

DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART

JOINT COMMITTEE ON JUSTICE

Dé Máirt, 23 Márta 2021

Tuesday, 23 March 2021

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	Seanadóirí/Senators
Patrick Costello,	Robbie Gallagher,
Michael Creed,	Michael McDowell,
Pa Daly,	Lynn Ruane,
Brendan Howlin,	Barry Ward.
Martin Kenny,	
Thomas Pringle,	
Niamh Smyth.	

Teachta/Deputy Jennifer Carroll MacNeill sa Chathaoir/in the Chair.

Victims' Testimony in Cases of Rape and Sexual Assault: Discussion.

Vice Chairman: The purpose of this meeting is to have an engagement with a number of stakeholders that have made written submissions to assist the committee on the topic of victims' testimony in cases of rape and sexual assault. I welcome all of the witnesses to the meeting today. We are joined by Ms Caroline Counihan, BL, legal policy director from the Rape Crisis Network Ireland, RCNI; Ms Kathrina Bentley, CEO, and Ms Andrea McDermott from Men's Aid; Ms Maeve Lewis, CEO, and Ms Deirdre Kenny, advocacy director from One in Four; and Mr. Dara Hayes, BL, and Ms Fiona Murphy, SC, from the Bar of Ireland. We are also joined from the Department of Justice by Ms Ciara Carberry, principal officer, criminal justice legislation and Mr. Deaglán Ó Briain, principal officer, criminal justice policy. The committee did receive submissions from other organisations and I will refer to those organisations later.

I invite witnesses attending remotely to unmute their devices to allow the sound feed into the committee room and to check if they can hear me. Is that all okay? Yes.

When we begin to engage, I ask members and witnesses to mute their microphones when not contributing so that we do not pick up any background noise or feedback. I also ask that they use the appropriate button to raise their hand when they wish to contribute. I ask all those in attendance to ensure that their mobile phones are on silent or switched off.

Before we hear the opening statements, I wish to advise the witnesses of the following points in relation to parliamentary privilege. All witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks and it is imperative that they comply with any such direction. For witnesses attending remotely outside of the Leinster House campus, there are some limitations to parliamentary privilege. As such they may not benefit from the same level of immunity from legal proceedings as do witnesses physically present.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable. For members who are participating remotely, I ask them to keep their device on mute until they are invited to speak. When they are speaking I ask that where possible, they have their camera switched on and be mindful that we are in public session. In addition, I would like to remind members of the constitutional requirement that members must be physically present within the confines of the place which Parliament has chosen to sit, namely, Leinster House, in order to participate in public meetings. I will not permit a member to participate where they are not adhering to this constitutional requirement. Therefore, any member who attempts to participate in this meeting from outside the precincts of Leinster House will be refused.

I will invite each organisation in turn to make an opening statement to a maximum of five minutes because we only have a two-hour window for the meeting. Once all of the opening statements have been delivered, I will then call on the members of the committee, in the order that they indicate to me, to put their questions. In the time remaining, there will be an opportunity for members to ask supplementary questions. I ask attendees to note that the duration of the meeting is limited, therefore the times must be strictly adhered to. I ask everyone to be

focused in their contributions. There is a time clock to ensure that we do that.

I now call on each organisation to make its opening statement in the following order: RCNI, Men's Aid, One in Four, the Bar of Ireland and the Department of Justice. I invite Ms Coughlan from RCNI to make her opening statement. She has five minutes.

Ms Caroline Coughlan: RCNI, supported by Safe Ireland, welcomes this opportunity to address the committee on the issue of victims' testimony. We would like to take acknowledge Government's commitment to full implementation of the O'Malley review recommendations and the significant progress made so far. RCNI also acknowledges recent positive changes introduced by other agencies, for instance, An Garda Síochána and the Office of the Director of Public Prosecutions. This opening statement will summarise the main points of our submission and address a small number of specific issues.

Victims' testimony is a key component of an effective criminal justice process. The pursuit of excellence in all contacts with victims of sexual offences by relevant professionals must be a key principle, both to minimise the risks of re-traumatisation of victims by the criminal justice process and to ensure that they are supported to give their best evidence in that process. The harm which can be caused by the criminal justice system itself to victims is real, and is sometimes described by them as worse than the sexual violence itself.

Victims of sexual violence should be seen as inherently vulnerable witnesses, Of these, some are additionally vulnerable, for example because of their young age or because of a disability, and all victims should be seen as individuals in need of individual supports. Many aspects of the criminal justice system can pose challenges for victims of sexual offences from the very beginning. These include a lack of access to legal advice, an inability to contact investigators, a lack of personal support, endless delays at each stage of the process itself, fears for their personal safety and privacy throughout the process and last but by no means least, fear of being subjected to lengthy and oppressive cross-examination on their private lives, going well beyond the facts of the offence itself. Good care of sexual violence victims begins from the moment that an offence is communicated, is multifaceted, takes account of individual needs, continues to the end of any trial and beyond, and involves effective collaboration between statutory agencies and NGOs.

Lengthy delays are not only re-traumatising in themselves but affect the quality of victims' memories. The primacy of oral evidence in our criminal justice system is at odds with modern psychological science. This is now recognised elsewhere. As the Scottish judge, Lord Carloway, put it, "a person's memory does not improve over time or being put under stress". For example, we could mitigate the negative effects on memory of lengthy delays between offence and trial by allowing at least the most vulnerable witnesses, namely, children and those with a "mental disorder" or communication difficulty, to have their entire evidence prerecorded and allowed to stand as their evidence at trial - not just as at present, their prerecorded evidence-in-chief. We could also allow any victim of sexual violence who wishes to do this to have their evidence-in-chief prerecorded and stand as their evidence at trial.

Access to special measures at court is difficult. Special measures remain hard to access in court for many victims of sexual violence who are neither children nor have a mental disorder. RCNI recommends that the current legislative framework is simplified and streamlined so that a presumption in favour of access to special measures is created for any victim of, or witness to, sexual violence. Serious consideration should be given to introducing special measures for accused persons, in order that the present legal culture, which is inclined to view special

measures for victims as intrinsically unfair to the accused, will cease to see these measures as a threat to defence interests. The twin aims of improving supports for vulnerable witnesses and achieving a fair trial for the accused should not be seen as mutually exclusive. Any new legislative framework should include wide-ranging judicial powers to allow the introduction of any novel, individually tailored special measure to assist a vulnerable witness to give evidence, provided that is not contrary to the interests of justice. It should also address the gaps in the use of intermediaries in our current legislation, that is, the use of intermediaries should extend to the witness's answers and should include witnesses whose mental condition is fine and who do not have a mental disorder but do have a communications difficulty.

Beyond special measures, our long-standing view is that any victim of sexual violence who needs it, should have access to support from a dedicated, professional advocacy and support worker from their first contact with either an NGO or An Garda Síochána. Our vision is a national network of professional advocacy and support workers to provide practical and emotional support, referrals, accompaniment services and links to other sources of information, advice and support, and whose role is distinct from that of legal advisers or specialist counsellors. For all the measures we have suggested which are already in hand, RCNI stresses that enough resources, including judges, must be provided if it is to succeed as it should. These resources should include access to appropriate training which challenges, head-on, the many pervasive rape myths on which much defence cross-examination is still based, in part, by pointing out that as they are not based on fact but on prejudice and misogyny, they are irrelevant to the issues in the case. However, RCNI also recognises that rape myths need to be identified and rooted out through education and awareness-raising initiatives.

I am happy to do my best to answer any questions on this opening statement and on the general issue of victims' testimony. I thank the members for listening.

Vice Chairman: I thank Ms Counihan for attending and speaking to us about this really important matter. We look forward to asking her questions later. Ms Bentley is next and she comes from a very strong background in dealing with matters of coercive control.

Ms Kathrina Bentley: The representatives of Men's Aid are delighted to be invited to be here to represent men and boys experiencing sexual assault and rape across Ireland. Men's Aid is the only national charity dedicated to supporting men and their families experiencing intimate partner violence. Our mission is to destigmatise intimate partner violence and raise awareness of the trauma affecting men and their families and support the victim as best we can. We do this through advocacy, education, practical and emotional support. As a front-line service, we are committed to eliminating partner violence and together with our colleagues in the sector, An Garda Síochána and Tusla, we are working towards the day every citizen can enjoy a family life free from the threat of partner violence.

Our services include a national helpline from Monday to Friday, one-to-one appointments, counselling, court accompaniment in the Dolphin House and Dundalk courts, training and national advocacy. Our front-line team are two full-time and four part-time workers. Our funding represents 1% of the national domestic, sexual and gender-based violence budget. Research from 2005 indicates that approximately one in seven men will experience domestic violence in his lifetime and that 95% of abuse experienced by men is not reported to the Garda. The under-reporting of domestic violence is a major concern and can only highlight even more how extremely difficult it is for men to report sexual assault and rape.

