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Title	Access to justice for people with disabilities as victims of crime in Ireland
Authors	Edwards, Claire;Harold, Gillian;Kilcommins, Shane
Publication date	2012-02-01
Original Citation	Edwards, C., Harold, G., Kilcommins, S. (2012) Access to Justice for People with Disabilities as Victims of Crime in Ireland, Dublin: National Disability Authority.
Type of publication	Report
Link to publisher's version	http://nda.ie/Publications/Justice-and-Safeguarding/Access-to-Justice/, http://www.ucc.ie/en/ccjhr
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Download date	2026-11-16 19:25:25
Item downloaded from	https://hdl.handle.net/10468/6966

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Access to Justice for People with Disabilities as Victims of Crime in Ireland

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February 2012

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Acknowledgements

We would like to thank all those who assisted in this piece of research. In particular, we would like to extend our gratitude to all the interviewees who gave so generously of their time. A number of other people spoke to us in an informal capacity to provide advice and guidance, including Miriam Delahunt (Barrister, Law Library), Dr. Stephanie O'Keefe (HSE Crisis Pregnancy Programme), Inspector Lorraine Stack (Garda Crime Victims and Family Liaison Office), Detective Superintendent John McCann (Domestic Violence and Sexual Assault Investigation Unit at the National Bureau of Criminal Investigation), and Seamus Gordon and colleagues (HSE); again, we are extremely grateful for their input. We would also like to thank Dr. Frances Hannon of the National Disability Authority for her support throughout the project.

This piece of research was funded through the National Disability Authority's Research Promotion Scheme 2011. It should be noted that the views expressed in the report do not necessarily reflect those of the National Disability Authority.

List of abbreviations and acronyms

ADA	Americans with Disabilities Act (US)
CPS	Crown Prosecution Service (UK)
CSO	Central Statistics Office
DDA	Disability Discrimination Act (UK)
DPP	Director of Public Prosecutions
HSE	Health Services Executive
ID	intellectual disability
LD	learning disability
LRC	Law Reform Commission
NDA	National Disability Authority
NCVS	National Crime Victimisation Survey (US)
PLOD	Police Link Officers for the Deaf (UK)
QNHS	Quarterly National Household Survey
RCNI	Rape Crisis Network Ireland
SAVI	Sexual Abuse and Violence in Ireland (McGee et al., 2002)
VIW	Vulnerable and intimidated witness

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Summary

Introduction

International literature recognises that people with disabilities are at greater risk of crime than their able-bodied counterparts, but that crime against people with disabilities is significantly under-reported and often fails to proceed to prosecution. However, little is known in the Irish context about how the criminal justice system responds to the needs of people with disabilities as victims of crime. This study aims to:

- Explore the barriers that people with disabilities who report a crime face in accessing the criminal justice system in Ireland and internationally.
- Compare the legislative tools and frameworks across different jurisdictions which seek to protect the rights of people with disabilities who report crime and abuse.
- Analyse the specific policies and practices that agencies of the criminal justice system have in place to facilitate people with disabilities' access to justice.
- Explore national and international innovations which may contribute to strengthening the way in which the Irish criminal justice system responds to the needs of people with disabilities.

The study addresses these aims through an international literature review and semi-structured interviews conducted with key agencies in the Irish criminal justice system.

Understanding the criminal justice process: key barriers

From the perspective of a victim of crime, the encounter with the criminal justice process can be separated into three sequential stages: (i) the reporting of the crime; (ii) accessing justice through the courts; and (iii) experiences after the trial. The international literature review revealed the challenges that people with disabilities experience at each stage, and these can be broadly grouped into three types of barriers:

- **Structural barriers:** the criminal justice system can be understood as a structure comprising a number of interrelated institutions. Structural barriers can evolve where there is a lack of communication between institutions, or lack of clarity within an agency in terms of who takes responsibility for dealing with victims of crime who may have impairments (for example, within the Gardaí when a crime is being reported).

- **Procedural barriers:** the criminal justice system comprises a complex number of procedures and processes. People with disabilities have often been shown to lack information about these procedures, from reporting a crime through to giving evidence and seeking compensation post-trial, where relevant. These procedures can appear intimidating and confusing to all crime victims. Lack of accommodation in terms of making these procedures accessible, including practical adjustments such as ensuring court premises are accessible, or that communication supports are provided, have acted as barriers to people with disabilities. It is also widely noted in literature that the common law justice system which characterises Ireland and countries such as the UK, US, Australia and New Zealand is based on an adversarial process in which the principle of orality is key: this in itself can disadvantage people with disabilities who are not able to communicate in a clear and persuasive manner.

