs can be met through entering a restorative justice process with the person who offended against me. I know this because I now understand what those needs are and I understand why I have them. The needs that I have are very normal and very human and whether the crime is sexual or non-sexual (but of a personal nature i.e. assault), a person will inevitably have them. I always use the following (extremely simple) analogy when describing my need to those who cannot understand why I would wish to meet with the Offender in my case, and I also believe it’s useful for those who cannot imagine themselves being the victim of a sexual offence:

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Imagine that you were walking down the street one day, minding your own business and someone came up and punched you in your face and you fell over on to the ground. The person that does this then runs off. How would you feel? I think firstly most people would feel completely confused and it would take a while to understand what has happened. Then, once they begin to understand this, they might start to feel angry with the person who has done this to them and chase them down the street seeking revenge. They may remain in this state for some time, but eventually after the anger has worn off, they very logical question that they might have is “why? “Why did you do that to me?” “Why did you punch me in the face”?

This is what restorative justice can provide – the answer to those questions. This is when it is needed, at the last stage, when the anger and confusion have dissipated somewhat. For me it makes no difference whether the crime is sexual or non-sexual, that need is the same. The fact that it is sexual only enhances the need for restorative justice as the effects of the crime on a person’s life are much more profound and all-encompassing. If so many people are affected by sexual violence in Ireland, as the statistics would show, and the ultimate goal is to have a mentally healthy population, then restorative justice becomes an essential component. I am not saying that every Victim will want it or should want it, but in my opinion, it should most definitely be available to those that do - like me.”

Section

06





Offenders and their
Families: Restorative
Justice in Sexual
Violence Cases,
Opportunities and
Challenges?



This chapter examines the perspectives of offenders of sexual crime and two family members of men who have sexually offended: one mother of a young person who abused a child and one mother whose husband committed sexual abuse of their daughter aged fourteen years old. The information forming the basis of this chapter is drawn from the transcripts of five group interviews with offenders and one individual interview with one offender and one interview in which the two family members were interviewed together. Three group interviews and one individual interview with convicted offenders took place in a prison. One group comprised five men convicted of rape or other sexual crime of an adult; one comprised five men convicted of child sexual offences; one group of two men convicted of rape or sexual crime against an adult. One individual interview was with an man convicted of child sexual offences. Two group interviews were conducted with men living in the community and attending a treatment programme. One group comprised seven men, either convicted or awaiting proceedings in relation to child abuse or child pornography crimes, and one group comprised three men either convicted or in the middle of proceedings for child abuse or child pornography crimes. In total, 23 offenders and two family members were interviewed and those interviews form the basis of this chapter.

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The transcripts of the offender interviewees in this chapter are coded as follows:

Offenders (5) imprisoned and convicted of child sexual offences (O1PP)

Offender (1) imprisoned for a child sexual offence interviewed alone (O3PP)

Offenders (5) imprisoned and convicted for adult rape/ sexual crime (O6RP)

Offenders (2) imprisoned and convicted for adult rape/ sexual crime (O4RP)

Offenders (7) attending a treatment centre for child sexual and child pornography offences (O2MC)

Offenders (3) attending a treatment centre for child sexual and child pornography offences (O5MC)

Where more than one person participated in a group interview, individuals were not identified with additional codes. The letters a, b, c, d, e, f and g were randomly applied to group interviews to distinguish one speaker from the next.

The transcripts of the family members of offenders are coded as follows:

Mother of a young man who admitted to a first time sexual offence (FO1M)

Mother and wife who is herself a victim of abuse by a Catholic priest and whose husband has admitted to the sexual abuse of their fourteen-year-old daughter (FO2MW)

The analysis for each group will be discussed under the following headings:

Do We Need Restorative Justice in Cases of Sexual Violence?

Opportunities and Possibilities

Challenges and Obstacles

Other Considerations

The chapter will also offer a summary of the perspectives of the respondents on the practicalities involved in conducting a restorative programme in sexual violence cases in Ireland. The views expressed by the participants in this chapter were considered seriously in drawing up the conclusions and recommendations that are presented in the final part of this report.

6.1 Do We Need Restorative Justice

Overall, like the victim respondents discussed above, the offenders interviewed as part of this study were unanimously supportive of the creation of a restorative justice programme for cases of sexual violence in Ireland. Although they would fear such a process and may not initiate it, the view of offenders was that if they were asked to participate in a restorative meeting with their victim or victims, they would do so.

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As the interviews proceeded it became apparent that many offenders too have a need to meet their victim in a safe and facilitated dialogical environment.

O2MCb: I can't think of a crime where it would make more sense than a sexual crime.

O6PRa: I think it's a good thing. Because there's not enough like I say people knowing exactly what we're doing and why we're doing it. Why we committed the crime and then the impact of it on the families. I think it's a good thing.

O6PRc: I agree as well. I think it's great idea. Because I believe some of victims would like to see their offender even you know shout at them. If my victims would ask me to see they want to see me I would say of course, yes. It's no problem at all. But it's not every victim I believe who would want this

The families of offenders were unambiguous in their desire to see a restorative justice service established in Ireland in the wake of sexual violence

FO2MW: Yeah I would definitely think that it would be a good idea because it's em, it's kind of, you know, realising that offenders need help, that you're looking at a human side as well as the person, you know, doing the crime or doing the offending behaviour, so I think it would probably be a very good idea, and I think the fact that you're

willing to take a time-out to try and do something to help, not only the partners and wives or husbands or daughters and sons, but you're interested to find out how the offender has committed the crimes that they have committed so in that end I would think that it would probably be a very good idea. P6: FO1 6:41 (139:139)

Offenders expressed a wish that the system would be available to those who seek it, mainly victims, offenders and other affected parties. However, when compared to the victim respondents, a striking number of offenders (mainly the internet offenders or offenders convicted of possession of child pornography) responded that they themselves would not like to participate in a restorative justice event with their victim or the victim's family. However, as demonstrated above and later in this chapter, many contact offenders felt they would participate in a restorative event if requested to do so, although they would not initiate such themselves. Giving something back was part of their motivation.

6.2 Possibilities and Opportunities

a. 'Debts Owed', 'Giving Back', 'Moral Obligation'

A persistent and spontaneous response, not one that was solicited from the interviewer's lines of questioning, throughout the offender interviews was that of 'owing' the victim and others affected by their wrongdoing, and that this would propel their involvement in restorative justice were they requested to do so by the victim or any other of the injured parties.

One man serving a prison sentence for child sexual abuse would have welcomed an opportunity to meet with his victim and her family when he was on remand, in order to give them something back:

O1PPd: What I'd like to have been done differently is within that year that I was on remand I would have loved to have had the chance to meet with the family and sit down and give them something back, you know.

Men imprisoned for rape wished they had had an opportunity in court or through some other mechanism to speak to the victims in their cases.

O6RPa: I would have loved to explain my whole situation. Why I committed the crime. But I just hadn't got the confidence or nothing in myself to do it. And I was just told, "Right, you're going out, just stand up, say this that and the other and then sit down and we'll bring you back" and that was it. I was just rushed through.

O6RPb: It was hard for me. It was hard for me, because as I said I commit ... my first time in my life I commit such a horrible crime and I really didn't understand at the time what happened. And my victims were strangers for me, they was two innocent women completely and I really wanted somehow help them. I knew that I

can't because... So then I wrote two letters, apology letter, to her, to them, because actually the solicitor told me that would be good. So anyway I did it before he offered to me but after all I found out letters was never reached to these victims because the guards stopped it and I don't know what happened exactly but I found out, that was ... So I think .. sorry I think that's the choice of victims, if they want to hear something from me or not, but I think they should offer or tell them that you know I would like to say ... even sorry. But I don't think this ever happens.

One offender of child pornography said he would meet with a victim if requested to do so and he argued that offenders should not have a right to refuse, as they owed it to the victim to meet with them if requested to do so.

O2MCg: ... the very least I could do is facilitate them by letting them, answering their questions or if that's what they need to do. If they need that to move on then of course... I mean we certainly owe that, we would owe that to them, to do that... when it came down to it I'd say it would be very, very difficult, but I'm sure that I would get something out of it as well ... I don't think people would have a right to refuse.

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Of course, however, this is against the spirit of restorative justice whereby participation by the parties must be on a voluntary basis.

In the following quotes, the offender respondents outlined the powerful moral obligation to participate, including their debt to the victim and the redemptive potential offered by participating for the victim's benefit:

O2MCf: Yeah I think if a victim is in a sense almost brave enough to go through that, I think the very least, you know, you could do, is put aside your fears and how you would feel about it and engage in the process too. Like if you really want to do something for them, you know, this is your opportunity to do it, by way of... I suppose you redeem yourself but also you're kind of giving something back.

O5MCc: Because if you are truly over it, and have reconciled yourself to it, then you should be man enough to accommodate the victim. And if you are... if you are able to come back to it in so many years time and reach that point where you were prepared to accommodate the victim, then you are certainly over it. And that would be the measure of success.

b. Opportunity For Victim to Confront Offender If Necessary

The idea that the victim had a right to vigorously confront the offender emerged as part of what the offenders of contact abuse believed was their debt to the victims.

O1PPb: ... that's why that would be important, because my daughters' hate would like to see me dead like, and they're living with that hate

which must be difficult for them, because they're minding families of their own and this is spoiling their system, all this, for the rest of their lives, and I think it would be important to get their say, even if it was a real verbal abuse to the abuser, even if, I'm not looking for reconciliation with them but let them have their say and sit back, say nothing and take it and then get a chance to say, give a sort of an explanation of why you think it actually happened and it wasn't their fault. Like I think that's important because the court system like, it's all media backed and it's always in the papers but it's not direct...

O1PPa:... if the victim didn't accept my version of things at least she'd know where I'm coming from and she could say her piece or whatever like and I think it might take the anger out of it like and maybe help in her life in the future and I'd be happy to

O1PPb: Well like my daughter's still very angry with me, she wishes me dead like and this is 9 years after getting life and I put my hands up to guilt but there's never going to be forgiveness till maybe till this would happen. Or even if there is no forgiveness I'll still accept it like.

Related to the concept of 'debt owed', many offenders also articulated an acute understanding of their need to accept and take responsibility for their offending and for the consequences of their actions. The following man, awaiting trial for his offence of historical child sexual abuse, felt he owed it to the victim to answer her questions.

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O5MCa: For me, I think it's about doing the right thing as well because the victim earnestly is seeking answers to questions.. that they deal with on a daily basis. If we can give them answers that are genuine, honest, and from the heart, it's about doing the right thing. And it would do me as much good as the victim because it means me actually taking responsibility in doing something tangible that will hopefully help my victim in a way that would not arise if I get a fine or I get a suspended sentence or a custodial sentence because those questions will still exist unanswered in the victim's mind.

For another man who committed a rape against a stranger, the desire for restorative justice must be premised on the acknowledgement of responsibility for the offence and that this does not only rest on a guilty plea but when full realisation of responsibility has been taken.

O6RP: But I think there has to be mediation somewhere, whether it is between a group like this between victims and the offender and probably more of a spotlight put on it..... and this is what they're [offenders] trying to do like there is people that don't want to change..... it's not even that they don't want to change, there's people that don't think what they were doing there's anything wrong with it, you know. And that's the first step. Like my first step was actually, even though I went guilty, for a good eighteen months

I was still saying “you wouldn’t do this” you know what I mean. “I know it’s there in black and white but you’ve never done anything like this before and that’s not you down there”. And it was only kinda the acceptance after that And it was the acceptance of doing it and then getting to somewhere like this and talking responsibility

c. For the Benefit of the Victim: Asking Questions and Answering Honestly

Most of the offender respondents would see a restorative event as centring on the needs of the victim, first and foremost. The following quote outlines a respondent’s view that the RJ system should offer a voice for victims who are unheard through the courts and the existing legal mechanisms of accountability for sexual violence:

O1PPc: Well obviously there are an enormous amount of voiceless victims out there who would like to have a voice and I think that this is a very constructive and, it’s progress for them, because for years they’ve gone unheard... So I think this restorative justice will give them a voice and give them a say... if it prevents crime in the future like that’s going to be a very big help...

Many of the offenders are keenly aware of the victim’s need to understand the sexual violence that he or she suffered and may have questions about this.

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O1PPd: I think it’s important as well for the healing process of the victim as well, for answers. I’m sure they have questions that would need to be answered as well, not them all but some anyhow. And when it’s an actual family member that has been abused, the way the family itself is torn asunder, you know so it’s not only the victim but the other members of the family as well, to talk to them as well like, to try to get the family unit back if possible like, in some form.

d. Apology and Expression of Sorrow

Almost all of the offenders interviewed for this study articulated a strong desire to apologise to the victim, and they thought an apology would form a central component of an offender’s participation in any RJ process, for the benefit of the victim and also for the offender themselves.

Interviewer: So if you were going to communicate with your survivor, what would you want to tell them?

O1PPe: Well just to get it across, I mean you get to the stage you’re so sorry, you get sick of being sorry because you’re not telling the victim, you know that way, so you go through years and years of being sorry and you get fed up of being sorry you know because you can’t express that to the person that you should be, you know, and I think that’s a very important part for the perpetrator himself, to actually get that out you know.

O1PPa: That's why this [restorative justice] system would be very important, you know just to apologise...

Offenders' desire to apologise was also tied into a wish to explain their actions in detail in the hope that it could offer the victims some insight into the violence, and, possibly, some reassurance, closure or healing. However, offenders felt that they could only do that when they understood themselves why they had acted in such an abusive manner, and often this only came following therapy for sexual offending.

O1PPb: ... me personally, I would like to meet my victim to explain why I done what I done, to let them know that there was something behind me that was pushing me to do that and I apologise wholeheartedly to put the victim at ease, to let them know that this isn't going to happen again. So that they're understanding why I committed the crime and for them to ask questions 'why me, why was it me, not somebody else' but without the course, going through the course, you won't be able to do that, you need to have answers to give the victim.

For the following offender, to be of real significance, the apology must be given directly to the victim, face-to-face:

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O1PPc: You're saying sorry inside in the group sessions or one to one but they're not the people who need to hear it. It's the victim that needs to hear it. And the victim has more say in hearing it than a psychologist would. I'd prefer to be sitting in front of my victim and tell them.

The relationship between healing for the victim, and also for the offender, and the offender's apology were also a relevant concern for offenders who might take part in the restorative process:

O1PPd: And obviously the greatest impact of that would be to your victim. The impact would rebound on you as well. Because to be given that opportunity to express your sorrow like is, I would imagine, is for all people, well for me anyway, would go greatly to my healing, you know.

The following offender viewed his apology as having a restorative component for the victim's benefit:

O1PPe: I'd like to be given the opportunity to apologise to my victims and to express my deepest feelings, so they'd have some sense of justice for themselves and give them back their dignity and restore the person to themselves.

e. Desire to See Victims Move on with Their Lives

While influenced by guilt and remorse over the damage his actions had caused, the following offender was also motivated by a desire for reassurance that the trauma of the rape had not destroyed her life and that she had been able to move on with her life.

O6PR: I've always wanted to see how the victim is getting on because if I know she is getting on in life and being happy and carrying on, that would be a great relief to me because the thoughts of her, if the pain was that great, and she couldn't cope with life, and I caused that, that would have a very major impact on me. Now I think mediation is not just... I know it's for the victim and needed by the victim .. it's actually good for both sides. And I found, the little things I do hear about my victim and how well she's doing, just lifts me up. I'm glad to hear. And eh as I says .. I think someone mentioned it here that the crime didn't overpower, the crime didn't overpower her or I have no power over her.

f. Forgiveness

Forgiveness was something that some offenders desired and they hoped it might happen through restorative justice.

O3PP: Because, people need to realise the damage has been done, they need to try to bring forgiveness to the wrongs, now I now sometimes that can be hard, but if people they can't bring forgiveness then your model of Restorative Justice will never work.

Interviewer: So, you think forgiveness is an essential part of Restorative Justice?

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I believe so. Yes. To accept the wrongs, the realise that you've hurt another person, for them to realise that they have been hurt by you and still there's a God above us all who adamantly asks all of us to forgive so that he may forgive us.

Another offender said he hopes for forgiveness for the benefit of the victims:

O6RPc: I would expect to be forgiven in the sense, not to make me feel better. If she could forgive she's healing herself. If she has the power to do that, it's like what he said there about eh that he doesn't want him to rot in jail. ... There's a certain amount of forgiveness there. There has to be that because for the person herself, whether she forgives me or not. Is it important to me? It is. Very important to me, because eh, then I know there's a healing process happening. If she doesn't forgive, if she can't forgive, I think then there's going to be anger and resentment and she's going to have problems in her own life. So I think it's important yeah.

g. Healing for Victim, Offender and Other Family Members

Similar to the victim respondents, the offender groups time and again the importance of some form of facilitated dialogue between the relevant parties, as part of the healing for both victim and offender and for other family members.

One offender wished he had had an opportunity to meet with the offender who sexually victimised him as a child, because it would have

been empowering, and he imagined the same might be true for his own victim.

O1PPa: Well I think for the survivor to come face-to-face [with the offender] and have that courage and... with all that shame and guilt that they have themselves, and come forward and meet that person and look them in the eye, is probably enough, for them in a sense. For me that would be a huge impact. As it was, if I had gotten that chance and I think seeing that person [his offender] would have had a huge impact, not even just hearing sorry but seeing that person and being able to have the courage to be able to do that, to come forward [to stand up]. I think that's empowering in itself and that will give that survivor more... more strength.

The following respondent in the same group interview anticipated this mutually beneficial dynamic through the open dialogue in the RJ process, but he still expected the victim to be the principal beneficiary from the process:

O1PPb: Oh I think this is a great idea, you know I think it gives a voice to both parties. It allows people to express their feelings and remorse and whatever comes from that. I think the survivors need that, much more so than the perpetrator because the perpetrator in prison has had that. I think it's a great idea. I think moving forward in this would help a lot of people.

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As with a number of victims, many offenders saw the restorative event as offering all parties, including the offender and their intimate known systems (family, friends and local community), some benefit and healing.

OMC2c: And if from my own point of view, if it's approached from that basis that there's a why, then you're healing too. I think that that would be a positive, that there's actually healing going on, on both sides... I mean because we have to see it from our point of view as well as from the victim's point of view. You know there would have to be something... something in it for us that's not the right expression really, but, you know, otherwise it just wouldn't happen, you know. I imagine. I could be wrong.

One respondent truly desired some sort of redemption and asked the rhetorical question whether it could happen through his participation in restorative justice:

O2MCc: it's looking for a sort of redemption as well I think.

Family reconciliation work was high on the agenda of family members of offender. There is a desire to prevent family division as much as possible. The benefits of a solid family structure were mutually agreed amongst the participants interviewed. Restorative Justice could be used as a tool to keep the family structure intact and reconcile any familial difficulties that had arisen.

FO2MW: It is. Very important... I think especially when you're married. You're married and you've children and you've... So much, yeah. It's huge. It's really huge. Nobody, I mean I'm not speaking for everybody, but most people don't want their marriages to end up in not working out and for things going wrong, so yes, I think definitely if it's a work, if people can work through trying to reconcile a new life in a different surroundings in themselves with their life, with whatever family they have together and if people are willing to maybe try and come to terms with, it does take time though... Well even children don't want to see the family fall apart.

Not all family members are willing to meet their sexual offending relative. Resulting emotions such as anger expressed by family members can be a barrier to restorative justice, but in time restorative justice could be beneficial for family reconciliation, if both parties should desire it.

Restorative Justice has the potential to include all members of the family, thus creating a healing environment for both primary and secondary victims. The experience of restorative justice itself had been very positive, when one of the interviewee's daughters went to meet her offender.

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 FV2MW: ... Yes obviously when you're talking about developing the programme I would see that if it did include the wider family, like as I say, what we're doing here, like we came in and we said look, we've gone this far, we're supporting our son but we still feel there's this to be done and can you help us? And that's where Irene is coming in and saying 'yes ok, we have to get so far with him and then at that point we can start bringing you in as a family and it's developing as we go along but, you know, as she said, she hasn't had many situations where a family has been willing to do this, you know, and I suppose part of it is a denial isn't it?..

h. Restorative Justice Would Fill a Gap in the Justice System

O5MCc: But there is a lacuna there in the judicial process, at the moment, the punitive system of dealing with this issue. So for that reason, anything that, you know, a shaping of the restorative justice that would answer that lack in the punitive side is... I'd certainly cooperate 100% with that. Provided the victim wants it.

However, one offender felt that even if their own victim was unwilling to meet, the process should still be open to a willing offender by using the alternative mechanism of a surrogate offender. This should happen the other way round too for victims, he suggested.

O5MCb: ... if you give it all back to the victim, saying if the victim doesn't want to participate, that denies the right to the offender to something that would be of benefit to them. And you're going to turn them into... making a victim of them as well... That if the process... if you have a case where victims opt in and therefore

the offender opts in and if one victim, another victim doesn't opt in, and therefore their offender are denied that right to opt into a process that could actually benefit them... I don't think you can do that. I just don't see, I wouldn't see that working. I think the process should be able to deal with people who... people... both sides, even in the absence of the others, and in the absence of the other, because the other may not simply want it or not even be there, you know where I'm going with that... maybe surrogate victims or surrogate offenders

The current criminal justice system is adequate in the eyes of the state, but not in the eyes of the people who have to go through it, according to the two families of offenders. For them, the state had shown little interest in suggesting or endorsing restorative justice in sexual violence cases, leaving that responsibility to NGOs such as CARI and One in Four.

FO1M: So it's something very new. Do you sense openness for something other than the current justice system in Ireland? Is there out there any sense of something different, that it's there, they're not quite naming what it is but there is a sense? We want to do it differently or? >No I think they're quite happy doing it the way they're doing it and, I feel, that there's not really much leeway out there, on them themselves, you know. It really takes places like here and like CARI for support, like, and for them to open up and say yes this is happening, this is real life and we've got to deal with it.

FO2MW: Because the justice system itself. It's people, it's human beings, and everybody has a different agenda it seems you know and it's something my husband always says. If you're dealing with humans, you know. P6: FO1 6:48 (159:159)

People who have a personal experience of sexual abuse have a greater understanding of the needs of victim survivors, and are therefore in a better position to make state decisions in relation to sexual abuse. The state should listen to families of victims and families of offenders.

FO1M: And also, if they haven't, something that's just coming to my mind when you're saying that, if they haven't themselves experienced sexual abuse in their own lives or relation, relative-wise, say their brothers in law, sisters in law, somewhere along the line, if they haven't experienced any of the knowledge of that how can they understand, how can they help somebody else?

6.3 Challenges and Obstacles

a. Victim and/or Offender Has Moved On with His or Her Life

It was interesting to note that a reason some offenders would not initiate restorative justice was because they thought the victim might have moved on with their lives. We found that victims also thought that the offender had moved on with his/her life, while in some cases neither is adequately able to do so without a dialogue together.

A frequent reason offered by the child pornography offenders for their disinclination towards meeting their own victim was that they had moved on with their lives and did not want to re-explore their wrongdoing with the victim.

O2MC: It sounds, like, good. but for me I wouldn't... , if I was to talk to a victim of a child pornography in a couple of years I'd rather have moved on from that. It's in the past. I, personally wouldn't want to talk to them. That's in the past. I've moved on now, you know... I would hope that I would have moved on to a stage where I don't need to ever, I could see how someone who had been abused might want to talk directly to their abuser but... I had child pornography on my computer.

O3RP: Well, as I have said, they have now gotten older, they have probably got on with their lives and in all honesty, that is the case; and uh... to open the old wounds may be more harm than good... I would have to treat it very, very carefully.

b. Fear and Shame

Perhaps more understandably, a number of offender respondents said they were disinclined towards meeting their own victim due to fear and shame:

O2MC: I'd consider it alright but then again I still wouldn't like to meet her... it would be very difficult.

A significant obstacle to offender participation in a restorative event, clearly articulated in the following quote, is that of the offender's own shame:

O5MCb: um, yeah, I don't know. I really don't know. I can only look at it from my perspective, and I would.. I wouldn't willingly go into it because of my own shame, first of all, my own guilt, and my own sense of... you know, I suppose, yeah, guilt and shame are the two best words to express it... and to have to go into a room and face people who I offended against, um, would be a very difficult thing to agree to, you know, so... To say I'd go into it with open... to embrace it with both arms – no, I wouldn't.

O5MCc:... The biggest fear for me was going into the court the first day and actually the victims being there, and having to face them in court, you know. The trauma of that was massive, um, never mind going through a process, um, with them. It was totally... I didn't want to go there. As it turned out, they have never been at a court hearing, you know.

c. *Earlier Discouraged from Apologising or Having any Communication with Victim*

Some offenders describe how social work services, the Probation Service or the gardaí had blocked attempts made by them to contact the victim with the intention of apologising.

O1PPa: ... the four years I was waiting I was getting counselling and psyche as well, I was trying to propose like having a supervised meeting with my victim to apologise to them during that period but they wouldn't hear tell of it... the welfare crowd, like, the welfare crowd they wouldn't hear tell of it, they wouldn't agree to any meetings or nothing...

But offenders were also cognisant of the apprehension state employees had over re-victimising the victim, even if that meant that the state took over decision-making powers from the victim and removed their choice from them.

O1PPb: Do you think that request was forwarded on to the victim?

O1PPb: No, not whatsoever.

O1PPa: It's... like, they don't even consider it here, like it's not.

O1PPc: The way they're looking at it like they don't want to upset the victim anymore with what they're going through but if the victim is an open-minded person and they say yeah ok, you know what I mean, let them sit down with their people to talk it through.

O1PPa: But the system doesn't allow that at the moment.

O1PPb: They should be given a choice, definitely given a choice, like I don't agree.

Offenders were also aware that their wish to apologise pre-sentence or post-sentence might not be welcomed by the victim and they relied on the police or legal advisors to advice on this course of action—often being dissuaded from same. We saw from the victims' perspective that many would have welcomed a sincere apology at any stage of the proceedings, even at the pre-sentence stage.

O6PRe: And my victims were strangers for me, they were two innocent women completely and I really wanted somehow to help them. I knew that I can't because... So then I wrote two letters, apology letter, to her, to them, because actually the solicitor told me that would be good. So anyway I did it before he offered to me but after all I found out the letters were never reached to these victims because the guards stopped it and I don't know what happened exactly but I found out, that was ... So... I think that's the choice of victims, if they want to hear something from me or not, but I think they should offer or tell them that you know I would like to say ... even sorry. But I don't think this ever happens.

O6PRa: There's two, this letter still exist, my solicitors still have in his office but it's not, never was given to them.... My judge knew it about these letters but I don't know what happened, that never these letters was read from them or something.

For this offender, who was imprisoned for the rape of two strangers, a letter of apology which he wrote was read out in court by the judge when the sentence was imposed. He was happy to have even this small means of saying sorry for what he had done.

O6PRd: I wrote an apology letter which she heard in the court. It was read out by the judge you know, like it seemed to have been received well, as well as they could be. There was no crap about it, there was no anything about it.

However offenders were not blind to the knowledge that an apology, either pre-sentence or at the sentence stage of the criminal process, might be experienced by the victim and by agents of the criminal justice system as a self-serving mechanism for the offender.

One man who was an acquaintance of the woman he had raped had wanted to apologise during the sentencing stage of the criminal proceedings—especially after hearing her victim impact statement even more so—but he was hindered in doing so by An Garda Síochána, he suggested. Offenders being dissuaded from apologising to victims by members of the criminal justice system (mainly police officers, probation officers and solicitors, and even in circumstances of a guilty plea) was not uncommon in this study. This is an interesting finding, especially when one considers what victims want at the earliest opportunity is acknowledgement of wrongdoing and, if possible, an expression of sorrow by means of an apology.

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The question is posed by this research as to whether there needs to be a policy change in the core criminal justice services—police, solicitors, barristers and the probation service—in keeping an openness to conveying the offender's wish to apologise or speak to the victim at post-arrest and pre-sentence, but only when a guilty plea has been entered. It also emerges in this research that therapists for offenders often know the offender is going to plead guilty before the victim, especially when, for legal reasons, the offender pleads guilty late in the criminal justice process, which leaves the victim believing he is denying the charges, and which can result in further suffering. Could there be consideration on the part of therapy agencies in consultation with defence lawyers that if the offender intends to plead guilty, this is communicated to the victim?

A designated support service set in a number of police stations would be best placed to provide information for victims and the families of offenders.

O6PRe: Yeah, I heard her statement [in the book of evidence] and eh I have to say that was worse than the courts and prison itself,

to be honest. I couldn't take it back, I couldn't undo what I'd done. I'm like J, I wrote a letter but I couldn't send it. I did text, but I was told not to text. The guards came to me and said to me I'm not to contact at all, whatsoever, say nothing, and I says "OK". Em ... that was hard to swallow because I really wanted to apologise deeply to her, you know, for the pain I caused. The impact of that really made me see my wrong. I mean I know wrong is wrong, and you're doing wrong... so when I was going through the court system, I knew I was up in court and it's only court system and that's it, and I done wrong and that's it. But when I heard the statement of my victim it really impressed upon me, and deeply into me that the wrong I really did commit. It's only when I heard her statement that I realised how wrong I really did do, and that had a great impact on me... How do you help the person you've harmed, you know? And that's the part that really got to me.

Another man who raped an acquaintance of ten years and who also tried to text and telephone his victim was understandably cautioned against this behaviour by the gardaí and by the victim herself:

O6PRC: I even phoned her, I was talking to her. I know her so well, like you know. She just wasn't having it like, you know ... I wouldn't blame her like you know but eh It was just sheer madness on the night like. It was just .. I was like a man possessed over the drink and the drugs and everything like you know. I was very angry at life anyway.

The above cases must raise a question that in circumstances where a man is making a guilty plea, what really is to stop a facilitated restorative meeting from taking place between the victim and offender, if both parties so decide, so that questions and statements can be made. The outcome of this meeting would be completely separate from the criminal proceedings and would have no bearing on the outcome of the criminal trial. It would simply afford both parties an opportunity to meet some of their needs.

For another man, knowing how to get an apology into court, and more important, to the victim, caused him some concern:

O6RPd: Yeah but who do you go through? You go to your solicitor, you go to your barrister like. Well you go to your solicitor and they tell you "well look it, there's no real point". I mean I've had me solicitor since I was fifteen/sixteen when I start getting into trouble, so he really looks out for me, he does, like you know. They fight your corner the whole lot. What's the point? You can't go through the Guards. The Guards won't let you near them and you know.....

Victims or offenders not knowing where to go for help beyond the obvious 'get oneself a lawyer' is very much exposed in this research, pointing to the need for a victim and offender support service attached to designated

garda offices. These designated staff would work on restorative and support issues with victims, and restorative issues with offenders, and it could point them to the relevant sex offender treatment programmes, restorative programmes and support services that they might require.

d. Stigma and Public Awareness

Some offender respondents tackled the complex issue of the stigma that they live with as a result of their sexual crime. Fear of further public exposure and vilification even by involvement in restorative justice was a real concern.