The barriers of reporting are extremely challenging for the victim. On our helpline we

hear how men feel they will not be believed and they speak about their shame, masculinity and gender stereotypes. They feel the crime is not classed as rape in law because of their gender. Our clients are aged between 18 and 83 years of age. These sons, brothers and dads come from all walks of life, and they include male Travellers, the LGBT community, farmers, those in direct provision, foreign nationals and men with disabilities. They are from a wide and varied background, from carpenters to chief executives. We know intimate partner violence does not discriminate.

We will address the question of rape myths. Little is known about the needs of men experiencing partner sexual violence. These men in the main suffer in silence as it remains difficult for society to accept that women can also be and are perpetrators of violence. In 2020, our service supported approximately 5,500 contacts. Of these, 13 brave men disclosed that they had been sexually assaulted, 11 by a female partner and two by a male partner. Two men disclosed that they had been raped by female partners. In January 2021, we supported 557 contacts to our service. One of the calls was from a man who disclosed having non-consensual sexual activity. In his words, he had been raped by his wife. This man, who is a dad in his 50s, took the brave step and with our support reported the rape to our colleagues in An Garda Síochána, who are now investigating so I cannot say anything further about the case.

Our colleagues in the UK are more advanced in the context of this issue. Dr. Siobhan Weare of Lancaster University law school is the expert in this field of men who report being raped by a female. The term used is FTP, or forced to penetrate. In 2020, we supported an 18-year-old boy who reported that his mum and sister were sexually assaulting him. His phone was taken from him at times so he started to communicate with us via email from his local library. His emails were heartbreaking to read. He wrote about his hope of getting a good leaving certificate and college being his escape and a safe place. Too old for a referral to Tusla and too scared to speak to gardaí, there was nowhere for this vulnerable victim to go as there is no refuge in Ireland.

Currently, Irish legislation does not recognise that a male can be raped by a female. The Criminal Law (Rape) Act 1981 and the Criminal Law (Rape) (Amendment) Act 1990 does not recognise or label FTP. US data indicates that approximately one in 21 men reported they were raped or forced to penetrate by someone else during their lifetime.

There is also the question of consequences and impact. The harm of partner violence is catastrophic to the victim's life. The impact on mental health, flashbacks, panic attacks, depression, anxiety, post-traumatic stress disorder, suicide ideation and feelings of shame, guilt and anger. The increase in suicide ideation reported to our helpline weekly is increasing at a significant rate.

We ask the joint committee to reflect on our presentation and we make the following requests. We call for law reform and legislation to acknowledge that men experience rape and sexual assault from a male and female; increased front-line and wraparound resources to support male victims of partner violence; and academic research in the area so we can grasp a better understanding of men experiencing sexual assault and rape by male and female partners.

I recognise that this is a new area for Ireland but it is our reality. Given the limited levels of data in the area of men experiencing rape by a female partner, I reached out to a number of colleagues when writing this presentation. I thank: Ms Noeline Blackwell of the Dublin Rape Crisis Centre; Dr. Siobhan Weare of Lancaster University; Mr. Duncan Craig, chief executive of Survivors Manchester; Mr. Mark Brooks, chair of Mankind UK; and Ms Rhonda Lusty, chief executive of Men's Advisory Project in Northern Ireland. It is imperative that we widen

the circle and engage with experts who are ahead of us as we work towards supporting men and boys who are victims of sexual assault and rape. I thank the committee for its time.

Vice Chairman: I thank the delegation for coming before us and for the presentation. It is important that we hear everybody. Just because we do not talk about something generally does not mean that it does not exist and is not a problem.

Ms Deirdre Kenny: I thank the committee for the invitation to appear before the committee this afternoon. I am the deputy chief executive of One in Four and my colleague, Ms Maeve Lewis, is also in attendance. I have no doubt everybody here today has a common objective to improve the experience of vulnerable witnesses in our courts. One in Four welcomes the commitment of the Government, particularly the Minister for Justice and her Department, and the work done on implementing the important recommendations made in the O'Malley report. There will be other valuable recommendations made here today but I want to shed light on an aspect of this issue that is often overlooked.

I would like the members to take a moment to think about what it might be like to describe to a room like this the intimate details of a positive sexual relationship. Now think about what that might be like if that sexual encounter had been terrifying. The criminal justice system is relied on by survivors of sexual violence to in part to help them address their traumatic experience. In reality, we know the real cost to them is re-traumatisation. The law is applied to the crime, but very little attention is paid to how the system interacts with the personal impact of the crime.

One in Four has developed wide experience in assisting survivors negotiate the complex terrain that lies between their personal traumatic experiences of childhood sexual abuse and the legal system. In 2016 we completed a study entitled *Only a Witness*, which brought to the forefront the voices of the survivors, as co-researchers, in order to identify their experiences of the criminal justice system and to provide constructive analysis. Our observations today are based on our expertise and the voices of those who have been through the system. We hope they may be of some value to the committee deliberations.

Trauma is undoubtedly an invisible witness in our courtrooms. If we are to improve the experience of vulnerable witnesses we need to direct attention to how the system can integrate insights on the impact of trauma. Sarah from our study stated, "It was so inhumane. I never felt the system in any way valued me as much as it valued him - never!". There are a variety of experiences that can provoke trauma. The psychological responses people have to stressful events would be different for everyone. A person's resilience, their support system, age and history will all influence their responses to the dynamics of trauma.

It is clear, however, that for many people the effects of trauma can be severe and debilitating. This is particularly so in the context of sexual and domestic violence, which happen in a complex relational context characterised by manipulation and abuse of power and trust. In the context of childhood sexual abuse, the child is subtly drawn into the sexually exploitative relationship, manipulating particular vulnerability, instilling secrecy, fear, feelings of guilt and responsibility in the victim through a process of grooming. This abuse can have a profound impact on the development of the child and the child has to adapt psychologically in order to survive. Coping mechanisms for those who experience trauma include: splitting off conscious knowledge of the abuse; dissociation or mentally cutting off during the physical act of abuse; internalising feelings of shame and self-blame; and rationalising and minimising the abuse.

Our courts require the witness to give a sworn testimony of traumatic events in an environment that often mirrors the power and authority dynamics of the person's past experiences of sexual abuse.

They become distressed and can only respond in the way they did to the original trauma. Harvard professor of psychiatry, Judith Herman, remarks that "if one set out intentionally to design a system for provoking symptoms of traumatic stress it would look very much like a court of law". In our study, Barbara described the ongoing impact of revisiting the initial trauma while giving evidence:

I couldn't go up there and give my evidence again. I just could not do that. It's one of the most awful things that I had awful trouble with afterward. I've gone to counselling and the rest. They had a booklet of the house where I was born and that house is in ruins now and they have pictures of each of the rooms and the rooms where I was abused. I'm still having trouble getting that out of my head.

Traumatic stress affects a witness's ability to deliver a consistent and credible account, perhaps casting doubt on the reliability of their testimony. Some people experience flashbacks. A person can lose all awareness of their present surroundings and live through the trauma as if it was happening again. Unfortunately, people experiencing a flashback are not always aware what it is. This is something I and my colleagues regularly witness while supporting survivors in court. Self-harm is a risk factor rarely mentioned in this context but is a very live issue for One in Four staff when supporting witnesses at court.

In order to facilitate witnesses to give the best account of themselves in court, it is important to understand how the trauma is triggered in a court setting or at any point through the process. In our study, Anne describes her feeling of powerlessness during her cross-examination:

And so the powerlessness you feel of what happened to you just comes back again. I mean you're totally powerless in that room, you can't gasp. You can't go Oh my god, you can't go oh this is terrible. You have to sit there and be like a stone wall. Fair enough ... they can't have chaos. But why the cruelty?

It is for this reason One in Four recommends an impact assessment be carried out on how the court environment and court procedures impact on complainant witnesses in trials of sexual crime. An impact study of this nature should examine the various interactions witnesses have with the system and its personnel, the likely trigger points for retraumatisation and how these could be mitigated. We have observed in court how language, tone of voice, the style of questioning and the use of silence are all devices that can either reassure or trigger a traumatic stress response in a witness. This is an area we feel deserves immediate attention. In our study, Sarah said:

I think overall I was probably on the stand for, give or take, four hours. I can't tell you how horrific it is being cross-examined. To this day I can hear that barrister's voice in my ear crystal clear. It feels like that is never going to leave me and my only saving thing is that I never once looked at him. ...if I heard his voice today I would know him straight away and it's horrific.

Vice Chairman: I am sorry to interrupt. We are over time. It is a good point to sum up on. I thank Ms Kenny for including those. Would she like to summarise the rest? We will be able to come back to her with questions.

Ms Deirdre Kenny: In terms of the special measures that exist, some examination and further impact assessment needs to be done in that area. I offer a final word of caution on any measure or legislation the Oireachtas seeks to introduce. The impact of sexual violence is not something that fits into a box and its effects are complex. If we are really committed to improving the experience of survivors in the system, we need to incorporate what we know about trauma. I am grateful for the opportunity to speak to the committee today.

Vice Chairman: I thank Ms Kenny for covering those subjects, which are very important to the work of the committee. We move to the Bar of Ireland and I welcome Mr. Dara Hayes and Ms Fiona Murphy.

