



Briefing note: Realities of Rape Trials in Ireland: Perspectives from Practice

21 June 2021

New research has been conducted on the operation of rape trials in Ireland drawing on the experience and views of legal professionals involved in rape trials and court accompaniment workers supporting complainants.

Dr Susan Leahy of the University of Limerick School of Law conducted the research to explore the realities of Irish rape trials and how current laws and procedures in this area operate. The research aimed to provide a new perspective on the operation of Irish sexual offences law, seeking to uncover the realities of rape trials by obtaining the views of certain key stakeholders. It also seeks to help fill a gap caused by the lack of empirical data on the practical operation of current sexual offence trials.

The research conclusion is that there is still much work to do to deliver best practice in the investigation, prosecution and trial of sexual offences, and on that basis Dr Leahy has made some evidence-based recommendations for legal, procedural and policy reforms.

The research was conducted in partnership with Dublin Rape Crisis Centre. Participating legal professionals were recruited with the kind assistance of the Bar Council of Ireland and the Office of the Director of Public Prosecutions. Court accompaniment workers were recruited with the help of Victim Support at Court and Dublin Rape Crisis Centre (DRCC)'s court accompaniment service.

Summary of issues raised:

- ▶ **Delay:** This was cited as the biggest concern in the trial process, with many cases taking years and having a significant impact on both complainant and accused. Pre-trial hearings were suggested as a way to help case management. Court accompaniment workers mentioned the impact on complainants whose own healing process is arrested by delays and resulting uncertainty in the trials process, affecting their families and supporters too, and causing knock-on problems for them in terms of employment, travel arrangements, financial burden etc.
- ▶ **Understanding Consent:** The interviews took place in July-Sept 2019, and given delays in cases, this meant that trials during that time related to events that predated the codification of the definition of consent in the Criminal Law (Sexual Offences) Act 2017. Both lawyers and accompaniment workers felt that the wider social understanding of consent was central and that the legal reform was only part of overall reform work needed. Some accompaniment workers noted that younger people had a better understanding of consent, implying that education initiatives including media/social media campaigns on consent have an impact, and suggesting that awareness initiatives targeted at other age groups are required.
- ▶ **Judicial directions:** Both groups acknowledged that ingrained/pre-existing biases, stereotypes, and assumptions influence juries, whether conscious or unconscious. These rape myths may be prevalent widely in society and, in other jurisdictions, courts have introduced guidance to assist

judges in directing juries to overcome them. This guidance can also help to mitigate the sheer volume of information facing jurors in some trials.

- ▶ **Sexual experience evidence:** The research suggested that those interviewed believed that applications to introduce sexual experience evidence was relatively rare, but concerns arose around whether complainants were adequately protected and represented during the trial process when such applications were made. Another problem was that the limited legal representation available when such applications are made applies only in some sexual offence cases, such as rape and aggravated sexual assault, but not in sexual assault cases.
- ▶ **Use of counselling records:** There is evidence that many complainants waive objections to use of records for fear of causing further delay in proceedings; however, some legal professionals wondered why counselling records were singled out for use as opposed to other ‘personal records’; and court accompaniment workers felt generally it was a traumatising, demoralising practice that breached confidentiality and could prevent the survivor from being honest in therapy, thus impacting their recovery. Some felt that the prospect of notes being used might prevent victims from seeking counselling in the first place or alternatively, stop them from reporting a crime, for fear their records might eventually be sought.
- ▶ **Legal representation for complainants:** Current provision of legal supports (outside the specific case of representation during an application by the defence to admit sexual experience evidence or counselling records) is very basic. Complainants may receive initial and general information on the trial process as well as a possible court familiarisation visit. On whether this offers sufficient protection for a complainant or sufficient information for them to fully understand the law relating to their case, the study participants had mixed views. Both groups of research participants tended not to favour separate legal representation for complainants beyond existing provision, as it would cause an imbalance in the bipartite system and complicate trials. However, they did favour better, more independent legal advice and information for complainants with clear guidelines on limits - court accompaniment workers in particular felt that such support should be available all throughout the trial process, using clear, relatable language. Familiarisation is also seen as key for complainants.

Recommendations:

1. Extend the definition of consent in law to emphasise that sexual coercion involves more than threats of and actual physical force.
2. Provide extra guidance to juries on the definition of consent.
3. Properly resource the design and implementation of carefully researched and targeted messaging to specific age groups and demographics so as to ensure broad societal awareness and understanding of sexual consent.
4. Introduce guidance for juries as a priority, to address rape myths - ingrained/pre-existing biases, stereotypes, and assumptions they may have, whether conscious or unconscious – preferably to be given at the start of a trial but with judicial discretion to repeat it when needed.
5. Provide training to judges and legal professionals on how to use guidance appropriately and meaningfully.



6. Close the current gap by providing legal representation to sexual assault complainants where applications are made to adduce sexual experience evidence.
7. Introduce strict time limits for applications to adduce sexual experience evidence and ensure that legal counsel representing the complainant is not much less experienced than those representing the prosecution and defence in such cases.
8. That representation should continue during questioning of complainants to ensure it goes no further than necessary.
9. Introduce a definition of 'sexual experience evidence' in law to prevent such evidence from being inappropriately or inadvertently admitted.
10. On disclosure of counselling notes, complainants must be fully informed and aware of the waiver process, ideally with legal advice.
11. Widen the disclosure regime to include all medical records or possibly all personal records, as is the case in Canada
12. Train all counselling, healthcare or social work professionals supporting victims of sexual violence on appropriate note-taking.
13. Make available free legal advice and information for anyone reporting or considering reporting any type of sexual offence.
14. Maintain provision of legal advice and information throughout the trial process, as well as legal advocacy for complainants where needed.
15. Such legal advisors and advocates should be specially trained to support survivors, similar to the SOLAs pilot scheme in Northern Ireland.
16. Introduce mandatory early proactive communication and engagement between the parties in serious sexual offence cases.
17. Urgently introduce preliminary trial hearings to deal with issues of disclosure, applications for the admissibility of sexual experience evidence or counselling records and any other pertinent matters in advance of the trial.
18. Incentivise early engagement of trial parties and active avoidance of delays in trials.

Notes for editors:

1. The research is available to download at drcc.ie
2. Anyone affected by issues raised in this research can call the **National 24-Hour Helpline** at **1800 77 8888**, for free & in confidence. Online chat support is available Mon-Fri, 10am-2pm at drcc.ie
3. Dr Leahy's research was funded by the Irish Research Council's New Foundations Scheme and complies with the ethical framework of University of Limerick.
4. While the research was done in partnership with Dublin Rape Crisis Centre, the views on reform expressed here represent those of the research participants and the recommendations made by the author are based on these views with reference to best practice in comparable jurisdictions.
5. The reforms suggested in this research can be read alongside the *Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences* published by the Department of Justice in 2020, which has identified further proposals for change in this area.