

Submission to the Law Reform Commission on Compensating Victims of Crime

Dublin Rape Crisis Centre

April 2022

www.drcc.ie

National 24-Hour Helpline: 1800 77 88 88

70 Lower Leeson Street, Dublin 2

info@rcc.ie

FB/ Twitter/ Insta

Background

The mission of Dublin Rape Crisis Centre (DRCC) is to prevent the harm and heal the trauma of all forms of sexual violence in Ireland. DRCC has been at the forefront of the Irish response to sexual violence for more than 40 years. That response includes:

- Running the National 24-Hour Helpline;
- Providing individual advocacy, counselling and other supports including our online webchat;
- Accompaniment and support services for those attending the Sexual Assault Treatment Unit (SATU) and those reporting to An Garda Síochána or attending court;
- Data collection and analysis on trends and issues relating to sexual violence.

As a frontline service provider, we work with and support people who have been directly affected by sexual violence. We are also committed to eliminating its tolerance through education, awareness raising, advocacy and policy analysis. Through that work, we have gained insights into how engagement with the justice system can either assist a victim to access justice or re-traumatise them. That perspective has been included in this submission.

Context

DRCC welcomes the opportunity to contribute to the Law Reform Commission's (LRC) consultation paper on compensating victims of crime. The paper provides an important and detailed narrative about the Criminal Injuries Compensation Tribunal (CICT) and compensation to victims of crime which has been most useful to us as we respond to the LRC. Our engagement with and experience of the work of the CICT within the context of the work that we do is limited, owing to a number of limitations to the scheme. The principal ones are that damages cannot be claimed for general pain and suffering and, until its recent removal, the 'same roof rule'. This exclusion significantly impacted on victim/survivors of sexual abuse, especially in cases of intimate partner abuse¹ or familial child sexual abuse². Our submission will only address those questions we feel are most relevant to the LRC from the perspective of the work we do with victim/survivors of sexual violence and through the lens of accessing justice for them.

¹ DRCC Statistical Supplement to Annual Report 2020 – Relationship between victim and offender page 18
https://www.drcc.ie/assets/files/pdf/stats_2020_final.pdf

² Ibid

Questions for Chapter 3: Legislating for victim compensation

What should be the stated aims of a statutory compensation scheme (that is, a compensation scheme set out in a law)?

The DRCC believes the following should be stated aims of a statutory compensation scheme for victims of crime, particularly having regard to general access to justice principles and international victims' rights standards provided in the EU Victims' Rights Directive³, European Council Directive 2004/80/EC relating to compensation to crime victims⁴, and UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:⁵

- Providing fair and appropriate compensation
- Facilitating recovery
- Providing victims of violent and intentional crime with access to justice
- Using trauma-informed process in dealings with victims of crime and in investigations
- Ensuring accessibility and Prompt redress
- Explicit recognition of the need for harm-reduction regarding repeat or secondary victimisation

Who should run the scheme? The Department of Justice, an existing body that makes personal injury assessments or a new specialist body?

Whilst the DRCC's expertise does not extend to definitively pointing to a particular actor to run the Scheme, we note that there are various advantages and disadvantages to each suggested option. To begin, choosing the Department of Justice to run the Scheme has its advantages as the Department of Justice currently holds responsibility over the Tribunal. However, to meet access to justice principles of transparency, consistency, prompt redress and accountability, the administrative scheme no longer is fit for purpose. The Department itself in 2021 recognised the need to provide for a statutory scheme.

As the Commission paper identifies, another proposed solution as to who should run the Scheme is an existing body that assess personal injuries claims, like the Personal Injuries Assessment Board (PIAB) or the State Claims Agency (SCA). Both entities have the logistical capacity to administer a compensation scheme and there is no doubt but that the reasonably modern PIAB has developed methodologies and systems which provide accessible information, accessible application systems and reasonably prompt processing of applications.