Mr. Dara Hayes: I will make the opening address on behalf of the Bar of Ireland. We thank the Chairman and the members of the committee for their invitation to us to participate in this public session of the Oireachtas Joint Committee on Justice. Ms Fiona Murphy, SC, who accompanies me on behalf of the Bar, is a member of the Inner Bar who regularly acts, both for the prosecution and the defence, in rape and sexual offence cases and cases involving vulnerable witnesses. I am a member of the Bar Council and I chair its Criminal and State Bar Committee. I also am a barrister practising in criminal law.

Rape and sexual assault are very serious offences. Rape offences are in the very small category of criminal offences exclusively tried in the Central Criminal Court. There are, however, persistent issues with the under-reporting of sexual offences and with prosecution and conviction rates lower than those for other serious offences. It is important that all areas of criminal law are kept under review to ensure that crimes can be effectively detected and punished.

It is important that the area of rape and sexual assault offences is considered in the context of steps that might be taken to improve both the rate of detection and successful prosecution. It is equally important to ensure that any proposed remedies do not infringe upon the constitutional protections to which accused persons are entitled.

Various special measures are available to assist victims and vulnerable witnesses in the giving of evidence and in their interactions with the criminal justice system. These include measures such as anonymity, the exclusion of the public from the courtroom and the giving of evidence over video link rather than in person. The use of intermediaries to assist child witnesses has increased in recent years, although their use is made more difficult by there being no registered intermediaries within the State. Other measures include the provision of a screen to shield the witness from the accused and a restriction, without the court's permission, on questioning a witness about previous sexual experience. These legislative protections culminate in the protections against secondary and repeat victimisation contained in the Criminal Justice (Victims of Crime) Act 2017.

When the issue of being questioned about previous sexual experience arises in a rape case, a victim is entitled to separate legal representation but there is, as yet, no similar entitlement in sexual assault cases. That anomaly should be remedied.

The O'Malley report, published last summer, contains many important recommendations that, if implemented, will assist victims and vulnerable witnesses as they navigate their way through the criminal justice system, from the time of their first engagement with gardaí through to the conclusion of the trial process. The Bar Council welcomed the report on its publication. It made a submission about the O'Malley report last September to the Department of Justice and has been working to develop a training programme, as recommended by the O'Malley

group, that will enhance the Bar's existing continuing professional development and advanced advocacy courses.

It is important to ensure that such special measures as are necessary and appropriate are available to assist witnesses to give their best evidence. It is also important to ensure that the criminal justice system is sufficiently resourced to protect against delays. There are delays in the court system caused by too great a backlog of cases, which now extends to 2023. Delay can also be caused by there being no court available on the day on which cases are listed for trial. This can cause cases to be adjourned for days or weeks and, in some cases, for many months. This would be significantly ameliorated by greater judicial and court resources. Delays can also be caused by issues with disclosure. Disclosure in criminal trials, particularly with regard to sexual offences, requires a system that is better resourced.

The impact of delay can be significant. First, the closer in time that any trial is to the events giving rise to the charges, the fresher in memory the testimony will be. Second, there is a psychological impact on victims and witnesses as they ready themselves for trial. The longer the process, the longer this burden has to be carried. There is also an impact on victims and witnesses where there is uncertainty over when a trial might commence. Some of this uncertainty will be alleviated by the introduction of preliminary hearings, which the Bar Council would welcome. Legislation to allow such hearings is currently before the Oireachtas.

In addition to the impact that the process can have on victims, in our submission we discuss the impact there can be on practitioners and the dangers of vicarious trauma. While there has been some limited study of the issue in this country, international studies suggest that it can be a significant risk for those frequently undertaking this kind of work. All of these issues are discussed in greater detail in the submission previously furnished to the committee and we are happy to assist the committee members as best we can with any questions they might have. I am grateful for the opportunity to participate.

Vice Chairman: Thank you. My apologies for incorrectly referring to Ms Murphy as BL when she is SC. I am very glad to see more women in that position. Next is the Department of Justice and I welcome Ms Ciara Carberry, principal officer, criminal justice legislation division, and Mr. Deaglán Ó Briain, principal officer, criminal justice policy division.

Ms Ciara Carberry: I thank the committee for inviting us and thank the other participants for their very powerful accounts of the needs of victims. As my colleague from the Bar Council mentioned, the genesis of the O'Malley Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences was concern about low reporting levels for rape and other sexual assaults and concern as to how victims are treated within the reporting, investigation and trial processes and beyond. I attended the review group on behalf of the Department and can confirm that the group was entirely committed to putting the victim at the centre of its work. That focus on the victim and on reforming the criminal justice process to make it as safe and secure as possible for the victim is reflected in every one of the more than 50 recommendations in the report.

Among those recommendations, as my colleague mentioned, was the urgent need to introduce preliminary trial hearings in order to reduce delays and to allow for certain matters to be addressed in advance of the trial. The Criminal Procedure Bill 2021 was drafted as a priority in order to give effect to this recommendation. The Bill was published before Christmas and has now passed all Stages in the Dáil and will go before the Seanad very shortly. Preliminary hearings will reduce delays and increase efficiency in how our criminal trials are run. They will

remove some of the uncertainties, we hope, that victims currently face about potential issues arising after the trial has started. They allow the court to deal with many of the issues that currently require the jury to be excused during the trial, sometimes on multiple occasions. Victims have spoken about how difficult it is for them when they have mentally prepared for a trial date and the trial does not go ahead and how upsetting and difficult it is if something unexpected is brought up during the trial that results in interruptions while difficulties or legal arguments are dealt with by the court. While preliminary hearings cannot change the fact that the trial is still an adversarial process, that an accused person is entitled to defend himself or herself robustly and that events can unfold in unexpected ways, their introduction should make trials more predictable and help them run more smoothly.

We can also provide strengthened supports for victims, including access to their own legal advice and support throughout the investigation, the trial and beyond in order that they have the information they need to make informed decisions and to understand what is happening and what their choices are at every stage. As recommended by Tom O'Malley in his review, we are working to extend the current right to legal representation that victims have during an application to question them about their prior sexual history in order that it covers the questioning itself in court.

A range of other legislative amendments to the sexual offences legislation arise from Tom O'Malley's recommendations, and the Department is developing the general scheme of a new sexual offences Bill which we expect to complete before the end of the year and which will provide for all those changes.

I will now hand over to my colleague, Mr. Deaglán Ó Briain, who will speak about the implementation.

Mr. Deaglán Ó Briain: I thank the Chair for the opportunity to be here.

Once the O'Malley review was published, the Minister, Deputy McEntee, asked the Department to prepare an implementation plan within ten weeks. The plan, Supporting a Victim's Journey, was published in October 2020. Delivering on all the agreed actions is a priority for the Department and a personal priority for the Minister. The most important point to make at this stage is our commitment as a Department to working in partnership with the domestic, sexual and gender-based violence, DSGBV, sector to ensure the victim's perspective and voice are at the heart of what we do. Crucially important physical and emotional supports and services are provided by NGOs, and the reform and development of these services should be progressed in a spirit of co-design between the State as funder and the voluntary sector as provider. I see in the room today many of the NGO colleagues with whom we work closely in implementing Supporting a Victim's Journey.

As to what we have done thus far, we have reviewed our grant schemes for organisations working with victims of crime. We asked each NGO to identify the precise categories of victims with whom they work, the services they provide and the geographical areas in which they work. The funding available increased from some €2 million in 2020 to some €4 million this year. We have allocated most of the 2021 grant moneys but are still analysing the data to see where gaps in service provision remain so we can work to fill them. We are also offering multi-annual funding commitments to a number of NGOs with which we work most closely and where the funding covers staff salaries. This is in the interest of promoting more sustainable service delivery and planning.

Vice Chairman: I ask Mr. Ó Briain to summarise because we have reached the end of the time allocated and I am keen for members to get as much time as possible.

Mr. Deaglán Ó Briain: By way of a very brief summary, then, we have commenced work on a new national strategy on domestic, sexual and gender-based violence. The current strategy expires at the end of this year. The next strategy will focus on outcomes. This will identify the desired outcomes, and then the actions and commitments will be built to deliver on those. I will also mention the programme for Government audit of how responsibility for services in this area is fragmented across Departments. That audit will be completed by the end of the month and the two Ministers, our Minister and the Minister for Children, Equality, Disability, Integration and Youth, will bring the outcome to the Government. The next strategy and the outcome of the audit will provide the context to give us the best possible infrastructure to support victims and to improve the victim's experience and society's response to these crimes.

There are other actions under way, and I would be delighted to give more information in response to questions in that regard.

Vice Chairman: I now invite members in the order in which they indicated - I have a little list - to engage with witnesses. To try to get everybody in, we will give each member five minutes to ask questions and get answers. I hope that will give us time for a second round but I will try to facilitate as many members as possible.