O2MC: ... There's such a stigmatisation attached to this that that's why people don't come forward and get help... I'd have done this 20 years ago if I knew how I was going to be treated by the facilitators, by the people in the group and that with... and I have to say with the respect and understanding that... and partly I'm actually shocked, because you know you think horrible things about yourself and to be treated with a sort of 'well you know there's a reason why you did this and we're going to get to the bottom of it' and you're treated as a person, I mean that's massive. If I'd have known that when I was 20 / 25 I'd have done this [therapy] when I was that age... If I'd known that there was some place available for me to go, I'd have gone there.

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While all offenders felt cut to the bone by the way they had been treated by the media, one imprisoned man linked media sales of newspapers to an unhealthy attitude towards sexual offenders that was crippling.

O3PP: They've hounded offenders into the ground, because there's a means of the selling newspapers.

O1PP: It's like a life sentence

e. Offender's Need for Safety and Living with the Emotional Trauma

The following offender response outlines his fear for his own safety and emotional trauma as a result of participating in the restorative justice process:

O5MC: you know, I can only think of myself first, to be honest... and you know, I have empathy for my victim, um, I know what I did was very wrong, I'm sure it had a huge effect on my victim. Um, but going forward, you know, I have to protect myself and, you know, would it do me good? ... Maybe it would.

f. Victim Chose Criminal Justice Route

One child offender, who was now living in the community and attending for treatment, resented how his victim had chosen to pursue the criminal justice route, even after he had made representation to him to engage in a more restorative process, and that this experience would disincline him towards engaging with him now:

O5MCb: ... I must say I have questions about this in a way that.. I mean, my victim has basically chosen to go down the judicial road... and whether he's... whether he's got any satisfaction, or contentment, or whatever, out of doing that, I don't know. But that was his choice. And obviously, whether I had any choice in it or not is beside the point, I had to face that... the judicial process, which I've done. And, uh, I think at some stage there has to be some kind of a cut-off, so that, if he has chosen that... that road, that I should go down that road, well I've gone down that road. And I would think twice about doing more than that now, at this stage.

Interviewer:... at this point...

O5MCa: ... at this stage... I offered it before, that's not what he wanted, but I did what he wanted, and I... in some ways I feel that should be enough, I think, you know. He has made a choice, I have complied, and I don't feel that it's healthy for either of us to continue sort of hounding each other either, you know. I think I've... I've walked down that road as far as, you know, in the end I had no choice, but I did go down that road, and so... I'm a bit reluctant to sort of say, well, yeah, I still want to have a... a session with him. I would think long and hard about that before I'd accept, yeah.

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One offender was concerned about the motives behind his victims hypothetical reasons for wanting to engage, especially having already been through the criminal justice process:

O5MCc: for me it's more... you know, I would be open to anything, but having gone through the... the judicial process, I'm at a different space, I think and I would say at this stage, before I would respond to anything, regardless of by what means, I would want to know why does he want this? What is his motivation, now? I would want to know that, and based on... on his motivation, I would take my... my decision.

g. Adversarial Culture of Justice

The pervasive adversarial legal culture in the wider framework of justice provision also arose as a potential obstacle to offender participation in restorative justice:

O5MC: because the system in this country, the system is adversarial. It's not about, it's not about resolution or conflict resolution or dispute resolution. It is set up as an adversarial system and until that culture changes you are in a very... A lot of people are not going to have faith in it. And particularly, perhaps, offenders would have less faith if they're going to leave them exposed and they're taken on again would be... The offenders and their families... you have to take their families into consideration here. But if they're risking... if there's a risk of... if there's a risk attached to this process...

h. Court Orders Prohibiting Offenders from Contact with Victim

A few offenders voiced their concerns about the impact of court barring orders prohibiting the offender from contacting the victims, and how this would impact on any requests for restorative justice

O5MCc: Well I know in my case I have a very clear, uh, instruction, mandate whatever it is, not in any way or in any circumstances to approach my victim. So I... I've no choice in that... I'm barred from meeting him

i. Offender Cannot Explain His Actions

One offender described his inability to explain his actions and wrongdoing:

O4RP: I've no, I've, honest to God, I've no way of explaining it. It was spur of the moment... It was... I don't know what... It was me alcoholism—I was reckless, a fool. I've no answers.

6.4 Other Considerations for Offenders

a. The Relationship between Restorative Justice and the Criminal Justice System

Some offenders were acutely aware of the risks for the offender, in relation to criminal convictions, associated with participation before the conclusion of the criminal justice process. They were concerned about self-incrimination and due process:

O2MCa: But I suppose if you had a solicitor they would probably advise you against doing it if you hadn't been in court yet.

O2MCb: You'd be making admissions etc, probably, yeah.

O2MCc: But I mean if you're serious about it that may not matter so much, you know. I mean I don't know, I'm sorry I'm just saying what I think

O5MCc: I suppose, there's something... that's come to mind: what would the legal position on such a form of communication be? You know, as part of the process... because you could be... would you be... and depending where you are in the process. I mean, you're at the end of the process, [inaudible, possibly: you're left to be... would be left out libel form] would be a civil suit or something like that. How would... how would this form of communication... could you... You've already been, you've already done... you've already been punished once, would you be punished again? Would there be any safeguards in such a form of communication?

b. Offenders Had a Need for the Victim's Validation of Restorative Justice

An interesting issue emerged during this research in that the offenders desired the victims' validation of restorative justice, while victims desired the state's validation of it. Their willingness to participate in restorative justice was dependent on the victim's willingness and desire to do it because it would be a good thing to do.

O1PP: And what would give me the confidence to move forward is that that's exactly what they would want you know, the survivor wants to meet us, to meet myself like. If that's what they wanted I'd feel more confident to move forward.

c. Institutional Inertia

Some offenders were anxious about depending on the state to provide for a system of restorative justice in cases of sexual violence, articulating a need for stakeholders to be proactive themselves in bringing about such a system:

O5MCc: Maybe before we go on to that, like, the other thing that comes to my mind here is that, when you talk about the Prison Service considering restorative justice currently... if we depend on government services to establish something like that, it might be a long wait. So, you know, can... can this... can society, you know, avail of this opportunity in other ways, without the intervention of government, or whatever? In other words, we have the skills, we have the people there, you know, can we not, without government, still offer that kind of process?

d. Social Violence, Restorative Justice and Societal Reconciliation

It emerged in the histories of many of the offender participants in this study that they had suffered adversity in their childhoods and earlier lives and this emerged as a possible area that could also be considered from a restorative point of view. The following child sex offender was concerned about the debt he owed to society, rather than to victims, and the additional debt he perceived society owed him:

O5MCb: To go back to my family history, there's a history of mental illness in my family, and just the whole stigma attached to that. Now I'd have to admit, when you look at the advertising and all that, yes, they are making amends, they're trying to make amends, but I don't know whether that fits in a context of restorative justice. If I was to ask society for restorative justice, how are they going to restore the injustices that were done to me in my life, as a child? But I don't know if that's within the context of your research. I suppose it comes back to the question... I owe society... I wonder if I owe society something for what I've done. But what does society owe me in response? If I'm prepared to go into therapy, and prepared to take my punishment, what does society owe me once

that punishment has been done? Because the stigma that there's going to be... there was a stigma attached to mental illness when I was growing up, and now there will be another stigma attached if and when I go through the court system. So when will my crime be expunged?

Another offender respondent described his desire for societal reconciliation through his participation in an RJ process:

O5MCa: ... I would actually have the chance to say my piece, to the whole process and reconcile... and my reconciliation process with society and with society, actually... I am a member of my own... I am a member of this Irish society and its impact on me is where I... has got... because I don't believe we're born like the way we turned out, this is a learned, a learned experience, so it would be part of my reconciliation process with society...

e. Complexity of Intra-Familial Sexual Violence

A persistent concern from intra-familial offenders centred on whether, due to the unique complexity of intra-familial sexual violence, any effective healing or closure could be achieved through a restorative process. Because of the on-going relational ties that involved in families could the sexual abuse could never fully be healed or would it be always ready to be raised at difficult times in the family's life.

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O1PPd: I would find that if it's a family member that has been hurt it's harder to pull back from that than I suppose a total stranger, within the family it's a harder situation than it would be with an outsider.

Interviewer: And are you saying that that would make the restorative process more difficult?

O1PPd: Within the family it would. Yeah because what can happen is that even if the two parties come together and they apologise, or the perpetrator apologises to the victim and it's laid to rest depending on the mentality of the two people, that it's put to bed now, what's happened has happened and let's move on with our lives. But if it's a family member it's always going to be thrown out in an argument, you know what I mean. But if it's not a member of the family and it's a complete stranger you're not going to have that argument because the complete stranger won't be there.

A non-familial offender against a minor offered the following perspective:

O1PPe: My crime wasn't with a member of my family but if it was with a member of my family I could never see that person again

Interviewer: you could never see them again, even if they wanted it?

O1PPe: I could never see them again, even if they wanted it, because I'm the one who committed the crime. I just wouldn't, because, out of... for their respect, because I invaded their privacy and I couldn't bring myself to meet that person because they're my flesh and blood. I couldn't bring myself to do it

f. Management of Stakeholder Expectations

The following offender respondent outlined the need for realism and the management of stakeholder expectations in relation to the practical potential of a system of restorative justice in addressing sexual violence in Ireland and saw it as only one element of justice:

O5Cma: ... So there has to be a bit of realism in what you look for and you also have to be careful, or I have to be careful not to look for an easy ride out of the system either. Because I have to take personal for what I did and I feel that I do have a debt to society through the other process. I do agree as well when people say that Restorative justice can be a lot harder on the offender than the ordinary run of the mill stuff.

One offender, while also being cognisant of the real risk of re-victimisation during the meeting, was sceptical of the 'happy endings' media portrayal of restorative events.

O5MCb: ... a lot of the ones that are televised are ones where there have been good outcomes, you know, and it all seems, you know, best mates after it. I don't think that happens very often at all, and human nature being what it is, if it doesn't work out the way it was intended, it can have even more drastic effects on either victim or perpetrator, if it doesn't work out well, you know.

6.5 Practicalities

6.5.1 Models of Restorative Justice

The offenders preferred model of restorative justice was influenced by their understanding of the vulnerability of victims and a desire not to re-victimise the victims through a restorative justice process. Although offenders were wary of face-to-face meetings with their victims, they were open to it, with some expressing the view that getting their thoughts down on paper and writing a letter could help their ability to express their views verbally in advance of such a meeting. Another offender indicated that he found it extremely difficult to write because it brought him face-to-face with what he had done.

6.5.2 Timing and Location of Restorative Justice

The general consensus among the offender responses was that restorative justice should be available at all times. All felt uncomfortable that the meeting should take place in a prison or probation building, describing them as a 'hostile environment'; at best they felt a designated neutral building would be helpful. All indicated that restorative justice

should be available at all times, but that it should be a voluntary process with no blame attached to anyone who wished to 'opt out' of it. There was a lack of consensus among offenders regarding the availability of restorative justice for those cases which do not progress past the Director of Public Prosecutions, while one interviewee stressed the punishment he experienced in waiting for his case to come to court – a view that was also felt by victim respondents.

6.5.3 Skills of Facilitator/Mediator

Most offenders named the same skills needed from a mediator/facilitator that the victim did. The important of being dealt with in an even-handed, professional, neutral and non-judgemental manner was seen as important, as well as being 'kept in the information loop'. Being a good listener, giving appropriate feedback, and being encouraging and building confidence and trust in the process were also important. Some stated that they didn't want to risk further victimisation of the victim and they also stressed the need for support for the victim and themselves after the meeting was over.

Conclusion

From the extensive data analysed in this chapter, it is clear that offenders and their families want restorative justice for many reasons. Whilst it would pose considerable challenges for them and the legal relationship between criminal justice and restorative justice systems requires serious analysis and resolution, these challenges are by no means insurmountable. As an opportunity to make amends for wrongdoing these men deserve such a restorative service. Their families who suffer from their beloved family member's wrongdoing can also only benefit from its initiation.

Section

07





Legislators
and Criminal
Justice Personnel:
Perspectives
on Restorative Justice
in Sexual Violence
Cases, Opportunities
and Challenges



This chapter examines the perspectives of legislators and criminal justice personnel on restorative justice in sexual violence cases. The information forming the basis of this chapter is drawn from the transcripts of 27 individual and group interviews comprising 41 respondents in all.

The chapter has been divided into the responses of six distinct groups, namely; 1, Judges; 2, Politicians; 3, Legal Professionals; 4, Juvenile Liaison Officers of An Garda Síochána; 5, Staff and Management of the Irish Prison Service; and 6, Staff of the Irish Probation Service. The analysis for each group will be discussed under the following headings:

- Do we need Restorative Justice in Cases of Sexual Violence?
- Opportunities and Possibilities
- Challenges and Obstacles
- Other Considerations

The chapter will also offer a summary of the perspectives of each cohort on the practicalities involved in conducting a restorative programme in sexual violence cases in Ireland. The views expressed by respondents revealed both similarities and divergences and all the views expressed are considered in drawing up the conclusions and recommendations that are presented in the final part of this report.

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7.1. Perspectives of Judges

Seven judges were interviewed, all individually, for the purposes of this research. One judge preferred that the interview was not recorded but permitted the interviewer to take notes. In this section the views expressed by the seven judges in relation to restorative justice in sexual violence cases are presented and considered under the headings outlined above.

7.1.1 Do we need Restorative Justice?

In response to the question ‘do we need Restorative Justice?’ the participants expressed varying views. Overall, the predominant reaction was one of openness and interest.

Four of the judges were supportive of the implementation of a restorative justice programme and were amenable to its use in sexual offence cases.

J3: I don't have the slightest doubt that it should be made available and the sooner the better as far as I'm concerned.

J5: I think there is scope for restorative justice in Ireland within a set of conditions which could be stipulated in a suspended sentence.

While J1 was open to the idea of restorative justice, this participant did emphasise he/she would need professional support and evidence to ascertain whether it was appropriate to use for a case:

J1: I have no difficulty in Restorative Justice being made part of the system, I would have the concerns, I would need you know a lot of

prompting and a lot of evidence that it's an appropriate disposal em for a case em and that would include a lot of professional help in that regard em and I would want to know that it was an equal outcome

Two judges, however, were less disposed towards the idea of using restorative justice in cases of sexual offences. J2 was very interested in restorative justice, but held some 'grave reservations' about its use in cases of sexual offences. J6 was open to learning more about restorative justice in general but was also hesitant about its use in sexual offence cases:

The judges as a group were strong advocates of the criminal justice system and emphasised the continuing importance of due process and providing a fair trial. There was general consensus that restorative justice should be used in conjunction with the current criminal justice system:

J3: I do think that in fact a serious criminal offence like rape obviously or murder obviously, this person should receive serious sanction and it means imprisonment, and imprisonment for a substantial period of time. So that is corrective justice it's not restorative justice. I think that restorative justice can come into play after that has been dealt with.

Three of the judges had previous experience with restorative justice. J1 was very positive about the work done in the Tallaght Restorative Justice Service.

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This participant struggled, however, to find suitable candidates to recommend for restorative justice in the court room; feeling they (the candidates) lacked the necessary understanding of what the victim was going through. J4 had experience of sentencing circles abroad and was impressed by what he had witnessed. Another participant, J5, had sent a few cases out for restorative justice but had received no feedback and was uncertain of outcomes. This participant thought monitoring and a closing report was a good idea.

7.1.2 Opportunities and Possibilities

(a) Addressing the needs not met by the criminal justice system

While the strengths of the criminal justice system were underlined, the judges pointed to a lack of understanding and a societal misconception about the function of the criminal justice system which resulted in unrealistic expectations.

J1: it's a societal norm at the moment that somehow if you go through the Criminal Justice system it will be good for you but I think that for people who have suffered sexual violence and to some extent violence just short of sexual violence they come to the courts they have hopes and expectations that this will allow them to get on with their life, I don't see that the court always meets those expectations

Several respondents considered that the experience of the criminal justice system was not conducive to victims' well-being:

J2: The criminal justice system for the victim is a very big ordeal, not only for sexual abuse, for any type of crime. It is not victim friendly.

J4: I'm saying that the standard form of trial that we have at the moment is not good for victims, it's not good for encouraging victims to come forward. And I don't think they are treated with respect

A number of the unmet needs of victims within the system were identified: - the peripheral role of the victim, the trial process not answering victims' questions, the lack of a sense of healing and closure or in some cases lack of validation.

(b) Victims more than a witnesses in Restorative Justice

One of the aspects of the criminal justice system highlighted by a number of judges related to the peripheral role victims play in court proceedings. The interview extract below captures a sentiment expressed by several participants:

J2: They have no representation. They are... victims. They're merely witnesses. And supposing somebody pleads guilty, they're [the victims] [are] superfluous to requirements. And I have seen, I have often seen people sitting in a court, the accused pleads guilty, the judge will deal with the case and mightn't be aware that the victim is actually in the court. The victim walks out of the court not knowing what on earth has happened.

J4 highlighted the potential of restorative justice to empower the victim by providing them with a key role in the process, 'the victim is more, the victim is not a mere witness'. Some judges advocated that equal roles within the restorative justice process should be provided to the victim and offender, whilst others deemed it more appropriate to have the process victim-oriented.

(c) Unanswered questions can be answered in Restorative Justice

The judges felt there was a societal misconception regarding what took place in the courtroom. They explained that the court may not establish or seek to establish the whole truth.

J1: A lot of people are hoping that the court process will answer certain questions and it often doesn't, and possibly won't be able to do that.

J4: It's not an overall investigation to say let's get to the bottom of this. That's not the courts, my function as a judge is to say, "are you right or are you right?" [. 12:17 (123:125)]

Victims are often left with unanswered questions following the criminal justice process and J4 highlighted the opportunity restorative justice

provided to explore these questions and ask “why did you do this to me?” J1 emphasised, however, that the expectations of participants in restorative justice must be managed carefully as they may not get answers to their questions or the answers they wanted.

(d) Healing and closure

The judges believed that most victims entered the criminal justice system believing they could achieve healing and closure. While this was true in some cases, it was not so in many others.

J6: As a means of resolving people's trauma, it is not always completely helpful because of the necessary element that cases have to be proved.

J5: They look to the Criminal Justice System, the trial procedure as being a kind of formalistic way of dealing with that [suffering]. Whether it answers the actual requirements, I mean these are multi-layered surely, but emotion would be an important one; a sense of wellbeing. Can the Criminal Justice do that? Sometimes it can't and sometimes, it can.

Healing and closure were identified by a number of judges as a potential benefit of restorative justice. J1 believed that by meeting an offender the victim can tell their story, tell the impact it had on them and empty ‘your drawer of guilt on to somebody else.’ This participant highlighted a case which involved an offence which occurred 20 years previously and although the case did not result in a conviction the judge felt this woman was ‘satisfied that she got out her story’ [J1]. J1 believed this woman would have participated in a restorative justice process and it would have been suitable for her, had it be available, as she primarily wanted to tell her story and have it acknowledged.

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(e) Validation

One of the benefits of restorative justice that J4 identified was to provide validation to the victim in cases where the offender pleaded not guilty, and the victim’s story was challenged during the cross examination. Following such an event obtaining acknowledgement and acceptance were the offender to be found to be guilty is clearly important. However, in cases where the evidential threshold is necessarily so high to prove the case “beyond reasonable doubt” Judge 4 wondered if there might be a role for restorative justice

J4: the victim first gets acceptance, validation, the story is true, and that's, I think that's important. And it's unequivocally accepted all around here is the perpetrator accepting it. That's a big thing.

(f) Prevention of recidivism by helping the offender understand the consequences of their actions

J3 felt that engaging in a restorative meeting and responding to questions posed by the victim could benefit first-time offenders. He also saw a role for restorative justice in situations where an excess of alcohol or drugs during the offence have been involved, sometimes by both parties. Hanley et al in Irish research indicated how difficult it is to prove such cases and how the attrition rate is very high for cases in this bracket. Services in Denmark and Norway certainly use RJ in such cases, as in acquaintance offences where alcohol is involved, something that J3 is alluding to here. He believes that a restorative approach could help the victim have some form of justice, in whatever way she wished: telling of her experience and the consequences for her and asking questions; the offender understanding the consequence of his actions, and an agreement reached between both parties regarding future conduct or action or compensation. In this way both parties stand to benefit from the experience. J3 further thought there was a role for RJ in first time “one-off” offences where the parties are acquaintances, where the evidence to secure a conviction are limited by mitigating circumstances, and yet a process like RJ could prevent recidivism.

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This participant also believed that although in some cases an offender may enter a restorative justice process ‘thinking he’s going to cod everyone’ that actually meeting the victim may bring about an unexpected realisation or understanding.

J4 also reflected on the transformative possibilities of a restorative meeting between the victim and the offender and considered that the victim’s narrative of the impact of the crime on him or her and their questions the victim would ask could assist the offender in the process of self-exploration and understanding of the consequences of his actions:

7.1.3 Challenges and Obstacles

(a) Denial of abuse by offender

Three of the judges were concerned about the potential challenge posed by the denial of abuse by offenders. J6 believed there to be a ‘mentality of denial and evasion’ among sexual offenders and states:

J6: ... quite a lot of people who are involved in sexual violence are self-denying, denying the offence and will never come to terms with the fact that they have harmed anybody else. They will pretend to consent in their own mind, if to nowhere else.

A number of judges discussed the different degrees/levels of sexual violence and J1 believed the lack of differentiation between types of offender means those who do not identify themselves with the image of the predatory serial sexual offenders can be reluctant to plead guilty to a sexual offence. J6 discussed how a guilty verdict in a criminal trial can

force an offender to confront himself, whereas J5 suggested offering an incentive of a part-suspended sentence as a means for dealing with the challenge posed by the offender's outright denial of the offence. Many of the points discussed here individually with the judges interviewed for this study could well be a topic for one of the sessions that are convened by the judiciary for the purposes of training and developing knowledge.

(b) Risk of offender abusing restorative justice process

A number of judges were concerned at the potential of the offender to agree to restorative justice for ulterior motives, such as reducing the length of a prison sentence rather than for a genuine desire to acknowledge the harm caused to the victim and to be accountable. J1 regarded the involvement of the offender as a 'gamble', believing some offenders may view the process as 'a get out of jail card'. J4 believed one of the difficulties which restorative justice faces and which it must be cautious about is the potential exploitation of the process by offenders:

J4: I could easily see a manipulative and intelligent perpetrator of whom I have said there are uh... there is a considerable number, looking at this with delight because of the possibility of exploiting it.

This participant believed there should be consideration given as to whether the offender pleaded guilty or not guilty during his/her trial. J4 suggested that offenders who entered a plea of not-guilty should have 'more hurdles to jump through before getting into a [RJ] process' to ensure the victim is not re-victimised.

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J3, however, was not concerned about the risk of offender abuse of a restorative justice process and considered the opportunities and benefits for the victim far outweigh the risks. This participant believed that although offenders may try to manipulate the situation or victim, the facilitator should be able to pick up on this and put an end to proceedings if necessary. J3 also felt that although the offender may enter into the process imagining he/she can manipulate the situation, the stark reality of actually coming face to face with their victim may cause them to rethink their approach. J6 advocated postponing any restorative justice process until the sentence is well underway in order to remove any possibility of an offender's motivation for RJ being linked to decreasing time spent in prison.

In many jurisdictions, such as Belgium, Norway, Denmark, Australia and New Zealand, restorative justice is de-coupled from criminal proceedings almost entirely, and works alongside but in relation to each other, in those cases where criminal proceedings are being processed. However, the high attrition rates in sexual crime indicate that it is a minority of sexual crime that is processed by the criminal justice system internationally. It is safe to say from the available statistics presented in the introduction to this study and in chapters one and two that ninety percent of sexual crime never becomes known to the criminal justice

system. In the ten percent of sexual violence and abuse cases that are prosecuted through the courts it is possible to run both restorative justice and criminal justice processes as related but separate justice mechanisms in cases involving sexual violence and sexual crime. In Belgium reports of the RJ meeting is only given to the trial judge with the agreement of both parties, and the decision whether to take it into account in sentencing is at the discretion of the judge. Participation in RJ has no influence on early release from prison for an offender.

(c) Opposition from family members in intra-familial cases

J1 pointed to two examples of cases involving intra-familial sexual violence which came through his court: one which involved a child and a stepfather and another which involved a teenage boy and two young relatives. The judge considered that an offer of restorative justice might have promoted family reconciliation in both these cases:

J1: ... [the] child who wanted her father figure, stepfather in her life em she would have been very open to Restorative Justice

J1: ... the young fella you know who was taking steps to deal with his offending em I think wanted to meet these girls and to actually say how sorry he was

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However, J1 believed that if a restorative process had been proposed it would have been opposed by other family members and would never have been allowed to go ahead. The view of J1 is in contrast to many of the intra-familial victims and families who participated in this research and who would have welcomed restorative justice initiatives in their cases had it be an option for them. Their views are recounted in chapters two and five of this report.

(d) Lack of societal understanding or knowledge

Several participants considered that there was a need to promote greater understanding of restorative justice. J4 considered that 'a good deal of education' presented in 'a lawyer way' is needed to move the concept of restorative justice forward in Ireland. J6 expressed similar views and noted that judges too want to be informed 'we are actually willing to be informed, yeah. Totally willing to be informed'

J1 argued there should be more information provided on restorative justice to the community in general and expressed the view that public education must include a range of possible examples from low tariff to high tariff crime. Documentaries and programmes should show that 'it isn't [or only] all about meeting the murderer or the rapist'.

(e) Resistance to restorative justice despite increased understanding

Three of the judges interviewed believed that there is sufficient knowledge and understanding of restorative justice in legal and policy circles. J1 was disheartened, however that despite the existence of

restorative justice in Ireland for low tariff offences for an extended period it has failed to take off. J3 noted a 'dismissive' and 'slightly patronising' attitude towards restorative justice within policy circles and resistance among some legal practitioners who may view it as 'a threat to their livelihood'; a view which is shared by J4.

7.1.4 Other Considerations for Judges

(a) Incentives

Two of the judges spoke about the value of offering incentives to offenders for their involvement in a restorative justice process; this view was in marked contrast to the concerns expressed by other participants that offenders might enter into the process with a view to mitigating their sentence. J3 stated:

J3: You can participate in this and it may help your sentence and if you want to participate in this, do so. But you should never make anyone do it. They have to voluntarily do it in my view. But you can incentivise them by saying "it may help your sentence".

J5 believed an incentive, in the form of a suspended sentence, could help breakthrough the disinclination of offenders to go in for treatment or to go into a restorative justice process and in this manner to help them face their denial and take responsibility for their wrongdoing and for the harm they have caused. This participant identified Section 99 of the Criminal Justice Act 2006 as providing the relevant scope for implementing an incentive-based approach to restorative justice as it allows for the court to suspend a sentence on conditions conducive to the future behaviour of the offender.

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(b) Voluntary nature of restorative justice

Three of the judges were keen to emphasise the need for all participants to engage voluntarily, willingly and consensually in a restorative justice process with J1 maintaining:

J1: ... you'd want to know that everybody was meeting on an equal plane, the victim was there voluntarily and didn't have expectations that weren't going to be met by this whole process and similarly the offender more so understanding why they were there

(c) Victim-oriented

Unlike J1 above, J4 believes a restorative justice process should not be on an equal plane for both participants, but firmly believes the victim and his/her needs should be at the forefront:

J4: I think first of all the question is would this benefit the victim? Um... not will it benefit the perpetrator. First of all if it won't benefit the victim I would say end of story. Process ends. If it will benefit the person, we'll have to say this is not um... an equal situation

it is somebody trying to make good, and the somebody trying to make good has done wrong and so the process is not there to um... make me better as the perpetrator it's there to make you better as the victim. The fact that we realise as victim and perpetrator that there's something we can both do to make both of us better is a destination we will reach on our journey together; if we have a journey together, but there are conditions for that journey.

(d) Media support

Two of the judges believed the media could play an important role in spreading knowledge and understanding about restorative justice. J3 held that the media needed to be brought on side in order to get legislation for restorative justice initiatives in cases of serious adult crime such as sexual crime. J1 thought more examples of the use of restorative justice needed to be provided to further the understanding of its potential.

(e) Legislation for restorative justice

J3 believed restorative justice should have a legislative base:

J3: I mean if it's required by law it's required by law. I think it has that advantage. It would certainly make it taken more seriously

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This is a contested view amongst many of the participants in this study. Some argue that all that is required is political will and policy changes for restorative justice in sexual violence cases to become more widespread and state funded. Gardai suggest that an internal directive from the Commissioner of An Garda Síochána could make it possible for the Gardai to inform all complainants of restorative justice as a possibility, as well as initiating criminal proceedings by means of making a complaint. The Gardai do not require legislation to inform adult victims, or all victims of the possibility of restorative justice alongside their criminal proceedings. NGO's for victims are already doing this work without any legislation. I have facilitated a number of cases myself very successfully post-conviction and in intra-familial situations. NGOs for offenders are also doing modified versions of victim-offender dialogues and in some cases victim-offender dialogues too. While one would not rule out legislation for restorative justice, what victims say in this study is that they want restorative justice to have legitimacy and funding and state support and they would like such a service to be available with immediate effect. Waiting for legislation is not an option for victims – although legislation can of course be considered alongside a public policy directive.

An issue to be considered with legislation is the constraining possibilities it imposes as in the main it considers only those cases that are referred to the criminal justice system, as in Belgium. This means that the 90% of so of sexual violence cases that never come in contact with the criminal justice system are 'denied' yet again any service. Institutionalizing restorative justice in legislation certainly has its merits; but when

it constrains the restorative services to only those cases that are already known to the criminal justice services the potential problems with legislation begin to appear. This report returns to the matter of legislation and public policy in the final Chapter of the Report when the Recommendations are made.

As noted above J5 identified a provision in existing legislation (Section 99 of the Criminal Justice Act, 2006) which he/she considered could be used for restorative justice.

7.2. Perspectives of Politicians

Six politicians were interviewed for the purpose of this research. The interviews were all conducted on an individual basis. Overall the politician's views on restorative justice, and the potential for it to be used in cases of sexual violence, were highly positive. Their prior knowledge and understanding of its application and use, both in Ireland and internationally varied. There was much discussion about the nature of the criminal justice system; namely its limitations and shortcomings where responses to sexual violence are concerned. The responses in favour of the expansion of restorative justice approaches can be understood in a context where it was felt that there was a need for some alternative method of pursuing justice; where justice is understood in the broadest sense of the term. The limitations of the criminal justice system to deal effectively with sexual crime formed the basis for arguments in favour of restorative justice in many instances. In order for restorative justice to become a more mainstream response to sexual crime, it was noted that there were a number of issues that would need particular attention; for example, the need to build societal support, to ensure that such a programme would be supported by adequate resources and informed by relevant research in the area.

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7.2.1 Do we need Restorative Justice for Sexual Violence?