³ [European Union: Council of the European Union, Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 14 November 2012, L 315/57](#)

⁴ [Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, Preamble paragraph 6](#)

⁵ [UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985: accessed 22 November 2021](#)

However, through the lens of aiding victims of crime, particularly of sexual violence, it could be concluded their practical knowledge and legal framework and expertise has considerable gaps with regard to awarding compensation for violent crimes. To begin, as noted in the Milquet report on the EU Victims' Rights Strategy, face-to-face engagement proves to be more effective for victims of violent crime due to the traumatic nature of the offences.⁶ PIAB and SCA do not have experience in face-to-face engagement. Again, it is important to reiterate, that victims of violent crimes, particularly involving sexual violence, require frameworks that are trauma-sensitive and allow them to be seen, heard, and understood effectively. Without any prior experience to face-to-face engagement, it is difficult to see how, if either entity is given responsibility of the Scheme, they will have the expertise to adjudicate on claims and administer compensation through a victims' rights, trauma-informed lens. It could be argued that given additional expertise, revised process and adequate training PIAB, for example, could run the Scheme, but this would substantially alter the structure and work of the organisation and so its effectiveness would have to be strictly monitored as to ensure access to justice and no undue harm is being caused to victims who are entitled to avail of the Scheme. Akin to the Department of Justice, delivering compensation with the above-mentioned proposed aims of the scheme without undue delay and with adequate respect for the rights of victims is vital. DRCC is uncertain at this time if choosing an existing entity like PIAB or SCA and upskilling it sufficiently would prove to be at the detriment of victims of violent crimes, particularly those of sexual violence where respect for their rights and trauma-informed approaches to compensation are vital in eliminating secondary traumatisation or victimisation.

The final proposed solution as to who should run the Scheme is that of a newly constructed specialist body. This solution is promising as all of the disadvantages noted in the previous proposed solutions could be addressed from the ground-up and be alleviated in how structures and policies of the new specialist body are formulated. This could be done with appropriately resourced specialist fulltime staff who understand victim rights and the impact of the trauma of violent crime and are privy to trauma-informed approaches. It has also been proposed that this new specialist body act as a hybrid model that addresses the intersectionality of victims and the supports that they need. Our experience is that the needs of victims are hard to package. They may relate to health including mental health and counselling, justice including the Gardai and prison systems, housing including homelessness, social welfare, immigration, financial to name but a few. There would be merit in whatever structure is chosen having a dedicated signposting service and links to and supports for other existing agencies such as helplines, citizens information services and the like.

⁶ Milquet, Strengthening Victims' Rights: from Compensation to Reparation for a new EU Victims' Rights Strategy 2020-2025 (European Commission 2019).

A new specialist body could help address the issue of decentralisation of services provided for by governmental and non-governmental organisations (NGO's) to meet victim needs. To combat fragmentation in the sector dealing with domestic, sexual and gender-based violence, any proposals to move beyond compensation to specifically addressing other victim needs must be cognisant of existing and newly emerging government strategies such as the proposed Domestic, Sexual, and Gender-Based Violence Strategy and proposed Agency, strategies on trafficking, health, women's health and many others. These differentiations will also need to include how service providers will be funded when asked to contribute to the work of the compensation tribunal to avoid the reality of under capacity within NGO's.

Questions for Chapter 4: Awards of compensation

Should compensation always include an amount of money for the victims' pain and suffering?

In our legal system, money is considered the primary form of compensation and therefore should also be available as compensation or part compensation for victim pain and suffering. Pain and suffering should include psychological suffering as this is as real and valid as physical suffering. It is true to say that medical science has been slow to recognise that reality, with Post Traumatic Stress Disorder only joining the International Classification of Disorders in recent decades and also slowly gaining recognition in our legal system.⁷ Our work in DRCC provides insight into the lifelong impacts of being a victim/survivor of sexual violence such as Post Traumatic Stress Disorder to which consideration should be given when discerning compensation amounts. We would also contend that allotting for a victims' pain and suffering has been legally proven to be a constitutional right.