Deputy Martin Kenny: I thank the witnesses for all the contributions. It was very interesting to read the opening statements prior to today's meeting. It is very clear this issue needs to be dealt with. Most of us have come across people who have had difficulties with the court experience. One of the things I do not think I came across in any of the opening statements is the idea of having somebody there with the victim on the day of the court sitting. People tell me that on many occasions there may be a garda or a couple of gardaí with whom they have been working through the process but that sometimes they are not there. The victims then feel they are lost, they have nowhere to go and they are in unfamiliar surroundings. There could be some practical measure taken to ensure they have somebody who would be with them, coach them, help them and bring them to a safe place when they are not required in the courtroom in order that they know they can have security around all that.

I am interested in the issue of video evidence and video link being used more and how that can be done. With Covid we are all getting more used to all this, and indeed here we are today. I think an awful lot more can be done with these measures.

Another issue I wish to raise relates to the statements that are made. Some of the Garda statements and the initial statements, as we know, are recorded when people go into the interview rooms in Garda stations to make statements. How and in what measure can these statements be brought to bear more on the trial and the process? Cross-examination is the big issue, most people find. When they are in the courtroom and the cross-examination is taking place they get into a really vulnerable state. There is huge trauma around all that. How can that be managed and worked better? I fully accept that in many cases the issue of consent is put forward as the defence. In that context we will find there is at least some level of discussion of previous sexual activity or the relationship the person may have had with the accused in the past. We have to acknowledge there is a person accused as well and that he or she is entitled to make a defence. The key issue here, however, is that the experience of so many people is reflected in the under-reporting of the crime. So few people come forward and report these crimes. We should try to ensure we drive this in such a direction that people can make a difference.

My first question relates to video evidence. What further actions do we need to take? Are changes required to ensure video links can be used more? Are courtrooms equipped for that? Is it a matter of putting the facilities in place or is it a matter of ensuring we can allow that to happen? Is that something that has discretionary support?

Vice Chairman: Who would the Deputy like to answer those questions?

Deputy Martin Kenny: Perhaps the Bar of Ireland or the Department of Justice would have a view.

Mr. Dara Hayes: I will answer the question about video links. One of the issues Deputy Kenny raised, which is the answer to this question to a degree, is resources. Not every courtroom is equipped for video links. For example, not every courtroom in the Criminal Courts of Justice, which is a very modern building that has been in use for a little over ten years, is equipped to take evidence by way of video link and not every courtroom around the country is able to do so. The situation is getting better and it has got better over the last half decade and decade. One of the things that currently restricts that option is the availability of resources. People who are entitled to give evidence by way of video link are not being prevented from doing so by a lack of options or resources, but these add to the delays because only a certain number of trials can proceed at any one time. It can add to the delays. The more resources we have, the better the situation would be.

Vice Chairman: Would a witness from the Department like to comment?

Mr. Deaglán Ó Briain: There is a mix of issues involved, including resources and making sure the appropriate equipment is available in the courts. Deputy Kenny mentioned Covid and our colleagues in the Courts Service report that that has had an impact on encouraging the use of remote facilities. They report that the courts are particularly happy to do so in relation to *ex parte* applications. After that it is very much in the hands of the court whether it will agree that evidence can be given remotely in particular cases.

I will briefly comment on the Deputy's question about having someone present to support the victim. That is one of the objectives of the reform of our grant schemes, to make sure the court accompaniment services we fund are available throughout the State. We put extra money into grants for NGOs and we are currently mapping the applications we have to identify the geographical areas and categories of victims where the service is not available, in order that we can open negotiations bilaterally with some of our NGO colleagues to address those gaps.

Senator Barry Ward: I am a member of the Bar of Ireland and a practising criminal barrister. Lest anybody feel that I am conflicted in any way, I am declaring that at the outset. I thank all the speakers. We got some important information there about the victim's perspective, which is probably not heard often enough in this kind of context. I will start with the RCNI. I like the idea of the presumption in favour of special measures. Does the RCNI have an idea of what we need to do to put that on a legislative basis? Would it involve a statutory instrument or does it require primary legislation?

Ms Caroline Counihan: It is probably safest to do it by way of amendments to the current legislation. My dream is to revamp the whole statutory framework for special measures entirely. A few years ago, I put together what turned into 13 pages of tables about special measures, which can be read in the appendix to my submission. Under each special measure, I listed who is entitled to it, when they are entitled to it and what conditions have to be fulfilled. It is a huge

patchwork of different conditions for every special measure. A dominant theme, as the Senator will know very well, is that if someone is under 18 or has a mental disorder, as defined by the legislation only, there is practically a presumption in favour of getting many separate special measures. The point, which Ms Kenny put so well, is that the effects of the trauma of sexual violence and the difficulties of testifying do not end the day a person turns 18. People are not then magically able to go into a courtroom and explain happily to a room full of strangers what happened to them. They still need those special measure. As I said, I see survivors of sexual violence as inherently vulnerable by dint of the trauma they have suffered. This presumption is terribly important and it would do a lot to allay the fears of survivors about testifying.

Senator Barry Ward: A number of speakers, including those from Men's Aid and One in Four, mentioned training for barristers. Rape myths were also mentioned. There is definitely a deficit of information. We are doing training at the Bar - I know because I am involved in it - and it is done on a voluntary basis. We do not get support from any outside agency to do it. Would organisations like the RCNI, One in Four or Men's Aid be interested in being involved in training barristers so they get a greater insight into this kind of thing?

Ms Caroline Counihan: Absolutely. Speaking for the RCNI, we would be delighted to do that and the Senator should please feel free to call on us. As he will be aware, as part of the implementation of the O'Malley report recommendations, a separate subgroup composed of people from various agencies, including NGOs, is working on exactly what forms specialist training should take. That matter is getting some serious attention at the moment and that is great.

Senator Barry Ward: Regarding the resources, a number of people mentioned what is and is not available in courtrooms at the moment. The other issue relating to resources is separate representation for victims in court. This may be a question for the Department. Are there any plans to change the fact that representation is currently only available in the course of the cross-examination of a witness? Is it something that could be expanded to cover representation for that witness throughout the trial? The reality is the witness is a relevant person throughout the trial. Equally, the representatives of the witness should be paid on parity with the other lawyers in the case. The barristers who are briefed to attend for the prosecution or the defence get one fee and the barrister representing the victim gets a lesser fee. I have never understood why that disparity exists. Does the Department have any plan to change that?

Vice Chairman: I ask the witnesses to answer briefly please because we are a good deal over time. A "Yes" would be good.

Senator Barry Ward: I have just one more question because this is also a matter for the Department. The Bar of Ireland mentioned this as well. I hear that trials are now being pushed back to 2023. That is another complicating factor for victims. I ask the Department to address the issue of resources as regards the number of judges available for trials.

Vice Chairman: I ask the Department to come back to the Senator in writing on that point for a couple of reasons but mostly because we are over time. I call Senator Ruane.

Senator Lynn Ruane: I thank everyone for their testimonies. My questions are mainly for Mr. Hayes and Ms Murphy and relate to sexual history. The O'Malley report states that the working group takes the view that the terms of the current application strike a fair balance between protecting the rights of accused persons and those of victims in sexual offence trials and it does not recommend any change to this section. I struggle to understand parts of that.

When I look closer, the onus appears to be solely on the judge to decide whether an application to question a victim on his or her previous sexual history is approved. We know from statistics that it is a common practice, with figures estimating that up to two-thirds of trials involve sexual history evidence being admitted. Do we have detailed guidance as to when relevant evidence should be admitted? How do the judges in those cases determine what is and is not important or what is admitted? Does the judge have to provide some sort of summary or insight as to how and why he came to the decision that evidence relating to sexual history is permissible? Whatever about Senator Ward being conflicted as a member of the Bar, I am conflicted as a woman who has been raped. The idea of sexual history, which is something I would have to contend with, is something that would keep me out of the court room. I wonder if this is one of the biggest issues, yet the Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences, the O'Malley report, does not recommend any change in this. I am not looking for an outright ban as I understand the logic of the application of reasonable doubt and everything needed by that, but is there something that the O'Malley report could have recommended in order to ensure there is more accountability and transparency in how evidence is permissible and how these decisions are made with regard to previous sexual history?

Ms Fiona Murphy: I will answer Senator Ruane's question on behalf of the Bar Council. The position is that it is the judge's decision as to whether questions on the sexual history of a complainant or victim can be allowed or permitted in the course of a trial and the judge will have to give a reason as to why he feels it is appropriate. When the application is made, defence counsel have to make it very clear why it is relevant. More and more, there are rulings from trial judges where they say that if one is asking for perhaps five different aspects, and the judge does not see the relevance of two to three of those aspects, the judge will then refuse those questions outright but will allow the application on those other aspects for a particular reason. In all cases, the judge will have to explain his reasons as to why he sees the relevance. As Mr. Hayes pointed out and as is clear from all of the testimony, the position is that victims have their own representation for the purpose of that application. On many occasions what can and does happen is that a victim will say to their representative that she understands, for example - I am not talking here about any particular case - that this is her ex-boyfriend and that he might want to question her about "A", "B" or "C" and she has no issue at all with that question being asked. Frequently, there is agreement to some extent from the victims themselves as to the extent of the questioning. It is not something in my experience that is done lightly by any judge to allow questioning on previous sexual history. Certainly, in cases where the complainant or victim was a child at the time of the offence, judges are reluctant to allow questioning on sexual history because it is very difficult to see a link in those circumstances and the judge would need a very particular reason for relevance to be shown.