The responses of a number of the participants can be placed in a context where their personal understanding of restorative justice evolved as the interviews progressed. For a number of the participants, it emerged throughout the interviews that their own knowledge of restorative justice was relatively limited; they also felt that their limited knowledge base was representative of that in policy circles in Ireland. However, they were highly positive about restorative justice as the interviews progressed. It appears that the initial reluctance may stem from a lack of a clear understanding of restorative justice:

PL1: I wouldn't consider sex offences as being a good fit for restorative justice but maybe, I will be persuaded otherwise in time, you know.

PL1 who understood restorative justice as a preventative measure, was not aware that it could be used in a post-conviction setting. As a clearer understanding emerged, the respondent became positive about its potential:

PL1: I spoke to... ah... people who operate community restorative justice in the North of Ireland and so, that has been my understanding, but if this was the case where post-conviction that there was a role for the person, if it was agreeable by both parties, I can certainly see how this could be cathartic. I certainly see a role for it.

This respondent indicated that they could see how restorative justice would enable an increase in offender accountability, something they viewed as valuable not only to individuals but also collectively as a society.

The following responses clearly demonstrate the positive reaction from the politicians for restorative justice in cases of sexual violence. The respondents would like to see a coherent, well organised, properly researched and funded programme to be established:

PL2: I would support the establishment of such a programme, actually... But, in terms of such a programme being established, I think it's something that should be resourced and researched in this country.

PL4: ... we are not dealing well with issues of this nature, and clearly there are very damaged people out there in the community. And we need to- now not everyone will get past it- but if there is a possibility that even 20% of the people get past the experience, by engaging in this type of process, it's worth it and we should do it.

PL5: But certainly what has been done up to now hasn't worked. So we need to look at something different. And restorative justice has worked and worked very well in other parts of the country [sic] and other parts of the world for different crimes, so there's nothing unique about Ireland. It should work in Ireland, there's no reason why it shouldn't work in Ireland.

PL6: I think it's a pity that it's not available, because I'm sure it could be part of the healing process for both the offender and the victim. I think it should be available, not mandatory. And again, if it is handled right, I think it could be really very healing and positive for both parties.

Some reluctance was expressed by PL3, who was concerned about the power dynamics and the complexity of responses to crimes of a sexual nature. It was indicated that the institutions involved with some offenders, especially in relation to institutional abuse within the industrial and reformatory schools run by the Catholic Church on behalf of the state have not always taken ownership of the crimes perpetrated and that they would need to display a genuine willingness to engage prior to restorative justice going ahead.

However it is worth noting that this participant did display a degree of openness to the possibility of expanding restorative justice programmes yet felt restorative justice for sexual crimes would need to be approached

with caution. However this reluctance seems to be tied to the participant's interpretation of how restorative justice may interact with criminal proceedings; where restorative justice may involve giving the offender some kind of 'bargaining power' with regard to sentencing:

PL3: You know, mediation requires an equality of arms and an equality of bargaining power at some level. That's why I always think restorative justice is a great concept I'm totally in favour of but I think it doesn't necessarily apply universally.

7.2.2 Opportunities and Possibilities

(a) To Improve the Response of the Criminal Justice System to Sexual Violence

Many of the respondents discussed the limitations of the Criminal Justice System in dealing effectively with sexual violence, from the perspective of both the victim and the offender. A number of issues were raised including, the reluctance on the part of the victims to come forward, the adversarial nature of court proceedings, the issuing of lenient sentences and the payment of financial compensation. It was noted that there have been a number of improvements to the system in more recent years, for example where victims have access to support systems such as advocacy groups. However, the participants noted that the adversarial nature of the court system is something that has remained over time but also indicated that there is room for a broader concept of justice. This point is very much in line with the objectives of restorative justice, where achieving justice is understood as giving due regard to the harm caused to the victim, rather than merely focusing on the crime that has been committed. There must also be a focus on the rehabilitation of offenders, where it is seen that incarceration does little in the way of assisting perpetrators to change their offending behaviour.

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PL4: So, it is about looking at different ways of doing things. I've always believed that how we deal with crimes of a sexual nature—because there are many variations as there are variations of assault, there are many variations—but I've always believed that there must be a different way of doing it. Not everyone will want to go to court, not everyone will want the person who committed the offence against them, will want them charged. Not everyone would. So there must be a way of undoing the damage. And really, I suppose, once justice is in the title of anything, then it automatically brings you to the Gardaí, courts and the criminal justice system, but it must be wider than that. It must clearly be wider than that, because this could be a way of undoing some of the damage.

(b) Rehabilitation of Offenders

A point raised throughout the interviews was that when sex offenders are convicted and imprisoned, there doesn't appear to be a coherent approach to rehabilitation and there is lack of adequate measures taken to address recidivism. It was said that that prisons in Ireland are substandard and many of the participants spoke of the need to look at a "decarceration" strategy. With restorative justice on the other hand, while it can be more painful for the offender, it was felt that it would be beneficial to meet with the victim and take ownership and responsibility for their crimes:

PL5: The level of re-offending is too high. And that's why we are embracing the restorative justice model. Because we have to think outside the box.

PL1: ... and we have to believe that we can have a system that yes, sometimes punishes when it is necessary, but for me the most important thing is that the people involved understand that they did something wrong; that they are rehabilitated.

7.2.3 Challenges and Obstacles

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(a) The Need to Build Societal Support

As discussed above the respondents in this cohort were overwhelmingly positive about the potential of restorative justice to become an aspect of societal and/or legal responses to sexual crime. What did emerge however was a general feeling that societal support would need to be gained prior to the establishment of such a system, and that this in itself may present particular challenges. Closely related to this issue is what is seen as the often harmful and highly intrusive nature of media reporting of sexual crime, as well as what could be described as a culture of 'penal populism'. It was argued that the tendency of the media to sensationalise should be addressed; PL5 stated that judges should issue orders to prevent the publication of harmful and inaccurate information about perpetrators of crime and that those involved in criminal proceedings should be offered professional legal advice regarding whether or not it is in their best interests to waive their anonymity.

PL5: I do feel that the media can be very irresponsible at times. And how do you get the media into the restorative justice model? I don't know, because you're trying to balance freedom of speech, freedom of the media, and to do the right thing by all the people; perpetrators and victims. But I wouldn't have a lot of faith in the media at the moment, in some of the decisions they make.

The manner in which society responds to sexual crime was seen to present difficulties for victims and offenders, as well as their families. This was also discussed in the context of intra-familial abuse. The response of the media, in particular the tendency to sensationalise, was said to

disturb the facts of sexual crime cases, resulting in offenders, and often their families, feeling highly stigmatised and isolated.

PL5: The challenge will be to introduce a restorative justice model and that's why I go back to what I said earlier on—public opinion is going to have to be influenced in some shape or form, because politicians do react to their constituents.

However, it is worth noting here that despite these perceived difficulties, both PL1 and PL4 believed that if a more positive discourse about the possibility of rehabilitation was developed, then perhaps the general public would be more open to the healing potential of restorative justice approaches. PL1 argued that it is possible to be more positive about the potential for sex offenders to be rehabilitated. However, the main concern was getting the media and society to see beyond the crimes that have been perpetrated and recognise that sex offenders are not 'monsters'.

PL4: But, there's one thing I'd start off by saying, is that let's start with something now—what is he good at? And is he a good father? A very good father. Okay, let's start from there. And I think it is about finding the good too, because some of them are not entirely bad. You know? It is about finding what space you can be comfortable in. What you feel comfortable about.

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PL1 felt that society would respond in a positive way if the aims and goals of restorative justice were made evident.

PL1: I think if society saw a convicted person for a serious offence was paying their debt to society and trying to... um. have an understanding of their impact on victims, I think combined that has a role. I think would be open to hear more about that, yeah.

(b) Lack of Awareness among Policy Makers and the General Public of Restorative Justice Models

There was a general feeling among all the politicians interviewed that there is a lack of understanding and awareness of restorative justice models within policy circles, in particular any awareness of the use of restorative justice for sexual crime. This was the feeling regardless of whether they themselves had any personal understanding of the merits of restorative justice and its use for serious crime.

There was much discussion throughout the interviews about the perceived need to address this issue, before a national restorative justice programme could be introduced in Ireland.

7.2.4 Other Considerations for Politicians

(a) Legislation/Research/Interrelationship with Other Systems

A large section of the interviews with the politicians was taken up discussing what kinds of conditions would need to be place in order to establish a restorative justice service, in other words, how it would work

in practice. This includes for example, the introduction of pilot projects, the need to make reference to international research and best practice models, and also that such a programme would need to be properly resourced and funded. It was mentioned also that resources would need to be committed to an educational program in order to build awareness among the general public and within policy circles. Furthermore, many of the respondents expressed that they would like to see a commitment made by all relevant stakeholders to engage in a significant period of consultation not just among the Gardaí, prison officers, etc. but also with society generally.

All respondents were in favour of expanding on what already exists in Ireland in terms of restorative justice provision; this would result in the gradual introduction of restorative justice for more serious crime and among adult offenders.

PL2: Again, I would take it step-by-step. I think in time, yes, I would like to develop a programme first and then see, if we're satisfied we have the capacity to do this, and then once we have the capacity to do it, certainly, either legislatively or with a policy directive make sure it's available to victims and to offenders.

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Whether or not legislation would be needed was discussed in addition to whether restorative justice would be separate from, or run parallel to, the criminal justice system. PL4 felt that legislation would be necessary, and was also very positive about the openness that exists within political circles to restorative justice models. However, other respondents expressed more reluctance on this issue, stating that legislation in itself is not necessarily the most crucial or indeed appropriate means of establishing restorative justice systems.

PL1: We just need to develop a conversation and there are many fora for that and one of them is the Justice Committee. That would then, lead the path to legislation, but I think it is taking people with you on the journey. The Penal Reform Report we did, I think, was very progressive and I can see how these suggestions can fit into that, yeah.

PL6: It's difficult when legislation comes in, because legislation is so cut and dried and black and white, and it doesn't allow for the grey areas. And I think restorative justice involves a lot of grey areas. So, okay, just so there is a basis in law that this can happen, but not to be too restrictive on what it can do. I don't know if the two match.

Both PL2 and PL6 expressed the view that restorative justice should be run parallel to the criminal justice system and complement it but should also be kept outside of it and separate:

PL2: the justice system job is fundamentally to find someone innocent or guilty. That's their job. And I don't think the skill sets would be there to deal with this. Or the culture.

7.3. Perspectives of Legal Professionals

Having considered the perspectives of judges and politicians on the feasibility of establishing restorative justice in sexual violence cases in Ireland, it is now interesting to turn to the opinions of legal professionals. Five legal professionals were interviewed for the purpose of this research. The interviews were all conducted on an individual basis. This group, on the whole, took a very similar standpoint to the judges; viewing restorative justice as a means to complement rather than substitute the criminal justice system and to respond to currently unmet needs relating to healing and closure for victims and to assist offenders in taking responsibility for their actions.

7.3.1 Do we need Restorative Justice?

In response to the question ‘do we need Restorative Justice?’ the participants expressed a number of differing views but were, on the whole, supportive towards the implementation of a restorative justice programme in Ireland.

Three of the legal professionals strongly believed that a provision for restorative justice in cases of serious crime or sexual offence would be advantageous:

LP3: Without question I think it should be made available. I think there is an absolute need for it.

LP1: ... the worse the crime the more restoration is needed.

One legal professional stated that he/she would be guided by the victims. The participant would be open to restorative justice if it was something the victims felt would be beneficial to them:

LP4: I'd be very guided by the victims. I would be completely guided by them. If a significant enough number of victims said that they really would have liked to have it there to consider, well then my answer would be yes.

Another legal professional was interested and supportive of restorative justice but hesitant in relation to its use for serious crimes. He/she saw potential, however, in a limited number of serious cases:

LP2: I mean I can see that if you do have a combination of a person who is genuinely remorseful for whatever they've done and somebody who is willing to I dunno, forgive is the wrong word, well say who wants to try and understand why something happened or whatever... That, that could be useful for some people

This participant also believed restorative justice should be available in certain cases of sexual crime: where the parties involved express a desire to participate in the process; when there are children involved; and in some cases where alcohol or drug use played a part in the offence. This is very interesting on behalf of LP2 as in Denmark restorative justice is

integrated into therapy programmes for children who have been abused and both Denmark and Norway use restorative justice extensively in cases involving sexual assaults where both parties are heavily intoxicated or drugged at the time of the offence and gaining the evidence to secure a criminal conviction, if such is desirable, is next to impossible, as research mentioned earlier by Hanley et al1 also indicated in Ireland.

The legal professionals principally saw restorative justice as a process that would complement rather than replace the criminal justice system:

LP1: My legal instincts are that fundamentally, when you are dealing with criminal behaviour, you need to deal with it in the Criminal Justice System. I think it's key that that remains intact. The restorative justice, which I have read about here and those systems whether it's for the victim or the offender, would be something that comes in later.

LP3: ... it's not about replacing our system. Our system is a very, very, good system, but it's idea, it's focus was always on the rights of the accused person.

LP3 also believed the role of the criminal justice system as given within restorative justice circles of 'what law was broken, who broke it, how do we punish them' is not that clear as the Criminal Justice system does more than that. This participant stated that criminal law performs 'a number of functions, one punishment, two the deterrence of others, who may be disposed to committing the same offence, three to provide for the rehabilitation of the offender, and that's a thing that needs to be recognized here'.

LP2, however, acknowledged a limited possibility for restorative justice as an alternative to the criminal justice system:

LP2: I don't think it should be a substitute for the Criminal Justice system, unless somebody is so forgiving and the matter is you know, I mean again the question whether or not behaviour is likely to be repeated, whether or not it took place over a long period, whether it was a calculated intentional thing, or something that was much less culpable, possibly because of drink or drugs or some other similar problem.... All of these would be relevant factors, you know?

LP1 initially indicated that it is very important not to interfere with the criminal justice system, but subsequently conceded there may be scope for 'diversionary programmes or things could be introduced at point along the line in the system.' LP5, on the other hand, was a strong proponent of restorative justice being integrated into the criminal justice system, but acknowledged that victims would have to make that choice.

7.3.2 Opportunities and Possibilities

(a) Empowerment of the victim

In common with the views of judges one of the themes brought up by a number of legal practitioners was the treatment of victims as witnesses within the criminal justice system. Participants felt that the fact trials are conducted on the part of the State rather than on the part of the victim can be bewildering for the victim. LP4 also highlighted how the victim often does not understand that the prosecutor is the counsel for the DPP and not their counsel. The participants acknowledged the difficulty that the criminal justice system posed to victims; however, they also believed the current structure to be necessary to ensure due process and protect the rights of accused persons (LP1, LP3).

The prevailing opinion, on the other hand, was that restorative justice should offer the opportunity for a more influential position for victims, with choices regarding the type of communication and methods used being their decision:

LP3: I think the victim is put into a very eh, empowered position and the answer to most questions there will be, how does the victim see that?

(b) Answering victims' questions

LP4 outlined how victims often leave the criminal justice system without obtaining the 'truth' of what happened to them:

LP4: the victims very often look to the criminal trial as the place where they'll find out the truth, the why of what happened, and that is just not what the system is geared up to do, you know. The system is that the prosecution have a case to prove who did it, and that what they did was an offence and that's as far as it goes, and there can still be lots of unanswered questions at the end of the trial as to why, why that victim was chosen or, what was the motivation, you know, what came of the person that they did it and so on and so forth and people I think find it very distressing because they expect the criminal justice system to provide those answers, but the reality is that the criminal justice system doesn't set out to provide those answers and often doesn't.

This participant believed a dialogue between victims and offenders would represent a particularly valuable experience for former residents of industrial schools and would allow for any unanswered questions to be explored:

LP4: I'm sure a lot of the people, you know, the former residents, would have really liked to know why, you know, why did you do this to me, why did you run the school that way, and equally I think the people at the other end might well have said, we didn't realize what we were doing, or, we were put in such-and-such a situation,

and there actually would have been a v- some very interesting exchanges to be had.

Similarly, according to LP5 healing for both the victim and offender may be obtained through discussion which allows the victim to ask questions regarding the offence(s) and allows the offender the space to respond:

LP5: So many people don't know why they were picked, what is it that was, you know, and the offender has that information and they can impart that information

LP4 warned, however, of the need to manage expectations as even if the offender agrees to participate in a restorative justice process he/she may not have insight into their offending and may not be able to provide the answers the victim is looking for.

(c) Suitability for young offenders

LP2 outlined why she believed that restorative justice would be a preferable approach to dealing with cases of sexual offenses committed by young offenders:

LP2: the Criminal Justice System is completely unsuitable to deal with 14 year old offender and the like and obviously there I think the idea of restorative justice is to me it would seem much more sensible to deal with that. Because you are often dealing with files when people did abuse when they themselves were going through puberty or, or developing sexually and possibly I would say in lots of those cases didn't really understand the harm they were doing or the damage they were doing.

(d) Offender taking responsibility

LP3 warned that the court system can amplify the offender's perception of himself as a victim of the system and discourage any real sense of accountability. In contrast this participant identified one of the benefits of restorative justice, as encouraging the offender to take responsibility and gain an understanding of the hurt and damage caused by his/her wrongdoing.

(e) Apology/acknowledgement of wrongdoing

LP2 and LP4 both spoke of the need and desire of victims to receive some acknowledgement and an apology from the offender:

LP2: From the point of view of the survivors, you know what I was always seeing coming through files was, first of all, wanting an acknowledgement of what had been done and the wrong that had been done and it's not, and I don't think an apology is going... to make anything go away, but at least it was going to be, they needed some acknowledgement

LP4: There clearly is a desire for a real acknowledgement of what's been done and a real apology. There clearly is.

LP4 also spoke of the anger that victims can feel when they hear an apology for the first time made through the offender's counsel at the sentence hearing, *'they see it, and often rightly, as completely self-serving, that it's purely for the purpose of a reduction in sentence and it doesn't cost much to instruct your barrister to say it.'*

This participant saw the benefit that a restorative justice process could offer in a small number of cases where there was a past relationship between the victim and offender and there was need for acknowledgement of the offence and wrongdoing to move forward:

7.3.3 Challenges and Obstacles

(a) Risk of offender abusing restorative justice process

Three of the participants discussed the potential of the offender agreeing to restorative justice with the hope of reducing their prison sentence rather than for a genuine desire to take part. The participants believed if restorative justice took place post-sentencing (apart from in a limited number of circumstances) and if the process was carefully monitored for potential abuse the problem could be circumvented:

LP4: it wouldn't be done pre-sentencing in a way because it could be engaged in for the purpose of reducing a sentence, and, eh, the per – the victim then would get very little benefit out of someone who's engaging in it purely for self-serving reasons.

LP2: the danger is that it then becomes sort of... you know like the way some people buy their way out of a prison sentence now you know? That you would get people who would not be at all remorseful, but would see this as a way of getting a shorter sentence... People might then end up feeling that it was all about a bit of a cheat...

(b) Lack of understanding or openness to restorative justice

One of the challenges to restorative justice identified by the participants is the lack of understanding about it in both policy and judicial circles. Despite the perceived lack of understanding, LP1 believed there may still be openness towards restorative justice, provided it did not jeopardize or interfere with the criminal justice system.

Similarly, LP3 thought that reassurance that restorative justice would follow sentencing would promote openness amongst lawyers. He/she also felt that guidance should be sought from a lawyer who has been involved in the system to ensure its integrity.

LP4 believed, on the other hand, that although there may be openness to restorative justice in the context of more minor offences, this would not extend to cases involving serious sexual offending.

(c) Limited victim participation

LP4 indicated his/her belief that only a limited number of victims would want to take part in a restorative justice process:

LP4: I can imagine that most victims of serious sexual violence wouldn't want it.

Whereas LP2 felt restorative justice would not be desirable for victims in instances involving a long series of abuse:

LP2: ... they wouldn't want to engage, I think the last thing they would want is contact with the abuser.

(d) *Unsuitability of some offenders*

LP2 considered some offenders who had intentionally abused over an extended period of time to be unsuitable candidates for restorative justice:

LP2: somebody who is targeting and very often serially targeting and this would be particularly the case in some of the sporting coach cases or the priests or the teachers or people who had access to children in some way like that; and were adults with a considerable age gap and to my mind you can correct me if I'm wrong, but I find it difficult to see how restorative justice can really be applied in cases where people have quite cynically abused the trust that was placed and manipulated people and so forth.

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The participant also warned that, 'very often the abuser wasn't prepared to acknowledge anything and in some cases even persist in blaming the child for the abuse.'

7.3.4 Other Considerations for Legal Professionals

(a) *Procedural safeguards*

LP2 outlined the need to implement a procedure to identify whether a case was suitable for restorative justice. Certain questions would need to be considered when making this decision:

LP2: whether or not behaviour is likely to be repeated, whether or not it took place over a long period, whether it was a calculated intentional thing, or something that was much less culpable, possibly because of drink or drugs or some other similar problem

LP4 felt that once a restorative justice process was underway a well-trained facilitator must carefully monitor and review the process:

LP4: keeping a good eye on the process so that – the potential for damage, I think, is-is there, am, and just to be able to monitor the process and see signs of it and-and pull it to a halt or bring it to a halt if they think there could be an abusive process going on again.

(b) *Support members*

Two participants thought it would be beneficial if those involved in a restorative justice meeting could bring a family member, counsellor or friend to offer support and reassurance.

(c) *Voluntary nature of restorative justice*

All participants believed entering a restorative justice process must be voluntary for both the victim and offender. LP1 considered that it would be best to invite people to participate over an extended period of time:

LP1: you will need some way of inviting people to participate or refuse to participate in it. That involves an explanation of what it is and probably, time for people to think about it. I'm sure that people's ideas about being a victim or being a perpetrator develop over time. So, I think perhaps, maybe then, it needs to be something that is constantly and continually available for people to come back to and that needs to be made clear to them. I suppose, people may need reminders that it's there.

However this participant identified the need for victims and offenders to agree to engage in the process at the same time as a potential challenge.

(d) *Legislation for restorative justice*

Providing restorative justice with a legislative base was considered by LP1. After some reflection this participant felt there were concrete advantages to having RJ on a legislative basis for offenders:

LP1: From a practical point of view, it's a stick that makes whoever has got to do it, do it. Otherwise, things tend not to get done. I think it would. It would set a proper structure. It would be taken more seriously and that it would be seen as an integral part of what started out as the crime and the system.

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In order to bring in legislation for restorative justice, this participant believed it was necessary to have a champion in government or an influential person in the Department of Justice or an influential NGO. Furthermore a well worked out plan with plenty of evidence was deemed important.

(e) *Family Reconciliation*

All five legal professionals felt there was a need for family reconciliation work after sexual crime. LP2 believed there may be issues within a family when other members of the family knew abuse was going on but did nothing to prevent it.

LP2: the other aspect of this is too that there maybe need for some sort of restorative process between the victim and other people who are not the principal offender, but who failed to come to their aid, like you know? Like the mother who collaborates with the husband and turns a blind eye

LP3 was also concerned about the need for restorative justice to prevent victims being ostracised for reporting abuse by a family member.

LP3: the judge said, at the end of the case a curious thing which I didn't ever forget, he said now, I don't want this eh eh child to be victimized, in the family she is in no way to blame and she is, y-, there's care to be taken that she is not at fault here, and she's not to be pushed out, this was what he was saying. And I thought this was the most extraordinary thing in an extraordinary set of circumstances, first of all we were wondering, is this the sort of thing that should be in a court at all? Does it happen? Is it very - ? And it's terribly unusual, and none of us have ever heard of it. So it's the first eh, so there's a real sense of, this is a new and hard almost to believe, but I didn't realize how wise the judge was, eh, until later when I realized that he was aware of a pattern of behavior in families in those circumstances in which the child would be in fact expelled, ostracized, shunned, ah, that that dynamic – I thought, what a bizarre thing to say? You know, how could you think? And I didn't realize until afterwards, he was e-, he was entirely right.

7.3 Perspectives of Garda Juvenile Liaison Officers

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Having explored the range of perspectives expressed by judges, politicians and legal professionals with regard to the establishment of restorative justice in sexual violence cases in Ireland we now turn to the views of members of An Garda Síochána who work as juvenile liaison officers (JLOs) as part of the Diversion Programme for young offenders. The programme is used as means of sanctioning young offenders without bringing them before the courts, and its legislative base is underpinned by the 2001 Children Act. It aims to divert young people from committing further offences and in certain cases a restorative justice meeting with the victim is arranged. Eight juvenile liaison officers were interviewed for the purpose of this research. Four interviews were conducted on an individual basis and two interviews were carried out with two participants each.

Throughout the interviews, JLOs drew from their first-hand experience of restorative justice. With their focus stemming from experience of offender-centred diversionary programmes the approach of JLOs differed from the other groups interviewed. However, despite advocating for early intervention with most forms of crime, JLOs took a cautious stance in cases of sexual violence, believing restorative justice could not proceed until a conviction had been secured and recognising the advantages of a victim-led approach for reasons of safety. Similar to the legal professionals they expressed a concern regarding the suitability of some cases of sexual violence for restorative justice and recommended caution in cases which involved predatory-type offenders.

7.4.1 Do we need Restorative Justice?

As might be expected, given the nature of the work JLOs carry out in communities, the JLO respondents provided a wealth of information in relation to the question of restorative justice. All respondents provided

detailed and considered opinions on the potential for restorative justice in cases of sexual violence.

JLO1: It has to really be handled properly. So you need, like I mean, if we're going to go down that road, it really really has to have the backing...

JLO3: Well, from being involved in restorative cases, kind of mostly assault cases and things like that, I have seen the benefit of the restorative process; I think there's definitely worth in it. Because sometimes when the injured parties are in court, they might have their impact statement read out and so on, but they don't get to address the culprit, person to person and so you know, I think it's when you look into somebody's eyes across a table or in a room where you can actually express what you feel, is very very powerful.

A consistent and distinctive theme in the analysis of this cohort of respondents was the different conceptual and instrumental focus of the restorative justice systems the JLOs were familiar with, namely offender-centred diversionary programmes aimed at offender reintegration, as compared to the victim-centred approach for restorative justice in cases of sexual violence. As a result, many of the views and opinions offered by the JLOs to the substantive question of whether restorative justice should be available for more serious crimes, particularly sexual violence, was influenced by this background experience.

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While all respondents were supportive, at least to some degree, of the idea that restorative justice should be available for cases of sexual violence, given the nature of the RJ programmes they are familiar with, a sizeable cohort were concerned about the particular internal dynamics of such a process.

Interviewer: What do you think about adult sexual crime? Do you think there's a role for it there?

JLO4: Well that's what I'm on about, the adults or kid in the court system yeah. As long as you're not talking about a paedophile or someone, someone where there is no hope for rehabilitation. I still think, you need some sort of a psychologist's report or psychiatrist report to say that this person is a paedophile or it's highly unlikely that they'll reoffend before I'd go down.... that my own personal feeling before you go down the road of a restorative event you know. Because it's pointless bringing somebody in before a victim if they know that there's a big likelihood of this happening again.

JLO5: it depends on which sexual crimes. How serious they are. Predatory ones... Say a guy who is predatory, or say the partner or ex-partner arrives at the door and ends up raping the ex-partner, or whatever. It has to be—probably a lot of preparatory work for that. I don't know.

7.4.2 Opportunities and Possibilities

(a) Offender internalisation of consequences of wrongdoing

A number of respondents explored their own experiences of restorative processes, and articulated the enormous potential of restorative justice to help offenders face up to accept responsibility for, and internalise the consequences of their behaviour.

JLO2: I think there's a strength in trying to keep the people who have offended in a society which could support them, through that and after their offending, you know. And, if that can happen, I think again, this is the concept of being restorative. It's about recognising that the harm... their actions were wrong and their actions are what we put down, that's what we don't want, but their worth as an individual is accepted so that would be the key component of the diversion program overall, you know. So, I would hope that if we didn't know it before, what we're doing has a restorative nature to it, even if it's not called that.

Given the need for Offenders' to admit and accept responsibility for the consequences of their wrongdoing, some respondents were apprehensive about the possibility of using restorative approaches in some cases of sexual violence:

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JLO3: ... the person, I suppose takes responsibility, "yes, I did do this", you know that would be the ground rule before you could build anything on that because if you have somebody who is, maybe a paedophile, I just think of the likes of Brendan Smyth, I could never image the likes of him being in restorative cos he, in many ways didn't see what he was doing was wrong,

7.4.3 Challenges and Obstacles

(a) Need to Build Societal Support for restorative justice

Many JLO respondents spoke of the need to "sell" the idea of restorative justice to other players in the Criminal Justice System, such as judges and other Gardaí, as well as victim-survivors, the media and society at large. The following respondent offered his/her view regarding the potential role for former participants in restorative processes as public advocates in the campaign to build societal support for RJ:

JLO2: Sometimes I have found that, it's only by bringing people into a process and including them in it, do they understand the depth of value of it that they can then go back and sell to somebody else. So, people who have been through the process might very well be the individuals who we might rely on to be selling it to others. It's a difficult subject simply to sell certainly through media on its own and in my experience that's one of the greatest challenges that the whole, I suppose, restorative ethos faces, it's the acceptance of this way of doing things to the greater public and for them to be, I

suppose, feel safe, supported and comfortable enough to go into a process like this and step aside from a court based outcome.

A number of respondents spoke of the lack of openness in Irish society and a reluctance to face the realities of violence and crime, and how this presents a major obstacle to the development of alternative systems of justice and redress:

JLO1: Yes, in society we don't deal with what has happened, we close ranks, we protect. But in the protection, it's crazy, you are already faced with a difficulty, you're already; let's say from a restorative point of view, you're already faced with a resistance, by both perpetrator and victim to come to terms with the reality of the situation.

JLO4: That's one, the biggest job we have in selling it, I think we're not open, the Irish, I don't know if it's the Irish culture society, we're not very open to... I think because we're such a small community, I suppose we have fear about confidentiality even though we'd try and emphasise that it would be confidential, but that's up to the people...

(b) The Judiciary and the Wider Culture of Punitivism

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While some JLOs found judges were enthusiastic about alternatives to the Criminal Justice system in the cases they were professionally involved in, other JLOs identified the judiciary as an obstacle to the roll out of restorative processes as a workable alternative.

Furthermore, some respondents did not regard their work, or the principles of restorative justice as having significant regard within the Gardaí.

JLO1: It wouldn't be a path to getting to be a commissioner.

JLO2 felt more open public debate was needed about the use of restorative justice to broaden the understanding of alternative responses for dealing with crime.

(c) Legal Professionals

Respondents were concerned that offenders open to participating in a restorative process might be dissuaded from doing so by their solicitors, concerned that the process might put an offender in jeopardy of further or more serious criminal charges.

JLO4: One of our biggest problems was solicitors, the advice that they gave the client I suppose not to... or the offender. I suppose they were thinking from a court point of view, you know, you have to be careful what you say, and all that, so I suppose a liability and all that sort of thing. I found the solicitor an obstacle, if you want to go down the road of restorative justice because they go and they get legal advice and they solely look at it from a legal point of

view, the solicitor does because a lot of them aren't really aware of restorative justice.