As the Commission is aware, the Court of Justice of the European Union determined in *Presidenza del Consiglio dei Ministri v BV* that not only do victims of violent, intentional crimes have a right to compensation for material or non-material losses, but the amount of compensation should also take into consideration the seriousness of the consequences.⁸ This case is of significance to DRCC given the complainant was a victim/survivor of a sexual offence. The complainant successfully argued that the awarded compensation given by the Italian Criminal Injury Scheme was significantly lower than what would have been awarded to her in an ordinary claim of damages or what the defendants were ordered to compensate, which was not recovered.

⁷ <https://ijsj.ie/assets/uploads/documents/pdfs/2020-Edition-02/5.%200'Hanlon.pdf>

⁸ [Case C-129/19 Presidenza del Consiglio dei Ministri v BV EU:C: 2020:566.](#)

By that decision, the CJEU established that “*fair and appropriate compensation should represent a contribution to the reparation of the suffering to which the victim has been exposed to an appropriate extent.*”⁹ Providing further insight, this case also established that pain and suffering can be compensated for even when the victim received non-fatal injuries, unlike within the existing Irish Scheme. Through our work, we see how these serious consequences negatively impact health, families, relationships, social well-being, education and work. They should be considered when quantifying compensation in regards to the victims’ pain and suffering.

Are there circumstances where emergency awards of compensation should be paid?

The DRCC believes that emergency awards of compensation should be paid. We understand that there are immediate needs of victim/survivors of sexual offences. Per a 2014 EU-wide study by the European Union Fundamental Rights Agency (FRA), 14% of Irish women have experienced physical violence by a current or former partner and 41% of Irish women know of someone who has experienced intimate partner violence.¹⁰ Given these statistics, victim/survivors of intimate-partner abuse may require funds for immediate needs regarding safe access to housing, health care, and child care given these necessities were previously compensated or partially compensated by the perpetrator. Furthermore, consideration should be given to compensating for any immediate losses of income due to the physical or psychological harm caused by being a victim of a violent crime. The failure to make emergency awards will prejudice those with limited incomes and savings in particular, which inherently violates victims’ rights as intersectionality is not considered.

Should compensation be paid in regular instalments to cover a victim’s long-term needs?

The DRCC believes that the option for compensation to be paid in regular instalments to cover a victim’s long-term needs should be made available to victims to provide for ongoing health and other needs. This is extremely important within the context of trauma from sexual violence as was demonstrated in “*Understanding the Long-Term Trauma of Sexual Assault Patients*” by Lauren Black and Sally Henin.¹¹ This study asked 590 English speaking adult women who received sexual assault nurse examiner evaluation within 72 hours of the sexual assault, “*What do you think is most important for researchers to understand about your experience since the assault?*” 1 week, 6 weeks, 6 months, and 1 year after the assault.

⁹ [Case C-129/19 Presidenza del Consiglio dei Ministri v BV EU:C: 2020:566.](#)

¹⁰ [European Union Fundamental Rights Agency, *Violence Against Women: EU-Wide Survey*, \(2014\).](#)

¹¹ [Henin, Sally, and Lauren Page Black. “Understanding the long-term trauma of sexual assault patients.” *Journal of the American College of Emergency Physicians* open vol. 2,4 e12490. 3 Jul. 2021, doi:10.1002/emp2.12490](#)

Some of the significant findings from this study was that *“the long-term burden of sexual assault has characteristics that overlap with post-traumatic stress disorder, including difficulties with social interaction and major disruption of daily routines”* and *“sexual assault patients have challenges accessing care and health services. Emergency caregivers should be aware of the need to provide comprehensive resources to sexual assault patients.”* This study shows that within the context of sexual violence, victims/survivors may have significant long-term needs, which consequentially should be allowed for in the instalments of compensation.