The relevance test is a high bar and judges are reluctant to allow people, as referred to by the Senator, to be questioned about something so personal and there has to be a very relevant reason as to why that should be done. This is in recognition of the standard of proof and the presumption of innocence but this is a very careful decision which is made by any judge in such cases. I hope that answers the Senator's question.

Vice Chairman: The Senator has a further ten to 20 seconds if she wishes to ask anything else.

Senator Lynn Ruane: I will follow up with Ms Murphy as to that bar that is set and about cases where evidence does not seem relevant at all. In such cases, what kind of recourse is there? There were a number of cases in Ireland in the past number of years which may have

referred to underwear or such things. What happens in those situations and how would such a case make it through the process without being stopped with reference to the high bar that Ms Murphy has said has been set out in terms of relevance?

Vice Chairman: Ms Murphy appears to be gone and we may come back to that.

Senator Lynn Ruane: That is not a problem.

Vice Chairman: I thank Senator Ruane. I now call on Deputy Pringle followed by Deputy Howlin.

Deputy Thomas Pringle: I thank all of the presenters for their evidence to the committee. A number of the questions that I wished to ask have already been asked so I will put a number of additional ones now.

When thinking about this meeting today and the number of rape cases that are reported to an Garda Síochána but do not actually progress to the courts, I thought that such cases would also be a very important part of this meeting and how the experience for those persons could be improved. These cases predominantly involve women. If the experience in court and the performance of the court is improved, that will also improve the performance for people who do not actually make it to court. I know that the decisions as to whether to bring forward cases are made on the likelihood of a conviction and not necessarily on the merits of the case, as such. The decisions are made on the basis of whether the case can get through the court system, which is a problem. If we are successful in amending how the courts deal with cases that could lead, hopefully, to proceeding with many more prosecutions.

In 2018, for example, there were 2,771 victims of sexual assault, but in the same year there were 304 convictions. That amounts to 11% of the victims of assault.

Something that should also be looked at is that it is very hard to find statistics on the number of cases prosecuted, and so forth, through the courts. I had difficulty with this but perhaps I was just not looking in the right place.

I have a specific question where the Criminal Justice Act 1993 provides for a review of unduly lenient sentences. In 2017, 63% of sentences reviewed were increased and in 2018, 72% of sentences were increased. That shows me a system that is not working because no system of appeals should have such a high increase in the sentences delivered. When will we expect to see a change in this and how will we see this working? This should also lead to an increase in cases going forward and the courts system could end up being a victim of its own success in needing more resources to enable a more successful system to work. It would probably be for the Department to respond on how it might deal with this and perhaps the Law Society might deal with the point about the appeals of unsuccessful cases.

Vice Chairman: I will put those points now to the Bar Council and to the Department.

Mr. Dara Hayes: I thank the Vice Chairman. I speak now on behalf of the Bar Council. On Deputy Pringle's question on the undue leniency appeals and what appears to be their high rate of success, it is important to say that the bar that is set by the Court of Appeal in respect of a change of sentence with regard to undue leniency is by its very nature not one of leniency but of undue leniency and it is quite a high test. For that purpose, the Director of Public Prosecutions, DPP, in my experience, tends to be quite careful in the cases that she selects to go forward. She does not apply for appeals in terms of leniency, where in her view a sentence is merely lenient,

but she needs to form the view that it has been unduly lenient. She carefully selects the appeals that are taken and the ones that are taken are those that tend to have fallen quite far outside what would be considered the norm. The reason that these cases have had such a high success rate is because she does not appeal the ones, in my experience, that might be considered more marginal. It is only in the cases that are strikingly lenient, perhaps, that the appeals are taken.

Vice Chairman: Can I ask the Department to respond briefly now, please?

Ms Ciara Carberry: I mention, first, that sentencing is a matter for judges and not for the Department. I am aware that the Judicial Council is working towards bringing consistency to sentencing and is looking at sentencing guidelines. I imagine that that would be a very useful piece of work. Section 3 of the Criminal Justice Act 1993 is probably working as it is intended to do at the moment, and as my colleague has said there, the DPP is very careful in her selection of cases to bring forward. From the Department's point of view, we need to be careful about getting involved in any discussions around whether sentences are appropriate or not because that is really a matter for the sentencing judge.

Vice Chairman: I thank Ms Carberry very much. I will now move to Senator Gallagher. He will be followed by Deputy Niamh Smyth, Senator McDowell and Deputy Daly.

Deputy Brendan Howlin: I am sorry, but I think I have been left out.

Vice Chairman: I am terribly sorry. I skipped Deputy Howlin. That is really bad.

Senator Robbie Gallagher: Deputy Howlin can go first.

Vice Chairman: The Deputy has five minutes.

Deputy Brendan Howlin: I forgive the Vice Chair. I join others in thanking the witnesses for their powerful testimony and their pre-meeting submission, which was very helpful to us. This is one of the most difficult aspects of crime to prosecute. We made progress in recent times on it, but our history has not been good. The issue is always to balance the presumption of innocence in a fair trial with avoiding the re-traumatisation of victims. As has been stated, we have just passed new legislation in the Dáil which has to go to the Seanad on pretrial hearings. That is the area I want to ask a question about. How much can we address at the pretrial level, particularly in the context of pre-recorded testimony? A great deal of the evidence we have received refers to undue delay and lack of memory and, therefore, people almost being tricked or trapped into trying to recall things in a level of detail. How much can we capture immediately post the alleged crime and present that as uncontested evidence? Is there scope there?

Similarly, in regard to the structure of the courts themselves, I am interested in the view of the representatives from Rape Crisis Network Ireland. We had great discussion in the past about making courts child-friendly and unintimidating. Do we need to fundamentally look at the physical structure of the courts? Can we do anything in that regard?

It is a given that we need to look at legal representation for victims. We all know that the only one not properly represented, often by the taxpayer, is the victim. That is something that really needs to be addressed.

My final question mirrors one previously put in circumstances where we ran out of time to get an answer. I am desperately concerned about the impact of Covid, both on the number of unreported incidents of domestic violence that I think will be horrendous, quite frankly, and the

capacity of the courts system to deal with it. It will be incredibly difficult if there are years of delay in dealing with these crimes when they come to light.

Vice Chairman: Does Deputy Howlin want anyone in particular to respond?

Deputy Brendan Howlin: The question on the structure of the courts was addressed to Ms Counihan. The question on pre-recorded testimony is for the Bar Council.

Ms Caroline Counihan: On the structure of the courts, it depends on how one looks at that. The physical environment is certainly important for any witness, including vulnerable witnesses. There is no question about that. We are talking about the physical security of witnesses due to give evidence about extremely intimate and difficult personal matters who face a triggering experience of being re-traumatised. It is all very difficult, but much can be done to improve the physical comfort and security of the building itself. Where, unfortunately, it is not possible to wave a magic wand and change the physical configuration of the building, it is about having the right attitude among all those who are concerned with that victim. I refer to the court accompaniment people, the Courts Service staff, the members of An Garda Síochána a victim will meet, the prosecuting lawyer and the way the victim is treated by the judge so that they all have the victim's need for privacy and security well in mind.

If one is faced with a situation where one does not have a great building, where it is quite small and it is hard to avoid contact with the accused, who as we know very often is on bail, as a witness very often one is terrified of meeting that person. The victim has every reason to know that he or she is likely to be triggered by seeing the person again, to the point where he or she would be unable to talk to anybody about anything. Then it is a question of working together to find imaginative solutions such as having everybody arrive at different times and for people to be escorted everywhere. One can find some solution if one has the right attitude and the right understanding that this is a traumatic and difficult experience. It is in the interests of the witness but also of the whole system, if you like, to ensure that a witness feels as secure and safe as possible.

I do not know if that answers Deputy Howlin's question. When he first began to talk, I saw it from a different point of view. I wondered if it was a question about a specialist court. I know it is not something that I have spent time on in our submission. In a way, we have at least half a specialist court anyway. Deputy Howlin may be aware that in Scotland a cross-judicial agency review was published recommending the creation of a single specialist court there. We are half the way here with our Central Criminal Court. We are pretty far along the way in some ways. Does that answer the question?

Deputy Brendan Howlin: I thank Ms Counihan.

Vice Chairman: We have that report and we circulated it to members before the start of the meeting. I might take 30 seconds to make one observation because it flows from what Ms Counihan said about trauma. One in Four covered it particularly well in the description in its submission of what somebody is going through physically as he or she tries to describe a traumatic event. One cannot understand trauma until one really understands it. It is simply impossible for people who do not understand it to be able to treat it with the sensitivity it needs.