7.4.4 Other Considerations for Gardai

(a) The Need for Open and Honest Dialogue

Tapping into their extensive experience of restorative events, some of the respondents explored the need for honest, open and committed engagement by participants (primarily offenders in their experience) with the restorative process.

JLO1: ... if we don't have the ability to get the full story from both sides, we're in serious trouble and the restorative process can really lapse into... something else, which doesn't bring the restorative stuff.

(b) Preparation

A practical concern that arose with most respondents was the need for intense preparation of participants in order to exploit the full potential of a restorative event.

JLO1: Well first of all there has to be an understanding. Second of all you can't be cutting corners, people need to do work, they need to do work. You can't pretend you're going in to do this restorative thing, you know, without all the background stuff being done...

Participants also saw preparation as key in avoiding the risk of re-victimisation of the victim, or, as was noted by a number of respondents, avoid a risk of traumatising a vulnerable offender (note again, this concern for offenders was motivated by the nature of the JLO's work, principally young offenders and minor crimes). Taking a break or calling an end to the process when necessary was also viewed as imperative to avoid causing hurt within the process.

JLO3: ... preparation for me is the ultimate thing, because if there is a misunderstanding before these two people meet, it can be absolutely devastating. If both parties don't know, you know

(c) Need for parallel support services for participants

A number of respondents stated they would not be in favour of more expansive use of restorative processes for serious crime if there was not sufficient parallel support provided to participants externally.

JLO2: Whilst we don't obviously have to give direct consideration to the victim, we are concerned that for young people who are subject to having sexual assault and other actions of a sexual nature taken against them, that they themselves need to go through therapy and care afterwards. And for us to be in a position to address it, we'd like to think that that can take place for those people. So I think our challenges are based around what opportunities are there for other service providers to provide the

necessary intervention and that supports our involvement in a way, you know?

JLO2: Without those supports, it's very questionable as to how people recover or move on, be it that they were the victim or the offender. We have entered into other restorative meetings be it for other types of crime. We think we're stepping into the room with a victim and an offender and what we realise is that we are stepping into a room with many victims including the person who has offended.

(d) Legislative Underpinning of RJ for Cases of Sexual Violence

The following respondent, informed by his/her experiences of working under the Children Act 2001, detailed the need for and benefits of a legislative foundation for a system of restorative justice:

JLO2: legislation that supports it would be really good. The reason I say that is because I found that without the legislation in the Children Act, which allowed for an offender and a victim to be brought together for a formal caution, I wonder would I be sitting at the table with you here today having this conversation, you know. So, legislation has supported what we have done, even though I think we have moved on from it, we now accept it as a way of working.

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(e) Flexible Processes

While many respondents outlined extensive details regarding their experiencing of setting up a restorative process and event, JLO 4 believed that processes should be dynamic and respond to the idiosyncrasies of a particular case, stating the best response is to 'Mold it to your requirements'.

(f) Family, Friendship and Community Support Systems

All respondents described the crucial support provided by families to those participating in restorative processes.

JLO2: Family plays a critical role and I know that for young people, who have offended, we find, and we work with some other groups, that family support is crucial. With the right family support in place, there is every likelihood that the young person that has offended will move on from the offending and will recover and it'll be, it will be a very holistic and worthwhile process.

JLO3: whereas family, they love ya and they care about ya and they feel for ya and they are hurting because you're hurting and that's the most important support we all have because the system can be very cold, even though it's doing its job, so I suppose family and friends would be the best support system.

Others detailed the important role of friends and local community in assisting and supporting the offender in their attempts to reintegrate through restorative processes and after:

JLO2: We're talking about young people, most often the people who they're sharing their experiences with are their friends, let's be honest about it, they're not sharing it usually with their family, with their parents, they're sharing it with their friends. So they must play a vital role but sometimes the role that they play is not considered to be important. That's the challenge. Friends are there but none of us really have any interest in those friends, we're dealing with this person and we're dealing with them and their family and we're dealing with that agency. So we forget about the friend, the friend could be the greatest support that they ever have and I don't know if we recognise it.

(g) Family Reconciliation

Like with other groups of respondents, JLOs were universally in favour of providing for family reconciliation services for participants.

7.5. Perspectives of Prison Staff

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Unlike the Garda Juvenile Liaison Officers who expressed predominantly positive views regarding the potential of restorative justice and its implementation in cases of sexual violence in Ireland, the prison staff interviewed gave a much more mixed response. When analysing the responses of the prison staff some common themes emerged which centred around who may potentially gain from or, on the other hand, be damaged by restorative justice, and how current societal responses and services (including the criminal justice system) could possibly be improved by the introduction of some form of restorative principles into the current available support systems. A related and recurring theme, identified by the prison staff, was that prison is not rehabilitative and can in fact create major problems for offenders in terms of their personal healing and also in terms of preparing them in a practical sense for re-joining the community.

Twelve prison staff members were interviewed for the purpose of this research. One interview was conducted on an individual basis and two interviews were carried out on a group basis. A variety of staff members were represented.

7.5.1 Do we need Restorative Justice?

The views in relation to restorative justice for sexual violence varied among the respondents. Two of the interview groups stated that they were in favour of restorative justice being available in cases of sexual violence. The participants in these groups were very optimistic about the healing potential restorative justice offered as well as the opportunity it represented to strengthen societal responses to serious crime.

PS3: Yes, I think definitely. If it works towards some way, you can say, well, he's been rehabilitated in some small shape or fashion, you've been part of that... Absolutely it should be... Except- whatever the victim wants. It's good for everybody... It would have to be focussed on empowering the victim.

PS2: to restore people both sides is obviously a very very positive thing to do.

On the other hand, one group took a much more cautious approach and were particularly sceptical about the suitability of restorative justice for sexual crimes as the participants perceived a tendency amongst sex offenders to not express any remorse for their crimes.

PS1: Suffice to say, any kind of therapeutic work, you know, be it restorative justice or... work is necessary, but not sufficient. And... ... It won't be in the long-term successful.

All of the respondents spoke of how they would be keen to see any response to sexual violence being predominantly centred on the needs of the victim, with PS3 expressing the view that restorative justice must take place only where it is requested by the victim. PS2 alluded to the fact that participation in a restorative process must be voluntary and that it should result in positive outcomes for both victim and offender. This participant also felt strongly that restorative justice should be made available to any victim that requests it, regardless of the nature and seriousness of the crime. When determining suitability for restorative justice, PS2 viewed the response and needs of the victim as the determining factor.

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PS2: ... the principle of restorative justice should be available to everybody because it's about restoring so if the victim is very, very, very seriously damaged as a result of that particular crime, like raped, but they're happy and ready at some stage to deal with it, well then, especially if it's within a family for instance, that it was a brother or a father or a mother or whoever it was, caused damage and they want to try and deal with it. In that scenario, I would say, absolutely, totally and exclusively a decision for the victim in the first place. And the crime has nothing got to do with it.

PS2 also believed that while the most direct benefits of restorative justice would potentially be for the victim and offender taking part in the meeting, PS2 also believed these benefits could be far-reaching and extend to the local community and wider society.

PS2: I would see restorative justice as being a very, very positive element of a society and a very mature, caring and supportive element of a caring society and a mature society so I'd be totally supportive of the principle of restorative justice. [in any case, in all cases] in any, yeah so long as the people are, you know, and the proviso that it's all being done on the basis of agreement and consent'.

7.5.2 Opportunities and Possibilities

(a) Mutual Agreements and Gains

A prevailing theme evident throughout the prison staff responses was the need for mutual agreement between all parties in order for restorative justice to take place:

PS3: I don't think- well, the likes of a meeting between an offender and the victim- it wouldn't take place if either of them didn't want it. If the victim doesn't want it, and if the offender didn't want it, it won't take place.

Differing views were expressed, however, regarding the focus of the process, with PS3 placing more emphasis on the needs of the victim. This group of participants discussed the potential restorative justice offers to empower the victim when it is victim-led. It was mentioned that this is of particular relevance because of the power imbalances inherent to the nature of sexual violence.

PS3: she wanted to know why he did it and she wanted him to know that she was getting on with her life and he didn't destroy her life. It wasn't a forgiveness issue there. No. A power issue.

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PS2: on the other hand, expressed the view that restorative justice should be mutually beneficial, helping both the victim and offender in a more equal way. This respondent recognised the need for a focus on the victim yet also wanted adequate attention paid to the needs of the offender and the community.

PS2: My own philosophy would very much link with, and I believe the greatest benefit is when it is operated on the basis of restoring both people, especially in the context of a community because that's where restorative justice came from originally was where communities took responsibility for their community and therefore if someone offended, that there was a victim and there was an offender and there was the community and the whole idea was to restore all of them back into a cohesive community where of course there is an element of payback, of punishment, of payback, all that sort of thing but there but there is also the restoring thing, of trying to restore the person and in terms of sex offenders that is the huge challenge, of how do you, do you ever forgive, and not as individuals now but as a society...

PS2 has had substantial experience working with youth offenders in a restorative justice setting, and based on this, asserted that it, unlike the criminal justice system, can be hugely beneficial in assisting both victims and offenders to heal. PS1 also mentioned how the adversarial aspect of the criminal justice system does little in the way of helping victims to feel that their experiences are being acknowledged:

PS1: the sense of plea bargaining that's going on... .. can all be undermining of their reality, and of their truth

PS2 considered that in many cases taking part in restorative justice helped victims of crime to overcome their fear, by enabling them to see the perpetrator as a person and not merely a criminal, therefore assisting them to move forward with their lives. Offenders were faced with the reality that had harmed someone; it helped them to face the consequences of their actions and therefore to take responsibility for their crimes.

PS2: ... victims of crime, their whole perception and attitude and understanding of the perpetrator was a million miles removed from reality. A lot of them thought they came from Mars, they were some sort of animals that arrived down at their doorstep... And equally many of the young fellas said 'I never thought about a victim before, I never f... ing even thought about them.'

(b) Benefit for the Criminal Justice System, Social Services and Society

For the most part (with the exception only of PS1), the responses to the interview questions were centred around a particular concern that both therapy/rehabilitation programmes for prisoners and also state responses to victims are inadequate; this formed the basis of the arguments put forward in favour of restorative justice for sexual violence.

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Although cases of sexual violence were seen to be taken more seriously now by the criminal justice system and wider society than in the past, PS2 felt that the highly punitive approach which has been adopted will do little in the way of addressing sexual violence in the long term. He/she also saw the punitive approach to sexual violence reflected in attitudes extending beyond the realm of the criminal justice system, and being evident in media discourses, as well as in society generally.

This participant also expressed concern that sometimes the state does not deal with sex offenders in a professional manner. This participant argued that all services for convicted criminals should operate in a neutral manner, regardless of the nature of the crime that has been committed.

PS2: ... the way they are treated by individual guards and judges and others in the system is often horrific, very very very badly treated and again I would be always arguing that irrespective of the offence that the State should be neutral, that the State should provide a professional approach at all times and professional services and everyone, the delivery of them should be professional, impartial, objective and should never show your personal hand in whether you hate sex offenders or whatever.

Furthermore, PS2 argued that the current services that exist for sex offenders in prison are inadequate:

PS2: The role of therapists in that whole field in prison is very debatable because they are not there really to help the individual perpetrator at all. They're really there to represent the state, to write reports on behalf of the state, to evaluate and to assess risk on behalf of the State, tis very difficult to have proper therapy in such an environment... .. whereas if you go to a therapist, to work with a therapist where there's a clear contract that I work with you, you work with me and it is for your benefit and your good, there won't be any reports, good or bad, then I think that changes the dynamic completely.

However, it should be noted that the PS1 respondents took a different view of prison services for sex offenders and were much more positive about the facilities currently in place:

PS1: I think all services involved, in this context, externally- all have a positive role, I suppose, trying to... trying to address the... It's very strong, whatever angle they're coming from. As the system is now, there's a lot of positives within that, and a lot of success within that. Both... and especially within this prison.

Despite certain improvements and the provision of some services such as counselling, another area which PS2 identified as inadequate was the overall societal response to victims:

PS2: ... my strongest criticism would be that as a society we provide very little very little positive support services for victims, some but nothing like what would be adequate while we, as a society, we talk a lot about victims and all our empathy and sympathy but we don't deliver it as in many other areas, we don't provide a support for them.

(c) Will add some Balance to the Lack of Rehabilitation and Post Release Supports for Offenders

Many of the respondents spoke about the lack of attention paid to the individual personal attributes and specific needs of prisoners, believing prison based therapies are more designed to fulfil bureaucratic obligations than to assist with the personal development of offenders. These issues are linked to the unpreparedness of offenders to re-enter the community or to overcome any of their personal difficulties that contributed to their offending behaviour. The post-release stage was noted as presenting particular risks, where a lack of family and friendship supports is seen as leaving offenders particularly vulnerable.

PS2: So when they leave prison, their troubles are only starting so there's very little understanding, there's very little support provided. And people like David Byrne³ would be an example, dumped out on the street, no accommodation, no friends, no, followed by the media, the system totally withdraws from its responsibility... .. So coming out of prison generally speaking

for sex offenders is pretty tough in terms of jobs, accommodation, family and social integration

There was also mention of the inadequate socialisation of some criminals and how their personal experiences and realities can negatively impact upon the possibility of rehabilitation. It was noted that some prisoners, such as those that had been brought up in Ireland's industrial schools, had particularly difficult experiences as children. The lack of family support in the lives of these offenders was seen as presenting a particular risk upon release from prison and return to the community. These issues are seen as crucial in terms of the possibility of re-offending.

7.5.2 Challenges and Obstacles

(a) Lack of Remorse from Offenders and potential for abuse of the restorative justice process

Both of the prison staff groups expressed concern about a lack of remorse from sex offenders. PS1, while acknowledging the merits of therapeutic interventions for sexual offenders in general terms, tended to display feelings of distrust towards the offenders themselves; believing that sex offenders lack any empathy or understanding of the harm they have caused, and in some cases blame the victims for their wrongdoing.

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PS1: I can't think of any other cohort which have caused and generated such hurt and that the Gardaí and society... simply is a no-no crime,. So for restorative justice to work it's a huge huge challenge.

This group felt that while the offender may come to the realisation of the harm they have caused through engaging in restorative justice, the consequences of developing this new understanding may seriously affect their mental health. As such PS1 were of the opinion that restorative justice could potentially be damaging for both sides and interfere with the healing process.

The participants of PS3 on the other hand, while supportive of the use of restorative justice, identified a mentality of denial amongst sex offenders.

These participants felt sex offenders are not as open about their offences as other criminals, and that they are very guarded in prison perhaps signalling a lack of responsibility taken for their action. PS3, consequently, argued for a very cautious approach to its use.

A related issue raised involved the need for awareness that offenders may engage in restorative justice for 'ulterior motives'. PS3 warned that restorative justice should not be used as a 'bargaining tool' for reducing sentences and believed it should be kept separate from sentencing procedures within the criminal justice system. In the event that restorative justice may have an impact upon the trial or sentencing, this group stressed that it must be available only at the request of the victim so as to avoid abuse of the process.

(b) The Media

All of the prison staff respondents in this study were wary of the potential response of the media if restorative justice was to become available for sexual crimes in Ireland. It was noted by all respondents that the media have a tendency to sensationalise and over-react to cases of sexual violence which was considered to impact negatively upon all involved. Concern was expressed that restorative justice would be seen as ‘being soft’ on offenders and were restorative justice to be introduced into the criminal justice system for cases of sexual violence there would be a negative response from the media:

PS3: There would be a huge hue and cry about this... it would be ‘going soft’. how much is this costing... regardless of what it might do for a victim. And especially I suppose if it is for prisoners, whereas if it were victim-led, it might not be the same case.

7.5.3 Other Considerations for Prison Officers and Prison Personnel

(a) Preparation and Information Provision

All respondents identified a need for adequate preparation before any restorative justice meetings took place. PS3 identified the need for a clear information programme for all participants and potential participants as being the first step required. PS2 also recommended a comprehensive preparation programme and an assessment of the personal desires and goals of victims before entering into the process.

(b) Presence of a Support Person

When thinking about the possibility of a support person being present, PS2 felt strongly that it would be a matter for the individual (offender) to decide whether or not this is something that they would want or need.

(c) Voluntary-nature of restorative justice

Many participants, particularly those in PS1, expressed concern that the victim may feel obliged or pressured into taking part in restorative justice. The participants emphasised that engagement must be completely voluntary for victims:

PS1: I kind of would have a concern whether there’s any weight or responsibility for the victim, in trying to rehabilitate, for want of a better word, the offender- I’d have serious concern about that because there’s an implication by refusing to enter that process that there may be guilt or shame on the victims behalf, so I’d have serious concern in relation to consent by the victim in that the person isn’t pushed into that process.

(d) Family Reconciliation

It was felt by participants that family reconciliation meetings can be highly beneficial as they may assist with the reduction of re-offending and improve the social environment for the offender on release.

PS2: And the better you can make his environment when he gets back out, and the less chance he will reoffend against the rest of society. And that's where the focus should be. What it should be on. It would help a lot, if it provided a way for him to stop offending. That should be the aim.

7.6. Perspectives of Probation Staff

The Probation Service professionals taking part in this interview were generally open to the expansion of restorative justice for sexual violence, as they felt that in certain circumstances such interventions could be successful. However, they also saw the need for a very cautious approach, with sufficient time and consideration given to each case. Based on their own experiences of working with clients in restorative justice settings, they believed determining the suitability of victims and offenders for restorative justice to be dependent on each individual and each criminal offence. They indicated that they would like to see the process being victim led, but with adequate attention paid to the offender and discussed whether or not restorative justice would be successful in aiding rehabilitation.

Four probation staff members were interviewed for the purpose of this research. The interview was conducted on a group basis.

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7.6.1 Do we need Restorative Justice?

The interviewees responded to the question of whether or not we need restorative justice for sexual violence, by saying that they felt restorative justice already exists for sexual violence; for example, they explained that they have been involved in working closely with clients in family conferencing, where crimes of a sexual nature have occurred within a family. This answer particularly interesting because it is not consistent with the position stated by the Head of Victims services for the Probation Service who indicated that the Irish Probation Service is not providing restorative justice in cases of sexual crime, but rather refers such cases to one of their funded projects, such as the Tallaght Reparation Programme. This group of interviewees however indicated that they would be open to a further expansion of similar services as they see the value of victims having the power to choose which kind of interventions they themselves feel would be beneficial. Like other groups of personnel working within the criminal justice system, probation officers saw the potential for restorative justice to have a rehabilitative effect on offenders, but interestingly in contrast with other professionals within the criminal justice system they see this as one of the main goals that should underpin restorative justice approaches.

PRO1: I think to be fair we have been doing restorative justice with sex offenders as part of our work for a very long time. Where you have a guy who's offended against his children and the child wants to come back in and meet the father and talk about the offences.

We've been doing that work for a very long time and on some occasions it's worked very well and on some occasions it hasn't.

In response to the question whether they would consider restorative justice for sexual violence if approached about it directly by a client, they said:

PRO1: I think it would be fair to say that we would consider it in the context of our work. We'd look at it very carefully.

Caution characterised much of the responses of the probation officers to the possibilities of restorative justice in cases of sexual crime.

7.6.2 Opportunities and Possibilities

(a) Focus on the Offender: Addressing Recidivism

Respondents saw the possibility that restorative justice could assist offenders in changing their offending behaviour:

PRO1: So although I would obviously put the victim to the forefront, the survivor to the forefront, I think there needs to be an understanding as to who you're dealing with from the offender's side as well and the impact of this process on them also.

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(b) Offering Alternatives to the Adversarial Justice System

The respondents felt that there may be some difficulty in determining how restorative justice would interact with the criminal justice system. They claimed that there is pressure on the judiciary to impose a sentence of some sort, and that restorative justice is seen as an intervention, but not a sanction. Nonetheless, the interviewees also sensed an openness to consider something other than the adversarial system. They recognised that some victims may be very unhappy with the result of criminal justice proceedings and that restorative justice may shift the focus to addressing the personal needs of victims. They also saw the possibility for alternative interventions to be more cost effective and more efficient in terms of reducing re-offending.

PRO1: Because I mentioned there, people expect to feel maybe a particular way. Now some people are gleeful at one level when their perpetrator is apprehended and goes to prison and got their just deserts, and they can live with that being the end. Others, there's that emptiness or that whatever. So now we're saying "Well here's a process" we never told them that in the court that you might feel better and whatever because it was supposed to be all about the prosecution. Here's a process that supposed to be about you in the first instance and these are the benefits or whatever.

Furthermore, the pursuit of establishing a restorative justice programme was seen as an opportunity to develop a more systematic approach to societal and legal approaches to sexual violence, where the relevant

stakeholders could begin to interact in a more organised and purposeful manner.

PRO1: But yet we have quite a lot of victim organisations doing a lot of this work to a certain degree and in some ways trying to bring that together into a more systematic way of doing things, you know you could argue that there's a benefit to that.

(c) Empowerment and healing potential for victims

The participants indicated that restorative justice can be helpful to victims with the healing process. The participants also considered that providing victims with a choice regarding the kind of restorative process they engage in was a means of empowerment:

PRO1: And certainly, experience to date has shown that if they're planned well, and people engage in them well, they can be a very powerful intervention for all concerned, including the victim. Because certainly the victim, from our perspective is saying to us... ... we will put a support person in place for the victim, if the victim is involved... ... would be very clearly saying that it was very empowering and enabling and for all other reasons... So in some ways that can be helpful.

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7.6.3 Challenges and Obstacles

(a) High levels of Uncertainty and Risk

The main challenge identified was that restorative justice may not be suitable, or indeed successful, in every case. For this reason, it was stressed that a huge time commitment would need to be dedicated to each case, with an understanding that it is a form of work fraught with risk particularly when dealing with the 'depth of complexity to sex offending'. Therefore, participation from victims must be voluntary.

PRO1: we're involved in the risk business and there are no certainties. And you can never totally be very, very sure or positive that you've achieved a certain point with a person. That sort of permeates our work.

(b) Risk of re-victimisation

The participants expressed concern about the uncertainty and risk involved in RJ interventions and the possibility for the process to result in further harm to the victim.

PRO1: I think as well as we've been saying throughout the morning, that the, trying to get a real sense of where the individual is in this area is very difficult. It is very difficult and you do run a risk of further victimisation regardless of how firmly you believe that person is through a process of change.

1. Skills of Facilitators/ Mediators

A number of different skills were outlined by criminal justice personnel and by politicians as being necessary in their opinion for dealing with the practicalities of running a Restorative Justice Service. These included knowledge of the legal system in Ireland while having no direct involvement or conflict of interest with it. The principles underpinning restorative justice such as respect, inclusivity, adequate preparation and voluntary participation should be operationalised within the process through the ground rules for engagement and in the overall management of the process. The role of the mediator/facilitator and the service is seen as pivotal to ensure that both victim and offender get 'a fair process' regardless of the outcome.

Certain qualities were identified by all criminal justice personnel and politicians interviewed as important for a facilitator/mediator. These included; being present to both the victim and offender; having the capacity to inspire confidence in the process while at the same time supporting both parties in having realistic expectations of the outcome. Life experience and a high degree of self-awareness and the ability to manage one and others in highly emotional contexts were seen as crucial. Being non-judgemental and empathetic and having good listening and communication skills were seen to inspire trust and create conditions of safety. Careful consultation, sensitivity and preparation in advance of any meetings between victim and offender were also seen as vital to success. A high level of expertise was stated by all as a requirement to facilitate such meetings, while one respondent also felt that co-facilitation has much to recommend it particularly in complex cases.

The notion that such facilitation could be done on an ad hoc or voluntary basis was discounted with stakeholders reiterating that 'it isn't an amateur operation; expertise is needed, not well intentioned amateurs'. Good organisational skills and the ability to relate and liaise with a range of services and a set of guidelines to support facilitation particularly in complex cases was seen as necessary.

2. Models of Restorative Justice

There was recognition that a core part of any restorative process was the victim's readiness to participate and the ability to offer flexibility in terms of the models of engagement available to victims of crime was seen as very important. Overall the view was expressed that a face to face meeting between the victim and offender had the potential to be most useful and beneficial but a strong recognition also existed that this was an issue for the victim to decide. It recommended that a suite of options might be available to the victim who wished to engage with the offender, these included initial letter writing building up perhaps the meeting with the offender or in a case where that proved too difficult, a

surrogate offender might be available. There were mixed views on the use of video, while some saw it 'an option' for the victim, others recognised its limitations in terms of communication.

3. Timing of Restorative Justice

There was some uncertainty as to when a Restorative Justice process should be offered with most indicating that it should be offered post-conviction, otherwise it was felt that that it might be open to sentence manipulation. However those working with young offenders outlined the benefits to society of making young offenders aware of the impact of their actions when a crime or offence is committed and they were therefore inclined to consider restorative justice as an option for young offenders pre-sentencing, on an acknowledgement of guilt. However overall criminal justice personnel and by politicians were wary of offering restorative justice to sex offenders as an alternative to the criminal justice process and indicated that for that cohort of offenders, they could support restorative justice initiatives that would be initiated for victims and offenders when the criminal trial had been concluded.

4. Location of Restorative Justice

Flexibility, safety and the need for a neutral and independent space with a degree of anonymity which spoke to the needs of victims was seen as an important site for the location of restorative justice by criminal justice personnel and by politicians. While the architecture of the building was seen as important by one stakeholder in terms of it 'not being connected to the state'; for others, location was not seen as 'a game changer'. While Prison was considered as a possible location; the offices of the probation service was not seen as being suitable.

Dreaming of a purpose built restorative justice building another respondent offered a vision of a building with a range of room sizes dependant on the size of client needs, rooms for participants needing to take a break and some facilities for refreshments. One of the priorities stressed by criminal justice personnel and by politicians was that the location be where victims and their supporters could feel safe and secure. The restorative justice building in Tallaght was cited by one respondent as being an example of one such place's

Conclusion

As is clear from the responses given in this chapter by the legislators and criminal justice personnel, numerous and varying views exist in relation to the use of restorative justice in sexual violence cases. The level of interest and openness, however, to the potential restorative justice offers was noticeable, with only a minority of participants expressing hesitation for its use in cases of sexual violence.

The legislators and criminal justice personnel predominantly saw restorative justice as complementing the criminal justice system, emphasising the continuing importance of due process and providing a fair trial as part of society's response to sexual violence. Nonetheless, important opportunities restorative justice could offer for both the victim and offender - and which were felt to be currently lacking from the criminal justice system - were underlined and included:

- The empowerment of the victim by providing them with a key role in proceedings;
- Potential to answer unanswered questions;
- Space for the victim to tell the impact of the wrongdoing on him/her and his/her life;
- The offender's internalisation of the consequences of their wrongdoing and taking responsibility for the harm he/she has caused;
- An apology or acknowledgement of wrongdoing;
- The prevention of recidivism;
- The promotion of rehabilitation;
- Healing and closure

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While the benefits of restorative justice were primarily viewed as benefitting the victim and offender, a number of participants believed the benefits could in fact be far-reaching and extend to the local community and wider society.

Challenges facing restorative justice in cases of sexual violence identified by participants as needing to be, included:

- The risk of abuse or exploitation of the restorative process;
- A lack of awareness or understanding of restorative justice;
- Resistance to restorative justice

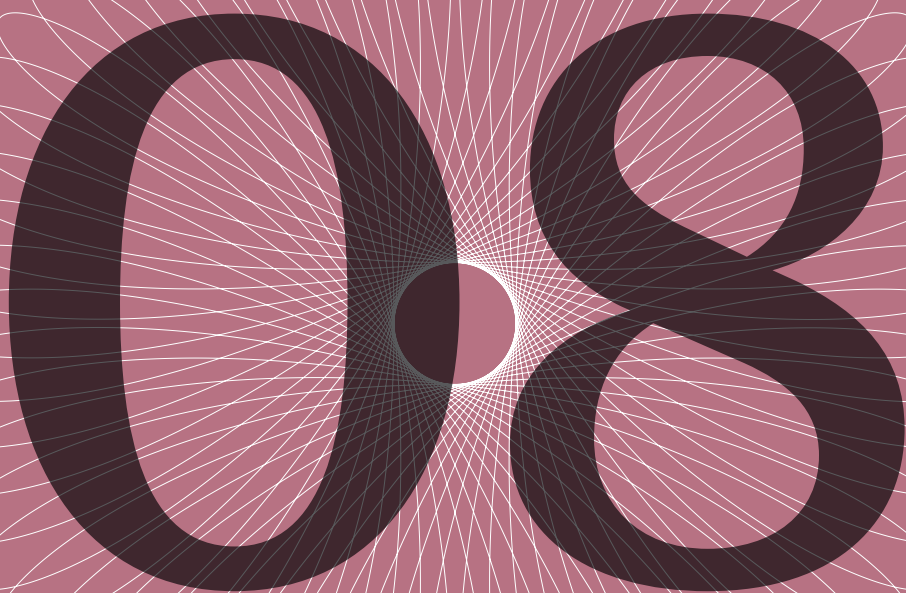
In order to circumvent any abuse or power imbalances in a restorative process participants recommended: - a screening process for participants of the process; ample preparation; an experienced facilitator to carefully monitor and review the process; and the limiting of restorative justice to post-sentencing.

Building societal support was an area identified as imperative for restorative justice to be accepted and implemented within Irish society. Participants felt more education and information was needed to raise awareness of the potential of restorative justice. The role of the media

in disseminating information regarding restorative justice received a mixed response, although a number of participants felt that if the media could move away from the presentation of sex offenders as monsters and the highly sensationalised reporting of sexual violence, it could play an important role in promoting positive discourse about the possibility restorative justice offers for rehabilitation and healing.

The views expressed by the legislators and criminal justice personnel have all been carefully considered and have informed the final recommendations which are contained in the final chapter of the report and in the executive summary.

Section





Therapists, Mediators,
Bishops, Religious &
Media Personnel:
Perspectives on
Restorative Justice in
Sexual Violence Cases;
Opportunities and
Challenges



Introduction

The final chapter of this report explores the views of a number of groups that have worked with or been directly or indirectly involved with victims and/or offenders of sexual violence. The groups interviewed included persons who have had direct involvement with victims and offenders in therapeutic and mediation settings; bishops, members of the religious communities and media professionals, who have contributed to the social discourse on sexual violence, and who continue to have an important impact on societal reactions to and understandings of sexual crime. The information forming the basis of this chapter is drawn from the transcripts of 27 individual and group interviews comprising 51 respondents in all.

The chapter has been divided into the responses of five distinct groups, 1, Therapists and NGOs for Victim; 2 Therapists and NGOs for Offenders; 3, Mediators; 4, Bishops and Religious and 5, Members of the Print and Broadcast Media. The analysis for each group will be discussed under the following headings:

- Do we need restorative justice in cases of sexual violence?
- Opportunities and possibilities
- Challenges and obstacles
- Other considerations pertinent to this group of respondents

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The chapter will also offer a summary of the perspectives of each cohort on the practicalities involved in conducting a restorative programme in sexual violence cases in Ireland. The views expressed by respondents revealed both similarities and divergences and all the views expressed are considered in drawing up the conclusions and recommendations that are presented in the final part of this report.