Questions for Chapter 5: Eligibility and exclusion

What types of victims should be able to apply for compensation? Do we need to expand the current system (see above – Who can apply for compensation?)

The following outlines the existing eligibility criteria for the Scheme (a) the victim of the offence; (b) a person responsible for the maintenance of the victim who has suffered financial loss or incurred expenses as a result of the victim’s injury; (c) a dependant of the victim where they died as result of their injuries; (d) where the victim has died and they have no dependants, any person who has incurred expenses as a result of the death, or (e) any dependant of the victim where the victim has died otherwise than as a result of the injuries caused by the criminal offence.¹²

The existing eligibility criteria failure to factor the impact on family members of victims of violent crimes who did not suffer fatal injuries, such as a parent of a young person who could be a victim. Similarly, *“any person who has incurred expenses as a result of death”* limits the scope and fails to address that individual that aid victims of non-fatal violent crimes should be compensated as well. Concluding, when considering a new eligibility criteria is should be noted that within the context of sexual offences, its impact does not distinguish between if the victim received fatal-injuries. Rather, family members, dependants, or individuals aiding the victim can also suffer material or non-material losses.

Should victims with psychological injuries but no physical injuries get compensation under the scheme?

This issue has also been addressed in a previous response. DRCC firmly believes that victim/survivors with psychological injuries, but no physical injuries should receive compensation under the scheme. Psychological illnesses including post-traumatic stress disorder are now recognised as illnesses, as debilitating and life limiting as physical illnesses.

¹² Paragraph 3 of the Scheme.

Although, the legal system has been slow to build that recognition. In regards to victim/survivors of sexual violence, common effects of the offences are post-traumatic stress disorder, depression, and flashbacks. These psychological consequences of being a victim/survivor of sexual violence can manifest into an array of other disorders and negative behaviour such as self-harm, disassociation, substance abuse, panic attacks, sleep disorders, and eating disorders.¹³ Given the serious nature of psychological injuries and their potential effect on the physical well-being of the victim/survivors, it is of the utmost importance that compensation be available to those who suffer psychological injuries alone. The importance of recognising psychological injuries has also been noted by the Council of Europe.¹⁴

Is the current minimum award of €500 appropriate? Should it be increased or decreased?

Whilst appropriate awards of compensation are not the DRCC's area of expertise, we note that in comparison to other compensation schemes this figure appears substantially low. For example, all of the ailments described by the PIAB who receive a minimum award of €500 are injuries that require as "short-term" recovery.¹⁵ However, within the context of sexual violence, psychological injuries rarely have "short-term" recovery periods and, as referenced above, require on-going aid and attention of clinical service providers. Whatever limit is decided upon, it should be subject to automatic indexation in line with the cost of living, and to periodic review based on the experience of need, as identified by victims to the Tribunal.

Questions on Chapter 6: Procedural Issues

Should the current three-month time limit to apply be changed?

Within the context of sexual violence, the three-month limit is simply not effective. Sexual violence reporting oftentimes comes in arrears and there are frequently reporting delays due to stigma, shame, societal pressure or lack of capacity to process the harm done. A 2017 study headed by Ronald Kessler (Harvard Medical School) entitled *Trauma and PTSD in the WHO World Mental Health Survey*¹⁶ identified that traumas involving interpersonal violence had highest risk.

¹³ Sexual violence and its associated psychosocial effects in Ireland <https://mural.maynoothuniversity.ie/15111/1/PH-Sexual-violence-2020.pdf>

¹⁴ [Council of Europe Recommendation Rec \(2006\)8 of the Committee of Ministers to member states on assistance to crime victims \(Adopted by the Committee of Ministers on 14 June 2006 at the 967th meeting of the Ministers' Deputies\)](#)

¹⁵ [Irish Times \(2021\) What are the new award guidelines for personal injuries?](#)