Senator Ward referred to the training of barristers. My view is that it is essential that they be trained and not on a voluntary basis. The State is putting people through a process that it has organised and it has a measure of duty of care to those individuals. Can members possibly

imagine the most horrific thing that has happened to them? It is the most horrific thing that has happened to victims and it is difficult enough to relive that experience with a therapist in a safe environment. It is so difficult and traumatic to be asked to relive the experience in front of a roomful of strangers, including the person who has committed the act, and to be expected to give one's best account of the experience, the one that really matters, the one that one was working towards and that one will always remember, that the State must take steps to make sure that people are facilitated and, more importantly, protected. Following that observation, I will move on to Senator Gallagher. He has five minutes.

Senator Robbie Gallagher: I might pick up where the Vice Chair left off. I agree with what has been said. That is matter I was going to touch on as well. I agree wholeheartedly with every word the Vice Chair said.

I thank everyone who has taken the time to be present this afternoon. I found the contributions harrowing in many ways but very necessary at the same time. As a previous speaker said, it is difficult to put one's finger on the extent of this problem in society. Moving on from the Vice Chair's concluding remarks and to add to the layer of trauma she outlined, the fact that in many cases the court procedure can go on for up to four years before there is a conclusion is harrowing. It is very disappointing that, from what we heard from the barristers, if I took them up correctly, this is an issue of resources and that, in many ways, additional resources could fast-track the whole process. I ask the representatives of the Department to comment in that regard. Has any work been done regarding the resources that are required in order to expedite the entire trial process?

I ask the officials to comment on rape shield law, which I understand is in place in America and Canada. Are there any plans to introduce rape shield law in this State? Is it being discussed? The whole idea that a person's clothing, previous sexual history or possible intoxication with alcohol or drugs should come into the equation is, to my mind, harrowing. It certainly should not be the case.

It is clear that, as a society, more needs to be done with regard to public awareness and education around this whole area and that of respect. Are the witnesses satisfied that we currently have the systems in place to address that issue? If not, how or where do they believe we can improve on that?

I refer to the whole idea of aftercare, for want of a better term. Is there an area where persons who have gone through a traumatic and life-changing event such as this can be taken by the hand, if one likes, and given all the help, if any, that is available to assist them to get their lives back in order and deal with the trauma they are going through?

As regards the courts system generally, I understand the O'Malley report made certain recommendations. Are our guests happy with the progress that has been made in that regard? Is there another jurisdiction anywhere on the globe which we could use as a blueprint to follow?

Vice Chairman: Does Ms Counihan or one of the representatives of the Department wish to respond? Did the Senator wish for the representatives of the Department to respond?

Senator Robbie Gallagher: I directed the question on resources to the Department. Is any progress being made on a rape shield law?

Ms Ciara Carberry: I will address the rape shield law. It is a restriction on the defence being allowed to question the victim generally about prior sexual history that is not relevant

to the offence at hand. We already have restrictions of that type. They have been improved at various points through the years. One cannot question a victim in a rape trial about any prior sexual history other than the actual encounter at hand in the prosecution without the permission of the judge. One of the recommendations in the O'Malley report is that victims will be able to have their legal representative with them in court during that questioning to ensure that it stays within the bounds of the permission that was given by the court. That is a change that was recommended by Tom O'Malley and it is something that we are committed to implementing in the sexual offences Bill this year. Of course, we must consider how we can continue to improve that because it is not in anybody's interest for victims to be retraumatised and revictimised during the proceedings and that is something we would like to avoid.

On the issue of resourcing for the courts, I think my colleague, Mr. Ó Briain, might be better placed to provide information to the Senator. I know the Minister has allocated significantly increased resources to assist on this issue.

Vice Chairman: I ask Mr. Ó Briain to comment very briefly.

Mr. Deaglán Ó Briain: Very briefly, the issue currently relates to Covid-19 restrictions and the backlog that is building. It will become an issue for us once the restrictions are lifted. There are additional resources in place but a very worrying backlog is building.

The issue of consent is on the agenda in terms of the implementation of the O'Malley report. We will be running an awareness campaign relating to consent along with our partners in the Department of Further and Higher Education, Research, Innovation and Science and, in particular, the Dublin Rape Crisis Centre. Research is being conducted regarding the sort of messaging that actually works and how to impact on attitudes in respect of consent. That is on the agenda as well.

Vice Chairman: Engagement with the Department of Education on a new programme of relationship and sexual education may also be a fruitful line of development.

Mr. Deaglán Ó Briain: I should mention that the Department of Education is also part of that discussion.

Deputy Niamh Smyth: I thank our guests for their very compelling evidence, statements and presentations. I would like their feedback on my observations and ask them to perhaps extrapolate a little further. All present have spoken to victims at various points. I was very surprised to hear that a solicitor who is herself a victim but whose legal expertise is not in this particular area found the whole courtroom experience as a victim very off-putting in terms of the language that was used, the workings of a courtroom on the day in terms of when people are giving evidence and the theatre, if one likes, that can often ensue. Although the professionals, that is, the barristers and solicitors who are involved in this area on a daily basis, are used to and aware of that and know the workings of it, what I have garnered from speaking to victims is that it can be another aspect that is re-traumatising and very off-putting. It almost encourages them to just call a halt to the process. What shocked me most was that the person to whom I refer has a legal background.

Senator Ward referred to training for barristers. What was described to me was a disconnect in terms of how that manifests on the day of the courtroom hearing compared with how the victim feels. The courtroom experience serves to create a feeling of isolation and further compounds the trauma the victim has been through. Can we do more in that regard? Deputy

Kenny spoke about the idea of video links, while Deputy Howlin spoke about how we can improve the court structure, which might entail physical changes to the building in the context of how a victim gives evidence. We now from feedback from victims that they feel retraumatised. The trauma they have been through is further compounded by their perhaps not being made fully aware of the atmosphere into which they will be stepping or how proceedings happen. Senator Ward stated that training is now taking place for barristers. I would have thought that would have already been in place. Obviously, it was not. How can the committee improve on that for victims? I would like the response of any of our guests who believe they can enlighten us in that regard.

Vice Chairman: In the interest of giving all our guests an opportunity to contribute, I will go to one of the groups that have not had an opportunity to contribute, namely, One in Four or Men's Aid.

Ms Deirdre Kenny: The Deputy's observations are absolutely correct. Our experience and that of our clients is just as she described. The procedures take over in a courtroom and the victim is often forgotten in that scenario. They walk into something quite alien. The experience of sexual violence is a very personal one. Then, suddenly, they are being spoken of in the third person in the context of the intimate and traumatic experiences they have had and all of this is spoken about in a way they are not familiar with. That is why we recommend an impact assessment is done on how those procedures play out and the impact on the witnesses we are asking to take part in the process.

Again, language is so important and powerful. There is the whole construct of legalese and this can often be off-putting for someone. Language is often used as a device as well. Sometimes a silence, a tone or a certain approach can trigger a traumatic response that people are not expecting. My experience of working with survivors in court is that they get that the law will do its thing but they are quite taken aback by the inhumane approach. That is not to make it personal for the professionals involved. It is simply that the system takes over and they are not really at the centre of that. Ms Counihan and others have commented on how we really need to focus on their well-being in this. We want to get the best from them. If we are to increase positive outcomes in these situations, we really need to focus on how we can bring the law and the trauma together in a more humane way. That can certainly be done. While I have highlighted some of the negative things our clients have talked about, there have been positive experiences in courtrooms for them as well. This is often because the personnel involved have been very gentle and have approached them in a way that is compassionate. There is certainly a way to do this but we need to give it focus and resources.

Deputy Niamh Smyth: My thanks to Ms Kenny for her presentation. Although she did not get to finish it, we have all read it and it is highly compelling. She is nailing exactly what I am talking about. The well-being of the victim is often well down the list of priorities in the courtroom and that is something we need to address. Can Mr. Hayes respond to that?

Ms Fiona Murphy: I can respond on that point. I have prosecuted and defended these types of cases. Certain court environments are better set up than others to look after the welfare of the victim. For example, the Criminal Courts of Justice building has a victim's suite. This allows a victim to have an area of privacy where they know they will not come anywhere near an accused person or any other witnesses in the case. The Director of Public Prosecutions has a system in place whereby all victims are met by prosecution counsel prior to trial. They are also met with victim support people from the Criminal Courts of Justice who can show them around the building. A considerable amount is being done to try to assist victims and make them feel

more comfortable insofar as that can be done prior to court hearings. Obviously, anything that can assist a victim to feel more comfortable is worthy and should be done. It is not appropriate for someone in that environment to be re-traumatised, as Ms Kenny said. That is not right.

Vice Chairman: It is important to acknowledge the work of Men's Aid Ireland as well. There is not the same volume of cases or experience of prosecuting cases from that perspective but I wanted to give the representatives of Men's Aid Ireland the opportunity to come in on any of this if they wish. I am aware that Ms Bentley is a strong advocate in the context of coercive control. This is a new criminal offence that we are seeing prosecuted and one in which this committee has had a strong interest.