8.1 Perspectives of Therapists and Stakeholders for Victim/Survivors

Professionals who have worked directly with victim/survivors of sexual violence in therapeutic/counselling settings are referred to as 'victim/survivor stakeholders'. There were 16 therapists and stakeholders for victims interviewed; 5 were interviewed individually, and there were 2 group interviews, one group with 5 participants and the other group with 6 participants. In this section the views expressed by the 16 therapists and stakeholders for victims in relation to restorative justice in sexual violence cases are presented and considered under the headings outlined above.

8.1.1 Do We Need Restorative Justice?

The respondents were universally positive about the potential for restorative justice to be used in cases of sexual violence. Many potential benefits were cited, including opportunities for victim/survivors to be heard and believed, to confront their offender and express their anger, as well as the possibility of receiving an apology and for the offender to take responsibility for his actions.

Restorative justice was seen as a process which has the potential to be a positive experience that could contribute towards healing and provide an opportunity for victims to be empowered. Participants felt that the restorative justice meeting could provide the victim with the opportunity to reach closure; to move on and close the book on the trauma of the sexual violence that they had experienced. All respondents also voiced their interest in facilitating a request for restorative justice, but some conceded they may not have sufficient funds or expertise at the moment; others felt they were more than ready. It was also commonly noted that many clients are eager for an alternative outcome and experience to that provided by the criminal justice system.

SS6: I think it would be a brilliant concept to bring forward. I think it's one of the ways out of it. It can't be the only way, but it's one of the ways for the right people to find a healthier path. I think there's absolutely nothing to be lost by trying it because we're certainly not doing things right as it is, you know? And certain family members, certain individuals, certain people would benefit enormously from it.

SS5: ... I really think that there is a need for something. And we're hearing it from so many of our clients, where it could make such a difference to their healing. Where it's like there is this vacuum there for them. And, you know, we've had clients, they'll write letters, they will confront maybe themselves – that they're doing it already, but maybe in a way that it's not the healthiest for them because they're not supported through doing it.

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8.1.2 Opportunities and Possibilities

(a) A Demand for Restorative Practices among Clients of Therapy Services

A number of the participants spoke of their involvement in previous cases of mediation and restorative justice-type events. Indeed it appears that we have provision of some services that are similar to restorative justice in Ireland – for example therapeutic interventions known as ‘apology sessions’. Respondents pointed to ongoing requests for help from victims of sexual violence, particularly in cases of intra-familial sexual abuse. However, the respondents conceded that there is no coherent structure at present and the absence of a legal framework for restorative justice means that there are no legitimate lines of communication open between many agencies seeking similar goals. All of the respondents were of the view that a structured and coherent restorative justice framework should be put in place.

(b) Addressing the Unmet Needs from Experiences with the Criminal Justice System

The responses of victim/survivor stakeholders echo the testimonies of the victims themselves, as outlined in previous sections of this report. The adversarial nature of the criminal justice system was viewed as being

a negative and destructive experience. A journey through it is marked by stigma, powerlessness, a lack of control, worry about being believed and re-traumatisation when a conviction is not secured. Respondents felt that within the criminal justice system, victims are treated only as a witness and that having their character and behaviour scrutinised and questioned was scarring rather than healing. The dread of publicity was also considered to be a significant factor for many victim/survivors.

SS4: ... in my view the criminal justice system isn't fit for purpose if the purpose is to help people move on and get on [...] I'm sort of thinking why people don't go down the criminal justice route. It's because, mainly because people don't want to put their children through this. It doesn't actually deal with the need for justice. It's all... negotiation and interim negotiation – well, justice comes at a price, and if I won't pay the price – no. So, can we provide justice in a less expensive way? I would see this as a massive opportunity for that.

What is apparent here is that there is some confusion among stakeholders of the remit and functions of the criminal justice process, which is essential about gathering evidence and putting the evidence of wrongdoing before a court and punishing and rehabilitating the offender.

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Respondents also had misgivings about the uncertainty of decisions made by the Director of Public Prosecution, as currently there is no requirement to provide an explanation regarding decisions not to pursue complaints of sexual violence. In such instances, respondents reported that victims often feel that they are not taken seriously and it was worthless coming forward. This was seen as something that may also act as a deterrent for others to come forward and report sexual crimes. The criminal justice system cannot, therefore, meet the needs of everybody who experiences sexual violence. Not every complaint can be prosecuted and so there will always be a vacuum for some alternative form of justice, preferably one that treats the victim with a higher degree of sensitivity.

SS3: ... the criminal justice system does not meet the needs of everybody who reports to the guards. There is no doubt about that, and I don't think any criminal justice really could. That's the truth, that the prosecutor, I can tell you, cannot prosecute every complaint. Not every complaint is something that you can get into court. Or if you do get into court you're going to get nowhere with it... So there is always going to be space for some other process.

Respondents felt that the criminal justice system is not necessarily the best place to deal with cases of sexual violence. It was pointed out that many victims choose not to report their abuse at all. In this regard respondents' felt that the system is benefiting neither victim nor offenders. The unmet needs of those who do not engage in the criminal justice process are of particular concern, as many still yearn for some form of justice to be served. This is particularly the case in instances of

historic child sexual abuse. In such cases restorative justice was viewed by some as a possible mechanism for securing offender accountability.

SS5: ... because the justice system does not – one size doesn't fit all – and for a lot of the clients who come in here, the majority of them are never going to report. We've found... I've found, and from the staff as well, that they are more so adult survivors of childhood abuse than current sexual violence, that they're looking for some way of being able to get their offender to actually hear the impact that it's had on them.

However, it was also mentioned that restorative justice should not undermine what has long been struggled for: that is, that sexual violence and child sexual abuse must continue to be taken seriously both in the criminal justice system and by the wider public.

(c) Humanising Potential and Societal Benefits

A restorative justice ethos was seen as being of value for society as a whole. A more nuanced appreciation of the harm caused and suffered, the complexities of sexual violence, and its underlying causes could be fostered through efforts to promote offender accountability. It was also felt that society must continue to acknowledge the harm suffered by victim/survivors.

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SS2: ... but in it I just see such hope that if we can get there we can then start to say what happened. How was that person so dehumanised? That they could even contemplate doing that to a woman, never mind do it. Like, I think until as a society we're asking how come we have young men growing up thinking that is permissible – that's where I see the hope in it, if we could get all the parameters firmly in place and if we could be really clear... It just doesn't happen to one person when somebody is raped. Yes, it happens to that body but in terms of effect on family and life and society, it changes the whole circle that they come into contact with.

Respondents viewed the promotion of a more informed understanding of both victims' and offenders' reactions to sexual violence as something that society should strive for. It was also thought that restorative justice's relational and flexible process can respond to the complexities of human relationships.

SS6: ... I think there's a lot of people crying out for this idea, you know? And I can see individuals where it is clear, even when you see an organisation like One in Four, who are very, very staunchly supporting of victim, and their whole raison d'être, they're now coming out and saying, listen, we are supporting victim but by helping an offender come to terms with their problem, and to create a safer society that way, then restorative justice is a very simple step from there, you know?

SS6: Even to understand it properly, you've got to work in a restorative way to make things better. Because simple black-and-white cutting off is never the full solution.

Restorative justice was also viewed as an opportunity for offenders to increase their awareness of their social responsibilities and to take ownership of their crimes and possibly to correct their propensities towards harming others.

(d) Part of Therapy for Both Victim and Offender

The cathartic nature of a restorative justice event was also viewed as being of therapeutic value, as its use of narrative dialogue might help to release inner conflicts and perhaps offer healing and closure.

SS7: But I think it could meet the needs of some people who either haven't gone down the criminal justice route but feel maybe at any stage in their therapy, that person has got... to face that person... it might be people coming towards the end of it, but that's an unfinished piece.

(e) Opportunity for Church Reconciliation

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This group of respondents considered that restorative justice has the potential to provide positive outcomes in clerical abuse cases. Interviewees felt that restorative justice meetings could potentially open a space to understand the reasons for abuse. It was also felt that a more restorative process may compensate for what is seen as the Church's unsatisfactory blanket apology.

SS1: ...the coming forward with an apology is one thing, and well - I suppose, in the early days of putting a delegate to a congregation in place, that gave survivors somebody that they could approach. It's not exactly reconciliation but it's a step that congregations, and I suppose the dioceses would take, having some kind of a system in place, probably not ideal, but there's something there that maybe could be worked on.

8.1.3 Challenges and Difficulties

(a) Lack of Public Awareness and Interest in Policy Circles

A number of respondents expressed the view that sexual violence is still not taken seriously enough in Irish society. The view was expressed that there is a very limited, but perhaps growing, understanding of restorative justice within policy circles. Participants felt that there is no common understanding of the principles of restorative justice and stressed that education on its core principles is vital. If not, the fear is that it could be seen as a soft approach and therefore dismissed as inappropriate for serious crimes such as sexual violence. Participants felt that there is a need for the upmost clarity when proposing restorative justice, citing positive examples of its use in other jurisdictions, and demonstrating its benefits with statistical evidence.

SS2: ... we are still in a place that we're so willing to blame the victim... still... we are also still in the place of being really willing to let him off the hook. Or her. And this can... unless it's managed... Can we beat this?... Because we haven't moved into thinking that we have absolute clarity as a society, as a whole country, that this is a crime... and the justice system is huge in that. It is huge.

SS6: ... I don't think there's a wide enough knowledge. There's certainly a lot of good individuals who know about the gist of it, but it's not widely – I think in this area, certainly I think there's a growing understanding and education, I think, is starting to take off here... but again, it's the nature of the sexual crimes – it's a more complicated area to try and persuade people to do something different you know? It's very easy to – “we'll catch them”, “we'll lock them up”. And we... and we label them as bad, that's it. Restorative justice, then, takes a gamble. It means taking a risk. It has challenges, so it's going to take a while to buy into it. But I think it can happen, yeah.

(b) Adversarial System

Respondents commented that the adversarial nature of the criminal justice system does not encourage offenders to acknowledge their guilt or to access therapy.

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SS6: [...], you can have people who are quite happy to plead guilty and maybe go look for help or therapy. But they may be encouraged by lawyers not to do that, because it can look – once you acknowledge that, your bargaining chips are gone to some extent. So the system isn't helpful in that way. So even if you have a man who wants to acknowledge it and wants to go forward and get help, there may be advice out there that contrary to that. [...] And there's also, if they go forward and advice allows them to do that and plead guilty and get help, is there sufficient help out there for them as well? Does the system allow them to get help?

(c) Fear That Offender Might Abuse Process

The fear of manipulation and victimisation was a concern expressed by many of the respondents. Respondents considered that there is a need to be cautious about what is motivating an offender to engage in the process. Interviewees felt that therapists should be able to postpone the meeting if they feel that the offender is not ready. They also referred to the need for preparation and communication between agencies to ensure that offenders have undergone therapy and have sufficient capacity to display empathy to engage in the process. However, as the quote below illustrates, this type of agency interaction may be a problem.

8.1.4 Other Considerations for Therapists and Stakeholders for Victim / Survivors

(a) Guidelines and Boundaries

It was felt that clear guidelines should be in place as this would provide clarity for participants and stipulate that the professionals involved were appropriately trained. It was also suggested that there should be continuous auditing and evaluation of the process.

Participants were in favour of clear boundaries being set around the process and model of restorative justice, specifically with regard to who may initiate the process. A few participants were not supportive of an offender initiating the process due to concerns for the safety of the victim. Participants spoke of the need for specific agencies to be appointed with responsibility for managing restorative justice meetings, with appropriate lines of communication to be open between all relevant parties. It was also noted that victims should be afforded high levels of autonomy and choice regarding their level of engagement in the process.

SS4: I wouldn't want to put the responsibility on the survivor to lead the process. But I would want, as I say, them to have their foot on the brake.

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(b) Problems Related to Historic Cases of Abuse

Memory loss was seen as being a major challenge, especially in cases of historic clerical abuse.

SS1: I do have concerns about it in the congregation, when the offender is deceased or has Alzheimer's or whatever, that the head of the congregation has to sit in the chair instead of the person who offended. That's extremely difficult and upsetting for the person.

(c) Offender Suitability

A number of respondents expressed concern about the suitability of restorative justice in cases of repeat offending. Some respondents felt that the age of an offender may be an important consideration when determining suitability. It was considered that restorative justice could be more effective and/or valuable where the offender is younger, as it may act as a deterrent.

SS5: I think, from what I've heard, that it works better for childhood offences, rather than for the adult sexual violence... I suppose I just find from my experience here, of working with both, and the fear is often greater and the fear of the perpetrator is often greater for the adult, when it's adult sexual violence than when it's the childhood.

(d) Inter-agency Communication

Respondents felt that communication and trust is essential between agencies involved in restorative justice, as a means of ensuring safety and delivering a positive experience.

SS6: We've worked in a situation where a sibling, a boy, abused a girl, a brother and sister. And the brother received help, therapeutic help for his offending, and the sister wanted to have some sort of interaction with him. So we were able to facilitate that. So that was – whether you would call it Restorative justice, or a name like that – but it was family facilitation [...] and then both the agencies had to work together and take risks to even do it, you know? So we had to develop a trust with each other that it was done at the victim's pace, not at the offender's pace. But it was a hugely powerful and positive experience for everybody.

(e) Mandatory Reporting and Public Protection Issues

Participants identified the recent legislation on mandatory reporting of child protection concerns as having a possible impact on restorative justice processes. Respondents acknowledged the requirement to comply with the reporting obligations to the various authorities.

SS5: ... unfortunately issues can arise then, and we need to be very clear that there could be a reporting issue... because there could be children at risk. Now, unfortunately, with the new withholding bill that just came into force at the beginning of August, it's going to have a lot of implications for our work here, you know? And if somebody doesn't want to report but gives us information where a child could be at risk – so there's going to be, that's going to impact on us now as well... it's about, at the end of the day, it's about managing the risk. If the risk is something that can be managed effectively in the community, well then maybe and I'm only saying maybe, it should be possible to have a restorative process, but I'd be worried about public protection aspects of not actually... Not alerting the authorities? Yes, you'd have to, I think, alert the police, the HSE...

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(f) Legal Framework and Funding for Restorative Justice

Respondents felt strongly that restorative justice should be placed on a statutory footing and that legislation should clearly designate the respective obligations of all the agencies involved:

SS6: ... does it come under justice? I'm not quite sure. I mean, it really crosses a lot of boundaries. I mean there's a health element to it, there's a family, it's a family support agency element to it. There's a justice element to it. [...] I presume there'd have to be somebody controlling it. I'm not quite sure.

(g) Time-intensive Process and Costs Need to Be Considered

Respondents also expressed concern about the substantial time commitment that would be required for restorative justice to be successful; this is seen as a possible hindrance to acquiring sufficient funding. It was also noted that a cut in funding could be extremely damaging to the process, as extensive preparation and follow-up is seen as essential.

SS7: I think that a key piece to this for agencies who are going to either in-house develop these services, or purchase these services, however you conceptualise that, is the knowledge about the time and the funding... Sometimes I'll talk to people and I'll think, oh yeah, we'll fund a meeting between two people. That's grand. Now, what does that mean? 3 hours? Ah, nothing, we can fund that. But to really get across the point that [...] when you get to that 3-hour meeting, you might have had ten or twenty or thirty hours – three years of work, meeting the two people in different rooms and different cities or counties.

The speaker continued with an important point about the realities of preparation and costing for restorative justice:

Um, so that – this report is going to more than likely, I think, show restorative justice is a good idea. But I think it needs to guide purchasers to understand that it's not just a very quick... it's a long, slow-burn of personal relationships between facilitator and perpetrator/survivor and that you might have two years of work before you get into a room. And is that worthwhile? Yes. It's about the cost. I think that would be a big challenge, about how you convince whoever funder you're talking to, that the cost is worth the time; the cost to really do it properly. Because you'd do more damage if you throw people into a room too quickly.

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(i) Family Reconciliation

Most respondents felt that there is a great need for family reconciliation, particularly in cases of intra-familial sexual abuse. It was argued that restorative justice could be an educative process for the family, as well as providing them with a safe and non-judgemental environment to be heard. It could also possibly be a very positive experience for the victim, and a vital element in assisting them to have a less traumatic journey through the criminal justice system.

SS5: We would get calls from either parents of victim or parents of people that are accused of sex offences. They are very much a forgotten group. And you know, we would always treat every call with dignity and respect, and give them that time. Unfortunately, we can't offer them a face-to-face appointment here because we don't have the facilities. But they're very much... and the hurt and the chaos in their lives! When somebody that they love and they've had a relationship with, and sometimes unfortunately it could be a mother who's trying to support a daughter and the son is the offender. And that they're trying to balance both, and they're torn. And it's like that they're not seen. And that's huge.

SS4: [...] it's not really the child's reaction to the abuse that mediates recovery most, it's the supportive parent, most often the mother, and her response. So we work with that in mind. So a child can do beautiful, wonderful therapy in here with us and they leave here and

go into a chaotic, unsupported space, then it's not going to do any good. So, that would be the view that we hold. But there is something around allowing the family time to hear what has happened and to understand what has happened, and the extent of it, and to accommodate it into their future behaviour together.

(j) *Piloting*

A number of respondents noted that it might be preferable to introduce restorative justice in cases of sexual violence on a pilot basis initially.

8.2 Perspectives of Therapists and Stakeholders for Offenders

The 'Stakeholder Offenders' have worked with those convicted of sexual violence in therapeutic settings and therefore offer a highly valuable insight into the reality of the manner in which offenders respond in the aftermath of their offending behaviour. There has been substantial focus on the needs of victims throughout this study, but it also emerges time and again that many are keen to see a more carefully considered and purposeful approach from society and the legal system to addressing offenders, with a view to encouraging the taking of responsibility and taking steps to consider how recidivism can be reduced. It emerges throughout the analysis below that those working in therapeutic settings with offenders share many similar views to those working with victims, for example, both stakeholder groups refer to what they would consider a demand for restorative justice among their clients, and that they would like to be able to offer such services in a more supported manner. They also both refer to the humanising potential of restorative justice interventions, where restorative justice is understood as offering a more sensitive and inclusive approach, in contrast with the formal and hierarchical legal system. Also, both specifically mention the lack of general awareness of restorative justice models among the public and policy makers as a genuine and concerning hindrance to establishing restorative justice as a mainstream approach to addressing sexual violence.

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There were 15 therapists and stakeholders for offenders interviewed, one individually, and there were 3 group interviews, one group with 5 participants, another group comprising 7 participants, and the third group comprising 2 participants.

8.2.1 Do We Need Restorative justice?

For the most part, the offender stakeholders supported the extension of restorative justice services to cases of sexual violence. Respondents in this group felt that the majority of sexual offenders are keen to apologise, make amends, and offer some kind of reparation for their actions.

STO1: From the point of view of the perpetrators, what we often hear from our clients is that they really miss that chance to talk to the victim to explain or try to explain why that happened and

try to apologise and very often, once an allegation has been made, thy have no opportunity at all to talk to the victim or to somehow address them and for many of them it is really difficult.

It was also felt that restorative justice would cater for the outstanding needs of the many people affected by sexual violence.

STO1: There are one or two discrete pieces of work that I am able to recall that involved a facilitator, an offender and a victim in a meeting working through some issues. But there are few meetings such as this, which is quite surprising given the fairly large volume of people that come in through the doors... I think that's a huge missed opportunity, both from people who have suffered abuse as well as those who perpetrated the abuse

All respondents also spoke of how they were keen to see a restorative justice pilot program put in place, but they cited a lack of resources as a major hurdle.

8.2.2 Opportunities and Possibilities

As is evident from the responses of the victim stakeholders, it appears that therapeutic sessions, with similar values and aims to restorative justice, are taking place among therapists and clients. Respondents spoke about how many clients are longing for what restorative justice seeks to provide. However, they are not aware of the term, or the practice of restorative justice as it exists outside of Ireland.

STO3: So, even within our own organisation, on a given night, we've got assaults all the time. So, in one of our hostels there, since Christmas, we've had three sexual assaults within that hostel... And we would have immediately put restorative justice models in place there, where people would be challenged on their behaviours. They would be made face the individuals, with the individual's consent and willingness and everything else, and they would listen to what that individual felt and how they made them feel, and what they had to endure. They would have been encouraged then to respond to that and to apologise, and to own... to try and understand what had happened. And then they would be encouraged to understand what a basic standard of behaviour was, which any worker should be entitled to.

(a) Addressing the Unmet Needs from Experiences with the Criminal Justice System

Respondents mostly felt that there is a need for a system that supports, cares and seeks to rehabilitate offender, rather than a punitive one intent on segregation. The current system is viewed as being largely unhelpful due to its lack of a therapeutic ethos, an ethos which respondents stressed is necessary if offenders are to be sufficiently reintegrated. It was also noted that sexual violence is a highly complex area; the criminal

justice system does not have the capacity to deal with the variety of needs and responses of either victim and/or offenders. Indeed, it is argued that this is not its purpose, which is suggestive of the need for a parallel system built on different foundations.

As noted above, the desire to apologise and make amends is common among offenders. However, this wish is not facilitated by the criminal justice system. Instead, offenders sometimes pursue this need individually, an act that may cause further harm to the victim, as it may not be appropriately managed or supervised.

STO1: I've had people who have told me they have gone off on their own and written letters of apology. So, there is that, and very rarely offenders have the opportunity to make an act of reparation. It's usually pre-emptive... I've met quite a few men who have offended who have expressed an interest in making some kind of reparation or contact. It didn't necessarily need to be face-to-face contact... I don't think they ever fully understand how the risk of victimising or re-abusing might be contained in that and that it's a hugely sensitive area and sometimes it's so sensitive that sometimes even I'd step back and wonder 'how to you begin to manage this?' So, it's quite challenging and it really doesn't just have the sense of 'well if I write a letter or if I see them, I'll say sorry'.

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It was also remarked that when judgements are handed down they do not always take into consideration the fact that offenders can, independently of the criminal justice system, begin to try to understand, to heal, and are often willing to listen and seek answers. There is thus a vacuum for a more inquisitorial process.

Another argument is that the criminal justice system, and the probation service in particular, are overly concerned with risk management and therefore do not take a holistic approach when working with offenders. It was thought that there is an over-emphasis on protecting the community from the offender, resulting in a lack of measures being taken to address offender rehabilitation. In light of such a risk-management ethos, it was stressed that restorative justice would have to demonstrate success in reducing rates of reoffending, in order to gain legitimacy.

STO4: I think the justice system is working on one aspect and one aspect is on citizen rights, that's it. That's all they care about. That's the bottom line. It doesn't matter how well, that's one big fear we talk about, we could be making these individuals we work with much more emotionally and all and that's brilliant, but at the end of the day the only thing that matters is that they don't go out and reoffend. If you could prove... and I'm not sure, this isn't a challenge to you, if you could prove this as a means of reducing re-offence rates I'd say they'd jump on you in a second... that's all they care about, is what you're doing as a means of reducing risk. And I know it's horrible

too, because it puts the victim kind of... it's not centre stage, but the work we do is offender focused, and it does put the victim collectively centre stage. It's just not individually...

The inquisitorial nature of restorative justice may offer benefits that are not available through the adversarial system.

STO2: There's a lot of truth in reconciliation. What is the truth of these matters? You know? What has happened? To me, to you. Now there is hope for reconciliation, but you have to get to the truth of the matters first, really. And the Criminal Justice System doesn't do that. They're not interested in the truth, they're interested in the conviction, and they're interested in punishment.

(b) Prison

It was strongly asserted by one respondent that in no way does prison offer positive outcomes for offenders. Community-based responses to sexual violence were thought to be preferable. Also, it was noted that the availability of pre-emptive therapy may act to reduce re-offending.

STO2: I really think that to address an issue like sexual offending it should be done within the community. I feel very... , very strongly about that. I don't think prison is the place for it. I don't think prison is the environment to help people who have... you know? I remember a guy saying to me one time that, for years, um, he'd suffered from paedophilia and he didn't know where to go for help or how to address it, and of course he ended up doing a long prison sentence and got no help while he was there because he never got to Arbour Hill. So there are huge issues. That's why I think the holding of restorative justice and the sexual offending needs to be looked at...

Furthermore, it was suggested that risk assessment could be an aspect of restorative justice to some degree. Also restorative justice could possibly be used as an alternative to prison for low-risk offenders. One respondent noted that blanket responses are rarely effective and that restorative justice could better suit the complex and individual dynamics of each case.

STO2: If you were to look at that with some kind of analysis, you know, high-risk, low-risk, say whatever, and how many of those would benefit from a restorative justice process? How many would be willing to do it? It would a huge. It would be a great thing to do because, as it is, they're just walking the corridors or the aisles of Wheatfield Prison.

It was also felt that relevant stakeholders need to be creative about how to assist in the development of a more positive discourse around the possibility of restoration in sexual violence cases. It is stated that this cultural change could begin in prisons as, currently, prison staff are seen

to have unhelpful attitudes towards men who have sexually offended. It was suggested that perhaps prison officers could become more involved in the therapeutic process and play a more substantial role in rehabilitation processes.

(c) Humanising Potential

It was argued that the criminal justice system creates divisions and “hardens people’s hearts more against each other” [STO2]. Restorative justice, on the other hand, is viewed as being more suited to dealing with the complexity of human actions, as it sees the offender as not being solely defined by their offending behaviour. Also the issue of sexual violence, in particular, is seen as too complex and sensitive for the criminal justice system to address adequately.

8.2.3 Challenges and Obstacles

(a) Lack of Public Awareness and Interest in Policy Circles

Many respondents felt that there is virtually no public awareness of the potential benefits of restorative justice. The public’s often unhelpful attitude towards sexual violence was also mentioned, particularly the culture of fear, highly punitive responses, and treating all sex offenders the same way. Respondents thought that education about alternatives to the current system is vital.

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The lack of political will to consider the benefits of restorative justice was also seen as a significant issue. It was felt that politicians are only comfortable with pilot projects, as they seek to avoid the responsibility of making lasting commitments, especially where high-risk offenders are involved. Also the judiciary are not supported by any coherent structures or legislation when making decisions regarding restorative justice.

STO1: The political will is fairly lukewarm – you get respected Ministers for Justices saying “yeah, sure, we’re fully behind this scheme”, but then they don’t do anything in terms of how to proactively develop it. So, for instance, restorative justice in the CJS is very much down to individual judges who see it as having a value and if lots of them don’t see it as having a value it doesn’t get any articulation or any application, and that’s part of the difficulty

It was argued too that there is no attention paid to those who work with offenders and the role therapy plays in rehabilitation. In this respect the need for community therapy was cited in order to help reintegrate offenders, ideally with the same therapist who worked with offenders in prison. However, insufficient funds are directed towards this kind of holistic approach.

Finally, a possible challenge noted was a concern with the moral underpinnings of restorative justice.

STO4: Just on the point of the offender, is it about easing their own guilt? I don't know... But is it not, but I know, is it more there? I'm not sure... I'm not convinced on either side from the legal system... Financially I don't understand it! I think we're coming back to a pure society thing. And we are so caught up on what people say sorry for what they've done. Is this whole restorative justice thing to reinstate... moral values or who is it really serving? Is it serving the victim and the offender? Or what's the wider... ?

(b) Complexity of Sexual Violence

There were a number of reservations expressed about the use of restorative justice processes in such a sensitive area. One group of stakeholder respondents were very cautious, and indeed worried, about the potential for further harm, given the power imbalances inherent to cases of sexual violence.

STO4: ... the legal system is all about legal justice and this is more about human peace and relationships and the connection and the ability to hear both voices. And all I see is., by the nature of a sexual crime, it's almost the vehicle to which restorative justice works has been destroyed, which is kind of that relationship, that connection piece... you know? That it's ruined before you even start.

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(c) Fear that Offender Might Abuse Process

Similarly, some respondents expressed concern that perhaps offenders may not be sufficiently aware of the hurt caused by their actions and therefore any apology may be 'hollow'. There were questions raised in relation to offenders' motivations, which may be selfish, albeit unintentionally, and directed towards meeting their own needs. Respondents felt that this could be damaging to the victim, but also possibly damaging to the offender. Again, the unique and individual nature of responses to sexual violence is important to recognise. An example was discussed, where a victim was abused as a child by their father, and wanted to know why. One respondent worried that this is an impossible question to answer.

STO4: There isn't a clear answer to that. So, that's not fair to the child, it's not fair to the father, because there will be a million different things and factors and then again I would imagine you would probably go away not feeling satisfied, because the reality is it is terrible that it was you. It's always awful that it was you. It wasn't that you do anything to... So I suppose, I think that sometimes when victims are looking for 'why me?' they are looking for 'what did I do?', 'what was different about me?' and it's like that holding on to that piece, holding on to that I'm different and abused – it's looking at the chance at re-abusing them.

There was also a fear that a victim's anger might provoke an offender, or that a victim might want to punish an offender, an act that might cause him great harm.

STO4: If a victim gets angry, which I'm sure, of course, they would at times, you know? We... you could imagine somebody getting very angry back and saying... well you know? If the offender then feels humiliated... he might want to then gain power and control back, and what might happen in that dynamic?

(d) Collaboration between NGOs and Department of Justice

It was thought that for a propitious beginning, collaboration between different agencies and advocacy groups, as well as the Department of Justice, would be necessary. It was also suggested that there may be a need to regionalise the practice for more exact outcomes and greater recognition.

STO3: There's a huge preciousness in the Department of Justice about who owns what. And if it doesn't come from Probation and the Prison Service then it doesn't get the approval. So there needs to be work done on influencing people there, and trying to get – it will have to be collaborative, no matter how stone-age they might be... So, you gotta work with Probation. You've got to infiltrate it. You've got to build relationships, even if it's gently... gently coaxing them. And then you need to almost let them believe that this is their baby, ya know? Because you need to get Justice to buy in.

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8.2.4 Other Considerations for Therapists and Stakeholders for Offenders

(a) Preparation

It was advised that all involved should proceed slowly and with caution. It was said that there is need for a substantial amount of communication between relevant parties. However, there was a feeling that perhaps there is a limit to the amount of preparation that can actually be carried out prior to coming face-to-face with the offender. It was said that the situation is so emotionally evocative that there are no guarantees, even where the victim is strong and motivated.

(b) Guidelines and boundaries

There was much concern expressed regarding who could initiate the process. A similar issue was mentioned by victim stakeholders, where it was felt that there may be difficulties if an offender wants to make the initial contact. However, it was mentioned that the stakeholders have had many dealings with offenders who want to arrange some kind of meeting in order to apologise. The task, therefore, is to manage the subtleties of informing a victim about restorative justice, without seeming to be advocating on behalf of the offender. It is felt that the establishment of an independent agency may be required to oversee this.