¹⁶ Kessler et al (2017) Trauma and PTSD in the WHO World Mental Health Surveys - <https://www.tandfonline.com/doi/full/10.1080/20008198.2017.1353383>

And according to John T Blackledge¹⁷ *“By definition, a distressing experience cannot be fully acknowledged and disclosed unless the discloser is not avoiding aversive aspects of that experience. Full elaboration of a trauma memory or other distressing experience cannot occur unless the client has learned how to start accepting the high degrees of distress involved.”* That full elaboration of a trauma presents a considerable challenge to many victim/survivors of sexual violence being in a position to engage with the Criminal Injuries Compensation Scheme within the 3-month period. And for those who have an increased vulnerability through intellectual disability, membership of a discriminated group, being an undocumented migrant, or homeless person their prospects of engagement are less likely.

As an analogy, where a victim/survivor of sexual offences is forensically examined, the evidence collected by Sexual Assault Treatment Units is now maintained for at least a year, recognising the particular delays that may arise with reporting or even confidentially disclosing this form of offence. We submit that a period of a year at least should be permitted, with a robust system to permit later applications.

What supports are needed to help victims go through the compensation process?

Similar to engaging in the criminal justice process, applying for compensation can be stressful and bring forth an array of emotions for victims of crime, particularly those of sexual offences. One of the services provided for by the DRCC to address the support needs of victim/survivors going through the courts is a court accompaniment services. This service offers victim/survivors emotional support before, during, and after the court process. Accompaniment workers provide victim/survivors with practical information on the trial process and possible follow-up options when the trial has concluded. A support structure akin to the DRCC’s court accompaniment service could be a valued asset to the compensation scheme as it is victim-focused and inherently trauma-informed through providing independent assistance on navigating the emotional and practical implications of the compensation scheme.

This however, is not a substitute for a very necessary legal advice and legal representation system. Victims of crime are given information in our system but we are conscious at DRCC that this information is often insufficient, hard to understand or inadequate to allow each individual victim understand the legal process they are engaging with and/or to help them shape what they need to say in order to access justice. The O’Malley Review referenced by the Commission in its paper has recognised the need to ensure legal advice and assistance for victims from the time of commissioning of the crime.

¹⁷ Blackledge, John T. (2004) Functional Contextual Processes in Posttraumatic Stress - <https://www.iopsy.com/volumen4/num3/94/functional-contextual-processes-in-posttraumatic-EN.pdf>

DRCC’s view is that the O’Malley Review should have gone further, to provide representation to complainants throughout the trial process. Nonetheless, the recognition is there that victims are entering into a legal process. This is also the case for any victim applying to the Tribunal. We recommend that the current proposals to provide legal advice and information via the Legal Aid Board be extended to include such advice in relation to the Tribunal. Representation should also be available at any Tribunal hearing. The Legal Aid Board would need to be adequately resourced with appropriate expertise. This could also be facilitated by the proposed centralised support hub for victims within a newly constructed specialist body referenced previously.

How can victims or applicants be protected from secondary victimisation when applying for compensation?

One of the best ways to address the risk of secondary victimisation is to ensure that victims have access to informed procedures. Within this context, informed procedures for victims include providing important information regarding the mechanisms of the compensation scheme, eligibility, possible outcomes, and the decision-making process as well as providing the legal advice and representation mentioned above. This information should be provided in an accessible way, including provision for those whose first language is not English or those who have difficulty accessing information online. By providing victims with this valuable information, expectation-management is more easily obtained and tracked. As outlined above, victims need to be fully heard in all processes. Our consistent experience is that when victim/survivors are recognised, and feel heard, they are much less likely to feel secondary victimisation. The approach taken by the Tribunal is crucial to protection from secondary victimisation. As mentioned above, an expert and trauma informed approach is essential for the Tribunal and all of those dealing with victims.

For any further information on the content of the submission, please contact:

Shirley Scott, Policy Manager

Noeline Blackwell, CEO

Telephone: 01-6614911