Ms Kathrina Bentley: What we hear from the men on our helpline is that sometimes they do not identify themselves as rape victims. It takes a lot for a man to actually disclose that he has been raped. It is not language that they often use. Moreover, our legislation does not recognise female-on-male rape and this is a barrier for them. We have a case that might be going through live this year. We are going to support our client all the way through with counselling. It took the person several months of counselling before it came out in a counselling session. Again, it was a great and brave step for that gentleman to come forward. Then there was great work from our colleagues in An Garda Síochána to support him in terms of gathering evidence, etc. From last year to date, we have heard of 13 disclosures. The previous year there were only five or six reported. Again, it is about using the language. The Government, the Department of Justice and the Garda all have roles. The Still Here and No Excuses campaigns worked hard over 2020 as well. I believe we are getting the message out for victims not to stay silent. It is great that they are coming forward and speaking, but obviously we have to resource or find the resources to walk with them on the journey.

The trauma felt is an issue. One person mentioned to us some weeks ago that he felt he was still in the fog of the domestic and sexual violence. We ramped up our communication with the person, although not too much. There was a text message and then a call some days later. He is still in the fog. He is out of the situation but the way it was described was as an absolutely surreal experience. This highlights the importance of having someone who is trauma informed and of having a front-line experienced person to walk the victim through it. Perhaps the family did not get it. Perhaps friends might not necessarily have got it or really understood the true dynamics of domestic and sexual violence. The volume we have seen in 2020 and the continued volume in 2021 are a matter of concern, but it is good that people are coming forward.

Vice Chairman: It is good that representatives from Men's Aid Ireland are here to contribute to this discussion. Ms Bentley referred to the language and described about men not feeling comfortable coming forward or not identifying as rape victims. This is partly a gendered experience in itself that is imposed on men. In so many different ways, we talk about the damage toxic masculinity can do to men and women without recognising that this can happen to both genders. We need to give it the seriousness it deserves. It is hard for us to move other conversations as well as wanting to treat this one with the respect it deserves.

I will move on to Senator McDowell, who has five minutes.

Senator Michael McDowell: My comments arise out of the topic under discussion with Men's Aid Ireland. Last night I watched an hour-long documentary on BBC about sexual abuse of young boys and men in football. We heard of the extraordinary obstacles they had when it came of making any disclosures at all. This was partially based on their gender and the social attitude towards male victims of sexual assault. It was harrowing to watch the programme be-

cause these were men in their 50s weeping because of their recollections of what had happened to them and how they had suppressed what had happened to them.

One question I have relates to the extent to which anyone now being accused of a sexual offence can rely on the right not to give evidence. Is that gone? There was a time when it was sometimes deployed and the accused simply never gave evidence. There is a case to be made for not allowing unsworn exculpatory explanations or statements made by the accused to gardaí investing the matter to come into evidence, especially if it is circumvented the sexual history prohibition that would normally be there. My question is for the practitioners and the support groups. Is it the case that no one sits out a case anymore and simply relies on the statements made to the Garda? Is that a real issue any longer?

Is it thought that the Director of Public Prosecutions prosecution criteria are too strict or just about right? Are they too lax? Is it fair to put someone who is a complainant, whether male or female, in a weak case through the process of a trial to avoid the accusation of not being supportive? If we are to try to eliminate all the preliminary issues and the trials within trials and have a straightforward trial of the issues in future in accordance with what the Department of Justice is planning to do, as I fully support, is there a case for some kind of standardised training video to be made available to a jury once empanelled to get across some of the background difficulties of trying a sexual assault case? The Judicial Council might approve a video, which would remind a jury of some of the basic facts. I know it is the judge's duty to charge a jury and bring relevant propositions to a jury's attention, but judges vary and some of them are better communicators than others.

There might be something to be said for supplying juries with a video once empanelled to set out some of the basic facts about the difficulties witnesses face, the complexities of sexual cases and the rules that are applied in order that the jury knows, for instance, that the sexual history of a complainant is not normally permitted to be gone into. Those are issues that should be brought to the attention of juries to give them some help in carrying out their functions. It might be useful to give them an educational video in that context.

I seek some feedback on those three points. It is a long time since I appeared in a criminal case, let alone a sexual criminal case, and I am interested to know whether people can allow their counsel to attack their accuser, and then sit back, give no evidence at all and rely on an explanation given to the Garda getting in by the back door.

Vice Chairman: Are the Senator's questions addressed to anybody in particular?

Senator Michael McDowell: Perhaps the criminal practitioners here might say something about that but I do not want to confine it to them alone.

Ms Fiona Murphy: I can deal with that. In trials, accused persons can certainly rely on their right to silence and not give evidence in a case. When an accused person is interviewed by members of An Garda Síochána in line with the proper procedures, he or she can put forward his or her case to those gardaí and obviously defence counsel is obliged to put that case to the victim in court. I appreciate what the Senator said that in some ways, that could be getting in by the back door previous sexual history matters that might not be relevant.

I wish to make it clear that those interviews can be excised and part of them can be removed for the purpose of going to the jury if there are aspects of it that are totally irrelevant and that should not play any part in the trial. That would be contingent on the ruling of the trial judge

on the application for questions to be asked on the previous sexual history of the complainant or victim. An accused person's simply making reference to something in his or her interview with the Garda will not be enough to make it relevant for the purposes of the trial. If necessary, trial judges can order that those parts of the interview are irrelevant and should be excised. However, it is not always the case and I could not give statistics on it. Anecdotally, it seems to be the case that in the past five years at least, accused persons are more likely to give evidence at trial.

Senator McDowell mentioned the possibility of there being some provision whereby it is not acceptable for an accused person to give an account to the Garda and sit back in court and say nothing. I think that could have ramifications elsewhere to preclude somebody giving his or her own account to the Garda when he or she is interviewed in respect of a sexual offence but not in respect of other offences. I think there could be difficulties in that regard. I think that answers the questions that the Senator wanted the Bar to answer.

Vice Chairman: I am keen to facilitate the discussion and to ensure that everybody gets in. I will now call Deputy Daly for five minutes at which point we will reach the end of the first round. I believe Senator Ruane indicated she would like to come back in. If anybody else wishes to come back in, I ask them to signal to me so that I can plan the time and allow the conversation either to flow or to get people back in.

Deputy Pa Daly: I thank the witnesses for their submissions and presentations. Several points have come up during the meeting. Deputy Howlin made a very fair point about court structures, which applies more widely and not only in cases of sexual violence. It always struck me as strange that in Tralee Circuit Court where I used to practise, all the witnesses sat right in front of the accused or sometimes the co-accused. In many cases the closest person to them in the court was the accused person. I always thought they should be sitting on the other side of the court. That should certainly be looked at.

I agree with what Mr. Hayes said in response to Deputy Pringle's question about appeals taken by the DPP. In my experience the current DPP and her predecessors have always been quite choosy about the number and types of cases they take. It does not surprise me that the number of appeals is relatively small but the statistics will back that up.

Ms Carberry and Ms Murphy made very valid points about the cross-examination of witnesses. There is an idea out there that it is a free-for-all against witnesses, complainants and victims who are giving their evidence in court. It is certainly my experience that this is not the case and that there are protections for the victims in place which are not widely known. It is very dangerous for someone defending an accused person to go down that line because one risks being absolutely hammered if a guilty verdict is brought in. That is the practicality of it.

Cases of domestic violence are treated differently all the way along. Those in jail for drugs offences, domestic violence offences and sexual assault offences do not qualify for temporary release in the same way that they would if they had been convicted for other types of offences.

Coming from my background in criminal defence, I recognise it is a difficult one, balancing the rights of an accused person. I read some excellent suggestions made by One in Four and by RCNI. I agree with most of them. One suggestion proposed allowing any victim of sexual violence to have their evidence-in-chief prerecorded and stand as evidence in trial. I think that would be a step too far, balancing the rights of an accused person.

One of Senator McDowell's questions related to the attitude of the DPP in bringing cases

forward for trial. He seemed to be asking whether more cases are brought forward for prosecution in sexual assault and rape cases than others. I am not so sure about that. In the past I have represented people who strenuously denied the accusations. They have their rights. Their families, partners and wives have been affected by that case hanging over them for five years. In a few instances, the cases were eventually dismissed. It is difficult to balance both of them, but some excellent suggestions have been made.

I have one question for RCNI about how the statistics are compiled by An Garda Síochána. I read some but not all of an excellent report about rape and justice in Ireland that the RCNI prepared. Is it happy with the way statistics are compiled in this jurisdiction? There were some fascinating statistics in the presentation about the attitudes to accused persons of, for example, male-dominated as against female-dominated juries. Is the RCNI happy with the way the statistics are compiled? An interesting statistic that came out of its report was that African people were ten times more likely to be accused in cases like this. Did that also follow through with prosecutions? That is all I will say on the matter but I again thank all the witnesses for their presentations.

Ms Caroline Counihan: The report, *Rape & Justice in Ireland*, was published in 2009. In my dream universe, we would be doing a follow-up report on it now because the world has changed an awful lot. The Deputy asked whether we are happy with the way statistics are compiled in this country. It is quite disparate. There are the Garda recorded crime figures, in another box on another website altogether are the DPP's figures and in a third box are the Courts Service figures.