STO2: I know there are court appointed victim support services, but what about a court appointed officer, who can actually sit down with the victim, “if, at any future date, a restorative justice opportunity were to present, would you be interested in it?” Now, a lot of very hurt and angry people might say “no way, I just want this person locked up for good”, but I think a lot of people, if they have a sensitive discussion with a restorative justice officer within the court system... that explains what restorative justice is about... might actually say “not at this point in time, but maybe in the future”... It’s giving the victim the message that there is a process whereby you can eventually sit down with the perpetrator or get from the perpetrator some written letter.

(c) *Voluntary and Individual Nature of Restorative Justice*

All respondents agreed that choice should be an essential component of restorative justice. The need for preparatory therapy was also stressed. However, doubts were expressed about whether some victims would be strong enough for a face-to-face meeting.

STO1: I would also nearly come down to an individual basis as well because at all points it would have to be something that the victim would want to be involved in and the offender would have to be suitable for and want to be involved in, so I don’t think that you could have a blanket that restorative justice would be good for one particular type of crime.

(d) *Equality in Restorative Justice Process*

There was a view that restorative justice should take a balanced view of both victim and offender, rather than marginalising one to suit the other’s needs.

STO2: I suppose, just, there needs to be balance between victim and perpetrators. I think there’s too many vested interests that say ‘let’s throw all the services at them’, like. I think, I think the victim’s needs need to be very mindful of that. Well, I know restorative justice is in part focusing on victim needs as well – I think that contribution is important. But there are times when the crude instrument of the victim impact report isn’t really, eh... doesn’t come anyway close to representing any moving forward for anyone...

(e) *Inter-agency Communication*

Similar to the victim stakeholders’ mistrust of offender therapists, the view was held that those who work with victims of sexual violence can often take an overly punitive attitude towards offenders. This divisive stance could be problematic where inter-agency communication is concerned.

It was also argued that one of the failings of the current system is that agencies do not work together, despite the fact that their ultimate goal is the same.

(f) Funding for Restorative Justice

The point was raised that funding may be difficult to acquire due the time necessary for preparation, and considering the excessively punitive attitude towards sexual offending.

STO1: I wonder in the current tough on crime climate, if you're saying the process could take two years of clinical work, I wonder about the ability to put finance towards that and how much funding is required. I therefore wonder how much desire there would be for that.

(g) Family Reconciliation

All respondents agreed that family reconciliation for offenders is of huge importance. There were a number of points raised in relation to this. Firstly, the family of an offender can need intensive support work, but it is not the job of the offender's therapist to provide this. It was said that there is a lack of availability of supportive interventions for the family of the offender. One participant said that their work involved family support meetings at the end of therapy, but that this was not sufficient. Secondly, reconciliation meetings would need to be held regularly, perhaps weekly. However, this may be problematic where the offender is incarcerated, and it was argued that a prison may not be the best environment for therapeutic interventions.

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Respondents spoke of the need for a safe space for families to simply talk and attempt to understand. It was felt that complexities arise with intra-familial abuse, which are of a different nature to the dynamics in cases where a victim did not know their offender. The intertwining of people's personalities, life histories and their bonds of love can often mean that in the long-term it is not viable to sever connections. Respondents, therefore, thought that restorative justice is probably more appropriate in cases of intra-familial sexual abuse, owing to the high levels of confusion and contrasting feelings that need to be resolved. However, it was noted that it may be even harder to bring all the family together, something that would be necessary, because while it may perhaps be easier for a victim, who can confront their offender, the extended family may be less likely to engage.

8.3. Perspectives of Mediators

It can be seen from the above discussion that those working in therapeutic settings with victims and offenders can identify a range of issues relating to their unmet needs on a personal and emotional level. The next group, mediators, focus on issues that can be considered to be very much in line with the above discussion. Owing to the nature of their work, again much importance is placed on the emotional responses of

both victim and offenders to sexual violence. The focus of this discussion is again centred on how restorative justice can assist in healing, through offering a space for victims to participate in a meaningful way in their own pursuit of justice. The respondents in this section identified the therapeutic dimension inherent in mediation. They expressed the view that mediation can offer a greater role for a personal contribution to the healing process, something that is missing from criminal justice proceedings. The criminal justice system is seen as a highly formal instrument where consideration of the victim's point of view is largely overlooked and where offenders assume a merely defensive role. The main challenges for restorative justice highlighted here can be framed in a context where the respondents are not overly concerned with restorative justice per se; their main concern is how restorative justice would interact with other social systems, namely the criminal justice system, the media and wider society.

There were two mediators interviewed for the purposes of this research; they were interviewed individually. In this section the views expressed by the mediators in relation to restorative justice for sexual violence cases are presented and considered under the headings outlined above.

8.3.1 Do We Need Restorative Justice?

There is ample evidence to show that the mediators taking part in this study are of the view that there are many potential benefits to be gained from an engagement in restorative justice practices in cases of sexual violence and they see restorative justice as an opportunity for correspondence, understanding and healing.

An understanding of restorative justice practices and its potential benefits was said to be growing within policy circles and among the relevant stakeholders. It is felt that restorative justice can benefit victims, offenders and the community. With this increase in informed benefits for society, the respondents see restorative justice as an important addition to the criminal justice system for crimes of sexual abuse.

8.3.2 Opportunities and Possibilities

(a) Healing

It was said that restorative justice can be used successfully in assisting participants to overcome the negative emotions commonly associated with sexual violence, such as blame and shame. By its very nature restorative justice gives the victim an opportunity for their voice to be heard; this is seen as an important component of the initiation of the healing process. However, restorative justice meetings should be carefully monitored to prevent the offender from adding any weight to residual negative emotions.

MO1: You know there's an expression that one hears you know and I'd like to hang on to that, "to be heard is to be healed" and so to

have that opportunity to speak it out is pretty invaluable I think that what I always find in mediation is that when the person who has been offended against speaks, they always exaggerate, that's what they all do but they know it themselves and so and so there's always a danger that the party hearing it will always respond in kind and challenge it so one is always cautioning them, please receive it will you because one always forgets that something is happening for the person or for the victim ya

Along with addressing these negative emotions, creating an opportunity for the victim to be believed can be immensely healing. The desire to be believed emerged as a common theme among victims.

(b) Addressing the unmet needs from experiences with the Criminal Justice System

It was said that within the current legal system, offenders assume a passive role and victims are treated merely as witnesses. The unmet needs of both victim and offenders referred to in this section were said to stem from this exclusionary aspect of criminal proceedings. One of the interviewees spoke of how both parties feel a desire to be heard. Being heard or believed is seen as being immensely healing and respondents were anxious about the fact that this is seen to be undermined by the criminal justice system.

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Further, by not involving the offender directly in the criminal process, the tendency for them to take responsibility is decreased. Providing restorative justice can assist both the offender and the victim/survivor to come to terms with the event, therefore potentially increasing offender accountability.

Because of the high financial costs required to maintain the current criminal justice system, alternative and complementing services tend to suffer a lack of adequate resources. For the legal system to operate at an optimum level, it is said that investment in related services is required, in order to increase availability and therefore engagement with such services.

MO1: I know and it's a terrible scandal to think of how of the level of cost associated with the legal system and the absence of financial support for that kind of work I mean it's kind of, one of the problems I suppose is any system that deprives people of their liberty has to be very exact and therefore you get into rights and proper legal representation and so on and its only you know when it gets to that extent and that's what soaks up all the money in the way and there are no resources left for.

Finally, as criminal proceedings tend to be very lengthy, there are concerns about extending the length of involvement for both parties by further participation in restorative justice. This delay in the process is seen as something that should be avoided, with the need for

interventions to be dealt with as quickly as possible. However, the respondent here also felt that deciding on the timing of restorative justice should be a personal decision and that it needs to be based on the readiness of both parties.

MO 1: Well I suppose my sense would be that once it all comes up to the surface that what they don't need is a process that goes on and on and that yes they need therapeutic intervention for themselves and maybe this can be provided by way of restorative justice but if not that if they become claimants then they need for that to be dealt with really quickly, not to drag out. Ya and the legal process inevitably drags it out so I think and there are problems with the mediation approach but I suspect that's the one to go for I mean you don't need any special procedures you just go do it you know and ya

(c) Positive Outcome of Restorative Justice

One of the interviewees discussed an example of how reconciliation can occur as a result of engaging in mediation. An offender who had initially been hostile towards the idea of a face-to-face restorative justice meeting, had, in fact, been embraced by his victim at the end of the process. Another example of the positive outcomes restorative justice can offer to those involved in crimes of sexual abuse is observable in a case mentioned by one of the interviewees. As a result of taking part in mediation, one particular victim began to feel less anger and frustration towards the offender and expressed that they longer had any issue with the offender living within their local community.

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8.3.3 Obstacles and Challenges

(a) Motive of Offender for Participating in Restorative Justice

Some concern was expressed about how restorative justice would interact with criminal proceedings. It was said that the victim might believe that if they were to engage with the offender in restorative justice, that this might be of benefit to the offender – for example, in terms of the impact it might have on sentencing or the reduction of a prison term. It was said that the victim would generally want to avoid such a scenario, and that this could impact on their willingness to engage in restorative justice.

MO2: Ya it's unknown while there's no guarantee of outcomes em in the Criminal Justice system em there's no guarantee of outcomes in restorative justice or you could reverse that one there's no guarantees in restorative justice processes until you get into it. Absolutely the same could be applied to the criminal justice process... how the Criminal Justice process is going to work out for them and would just kind of pass on the information at that stage is that don't invest too heavily in how this is going to end for you in terms of the criminal justice process

(b) Public Understanding and Awareness of Restorative Justice

It was felt by the interviewees that there is a lack of awareness and understanding of restorative justice among the general public. It was mentioned that there may be a positive role for the media here. It was suggested that, for example, an informative television program could be used as an educational tool to inform the general public about restorative justice practices. This would increase awareness and understanding of restorative justice and its possibilities.

MO1: It would be very interesting to have a television programme on the subject... Mmm could you do a mock Restorative justice session?

(c) Media Position Unhelpful towards Sexual Crime

It is unanimous amongst both mediators interviewed that media reporting is often unhelpful or indeed damaging for victim. For those who have been exposed to unwanted media attention, it is suggested that this can have a negative impact on the healing process, creating some added difficulties that are not experienced by those that have been given space and privacy.

MO1: To some extent I worry that many of those people whom we hear on the media are actually taken up by the media and held in that condition where there is no healing you know... I think I think the problem with the media is simply that it only deals in terms of blame and it can have a re-traumatizing affect. I think I have a lot of sympathy for offenders actually you know, how do they get to be the way they are, I haven't seen enough of them and the ones I have dealt with have been a great disappointment to me in that they don't seem to be eh good as regards to acknowledgement

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It is felt by another mediator that, because the media are commercial entities, they are only interested in selling newspapers and do not have any real concern for the well-being of those involved in each case. This can be a very destructive and unhelpful formula, as it can have a significant and negative impact on victim and offenders.

MO2: I wouldn't have a great opinion now and I have lots of friends and family who work in the media, I have very little time for them in the context of the chosen profession... I think they have a very destructive and unhelpful role to play and that a the role that they do play, they're in the business they're a commercial entity that's what they are, that's what they're about.

8.3.4 Other Considerations for Mediators

(a) Spiritual Nature of Restorative Justice Should Be Applied

When appropriate, spiritual values can be drawn on and applied to the restorative justice process. One of the mediators discusses a triangular connection, between the victim, offender and the 'Ultimate Source',

which can be ‘God’, or ‘Jesus’, or whatever “different language people have for the Source, the Spirit... the God of Peace which is somewhere in all of this.”

(b) Preparation

Devising a strategy for preparation and participation in restorative justice should be case-specific. The cognitive condition or mental state of victim/survivors and offenders should be taken into account. The best interests and well-being of all participants should always be of primary concern.

(c) Benefits Where Mediators are Working on a Voluntary Basis

One mediator stated that there may be benefits to be gained if mediators were to work on a voluntary basis, so long as they have had some prior professional training in the area. Working within a corporate structure with strict budgets was seen to present some limitations, limits that could be overcome if work was carried out on a voluntary basis.

8.4 Perspectives of Bishops and Members of Religious Communities

The members of religious communities taking part in this study comprised bishops, priests, a friar and a nun. Seven of the eight participants came from the Roman Catholic Church. In addition, one respondent was a clergyman of the Church of Ireland. There were 8 bishops and members of religious communities interviewed for the purposes of this research; there were 4 individual interviews and one group interview comprising 4 participants.

8.4.1. Do We Need Restorative justice?

In response to the question ‘Do we need Restorative justice?’ the participants, overall, were positive about the potential it could offer in cases of sexual trauma and abuse. The main reasoning for the response was attributed to the potential for healing and closure:

8.4.2 Opportunities and Possibilities

The two main opportunities which participants believed restorative justice could make possible were: addressing the unmet needs of the criminal justice system and system of redress, and as a means for church reconciliation.

(a) Addressing the Unmet Needs from Experiences with the Criminal Justice System and System of Redress

The group believed that measures for healing and closure were lacking from the current mechanisms for addressing sexual violence and the humanising potential that restorative justice could offer was also discussed. The majority of the participants expressed the view that restorative justice should complement the criminal justice system¹ to address unmet needs identified. B1 expressed a desire to move on from the adversarial approach used by the criminal justice system and work

towards resolution:

B1: 'take it away from this, you know, contentious, litigious thing. And [...] tries to get concord and reconciliation and to help people to move on.

R3 felt that the Redress system was also limited in its ability to help with healing and closure and suggests that there are possible benefits for restorative justice to be used alongside, or in parallel to the criminal justice system:

R3: you've got your conviction and you got your justice, whatever—but you haven't got peace and you haven't got healing. And there are things that maybe could be followed through in that. So, maybe they have them after—maybe some of them can happen in parallel with the justice system

R4 feared that the criminal justice system is losing its ability to deal with the complexity of human situations:

R4: I think we have got to a stage now where our regulations for protection have become so water tight that we are in danger of losing something else, which is the capacity to deal with human situations

Respondent R4 endorsed the fluid and individualised process of restorative justice which accommodates the complexities of the each case:

R4: I think Restorative justice is not a framework as the other thing is, like a cage its actually organic link which can only be developed in body [...] by the units and the individual people who make it flow like blood through our system, you know

R3 also believed the humanising potential of restorative justice would complement the criminal justice system:

R3: if you can complement that by the more human, the more compassionate—the more I suppose you could call it patient way of working with how pain resolves itself, but how wrong motivations can be adjusted back to a better and more righteous way of living²

(b) Opportunity for Church Reconciliation

The potential afforded by a process of church reconciliation in dealing with the consequences of clerical abuse was discussed in depth by this cohort and it was seen as a very positive opportunity. A number of the participants spoke of past work – some of which was restorative in nature – done by the Church to attempt to address the harm caused by clerical abuse. Some of the experiences included visiting a parish where an offender had just been convicted and apologising on behalf of Church, maintaining contact with victim-survivors and offering support where possible, inviting people of the parish to come to a meeting where they could voice their feelings and concerns about clerical abuse, and the

organisation of a community parish walk and the erection of a monument inside church grounds.

While the feedback from this type of work had been positive, participants believed it was limited and not happening on a wide-enough scale. They were keen to build and expand on restorative practices with more long-term foresight:

The consequences and harm caused by clerical abuse has been extensive and R3 highlighted the need for a multifaceted approach to any process of church reconciliation:

R3: if you take a parish where a priest was an abuser, [...] The parish is devastated that this happened, and how could it happen and why was it let happen, and so on. So you've got to mend, with the authorities that were there. The priest, the other priests that might be there, will be devastated that they didn't know or weren't given information in time. Or whatever it is. And the fact that he was a brother priest—they have, those priests have a very specialised, in some senses, relationship with each other.[...] it's related really to the vocation to be priest in some senses, and that they look on each other as having entered into that thing. And you have fallen out, you have messed it. You have devastated it. You have of course made me look the same as you, because we're all tainted now. You've brought shame on us.

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In addition to addressing the harm caused to the parish and wider community by clerical abuse, a process of church reconciliation must also address the divisive effect it has had within the church itself. A process of church reconciliation must therefore comprise internal and external components.

(c) Internal Church Reconciliation

Two areas which internal church reconciliation offer the opportunity to address, as identified through the interviews with the participants are division between superiors and clergy/friars and the relationship between the offender and church/religious community. B1 highlighted the disunion caused when members of the clergy, not knowing all the facts of the case, did not believe that the accused priest was an offender, and disagreed with the way he was being treated:

R1: one particular case that I have that's before the DPP—he was a priest, is a priest who is very well got—he would be very well known and would have been very popular, and there would be a great level of disbelief among the people in general, and among the clergy in particular. And .. there was a caucus? Meeting to try to, you know, force my hand, with regard to it. I know facts that nobody else knows, and I have concerns that obviously nobody else has.

The relationship between the offender and church was discussed in a different light by a number of participants and various points were made. Areas identified as needing attention related to the treatment of

the offender and restoring the offender to religious life. R3 discussed the treatment of the offender by the church. He believed that the church had gone too far in trying to appease the public and as a result they have turned their back on one of most the fundamental doctrines of the church – forgiveness:

R3: And the church is going to be found out! You can't preach forgiveness and not give forgiveness

While R3 felt that the offender had not been treated appropriately, another participant (R1) expounds upon the pressure placed on the religious community when dealing with the return of an offender. It is the responsibility of the religious community to prevent recidivism and he outlines how, in his view, it is the members of the religious community who need additional support and counselling:

R1: I mean there's primary victim and then there are secondary victim, and everybody is a secondary victim—we've all been affected by it. But I believe that a community in that situation, who are endeavouring to monitor one of these men. In one community, they're monitoring three of them. That there's great stress on them, apart from the fact that, you know, our way of life has been—is called into question by these men and the terrible things they have done.

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(d) External Church Reconciliation

Participants identified two issues that church reconciliation could address: the divisions that have been created between the church and the community, and the issue of reintegration of offenders back into the community.

There is a considerable degree of frustration felt by members of church – many members of religious organisations feel that they can be deemed to be secondary victim.

R1: They're responsible for all our troubles. I think there has been a significant denial in our society, that really, 'it's that church crowd', it's 'they' who are responsible for all the abuse of children. Now, if one of us said that in public—oh! You're in denial! You're not facing up to the problem. And that's one of the issues that you feel frustrated about.

There are significant issues that need to be addressed around the manner in which offenders are stigmatised within local communities.

R3: in any other field, you do your time and that's it. You've done your duty to society. There's no freedom ever for the paedophile, if you like.[...] You've never done your time. And I think a good deal of that needs analysing. I mean, society, I suppose even the judges, the justice world, and how would you prove it—if people are going to remain a menace, maybe they should never be let out of prison?

In other words it shouldn't be ten years, it should be for life? Or else, somebody else has to be doing the imprisoning after they are out. And the somebody else has no authority from government or state or whatever, to be doing the imprisoning.

8.4.3 Challenges and Obstacles

The participants identified areas which they believed represented challenges to the successful implementation of a restorative justice programme, these included public awareness and interest, participation and denial. Specific to church reconciliation, the challenges of the complex structure of the Catholic Church and communication difficulties between generations were identified.

(a) Public Awareness and Interest

A number of respondents identified the need for increased public awareness as a precondition for a restorative justice programme to work. B1 expressed concern over the challenge of gaining public acceptance and interest:

R3: I think that the whole thing of restorative justice has great potential. I really do. Now, I'm not sure how far we can get with it, because I don't know about people taking it up. But I certainly believe in theory that it has a lot to offer.

R3, however, felt that although there is a need for “heightened awareness in the public domain”³, there is openness to something other than the current system and he thought “everybody would agree that it should happen.” One respondent recommended using social media as a means to increase public awareness.

R4 worried that the necessarily slow nature of restorative justice would not arouse public interest:

R4: Well the trouble about restorative justice is that it's so tedious and so human and so long term that nobody is interested in it, they want quick fix solutions to everything

A different participant in the group interview took hope from the growing interest from the legal world in restorative justice which he felt might have a knock-on effect on the wider community

(b) Participation

Participation was concerned to represent a challenge to restorative justice practices by the cohort, drawing on their experience of victim-survivors being reluctant to meet the offender and fearing manipulation. Within the group interview, two participants agreed that their common experience from working with victim-survivors was that they do not want to meet the offender. When offenders have attempted to initiate a meeting with the victim-survivor, R4 had found that victim-survivors had

been averse to the request and questioned the offender's motives.

R4: the last thing they want is to have engagement with the predator because they would feel in many cases they were dominated by the other person and they would feel this is another form of manipulation to try and weasel their way back into [...], it's not restorative justice, it's to restore my good name and really it didn't harm you as much as you said.

R3 had found that the efforts of her religious community to make connections with former residents had been received as unwelcome.

R3: they don't want to see sight or light of use, if you know what I mean. And we would have had, we would have had highly qualified counsellors [...] but the fact that they would be part of any kind of, you know, counselling or healing thing was anathema. So we're paralysed from the point of view of trying to be helpful to mend or repair

(c) Denial

R1 discussed the challenge posed by denial and identified the lack of accountability for the harm caused by the offender as an area of real concern for restorative justice. He relayed one particular incident involving a member of a religious order who received a suspended sentence:

R1: One man got a suspended sentence, and at the gates, steps of the court, I congratulated him on apologising to his victim, and he said—I only said that because my lawyer told me to say it. So he just .. so you have these—he was only ever, as he would say himself, loving little boys. He just! And anytime I hear a mother or anybody in the street saying, oh isn't he a lovely little boy, that was his phrase, I just, ooooh, freeze.

R1 felt this was not an isolated incident; he believed denial of the offence and lack of co-operation can be a big issues.

R2 also identified denial as an issue for consideration. He highlighted the use of denial as an attempt to avoid prison and escape the criminal justice system, and also as a means to cast doubt in the minds of others and guilt over their treatment of him/her. Deep down, however, R2 believed they knew the harm they had caused.

(d) Complex Structure of the Catholic Church

When considering a process of church reconciliation, R1 stressed the need to take into account the vast nature of the Catholic Church and the multitude of independent bodies within it. The religious order uses a different system to a diocese and the complexities of dealing with a transient system of authority must be given due attention:

R4: In a diocese, the bishop can be there for 20 or 30 years. And he has real power, if you like. Whereas in an order such as ours, an ordinary man is elected to be provincial, he does his thing for 3 to 6 years, and then is gone. So, if you like, what is happening at the moment—what needs to be done, is perhaps reconciliation between a friar who was provincial in the early 90s, and the friars now. It's very complicated. ... [...] we're a much more flexible and impermanent set-up.

(e) *Communication Difficulties between Generations*

R4 believed there was need for church reconciliation work to provide an opportunity for discussion and communication within religious communities. However, one challenge he felt must be taken into account was communication differences between generations:

R4: you know some people are 90 in communities and some people are 20 or 30 maybe and so there's a huge difficulty about just talking between that age group[...] there are people who at the very mention of the word sexuality causes a problem and a ripple and they can't really be comfortable speaking about it. so in communities you really have generations of a different language groups, you know that some of them have been brought up in a way where you don't talk openly about anything and a younger group who never talk about anything else⁴.

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8.4.4 Other Considerations for Bishops and Religious

(a) *Piloting*

While the respondents were in favour of the use of restorative justice for sexual crime, a couple of them believed that piloting must first be undertaken:

R3: I would definitely say that steps toward that possibility should be taken up and set in motion. A couple of pilot adventures, if you like, one way and another. Reported on.

Within the group interview, the use of pilot cases and subsequent evaluation was also felt to be necessary before restorative justice would be acceptable for sexual crime:

B2: I think you'd have to do a pilot project and see how it's working and try and learn from that. To know what conditions—probably you'd have to work first of all to identify a small number of victims who would be willing to take part in this, and I suppose a small number of people with competence to, if you like, conduct it. But I think you'd have to begin with a pilot project to see

It can be seen from this analysis that the members of religious organisations are particularly concerned about the current societal approaches to dealing with the complexity of individual responses to sexual crime, as well as the divisions that it has created in the church and within local communities. A main theme that emerged throughout this analysis is that society as a whole often does not respond to sexual

violence in a way that assists victims and offenders in the healing process. The media is seen to play a major role in this.

Turning now to examine the views of media professionals themselves, it has emerged that media reporting is seen as playing a complex and often contradictory role in influencing the manner in which sexual violence is understood and responded to. In the following responses, much reference is made to the inaccurate and sensationalist media responses to sexual violence which can be intrusive and harmful. This can create a situation where the wider public form views that are not representative of the reality of sexual violence. On the other hand, however, there was also much discussion about the more positive influence that media reporting could have, if journalists and media professionals were committed to producing reports of a high quality, presenting information in an accurate and fair manner.

8.5 Media Professionals

There were 9 members of the print and broadcast media interviewed for the purposes of this research; all of them were interviewed individually. In this section the views expressed by the members of the media profession in relation to restorative justice in cases of sexual violence are presented and considered under the headings outlined above.

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8.5.1 Do We Need Restorative justice?

Overall the participants were positive about the possibility of introducing restorative justice services and the potential it can offer, with varying degrees of support expressed. M5 was very sceptical about the potential for restorative justice to be a successful intervention from the victim's point of view, and was also reluctant to give any in-depth answers to the questions posed throughout the interview. Others, however, were much more positive, expressing that the priority in responses to sexual crime should be to promote interventions that would enable the victim to recover from the trauma of violence and abuse, and that restorative justice could assist with this healing process.

M3: I don't know, but whatever is good for the victim or survivors of sexual crime and indeed, for the perpetrators is a good thing. If we can deal with the harms and deal with the causes, it seems to me a good idea, but I don't know, it's beyond my knowledge or comforts.

M4: I think restorative justice is hugely important in this area, because of the nature of the crime itself. That it does such damage emotionally and psychologically to people, that they need that support, and that a sentence is not enough in itself. The emotional damage that remains on their—because of the exposure of the abuse... , So I think restorative justice in this area is hugely important for the future—for their future.

M5: I would be very sceptical and very concerned about the introduction of such programmes without the full support of the feminist organisations that have expert awareness of the needs of victim.

M2 and M7 were also open to the development of a specific programme in response to sexual crime, whereas M9 felt that sexual crime should not be singled out from other serious crimes:

M9: if you just introduced it for sexual crimes, you wouldn't get anywhere. You wouldn't get it past the post, because it'd have to be in a climate where restorative justice was available for other areas as well.

M8, while being supportive of the concept of restorative justice and believing it was worth introducing for serious crimes, expressed caution regarding the outcomes it could achieve;

M8: 'Obviously it is something that is worth trying. What the success is likely to be is something that well certainly I couldn't predict.'

Similarly M1, who was positive to the potential that restorative justice presented, had reservations which related to the suitability of some offenders to participate.⁵

A number of participants expressed the opinion that restorative justice should take place alongside the criminal justice system and have some interaction with it. M8 saw restorative justice as being included within the criminal justice system with involvement from the gardaí, probation service and prisons. This participant warned against using restorative justice as a substitute for the criminal justice system:

M8: while restorative justice has a place in all of that, it can't be a substitute or it can't deflect from that essential core of our criminal justice system which is that we have gone beyond the era of blood feuds and an arm for an arm and an eye for an eye and all the rest of it.

8.5.2 Opportunities and Possibilities

The main opportunities which participants believed restorative justice could promote included: furthering the understanding and communication regarding sexual offending; changing the discourse and attitude towards sexual offenders; rehabilitation of the offender; giving priority to the victim's needs (and establishing a role for the victim in the criminal justice system); providing answers to unanswered questions; and allowing the offender to understanding of the harm and consequences of his/her actions.

(a) *Promotion of Understanding and Communication regarding Sexual Offending*

More discussion surrounding the causes of sexual offending and how to deal with offenders was deemed necessary by a number of participants:

M9: there's seldom enough space to talk about it. Sex offenders and the nature of it, and more importantly dealing with it and trying to address it.

M7: the reason that we're not doing it is because it's not part of the national conversation. And I think the Irish media has a big question to answer on that. We haven't started on the debate. Because everybody is just too sensitive. And we have to talk about trying to rehabilitate offenders. Try to teach them what is wrong with what they have done. And it's as basic as that. You know? We're not going to make any progress until we first of all acknowledge and discuss how we're going to sort that out.

Before an informed discussion could take place, M9 believed it was essential to gather more material on the topic of why offenders offend and how best to deal with them through analysis, study and debate:

M9: The main challenge is trying to get an understanding of it. I just think there's a dearth, still a dearth of analysis and understanding of sexual crime. Invariably in the media it's pretty black and white, to say the least. So the main challenge is more analysis, more study, more inquiry into it. And trying to, in a very very difficult atmosphere, trying to have a serious debate on what can be done about sexual offenders, in particular. They're the main challenges as far as I can see.

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M1 felt that public seminars were needed to stimulate discussion, involving members of the public along with the media:

M1: What you probably need to have is some sort of public seminars or something, have people speaking at it, and invite the media along, and say, "look it, what are the reasons, why do we have, why have we got rapists in our midst?"

Both M2 and M9 viewed the introduction of a restorative justice programme as a key component to igniting and subsequently facilitating the dialogue in this area:

M9: ... that's why I welcome the whole idea of debate about restorative justice because it brings up so many other things, which are not talked about. Fear, or taboos, or whatever. And as I said at the outset, the ore creative ways, the more human ways of trying to deal with these problems, the better.

M2: 'I think that would be wonderful. .. the language even to understand it, needs to be dealt with.'

(b) *Changing the Discourse and Attitude towards Sexual Offenders*

Two participants highlighted the adverse effects the current trend of demonising sex offenders has on society as a whole. M8 felt that the sections of media who promote and exploit this outlook are doing a disservice to society, as it does not help meet the requirements of society to reduce offending behaviour and rehabilitate the offender. M2 believed that the demonisation and dehumanisation of sex offenders allowed society to place them at a remove, therefore negating feelings of identification or social responsibility:

M2: I think the impact has been detrimental in terms of social responsibility. If we continuously the stories, to portray the victim [sic] and demonise the victim6 [sic], the way we do, we will never be socially responsible in relation to how this should be dealt with. Because the bottom line is, and I think, is sexual abuse is endemic in Ireland. If people knew that their brother, their mother, their father, their—it's in every family. Everybody has it. People you know are sexual abusers. So if you just think of that, then you've got to realise how you are going to deal with a sexual offender. But the media doesn't deal with that, they demonise them. You see an evil person. It doesn't see a human being, it sees an evil monster.

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This participant believed the media needs to stop the 'character assassination' of sexual offenders, even if people want and will pay for those stories. A different approach must be taken:

M2: It's those people who buy those newspapers, who want those stories, who are asking—that's what we will buy. If you give us that shite, we'll buy it. Please give us? But you don't give men pornography because they want to look at it all the time. So you have to find a way of saying, you know, to find another means of saying, this is not right. You have to find—look it, find a way of creating a dialogue about the morality and the ethics of this. And finding a way of getting people to hear that this is not the best way of moving forward. This is ethically not right.