I would love to see, in the DPP's annual report, a breakdown of the reasons sexual offences, in particular, might not be prosecuted. I would also love to know the proportion of sexual offences, or files concerning sexual offences, that result in a prosecution for any offence. At the time of publication of *Rape & Justice in Ireland*, the DPP very kindly allowed the researchers to enlist the assistance of DPP staff. In fact, DPP staff filled out questionnaires, not from a sample but from the entire number of files for a given four-year period, and compiled statistics from that. I went back to the Office of the Director of Public Prosecutions about a year ago to ask if it was possible to determine the proportion of sexual offence files from An Garda Síochána which result in a prosecution and also to break down the reasons they might not be prosecuted. It explained that it was not possible to do this exercise digitally and it could really only be done manually. As I understood it, the office did not have the resources to do it. If possible, I would love to know what the proportion is because then I could give more meaningful advice to people who ask what the chances are that a file will even get as far as the DPP, never mind any further.

Having said all that, while the Director of Public Prosecutions does live up to a fairly stringent test, she has also pushed the boundaries of it and has been more liberal in recent times. Survivors have benefited from that. I am not talking about a huge effect but that is my anecdotal impression. I do not have statistics on it. It is very hard in our statistics system to track a case, complaint or victim from the beginning right through the process. In a given year, one is not talking about the same cases. An Garda Síochána has a bundle of recorded cases or complaints that are separate from, and probably do not much overlap with, what has got as far as the DPP in a given year and what is with the DPP is not necessarily what reaches the Courts Service. One is always comparing apples with pears and cauliflowers. It is not a unitary system. I do not know enough about statistics to know if a system could be devised that has a single identifying number for every case, charge, victim or perpetrator. To answer the Deputy's question, it is not very satisfactory.

I am always finding things that are not obvious but should be. For example, although it has improved in recent times, the Central Statistics Office, CSO, categories of recorded crime include a huge category of “other sexual offences” which lumps various offences together. One can find out the breakdown for a particular offence but it is necessary to ask the CSO. I am sure it is a question of resources, not ability, but it is cumbersome and not easy to work with.

Vice Chairman: The point about a single identifying number to track processes through different State institutions is a very good one. I thank Ms Counihan for that.

Senator Lynn Ruane: A couple of speakers have talked about the courtroom experience. I apologise if there has already been comment on it, but could the Department speak about the strategy it has in place under the Supporting a Victim’s Journey plan to assess the impact of the court environment and procedures on victims? Many of the submissions outlined the need for an impact assessment. One in Four referred in its submission to a case where a victim could hear the accused whispering in reaction to her testimony. Deputy Daly mentioned a similar experience in Tralee courthouse. Will the Department comment on the role of the Supporting a Victim’s Journey strategy in addressing that issue?

Mr. Deaglán Ó Briain: There is in no getting away from the fact that we have accommodation and court buildings that are heritage buildings built in previous centuries. There is a huge programme of work that needs to be undertaken but I will not pretend this matter will be resolved quickly.

On Supporting a Victim’s Journey, one of the key priorities is to make sure the person is supported at all stages of the process. I am not trying to sidestep the question but our focus, right from the start when the person makes the complaint, through the Garda investigation, the court process and afterwards, is to ensure support is there for any legal processes that take place after conviction, such as parole and so on. That is our focus and we have made considerable progress on it.

Work has been done on a number of interview suites that are available to gardaí when interviewing victims. These are more suitable than Garda stations, some of which are still heritage buildings, if I can describe them as that. There is a big job of work to be done. It will take a long time to modernise all the court accommodation and the court IT system so that proper data are collected and we can avail of the full potential of electronic filing, remote hearings and so on. These are big jobs that will take quite a few years to bring to completion. The current focus is on how we have somebody with the victim at all times to provide support.

Deputy Brendan Howlin: I have a brief question for the Department of Justice officials on the Garda Síochána statistics, which were very much discredited some time ago. Since the CSO refused to stand over statistics provided for a variety of crimes, what is the reliability and accuracy of the statistics provided by An Garda Síochána and the PULSE system for each category of crime?

Mr. Deaglán Ó Briain: I volunteer to come back to the Deputy and committee in writing on that. I do not have a brief on that particular topic.

Vice Chairman: We were to revert to Senator Ward on having equal standing for barristers on the side of the victim and accused, respectively.

Deputy Pa Daly: I forgot to mention the O’Malley report and some of its recommendations. For anyone present who may be on the Courts Service committee, I hope the refurbishment

of Tralee courthouse can be sorted out quickly.

Vice Chairman: I admire the commitment Deputy Daly shows to Tralee courthouse at every meeting.

Deputy Pa Daly: If only everyone had the same commitment to keeping it.

Vice Chairman: I will give each group that has attended, the advocacy groups in particular, an opportunity to make a final contribution.

Ms Deirdre Kenny: We are grateful for the opportunity. It sounds as though the committee has received our message with regard to the trauma and impact people experience in the courtroom. I reiterate that delay is the biggest issue at present. We are receiving court dates for cases in 2023 that should have happened in 2019. Victims are waiting nearly six or seven years for those cases. The Courts Service is overwhelmed by the demand. It was overwhelmed before Covid-19 but it has certainly got worse. That is our primary concern at present. I would like the committee to keep that in mind.

Ms Maeve Lewis: The O'Malley report is wonderful but Mr. O'Malley made a strange comment that there was no need for more judges. One of the reasons for delays is that there are not enough judges available for trial. Our clients are constantly going to court with a date, which is then repeatedly postponed. That needs to be addressed. We need more judges on the Bench.

Ms Caroline Counihan: Ms Kenny and Ms Lewis have said it so well. I endorse what they have said about delay and what Ms Lewis has said about judges. We need more judges and they should be made available as a matter of justice. It is about ensuring that every voice is heard as is stated in the title of our report. It is about hearing every voice and allowing every voice to be heard without increasing the risk of them being dramatically retraumatised by the experience. This can be and is being done.

Somebody asked me who we would look to. My favourite go-to jurisdiction is Scotland. It has been at this for years and has made inroads. Northern Ireland is the new kid on the block coming up fast on the inside rails. England and Wales seem to be in disarray but the two smaller jurisdictions are well worth looking at.

Vice Chairman: I agree with Ms Counihan on Scotland. There is much to be taken from that example.

Ms Kathrina Bentley: It is important to recognise that a victim centred approach is becoming embedded across the NGO and statutory services, in particular An Garda Síochána and the Courts Service. We need to build on this by ensuring male victims of serious sexual crime are supported and not retraumatised. We also give training on the male perspective, what happens with men and how under-reporting is a significant problem for male victims. We know that only 5% of male victims of domestic violence report. It is even more traumatic for male victims who come forward to report sexual assault, so we need more training in that area and more judges.

Mr. Dara Hayes: The Bar of Ireland agrees with what most of the parties have said in relation to resources, particularly judicial resources. Delay is not the only issue that affects victims who go through the courts system but it is important. We have included in our submission the impact delays can have on victims, witnesses and anybody involved in the trial. It is important to do as much as possible to ameliorate that.

The problem is that the delay pre-existed Covid-19. The delays in Dublin Circuit Court before Covid-19 were in the region of 15 to 18 months. It now takes approximately two years before a case comes to the Circuit Court, assuming everything goes smoothly. An issue with later disclosure can knock that back by several months.

Ms Lewis referred to a statement in the O'Malley report that extra judges were not needed. This is one of the few things we disagree with in the O'Malley report. Additional judges are needed at all levels. The Bar organised a conference on Friday on the effects of Covid-19 at which the President of the High Court, Ms Justice Irvine, spoke. She indicated she had called for an additional 15 to 20 High Court judges for all matters because of the increase in work and the impact of Covid-19. The Bar of Ireland agrees with that and it is important that as much as possible is done to reduce delays in the system.

If a case were to come before the courts, with the offence having been committed today, there would be a Garda investigation. Even if the investigation were brief, it would be a number of months before it got to the courts. It would be two years thereafter before it got to trial. Even with everything running smoothly, it will take the best part of three years from the date of the offence to the date of the trial. That time should be substantially shorter. I apologise if I went on a little too long. I thank members for their patience.

Vice Chairman: That concludes our engagement with the witnesses. I thank them for coming. I propose that we publish the opening statements on the committee's website. Is that agreed? Agreed.

As I mentioned at the beginning of the meeting, it was not possible to invite all those who made a written submission to participate in the meeting due to time limits. We appreciate them having done so. The contents of the submissions have been noted by the committee and will be included in any report the committee publishes on the topic.

I thank the other stakeholders that made written submissions, namely, the Law Society, the Dublin Rape Crisis Centre, the National Women's Council of Ireland and the Victims Alliance. We have had an excellent, balanced representation from those working in the area. On behalf of the committee, I thank the witnesses for taking the time to participate in our meeting on this important topic.

I suggest that the Joint Committee on Education also discuss this matter with the Department of Justice. Given that the Joint Committee on Justice deals with the outcome of these issues rather than their source, I fear that our successors, 20 or 30 years from now, will still be dealing with those outcomes unless we intervene, in an intergenerational way, in how we educate our children.

As there is no other business arising, I will adjourn the meeting.

The joint committee adjourned at 5.29 p.m. *sine die*.