M2 saw restorative justice as a means for changing the discourse and approach to sexual offenders. This participant saw it as an individualised approach which does not treat all sex offenders as a homogenous group, but which offers the necessary support and treatment to aid rehabilitation:

M2: We need to find ways of bringing—okay, I'm saying—you call it restorative justice, I don't have a language like that on it, but a sense that if we can get perpetrators to see that this is—if they're sick, they need to be looked after. If they are sick, and manipulative, they need the best possible treatment they can get. If they're not, we can't put them all in the same boat, and say, he's a paedophile, he's a serial abuser, therefore he's, for the rest of

his life, he's going to be tarnished with that label, and therefore he's never going to have a value in life. Or that's his value, or his devalue. So he's constantly devalued. What sort of way is that for a human being, or for a society to treat a human being?

(c) *Rehabilitation of the Offender and Helping Take Responsibility*

Reference was made to the unsatisfactory nature of the criminal justice system in directly addressing offender accountability. Among this cohort, the limits of the criminal justice system were mainly discussed in terms of addressing the victim's needs. Nonetheless, the prevention and reduction of sexual violence was also discussed in relation to the need to work with offenders and establish a purposeful system of intervention. It was said that the criminal justice system alone will not solve the issue of sexual crime in society, as its function is not to assist society, or even perpetrators themselves, to understand and acknowledge the reasons why sexual violence occurs and the harm it causes. It was eluded to here that it is not just society that lacks an awareness or understanding of why sexual crimes occur, but also the offenders themselves have a limited understanding of their own behaviour. Relying on the criminal justice system as it currently stands is not going to adequately address this issue.

M4: Where the offender is concerned, yes, if he can be convinced of what he has done—the evil it has caused in people's lives. And I think most of them just don't realise that. They certainly, in the vast majority of cases, they just don't accept it—denial, as I said. It's rare for any of these men to feel any sort of remorse. There may be a sort of rational acknowledgement of what went on, but there seems to be no emotional conception of it, in most cases. And that's a hard one to crack, very hard. For .. But we mustn't forget that they are human beings, after all, too. There must be some way to reach these men. But it's a challenge. I've often thought, they probably have a mask??? to protect themselves, to allow them to continue their behaviour. If they can't acknowledge the gravity of their perpetrating, and the effects it has on other people. But I mean, they're part of the human race as well. It is part of human nature.

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M4: And that's something that I think people are beginning to realise, that paedophilia is part of human nature. And society has to deal with it. And you can deal with it in a number of ways. The court system, which is a crude instrument, and won't solve the problem. Or take the restorative route, which maybe can—and help them gain an insight into themselves and their behaviour, and the consequences of their behaviour for other people.

Awareness of the harm caused can be necessary for a reconciliation to occur. M6 raised this issue in the context of mediation generally, where he discussed his experience of witnessing a mediation taking place between two colleagues.

M6: ... sometimes the mere awareness of the emotional intensity that's felt on the other side has been hugely significant... . And he agreed to... .. he apologised privately, he agreed to destroy the photograph, never to use it again, so on and so forth. But it was a total resolution to the problem.

Being shunned by the community and hounded by the media were identified as some of the realities facing offenders on their release from prison. Furthermore, the current provisions for rehabilitation of the offender in the criminal justice system were deemed to be lacking:

M8: Well I think the, there is not a great focus, it's very patchy, within the criminal justice system on rehabilitation. We know that the prison system only very rarely actually produces rehabilitation, and there is a much broader debate as to what relative weight should be given to rehabilitation within the criminal justice system and particularly within the prison system. I think that people are aware of that.

M7 saw restorative work within the community as a means for repairing after sexual crime. This participant advocated a community approach to dealing with the rehabilitation of offenders:

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M7: You know this network of support for rehabilitation or something—I think it's really important to have that as a mix of professional and community. So there is a sense of—this sounds very soppy—but communal love for a human being. And we integrate this in our society. Absolutely, so you have the professionals, the psychiatrists and social workers—all those—but you also have .. the community as well. Dropping in. So the person doesn't feel like they're being monitored (thought they are)

M8 also saw restorative justice as aiding the rehabilitation of the offender:

M8: I think it's also a vehicle for assisting the perpetrator into rehabilitation and that generally is going to be to the benefit of society as a whole and to making society safer.

(d) Giving Priority to Victim Needs

Many of the respondents spoke of how they saw the need for a more adequate response to the needs of victims of sexual crime, both from the legal system and society in general. The adversarial nature of the criminal justice system was seen as a hindrance in assisting victims to overcome abuse, as well as what was seen as its highly formal and hierarchical nature, where it exists to perform a specific function that does not include therapeutic intervention of any kind for victims of crime. Restorative justice was seen a possible mechanism to give victims autonomy and ownership over their personal pursuit of justice. Some of the respondents also felt that restorative justice has the potential to enable offenders to understand and take responsibility for the harm that they have caused.

For the most part, however, their emphasis was on the potential benefits to victims.

(e) *A Role for the Victim in the Criminal Justice System*

M8, who saw restorative justice as being implemented within the criminal justice system, believed that it would offer victim the opportunity to engage with the system:

M8: I think that it is a way of the victim of crime being kind of integrated into the totality of the criminal justice system

M4: I think that the effect of the crime on the individual really has to be taken into account, not just the damage done to society by the criminal behaviour—which of course is the emphasis of justice, or traditionally has been, the social impact of their misbehaviour. I think the victim needs to be more and more to the centre. And I suppose that has been a feature of the justice system over latter decades, it has become much more nuanced, and sensitive to the suffering of the victim. But I think they have a long way to go.

M4: Well, I think personally, the priority for society of the family, and the justice system, should be the victim. . to recover from the trauma. And help them to lead a fairly normal, if there is such a thing, happy life, fulfilled life. Of secondary, but indeed, as a preventative, it is crucial that the perpetrator be dealt with also.

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Furthermore M3 spoke about what could be described as the unequal power structures in society, where victims of crime cannot assume ownership over justice proceedings and are, in fact, excluded from the process to a large extent. The very formal and impersonal legal system was seen as an obstacle to victim autonomy and the accessibility of justice.

M3: With regard to law, why do we have laws written in a way that most people cannot possibly understand? Why don't we just simplify the whole thing and make it absolutely clear cut of what the law is. Stop this carry on in courts of 'Lord' and 'Justice' and this hierarchy... that goes on with people in wigs, excluding the populous. Why don't we have an open thing? Of course, we'd have to have some structures to them. Make it coherent and stop all this carry on that goes on. In that context, what you are talking about would be maybe, good. You could then see, not just with regard to sexual crime, but regard to crime generally, that you are confronting people, but if you were doing it in the context of an equal society. A lot of people feel diminished by the way things are and disrespected.

(f) *Providing Answers to Unanswered Questions*

The opportunity to solve unanswered questions was a major benefit to victims outlined by two of the participants. M2 discussed a restorative justice process he/she had been involved in which did not proceed, as the victim was suffering from panic attacks. This participant believed it would have been advantageous to the victim to have been able to find out the reasons behind the offender's actions, had the process gone ahead:

M2: And he would also be able to find out a little bit about them, and what their lives were about. And why they did what they did. Because I don't think he ever found out. And that would have been very useful.

(g) *Telling the impact: A means to Move Forward and Offender Understanding of the Consequences of His/her Actions*

A space and opportunity for the victim to tell the offender of the impact on their lives that arose from his/her actions was considered valuable by M1. Furthermore, M2 discussed the potential benefits telling the impact could have for family members of the offender and victim. The participant told of an experience he/she had attempted – to set up a meeting between two mothers. One mother's son had killed the other. Both mothers were dealing with the fall-out and consequences of the event. M2 felt that by never crossing paths, the two women would continue to hate each other forever, which he/she did not feel was healthy. Although no meeting took place, the participant saw the advantages it might have had as a means of moving beyond hate:

M2: Not just the impact, but how you get beyond it. If there's a way of getting beyond it. And sometimes if you—if the human beings can see the trauma and the impact that it's had on both their lives, they could actually be a support to each other, rather than seeing each other.

M6: I think it's terribly important that victim should have a say. I'd suspect it probably is very therapeutic for many of them but I wouldn't like to see a situation develop in which that was the only value of that kind of scenario.

M2 also believed direct discourse between offender and victim offers a powerful opportunity for the offender to gain an understanding of the consequences of his/her actions. This participant deemed the understanding as crucial in the prevention of recidivism:

M2: because most people who come out of this jail go back in again, within a year or two years. Imagine if they never went back in again because they were involved in that little simple thing, of telling the story because they realised the impact of what they'd done, and they realised—now, they need more than that.

(h) The Response of the Media as a Potential Means to Gaining Societal Support for Restorative Justice

The response of the media to sexual crime was discussed at length among this cohort. It is described as ‘a double-edged sword’ (M6), where on the one hand the media sensationalises and distorts the reality of sexual crime, but that it can also assume a more positive role by informing the public and also potentially offering a means of generating a more critical analysis and discussion of more adequate ways to respond to the reality of sexual crime and the unmet needs of victims. A number of the respondents felt that society would respond positively to a discussion about restorative justice in the media. It was felt that if such a discussion were to be framed in a context where engagement in restorative justice was voluntary and victim-led, the wider public would empathise with the position of victims and be supportive of their right to choose to engage with such a process. It was noted, however, that despite this, offenders might not be treated with empathy, even where they showed remorse, as they would still be seen as dangerous. It was stated that a lot of people are of the opinion that “offenders have no rights.” (M6).

M5: Good media coverage can reassure a survivor and make her feel that her pain is understood, and can educate others and change our culture to become less tolerant of misogyny and the crimes of violence it gives rise to.

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M4: I have no doubt. Indeed, some of that—of course the media would be supportive. ... anything, the media would be naturally sympathetic to the victim in anything that would help them to recover to return to a quasi-normal life, insofar as they can... I actually have no doubt about the media—anything that might bring about the end of abuse, and if the abuser is sincere about ending his ways. ... Most of the media would be utterly supportive of such a process.

M4: Well, I think, I mean, if it is believed that this will help the victim, I can—it would be very positive .. towards that. Where the offender is concerned, again, if the offender is willing to do this to help the victim, I’d say the media at large would be very supportive of that. The only issue that I can see, is where the offender is concerned... that’s where I might be cynical. And I know elements in the media scapegoat these guys, as we said earlier on, when they get out of prison. ... That’s a difficult one to deal with. A really difficult one.

8.6.3 Obstacles and Challenges

The participants identified areas which they believed represented challenges to the successful implementation of a restorative justice programme, they included: the media is driven only by the pursuit of profit; offenders as the ‘unforgiven’ in society; a lack of interest among

the wider population for alternatives to the criminal justice system; and the unsuitability of some offenders to take part in a restorative justice process.

(a) Media As a Profit-driven Enterprise

Linked to the issue of generating societal support for restorative justice, the media was seen as a fundamental aspect of societal responses to sexual crime, with all respondents recognising the significance of media reporting in how the general public form their views of societal issues. Despite the opportunities seen to exist where changing the discourse around sexual violence is concerned, many respondents were sceptical that the media would be willing to adopt a more progressive critical analysis, in the absence of some kind of financial incentive. The respondents were keen to point out that the media operates as a commercial business, where the main concern of media professionals is to increase ratings and therefore profits for the owners. Furthermore, media professionals operate in a fast-paced and competitive environment where they do not have the resources to engage in investigative journalism or longer-term projects that could offer a more critical analysis to could assist in our understanding of sexual violence in society. To date, the result of this emphasis on ratings and profits has meant that competing media professionals have produced sensationalised media stories about sexual crime and sex offenders, often resulting in further harm to victims, offenders and family members.

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M5: media coverage often reflects the myths of rape rather than the realities and this impacts on our cultural understanding, and on the minds of potential jurors, counsellors, gardai, friends, family – those whom the rape victim relies upon for support and justice.

M3: ... Yeah, the profits of the owner. That is what the media is about. More and more journalists, like when I started in journalism that would be regarded as outrageously cynical view. Now, people say it defiantly. The primary point is make profits for the owner. That's it or survival. Survival, is an obvious thing and whatever you need to do, you do.

(b) Offenders As the 'Unforgiven' in Society

A number of the participants spoke about the difficulty society has in forgiving sexual offenders:

M1: I think they're probably right in saying that, that they are the unforgiven, they will always be tarnished as a pedophile

M7: Of all the cohorts in society, for me, they are the hardest to forgive and to treat as normal human beings. That is a challenge, and we have to start doing it. There are many reasons why, I think people are very afraid of them. Because we expect them to be monsters, you know, and the thing that I've learned is that they're

just like the person, the people walking down the street—they're your father, your brother, your first cousin.

M8 believed society's reaction was due to a lack of understanding of certain kinds of sexual offences, compared to other crimes. This participant identified the role of offenders and those working with offenders in bridging the gap in understanding:

M8: I expect the people who have not ever committed a sexual offence can't conceive of abusing a child or raping a woman and it is more difficult therefore to empathise with somebody who has done that. Now probably offenders are going to have to, and again I don't want to generalise about offenders, but those who are working with offenders and offenders who can themselves work through the offending behaviour and come to an understanding of it, will have to somehow take responsibility for explaining how it was they got to be offenders and how they came to deal with that in order to try to bridge that gulf in empathy which undoubtedly does exist between most of the public and the offenders.

M7 took a similar approach, recommending knowledge to be the key and the need for the offender participation to further understanding,

M7: '... they need to participate in that process. They need to help us to understand them.'

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The lack of understanding and forgiveness for offenders has led to indifference and/or hostility to providing additional or alternative approaches to the criminal justice system (as outlined below).

(c) Lack of Interest among Wider Population for Alternatives to the Criminal Justice System

One challenge identified by a number of participants related to a lack of interest and support for alternatives to the criminal justice system from the wider community. M2 believed that while the people who work within the prisons and with offenders would be supportive of restorative justice, there remains the mentality of lock them up and throw away the key amongst the majority of the population:

M2: "people don't want it. So what needs to happen is people need to change. That needs to change, the attitude needs to change. How are they going to find out that restorative justice works and will work? That it is important."

M1 also mentioned a similar attitude prevalent amongst editors (in particular, tabloid newspaper editors) who do not want to be seen as "soft on pedophiles". (M1) This participant believed that highlighting the benefits that restorative justice could bring to the victim and demonstrating that it was something the victim wanted would be the best route to arouse interest and support from editors. However, he/she

warned there is “a bit of a mindset there and that is not going to change overnight” (M1).

M8, however, saw some potential for change and pointed to the financial crisis as acting as a stimulus “for a refocusing of attention for perhaps of a different way of dealing with perpetrators and one which might be less costly and, you know, it might open up an opportunity for fresh thinking” (M8).

(d) Unsuitability of Some Offenders

M1 felt that if an offender showed “genuine remorse” (M1) went through proper counselling and aftercare, and was seen trying to make amends, he might be deserving of a second chance. However, certain serial offenders he would consider to be “lifelong recidivists” (M1) whom he/she is uncertain can be helped.

(e) Risk and Uncertainty

M5 was least open to the possibility that restorative justice could be a positive intervention. This respondent in general did not engage with many of the questions put to them throughout the interview.

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M5: .the history of restorative justice interventions in relation to these crimes shows that they are highly risky – I know of women who have been badly injured because of ill judged interventions with abusers. I think restorative justice needs to be fully discussed with those currently providing support for victim ie rape crisis centres and domestic violence service providers.

8.6.4 Other Considerations for Media Personnel

(a) Family Reconciliation

The question regarding the need for family reconciliation received a mixed response. M7 was clear that family reconciliation would be advantageous, “I think families have to be brought into it” detailing that the injuries and consequences of the offence can have serious repercussions for the families. While positive to the potential of family reconciliation, in cases concerning children M8 pointed to children’s safety as the first priority. M9, on the other hand, saw a need for it, but was uncertain whether it could be achieved, “I can’t think of any greater bridge across, because it is so complex.”

(b) Developing Gradually

One participant was of the belief that, rather than starting with the implementation of a large restorative justice structure which would not provide the flexibility to respond to the needs/issues as they arose, it would be best to start small and let the structure grow naturally:

M7: Yeah, I see. I think, I don’t think you need to start very big. I think it should be part of the wider solution. So I think you could

start fairly small. You know, a very dedicated core .. structure. And kind of let it grow out. To evolve organically, it would be much better than a great big .. if it doesn't work in its first six months, it would be a disaster.

(c) Incentives

The use of incentives to encourage offender involvement was discussed by M7. This participant believed that, particularly in cases which concerned a stranger offender, there would be a need to incentivise the process and he/she suggested six months off the prison sentence. Although the incentives would encourage participation, M7 did not believe this would undermine the value of the process, “*It's only when they get on the programme that they might realise the benefits themselves.*” [M7] The participant acknowledged, however, the conflicting feelings that might arise out from the provision of incentives:

I think it's a very hard thing for society to do, you know, to say, we will reward a serious offender. But we have to think about the rewards for all of us. [M7]

(d) Media's Assistance in Gaining Support for Restorative Justice

The pivotal role the media played in bringing the area of sexual abuse to light in Ireland and driving reform was acknowledged by all participants. A number of participants offered advice on how to approach the media successfully in order to receive assistance in disseminating information and gaining popular support for restorative justice.

M7 recommended making the information more accessible and providing stories which illustrate how restorative justice has helped individuals:

M7: you have to de-theorise it. You have to come up with examples of how it works. People that it might suit. Often something like this, to get it up and running—show the media how it works. And this is how it works. And here is somebody who has been saved by it. And here is somebody who has recovered, or partially recovered, because of it.

Interviewer: Or at least that it contributed in some way to some healing for them.

Yeah. The media loves those stories.

M2 also highlighted the importance of providing past examples of restorative justice and allowing the media access to the people who can provide them:

M2: 'By telling stories about restorative justice. By actually telling the stories. So they need to get access to the stories, to the people.

This respondent warned, however, of the potential for manipulation by media and the need for responsible journalism:

M2: It has to be about them, it's not about the story. But the story is important, absolutely important. You have to find a way of telling it. You may have to compromise on it, but you have to find a way of telling it, that you hope would be responsible for the victim. And their families as well, because I think their families have to be considered in this too.

M8 recommended approaching relevant NGOs with pre-existing ties to the media as a starting point:

M8: I think they would probably be quite a good starting point, to use some of the existing of contact that exist with some of the existing NGOs, the Irish Council for Civil Liberties and so on, to try and use the channels of communication that already exist between them and some segments of the media, as a starting point

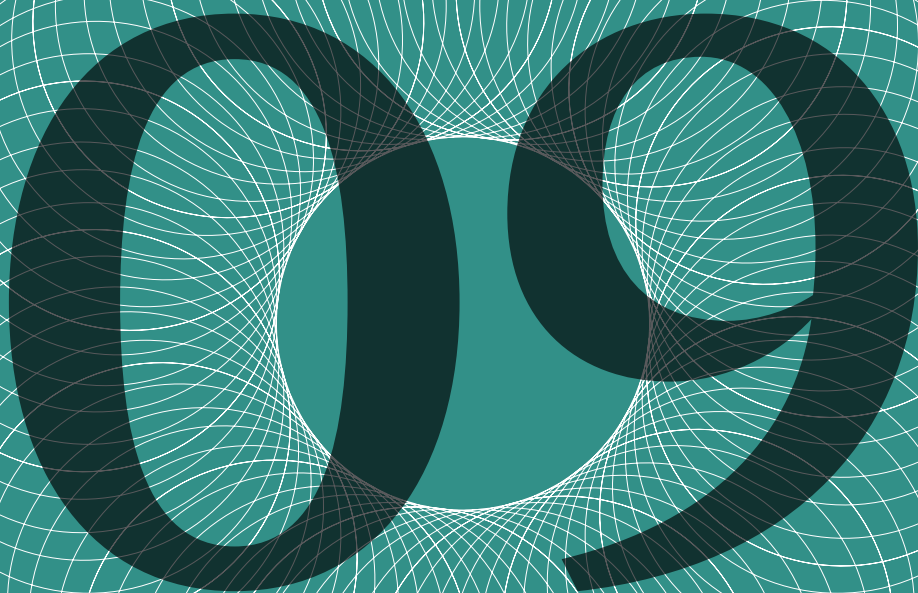
One obstacle acknowledged by M2 related to the potential problem for the offender in going public. In a prior experience with a restorative justice process (which did not proceed in the end), the two offenders were willing to participate, “But I knew that they had problems, and that they started—if they went public, for instance, it could be a big problem for them. And there some big issues around that.” However the participant saw value and benefit to showing the impact on television that restorative justice has on the offenders for changing perceptions⁷.

Similarly M9 had been trying to encourage offenders and their families to talk so that “the public might get a greater insight, a glimpse, or whatever, into the pressures that they come under.” The participant, however, had found it ‘extraordinarily difficult’ to find people to participate.

Conclusion

A range of professionals have offered views on the limitations of the criminal justice system for victims of sexual crime and for the manner in which sexual offenders and sexual crime are so poorly understood. This chapter leads us to our final and concluding chapter which summarises the need for restorative justice as an additional justice initiative to conventional justice mechanisms for victims and offenders of sexual crime and for their families and communities.

Section



∞

Conclusions and Recommendations

∞

Considering the Possibility of Using Restorative Justice for Sexual Crimes in Ireland

Against the background of the international literature and based on the findings of this study, we argue that the scene is now set for restorative justice in certain cases involving sexual violence in Ireland. Before setting out the report's recommendations, the report's conclusions are developed along with the circumstances which must be considered when one is establishing a programme for restorative justice in cases involving sexual violence in Ireland.

Conclusions

All cohorts of participants are in favour of restorative justice in sexual violence cases as an additional justice mechanism for victims of sexual crime, as all participants recognise the considerable gaps that exist in current justice provision for victims of sexual crime in this state.

For the vast majority of victims of sexual crime, a gulf exists between what is expected of the criminal justice system and what it can actually deliver. This is in part because, at its core, the criminal justice system was established to ensure a fair trial for an accused, to gather and test the state's evidence against an accused, to punish wrongdoing, to rehabilitate offenders, and to act as deterrence and not to directly address the harm caused to victims. Because of the powers given to the courts to impose severe penalties on a wrongdoer in cases involving sexual crime, the criminal law must therefore be concerned with a desire to avoid miscarriages of justice. This results in a criminal trial format that is highly adversarial, extremely strict on the kinds of evidence that can be adduced by the prosecution against the accused, and the evidential threshold on the prosecution is to prove guilt 'beyond reasonable doubt'. This process is extremely difficult for victims of sexual crime, as the criminal trial sees the state take complete ownership over the process, and marginalises the victim to the role of a complainant and at times a witness. This leaves little space for the personal account of the victim's experience and trauma as a result of that assault. The Victim Impact Statement now offers a victim some direct input into the process, but it is only presented after a conviction has been secured and is limited in its remit. Despite the many improvements that have taken place in the criminal justice process, at its core the criminal justice system is not about doing right by the victim but rather about prosecuting the offender.

Civil actions for personal injuries are often taken by victims of sexual crime where a criminal prosecution has failed to secure a conviction, or where the case was not prosecuted, as the Director of Public Prosecution feels there is a lack of sufficient evidence to secure a conviction. As there is not normally the risk of imprisonment for those against whom cases are proven, civil actions benefit from lower evidential standards, the 'balance of probabilities', than criminal trials, and a much less

onerous burden of proof on the victims of sexual crime. If successful, civil proceedings can result in damages being awarded to the plaintiff. However, payment of damages will depend on the defendant's means. If the action is unsuccessful the complainant may have to pay the costs of the defendant. It is not surprising to find in our study that very few of our victim participants have actually used the legal mechanism of personal accountability offered by civil law, or the Law of Tort, because it is costly, suffers from long delays and, like its criminal counterpart, is adversarial in nature. This leads to gaps in the justice provision for victims of sexual crime, which all our participants recognised.

Restorative justice is one form of innovative justice that can be added to conventional criminal justice mechanisms to improve the justice responses for victims of sexual crime. Restorative justice can work to repair the harm caused by the offence; increase the offender's sense of responsibility for the offence; provide an opportunity for the victim to receive reparation and/or an apology; provide an opportunity for the victim to ask questions and receive information from the offender; provide a means for victims to talk about how the incident impacted them; giving victims an opportunity to take back power back and maximize the opportunity to provide victims, offenders and the community with a sense of justice. Other aims associated with restorative justice in cases of sexual violence can include healing for victims and offenders. In the case of intra-familial sexual violence, restoring family relationships may also be an important outcome.

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Preparation, Preparation, Preparation

Attendance and participation by victims and offenders for preparation prior to a restorative event has been found to be crucial to the success of the restorative meeting. Cases involving very serious offences such as sexual violence are highly sensitive and require extensive preparation prior to a face-to-face meeting. This can last from six months to two years. Although the methods used to prepare participants for restorative justice vary, the over-arching goals of preparation to equip the victim with enough emotional control and confidence to attend the meeting without being re-victimised; to ensure that the offender is ready to accept responsibility and reach an agreement/participate in a healing dialogue without resistance and to ensure all attendees adhere to the ground rules reached in advance of the meeting.

Referrals: Creating the Best Conditions for Restorative Justice to Work

Restorative Justice programmes are generally seen as successful if attention has been paid (1) to developing clear, strong referral mechanisms and procedures, and (2) to developing agreements among law enforcement and criminal justice officials and restorative justice

programmes on how and when cases will be referred and dealt with restoratively.

Agreed referral protocols and criteria provide clarity and stability. Yet, there is little consensus on when best to offer restorative justice. In this report we do not consider restorative justice as a diversionary measure in adult sexual crime. However, restorative justice should be refused to no victim, irrespective of whether their case is proceeding to trial or not. The legal and social infrastructure to establish restorative services in cases where there are no criminal proceedings needs to be more formally established. As this is a highly complex matter, involving legal, political, and child protection imperatives, suggestions as to how this can be advanced further are offered in the recommendation section of this report.

Procedural Safeguards

It is critical that restorative justice practice in the area of sexual violence be rooted in a clear set of values and principles that ensure victim safety on an emotional and on a physical level. The preparation stage is key to ensuring physical and emotional safety for all participants. Quality assurance and the setting of minimum standards of practice are essential. If there are any uncertainties as regards a participant's safety, the restorative justice process can take place through indirect communication.

Recommendations

At the time the National Commission on Restorative Justice reported in 2009, it said "While no offence should in principle be excluded from the restorative process, certain serious offences such as sexual assaults should be excluded from the initial phases of implementation" (NCRJ 2009, p. 81). The evidence from the research presented in this study indicates that this cautious approach to restorative justice in sexual crime is now no longer appropriate. Based on the international literature examined, the international programmes contacted during the course of this study, and (most importantly) the views of 30 victims of sexual crime, 23 sexual offenders and a total of 149 research participants, the following recommendations are made:

1. That the provision of Restorative Justice Services to respond to the needs of those impacted by sexual crime be included in the forthcoming second Cosc National Strategy for 2015-2020.
2. That a three-year pilot project of Restorative Justice in certain cases of sexual violence be established in Ireland as a matter of urgency, with a specified agency established for this purpose
 - That a small team of appropriately trained and experienced staff in sexual trauma and sexual violence and Restorative Justice be appointed to this pilot project;

- That the pilot project be managed by a suitably qualified Project Director, with appropriate administrative back-up appointed to the team;
- That the designated agency be allocated an appropriate building in which to carry out its work;
- That the agency be subject to review on an annual basis, with a fuller review and evaluation after three years;
- That the pilot project be confined to cases at the post-adjudication stage of the criminal justice process, including retrospective cases that have been adjudicated in the criminal courts in the past, including cases where the offender is currently incarcerated;
- That the designated agency develops a procedure immediately for informing all victims and offenders at the post-conviction stage of the criminal justice process of the possibility of restorative justice in their cases;
- That the designated agency accepts requests from victims of sexual crime for restorative justice once their cases have been adjudicated in the criminal courts;
- That victim requests for restorative justice are processed immediately with follow-up meetings and preparatory conversations initiated;
- That offender requests (post-conviction) for restorative justice be carefully logged by the designated agency, but not initiated unless the victim in the case requests restorative justice;
- That the designated agency accepts referrals from all agencies for restorative justice for relevant cases – post-conviction;
- That the designated agency be state funded;
- That the designated agency work in collaboration with all justice, health, child protection and welfare agencies in the state in carrying out its mission;
- That the designated agency be charged with establishing a select committee (of judges, legal professionals, therapeutic services and NGOs) to advise the Minister for Justice and Equality and other relevant Ministers on the legal, social and procedural infrastructure required to consider restorative justice being extended in other types to sexual violence cases;
- That the select committee be charged with delivering a report to the Minister for Justice and Equality and other relevant Ministers within eighteen months from the date of its formation; That the designated agency be charged with initiating a public campaign of restorative justice for all levels of crime forthwith;

- That the designated agency be charged with logging a record of all requests for restorative justice, including those that do not fit the criteria and to conduct consultation and research as necessary to assess further community need and interest.
3. That In line with article 12 of the 'EU Directive 2012/29/EU to establish and protect minimum standards on the rights, support and protection of victims of crime', victims of sexual crime need to be informed about available restorative justice services, as these are developed to meet their specific needs over the coming years.
 4. That State funded support and advocacy services be developed nationally to avoid regional differences in the availability and standards of services for all victims of sexual crime who report their victimisation to the Gardaí, the HSE or other specialist services. Victims of sexual abuse and violence need prompt access to information on the operation of the criminal justice process.
 5. That in line with the 'EU Directive 2012/29/EU to establish and protect minimum standards on the rights, support and protection of victims of crime', that the Garda Síochána establish specifically trained Victim Liaison Officers to be available nationally to offer a support service to complainants who report a sexual crime to them. This specialist Gardaí would accompany complainants through the investigative and criminal process, offering them support and keeping them informed of all developments in their cases. This service will fulfil the State's responsibility to these victims with 'specific protection needs' and should be accompanied by increased funding for the complementary independent services already offered by the Rape Crisis Network Ireland, One in Four, and the Dublin Rape Crisis Centre and other advocacy services for victims of sexual violence, which cover attendance at the Sexual Assault Treatment Units, Garda stations and Court hearings.
 6. To recognise the need to focus on the ripple effects of crime, that new and existing Victim Support Services for victims of sexual crime be extended to the families of complainants and to all secondary victims of sexual crime, including the families of persons accused of sexual offences
 7. That current Government policy on reducing the unacceptable delays in criminal investigations in sexual crime be expedited with the necessary resources and infrastructure allocated to an Garda Síochána, the Office of the Director of Public Prosecutions and the Courts Services as a matter of justice for victims and accused persons.
 8. That the Irish Prison Service expand their restorative initiatives in Irish prisons to include restorative circles for incarcerated offenders, with the input of victims of similar crimes, to be modelled on international best practice.

Bibliography

Aertsen, I., Daems, T. and Robert, L. (2006) *Institutionalizing Restorative Justice*, Cullompton: Willan Publishing.

An Garda Síochána (2013). Making a Victim Impact Statement. Dublin: An Garda Síochána/Victims of Crime Office/Office of the Director of Public Prosecutions. Retrieved from: [http://www.garda.ie/Documents/User/ENGLISH%20-%20Making%20a%20Victim%20Impact%20State-](http://www.garda.ie/Documents/User/ENGLISH%20-%20Making%20a%20Victim%20Impact%20Statement%20-%2020040613.pdf)
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Ashworth, A (2002) Responsibilities, 'Rights and Restorative Justice', *British Journal of Criminology*, 42 (3), p. 578.

Australian Bureau of Statistics (2005) Personal Safety Survey Australia Accessed on April 4th 2014 at <http://www.ausstats.abs.gov.au/ausstats/abs@nsf/Look-up/4906.0Chapter5002012>

Bacik, I., Heffernan, L., Brazil, P. and Woods, M. (2007) Report on Services and Legislation Providing Support for Victims of Crime. Report prepared for the Commission for the Support of Victims of Crime, Dublin: Commission for the Support of Victims of Crime.

Bacik, I., Maunsell, C. and Gogan, S. (1998) *The Legal Process and Victims of Rape*, Dublin: DRCC.

Bazemore, G. and Walgrave, L. (1999) 'Restorative Juvenile Justice: In Search of Fundamentals and an Outline for Systemic Reform', in G. Bazemore and L. Walgrave (eds), *Restorative Juvenile Justice: Repairing the Harm of Youth Crime*, Monsey NY: Criminal Justice Press.

Bird, K. and Reimund, M. (2001), 'Restorative Justice Dialogue Processes: Are they Confidential? Erosion of Confidentiality in Some Jurisdictions is Cause for Careful Evaluation, VOMA 9.

Bluett-Boyd, N., Fileborn, B., Quadara, A. and Moore, S. (2013) *The Role of Emerging Communication Technologies in Experiences of Sexual Violence: A New Legal Frontier?* (Research Report No. 23), Melbourne: Australian Institute of Family Studies.

Braithwaite, J. (1989) *Crime, Shame and Re-integration*, Cambridge: Cambridge University Press.

Braithwaite, J. (1999) 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts', *Crime and Justice*, 25, pp. 1-127.

Brown J., McKenna, D. and O'Kennedy, E. (Forthcoming) *Only a Witness*. Dublin: One in Four.

Buckley, D. (2013) 'Justice Denied', *Irish Examiner*, 23 January 2013. Retrieved from: <http://www.irishexaminer.com/analysis/justice-denied-220366.html> (accessed 13th August, 2014).

Buntinx, K. (2007) Victim Offender Mediation in Severe Crimes. Paper presented at a meeting jointly convened by the Probation Service and Facing Forward. Dublin: 30 May 2007.

Campbell, R. (2008) 'The Psychological Impact of Rape Victims' Experiences with the Legal, Medical, and Mental Health Systems', *American Psychologist*, November, pp.702-717.

Central Statistics Office (2013) *Garda Recorded Crime Statistics 2007-2011*, Dublin: Government of Ireland.

Central Statistics Office (2014) *Garda Recorded Crime Statistics 2008-2012*. Dublin: Government of Ireland. (pp.15-17). Available at <http://www.cso.ie/en/releasesandpublications/crimeandjustice/gardarecordedcrimestatistics2003-2012exceltables/>

Centre for Innovative Justice (2014) *Innovative Justice Responses to Sexual Offending – pathways to better outcomes for victims, offenders and the community*, Melbourne: Centre for Innovative Justice, RMIT University.

Chalmers, J., Duff, P. and Leverick, F. (2007) 'Victim Impact Statements: Can work, do work (for those who bother to make them)', *Criminal Law Review*, May, pp. 360-379.

Civil Free Legal Aid. See http://www.flac.ie/download/pdf/flacsheet_on_civil_legal_aid.pdf

Cossins, A. (2008) 'Restorative Justice and Child Sex Offences: The Theory and the Practice', *British Journal of Criminology*, 48 (3), pp. 359-378.

Couture, J. et al. (2001) *A Cost-Benefit Analysis of Hollow Water's Community Holistic Healing Circle Process*, Ontario: Solicitor General of Canada.

Daly, K. (2000) 'Revisiting the Relationship between Retributive and Restorative Justice', in H. Strang and J. Braithwaite (eds), *Restorative Justice: Philosophy to Practice*, Aldershot: Ashgate/Dartmouth, pp. 33-54.

Daly, K. (2002) 'Sexual Assault and Restorative Justice', in H. Strang and J. Braithwaite, (eds), *Restorative Justice and Family Violence*, Cambridge: Cambridge University Press.

Daly, K. (2006) 'Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases', *British Journal of Criminology*, 46 (2), pp. 334-356.

Daly, K. (2008) 'Setting the Record Straight and a Call for Radical Change: A Reply to Annie Cossins on Restorative Justice and Child Sex Offences', *British Journal of Criminology*, 48 (4), pp. 359-378.

Daly, K. (2011) 'Conventional and Innovative Justice Responses to Sexual Violence', *ACSSA*, 12.

Daly, K. (2012) 'Conferences and Gendered Violence: Practices, Politics and Evidence', in E. Zinnstag and I. Vanfraechem (eds), *Conferencing and Restorative Justice: International Practices and Perspectives*, Oxford: Oxford University Press, pp. 117-135.

Daly, K. (forthcoming), 'Reconceptualizing Sexual Victimization and Justice', to appear in I. Vanfraechem, A. Pemberton and F. Ndahinda, eds., *The International Handbook of Victimology*, London: Routledge.

Daly, K and Bouhours, B. (2010) 'Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries', In Michael Tonry (ed.) *Crime and Justice: A Review of Research*, Vol. 39, Chicago: University of Chicago Press, pp.565-650.

Daly, K. and Curtis-Fawley, S. (2006) 'Justice for Victims of Sexual Assault: Court or Conference?' in K. Heimer and C. Kruttschnitt (eds), *Gender and Crime: Patterns of Victimization and Offending*, New York: New York University Press, pp. 230-65.

Daly, K. and Immariageon, R. (1998) 'The Past, Present, and Future of Restorative Justice: Some Critical Reflections', *The Contemporary Justice Review*, 1 (1), pp. 21-45.

De Hann, W. (2008) 'Violence As an Essentially Contested Concept', in S. Body-Gendrot and P. Spierenburg (eds), *Violence in Europe*, New York: Springer, pp. 27-40.

Dignan, J. (2000) *Restorative Justice Options for Northern Ireland: A Comparative Review*, Belfast: The Stationery Office Bookshop.

- Du Mont, J., Miller, K-L. and Myhr, T. L. (2003) 'The Role of "Real Rape" and "Real Victim" Stereotypes in the Police Reporting Practices of Sexually Assaulted Women', *Violence Against Women*, 9 (4), pp. 466-486. doi: 10.1177/1077801202250960
- European Union (2012) EU 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. A 'Victims Charter' has also been published by the various pillars of the Irish criminal justice system including An Garda Síochána, the Courts Service, the Office of the Director of Public Prosecutions, the Probation Services, and the Prison Services. The various charters can be accessed at http://www.justice.ie/en/JELR/Pages/Victims_Charter accessed at 02/08/2013
- Garda Youth Diversion Office (2013) Annual Report of the Committee Appointed to Monitor the Effectiveness of the Diversion Programme, Dublin: An Garda Síochána, p. 25. Retrieved from: <http://www.justice.ie/en/JELR/Monitoring%20Committee%20Annual%20Report%202012%20Final.pdf/Files/Monitoring%20Committee%20Annual%20Report%202012%20Final.pdf> (accessed on 12th August, 2014).
- Gavin, P. and Joyce, N. (2013) 'Restorative Justice in the Republic of Ireland: Reports, Recommendations and Developments', *The Irish Review of Community Economic Development Economic Law and Policy*, 2 (1), pp. 6-20.
- Gavrielides, T. (2007) *Restorative Justice Theory and Practice: Addressing the Discrepancy*, Helsinki: European Institute for Crime Prevention and Control affiliated with the United Nations.
- Gavrielides, T. (2012) 'Clergy Child Sexual Abuse: The Restorative Justice Option', in K. Van Wormer and L. Walker (eds), *Restorative Justice Today*, California: Sage Publications, pp. 131-142.
- Gelb, K. (2007) *Recidivism of Sex Offenders: Research Paper*. Sentencing Advisory Council, (January). Retrieved on November 6th 2013 from https://sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/recidivism_of_sex_offenders_research_paper.pdf
- Geske, J. (2007) 'Restorative Justice and the Sexual Abuse Scandal in the Catholic Church', *Cardozo Journal of Conflict Resolution*, 8.
- Geske, J. (2014) 'Why do I Teach Restorative Justice to Law Students?', *Marquette Law Review*, 89 (2), pp. 328-334.
- Goldsmith, A., Halsey, M., and Bamford, D. (2005) *Adult Restorative Justice Conferencing Pilot: An Evaluation*, Adelaide: South Australian Courts Administration Authority.
- Gustafson, D. (2005) 'Exploring Treatment and Trauma Recovery Implications in Facilitating Victim-Offender Encounters in Crimes of Severe Violence: Lessons from the Canadian Experience', in E. Elliot and R. Gordon (eds), *New Directions in Restorative Justice*. Portland OR: Willan Publishing, pp. 193-227.
- Hanley, C., Healy, D. and Scriver, S. (2009) *Rape and Justice in Ireland: A National Study of Survivor, Prosecutor and Court Responses to Rape*, Dublin: The Liffey Press.
- Hanson, R.K. and Morton-Bourgon, K.E. (2005) 'The Characteristics of Persistent Sexual Offenders: A Meta-analysis of Recidivism Studies', *Journal of Consulting and Clinical Psychology*, 73, pp. 1154-1163.
- Hargovan, H. (2005) 'Restorative Justice for Domestic Violence: Some Exploratory Thoughts', *Agenda*, No. 66 *Gender-based Violence Trilogy*, 1 (1), pp. 48-56.
- Heil, P., Ahlmeyer, S. and Simons, D. (2003) 'Crossover Sexual Offenses', *Sexual Abuse: A Journal of Research and Treatment*, 15 (4), pp. 221-236.
- Hermstad, K. (2011) 'Sexual Offences, Law and Moral: Can Behaviour and Attitudes Be Changed by Legal and Moral Efforts?' *Sexual Offender Treatment*, 6 (2).
- Holmberg, U. and Christianson, S. (2002) 'Murderers' and Sexual Offenders' Experience of Police Interviews and Their Inclination to Admit or Deny Crimes', *Behavioral Sciences and the Law*, 20, pp. 31-45.
- Hudson, B. (1998) 'Restorative Justice: The Challenge of Racial and Sexual Violence', *Journal of Law and Society*, 25 (2), pp. 237-256.
- Hudson, B. (2002) 'Restorative Justice and Gendered Violence: Diversion or Effective Justice?' *British Journal of Criminology*, 42 (3), pp. 616-34.
- Ikpa, T. (2007) 'Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System', *Journal of Law and Policy*, 24, pp. 301-325.
- Irish Daily Star (2013) 'Victims suffer as sex monsters roam free: It's time for tougher sentences for sickening sex predators', 12th June 2013. Retrieved from: <http://www.thestar.ie/star/victims-suffer-as-sex-monsters-roam-free-its-time-for-tougher-sentences-for-sickening-sex-predators-27656/> (accessed 13th August, 2014).
- Johnstone, J. (2003) *A Restorative Justice Reader: Texts, Sources and Context*, Cullompton: Willan Publishing.
- Joyce-Wojtas, N. and Keenan, M. (2014) 'Is Restorative Justice for Sexual Crime Compatible with Various Criminal Justice Systems?' *Contemporary Justice Review* (Forthcoming December).
- Julich, S., Buttle, J., Cummins, C. and Freeborn, E. (2010) *Project Restore: An Exploratory Study of Restorative Justice and Sexual Violence*, Auckland: AUT University.
- Kebbell, M., Hurren, E. and Mazerolle, P. (2006) *An Investigation into the Effective and Ethical Interviewing of Suspected Sex Offenders*, Final Report CRC 12/03-04. Retrieved from: <http://www.criminologyresearchcouncil.gov.au/reports/200304-12.pdf> (accessed on 11th August, 2014).
- Keenan, M. (2009) '"Them and Us": The Clerical Child Sex Offender as "Other"', in T. Flannery (ed.), *Responding to the Ryan Report* (pp. 180-231). Dublin: Columba Press.
- Keenan, M. (2012) *Child Sex Abuse and the Catholic Church: Gender, Power and Organizational Culture*, Oxford: Oxford University Press.
- Keenan, M. and Joyce, N. (2013) *Restorative Justice, Sexual Violence and the Criminal Justice System*, UCD School of Applied Social Science (working paper 33).
- Kelly, L., Lovett, J., and Regan, L. (2005) *A Gap or a Chasm? Attrition in Reported Rape Cases*. Home Office Research Study 293, London: Home Office Research, Development and Statistics Directorate.
- Kilcommins, S. et al. (2010) *The Needs and Concerns of Victims of Crime in Ireland*. Dublin: Commission for the Support of Victims of Crime.

- King, V., Paulin, J. and Porima, L. (2008) Review of the Delivery of Restorative Justice in Family Violence Cases by Providers Funded by the Ministry of Justice, Crime and Justice Research Centre, Victoria University of Wellington.
- Kirby, S., Greaves, L. and Hankivsky, O. (2000) *The Dome of Silence: Sexual Harassment and Abuse in Sport*, Halifax, NS: Fernwood Publishing.
- Koss, M.P. (2014) 'The Restore Program of Restorative Justice for Sex Crimes: Visions, Process and Outcomes', *Journal of Interpersonal Violence* 29 (9), pp. 1623-1660
- Koss, M.P. and Achilles, M. (2008) Restorative Justice Responses to Sexual Assault VAWnet: National Online Resource Center on Violence Against Women.
- Koss, M. and Hopkins, C. Quince (2005) 'Incorporating Feminist Theory and Insights into a Restorative Justice Response to Sex Offences', *Violence against Women* 11 (5), pp. 693-723.
- Lea, S., Lanvers, U. and Shaw, S. (2003) 'Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors', *British Journal of Criminology*, 43 (3), pp. 583-599 (p. 583).
- Liebmann, M. (2007) *Restorative Justice: How it Works*, London: Jessica Kingsley Publishers.
- Liebmann, M. and Crosland P. (2013) 40 Cases Restorative Justice and Victim Offender Mediation. Bristol: Mediation UK.
- Lievore, D. (2003) 'Non-Reporting and Hidden Recording of Sexual Assault in Australia, Australian Institute of Criminology. Accessed April 4th 2014 at http://www.aic.gov.au/media_library/conferences/policewomen3/lievore.pdf, 3.
- Lofland, J. (1969) *Deviance and Identity*. Englewood Cliffs, NJ: Praeger.
- Lonsway, K. and Archambault, J. (2012) 'The "justice gap" for sexual assault cases: Future Directions for Research for Reform', *Violence Against Women*, 18 (2), pp.145-68.
- Lovett, J. and Kelly, L. (2009) *Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases across Europe*, London: Child and Women Abuse Studies Unit, London Metropolitan University.
- McAlinden, A.M. (2005) 'The Use of Shame with Sex Offenders', *British Journal of Criminology*, 45 (3), pp. 373-394.
- McAlinden, A.M. (2006) 'Managing Risk: From Regulation to the Reintegration of Sexual Offenders', *Criminology and Criminal Justice*, 6 (2), pp. 197-218.
- McCold, P. (2000) 'Toward a Holistic Vision of Restorative Juvenile Justice: A Reply to the Maximalist Model', *Contemporary Justice Review*, 3 (4), pp. 357-414.
- McCold, P. and Wachtel, T. (2003) In Pursuit of Paradigm: A Theory of Restorative Justice. Paper presented at the XIII World Congress of Criminology, 10-15 August 2003, Rio de Janeiro.
- MacDougall, L. (2009) *Restorative Justice and Sexual Assault in Nova Scotia: Why is the Door Ajar?* (MS thesis). Acadia University, Nova Scotia.
- McGee, H., Garavan, R., de Barra, M., Byrne, J. and Conroy, R. (2002) *The SAVI Report: Sexual Abuse and Violence in Ireland. A National Study of Irish Experiences, Beliefs and Attitudes Concerning Sexual Violence*, Dublin: The Lifey Press in association with Dublin Rape Crisis Centre.
- McGuinness, C. (1993) *Report of the Kilkenny Incest Investigation*. Dublin: Stationery Office.
- Madsen, K.S. (2004) 'Mediation As a Way of Empowering Women Exposed to Sexual Coercion', *NORA* 1/12, pp. 58-61.
- Marshall, T. (1996) 'The Evolution of Restorative Justice in Britain', *European Journal on Criminal Policy and Research*, 4 (4), pp. 21-43.
- Maruna, S. (2001) *Making Good. How Ex-Convicts Reform and Rebuild their Lives*. Washington, DC: American Psychological Association.
- Mercer, V. (2009) *Restorative Justice and Sexually Harmful Behaviour*, Manchester: AIM Project. Further information available at www.aimproject.org.uk.
- Miller, S. (2011) *After the Crime: The Power of Restorative Justice*, New York and London: New York University Press.
- Miller, S. and Hefner, K. (2013) 'Procedural Justice for Victims and Offenders? Exploring Restorative Justice Processes in Australia and the US', *Justice Quarterly*, (forthcoming).
- Ministry of Justice (2013) *Restorative justice standards for sexual offending cases*, Wellington: Ministry of Justice.
- Ministry of Justice, Home Office and the Office for National Statistics (2013) *An Overview of Sexual Offending in England and Wales Statistics Bulletin*. Retrieved from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214970/sexual-offending-overview-jan-2013.pdf (accessed 13th August, 2014).
- Monk-Shepherd, R. and Nation, D. (1995) 'Mediation in Prison Following Incest', *Probation Journal*, 42, pp. 26-30.
- Morris, A. and Gelsthorpe, L. (2000) 'Re-visioning Men's Violence against Female Partners', *The Howard Journal of Criminal Justice*, 39, pp. 412-42.
- National Commission on Restorative Justice (2009) *Final Report* Dublin: Department of Justice, Equality and Law Reform.
- National Crime Forum (1998) *Report of the National Crime Forum*, Dublin: IPA.
- National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014 available at <http://www.cosc.ie/en/COSC/Pages/WP08000096> accessed 01/11/2014
- Naylor, B. (2010) 'Effective Justice for Victims of Sexual Assault: Taking Up the Debate on Alternative Pathways', *University of New South Wales Law Journal*, 33 (2), pp. 662-684.
- Noll, D. and Harvey, L. (2008) 'Restorative Mediation: The Application of Restorative Justice Practice and Philosophy to Clergy Sexual Abuse Cases', *Journal of Child Sexual Abuse*, 17 (3-4), pp. 377-396.
- Ó Cathaoir, K. (2012) *Recent Rape Sentencing Analysis: The WD Case and Beyond*. Dublin: Judicial Researchers' Office (p.3). Retrieved from: <http://www.irishsentencing.ie/en/ISIS/Pages/WP09000222> (accessed 5th August, 2014).
- O' Concubhair, C. (2013) *Restorative Justice in Cases of Sexual Violence: Power, Accountability and Corrective Justice (and, maybe, Democracy)*. Accessed 10.11.2014 available at https://www.academia.edu/7374825/Restorative_Justice_and_Sexual_Violence_Power_Accountability_and_Corrective_Justice_and_maybe_Democracy

- O'Connell, C. (2014) 'Building Bridges: A Restorative Journey at Green Bay Prison Wisconsin', *Journal of Mediation and Applied Conflict Analysis*, 1 (2). <http://kenedyinstitute.nuim.ie/journal-of-mediati..> (accessed Sept 20th 2014)
- O'Donnell, I. (2003) 'Sex Crime in Ireland: Extent and Trends', *Judicial Studies Institute Journal*, 3 (1), pp. 89-106.
- O'Keeffe, A. (2013). 'State to Appeal Rapist O'Brien's Lenient Term', *Herald*, 15 February 2013. Retrieved from: <http://www.herald.ie/news/courts/state-to-appeal-rapist-obriens-lenient-term-29073807.html> (accessed 13th August, 2014).
- O'Malley, T. (2009) 'Sentencing Recidivist Sex Offenders: A Challenge for Proportionality', In I. Bacik and L. Heffernan (eds), *Criminal Law and Procedure: Current Issues and Emerging Trends* (pp. 106-132) Dublin: First Law.
- O'Malley, T. (1996) *Sexual Offences, Law Policy and Punishment*, Dublin: Round Hall, Sweet and Maxwell.
- Pali, B. and Pelikan, C. (2007) *Building Social Support for Restorative Justice: Media, Civil Society and Citizens*, Leuven: European Forum for Restorative Justice.
- Pali, B. and Sten Madsen, K. (2011) 'Dangerous Liaisons? A Feminist and Restorative Approach to Sexual Assault', TEMIDA March 2011.
- Patritti, C. (2010) 'Restoring Human Trafficking Victims through Victim-Offender Dialogue', *Cardozo Journal of Conflict Resolution*, 12 (1), pp. 217-244.
- Pemberton, A. and Reynaers, S. (2011) 'The Controversial Nature of Victim Participation: Therapeutic Benefits in Victim Impact Statements', In E. Erez, M. Kilchlinh, and J. J. M. Wemmers (eds), *Therapeutic Jurisprudence and Victim Participation in Justice: International perspectives*, (pp. 229-248). Durham, North Carolina: Carolina Academic Publishing.
- Rape Crisis Auckland (2013) 'One in One Hundred Sexual Assaults Result in Conviction'. Media Release retrieved on August 13th 2013 at <http://www.scoop.co.nz/stories/PO1308/S00173/one-in-one-hundred-sexual-assaults-result-in-conviction.htm>
- Rape Crisis Network Ireland (2010) *Rape and Justice in Ireland Handbook*, Dublin: RCNI.
- Rape Crisis Network Ireland (2011) *Victim Impact Statements/Reports: A Booklet for Victims of Crime*. Dublin: Rape Crisis Network Ireland. Retrieved from: <http://www.rcni.ie/wp-content/uploads/VICTIMIMPACTSTATEMENTSREPORTSABookletforVictimsofCrimeMarch2011.pdf> (accessed on 13th August, 2014).
- Rape Crisis Network of Ireland (2012) *Guide to the Legal Process for Survivors of Sexual Violence*. Dublin: Rape Crisis Network Ireland.
- Regan, L. and Kelly, L. (2003) *Rape: Still a Forgotten Issue?* London: Child and Woman Abuse Studies Unit, London Metropolitan University.
- Rennison, C.M. (2002) *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992-2000*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, August 2002, NCJ 194530.
- Robertiello, G. and Terry, K.J. (2007) 'Can We Profile Sex Offenders? A Review of Sex Offender Typologies', *Aggression and Violent Behavior*, 12, pp. 508-518.
- Roberts, T (1995) *Evaluation of the Victim Offender Mediation Project*, Langley, British Columbia Final Report, Victoria, British Columbia: Tim Roberts Focus Consultants.
- Rogan, M. (2006) 'Victims' Rights Theory and Practice-Part II', *Irish Law Times*, 24, pp. 151-155.
- Ross, R. (2008) 'Issues in Restorative Justice', paper presented at the Queensland Law Society Forum, Law and Order Issues in the 21st Century, Queensland.
- Saleh, F. and Guidry, L.L. (2003). 'Psychosocial and Biological Treatment Considerations for the Paraphilic and Nonparaphilic Sex Offender', *The Journal of the American Academy of Psychiatry and the Law*, 31, pp. 486-93.
- Shapland, J., Atkinson, A., Atkinson, H., Chapman, B., Colledge, E., Dignan, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A (2007) *Restorative Justice: The Views of Victims and Offenders – The Third Report from the Evaluation of Three Schemes*, London: Ministry of Justice.
- Shapland, J., Robinson, G. and Sorsby, A. (2011) *Restorative Justice in Practice*, London: Routledge.
- Sherman, L. W., Strang, H., Angel, C., Woods, D., Barnes, G. C., Bennett, S. and Inkpen, N. (2005) 'Effects of Face-to-Face Restorative Justice on Victims of Crime in Four Randomized, Controlled Trials', *Journal of Experimental Criminology*, 1, pp. 367-395.
- Sherman, L. and Strang, H. (2007) *Restorative Justice: The Evidence*, London: The Smith Institute.
- Skelton, A. and Batley, M. (2006) *Charting Progress, Mapping the Future: Restorative Justice in South Africa*, Pretoria, South Africa: Restorative Justice Centre.
- Stack, A. (2013) 'Restorative Justice and the Irish Prison Service', ACJRD Conference on Varied Applications of Restorative Practice, Dublin: 21 January 2013.
- Strang, H. (2002) *Repair or Revenge: Victims and Restorative Justice*, Oxford: Clarendon Press.
- Stulberg, T. L. (2011) *The Restorative Justice Program Evaluation*, Washington DC: U.S Department of Justice, Bureau of Justice Assistance.
- Tempkin, J. and Krahé, B. (2008) *Sexual Assault and the Justice Gap: A Question of Attitude*. Oxford: Hart Publishing.
- Umbreit, M. (2012) *Restorative Dialogues Workshop*. Conference organized by University College Dublin and Facing Forward. University College Dublin, 30 October.
- Umbreit, M. and Armour, M. (2010) *Restorative Justice Dialogue: An Essential Guide for Research and Practice*, New York: Springer Publishing Company.
- Umbreit, M., Coates, R.B., Vos, B. and Brown, K. (2003a), *Facing Violence: The Path of Restorative Justice and Dialogue*. Monsey, NY: Criminal Justice Press.
- Umbreit, M., Coates, R., Vos, B. and Brown, B. (2003b) *Victim Offender Dialogue in Violent Cases: The Texas and Ohio experience*, VOMA No. 14.
- United Nations (2006) *Handbook on Restorative Justice Programmes*, Vienna: UN Office on Drugs and Crime.

United Nations (1985) UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Geneva (General Assembly Resolution 40/34).

Van Ness, D. (2005, April), An Overview of Restorative Justice around the World. Workshop 2: Enhancing Criminal Justice Reform Including Restorative Justice, Item 8(b) of the provisional agenda at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, Bangkok, Thailand.

Van Wormer, K. (2009) 'Restorative Justice as Social Justice for Victims of Gendered Violence: A Standpoint Feminist Perspective', *Social Work*, 54 (2), pp. 107-116.

Victims of Crime Office. See <http://www.victimsofcrimeoffice.ie/en/vco/Chapter%203.pdf/Files/Chapter%203.pdf>.

Wade, A. (1997) 'Small Acts of Living: Everyday Resistance to Violence and Other Forms of Oppression'. *Journal of Contemporary Family Therapy*, 19 (1), pp. 23-39.

Walgrave, L. (2000) 'How Pure Can a Maximalist Approach to Restorative Justice Remain? Or Can a Purist Model of Restorative Justice Become Maximalist?', *Contemporary Justice Review*, 3 (4), pp. 415-432.

Ward, T. (2008) 'Restorative Justice and the Human Rights of Offenders: Convergences and Divergences', *Journal of Aggression and Violent Behaviour*, 13 (5), pp. 355-372.

White, M. (2000) Re-engaging with History: The Absent but Implicit, Reflections on Narrative Practice: Interviews and Essays. Dulwich: In Dulwich Centre Publications

White, M. (2004) 'Working with People Who Are Suffering the Consequences of Multiple t

Trauma: A Narrative Perspective', *International Journal of Narrative Therapy and Community Work*, 1, pp. 45-76.

Woessner, G. (2010) 'Classifying Sexual Offenders: An Empirical Model for Generating Type-specific Approaches to Intervention', *International Journal of Offender Therapy and Comparative Criminology*, 54 (3), pp. 327-345.

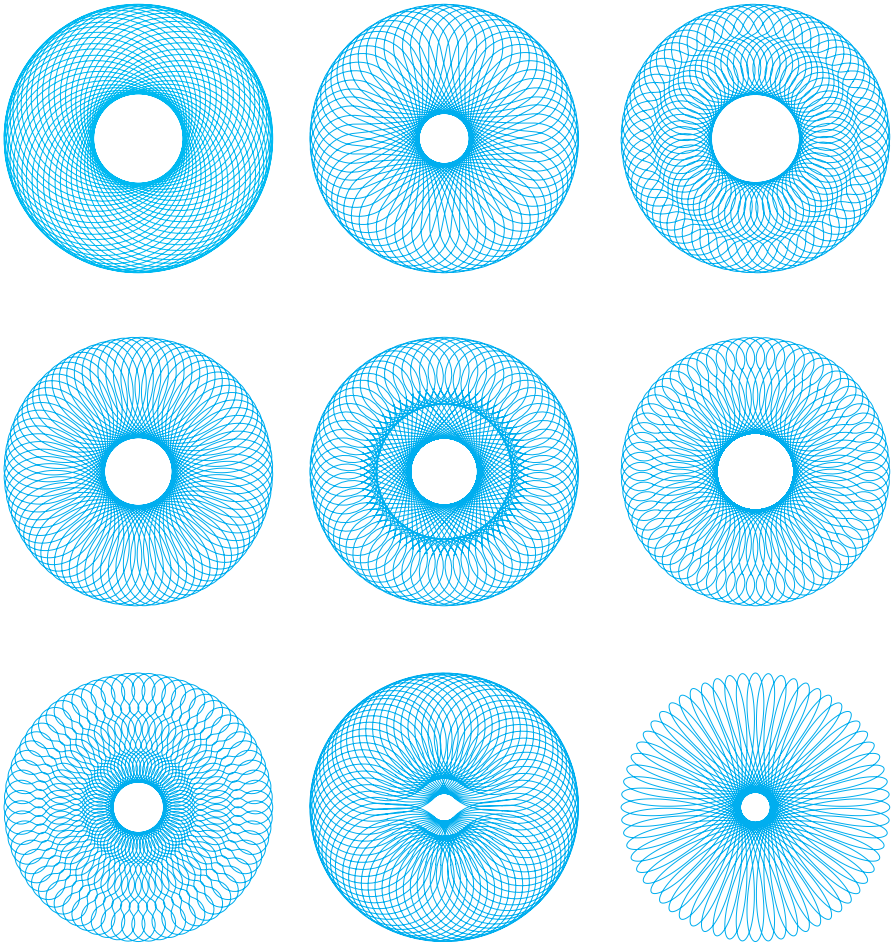
World Health Organisation (1996) WHO Global Consultation on Violence and Health. Violence: A Public Health Priority, Geneva, (document WHO/EHA/SPI.POA. 2).

Yantzi, M. (1998) *Sexual Offending and Restoration*, Ontario and Scottsdale, PA: Herald Press.

Zehr, H. (1985) *Retributive Justice, Restorative Justice: New perspectives on Crime and Justice*. Akron, PA: Mennonite Central Committee Office of Criminal Justice.

Zehr, H. (1990) *Changing Lenses: A New Focus for Crime*. Waterloo: Herald Press.

Zinsstag E., Teunkens M. and Pali, B. (2011) *Conferencing: A Way Forward for Restorative Justice in Europe - Final Report of JLS/2008/JPEN/043*. Available at www.euforumrj.org/assets/upload/Final_report_conferencing_revised_version_June_2012.pdf (accessed June 2013).



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