- **Attitudinal barriers:** the criminal justice system involves numerous different professional groups and personnel, including police or Gardaí, barristers, and the judiciary. Assumptions made by these groups about the abilities and capacities of people with disabilities have been shown to be problematic whether in terms of reporting a crime, or in people with disabilities being seen as competent and credible witnesses in court.

- **Barriers in the built environment and information:** the procedural barriers which people with disabilities experience are often compounded by barriers in the built environment, such as inaccessible courthouses or Garda stations, or failure to provide information in accessible formats.

Specificities of the Irish context

Ireland would appear to share much in common with other common law jurisdictions in terms of the challenges faced by people with disabilities as victims of crime. However, the response of the Irish criminal justice system to people with disabilities is shaped by the specificities of the national context in a number of different arenas.

A key issue: an absence of data

A key challenge in the context of assessing the experiences of people with disabilities in the Irish criminal justice system is the lack of data on the prevalence of crime perpetrated against people with disabilities in the State, of the experiences of people with disabilities who have experienced a crime, and of how far supports put in place for people with disabilities are working to secure equitable access to justice. There is no clear statistical information in Ireland on rates of crime and victimisation as they pertain to people with disabilities, as neither of the two main sources of information on crime - the Gardaí Public Attitudes Survey and Crime and Victimisation module on the Quarterly National Household Survey (QNHS) - provides a breakdown of figures based on disability. With a couple of exceptions, few agencies involved in the criminal justice system in Ireland appear to be monitoring or keeping records of people with disabilities who are victims of crime, and the fact that there is no systematic recording of cases which come to trial at District and Circuit Court level also makes it difficult to identify cases where a person's impairment may have been significant. These data absences need to be acknowledged as serious gaps which undermine our knowledge of people with disabilities' experiences as victims of crime.

Complex and conflicting policy and legislative contexts

There are a number of different policy and legislative contexts which shape people with disabilities' encounters with the justice system in Ireland. These include:

- **Criminal law**: people with disabilities are covered by criminal law in the same way as other citizens, but in some cases law has sought to provide extra 'protection' for people with disabilities. Section 5 of the Criminal Law (Sexual Offences) Act 1993 is one example of this.

- **Law relating to criminal procedures,** such as the Criminal Evidence Act 1992 which puts in place special measures for vulnerable witnesses, including children and those deemed to have a 'mental handicap'. These measures include use of intermediaries in court, removal of wigs and gowns, and use of videolink to give evidence.

- **Anti-discrimination legislation and affirmative action measures** contained in the Equal Status Acts 2000-2008 and Disability Act 2005. The Disability Act 2005 places an obligation on public service providers (including the Gardaí, Director of Public Prosecutions and Courts Service) to make information and premises accessible.

- **Legislation relating to capacity** to make decisions. Current practices are embodied in the Lunacy Regulation (Ireland) Act 1871.

- **Legislation which safeguards people with disabilities against abuse**. This includes legislation such as the Health Act 2007 and guidelines published on dealing with cases of reported abuse of clients in the care of the Health Services Executive, such as *Trust in Care* (2005).

The research identified that there are a number of disjunctures in this complex set of legislative and policy relationships which have impacts for people with disabilities as victims of crime. For example, whilst anti-discrimination legislation is premised on furthering the rights of people with disabilities and an understanding of disability which draws together medical and social dimensions, disability is couched in terms of vulnerability and incapacity in criminal law. Current legislation such as the Lunacy Regulation (Ireland) Act 1871 which takes a status-based[1] approach to capacity also erects barriers in terms of considering people with disabilities as competent witnesses.

[1]A status-based approach to capacity refers to an overall assessment or judgement of someone's ability to make decisions, without considering the specific context of decision-making. It is best described as an 'all or nothing' approach (Law Reform Commission, 2006). A functional approach considers the ability to make decisions, or to understand consequences of decisions, in specific circumstances at specific times. Under the functional approach, it is possible to be deemed to have capacity in relation to one issue but not another.

Findings from qualitative interviews

A number of key messages emerged from the interviews conducted with agencies involved in, or related to, the criminal justice system in Ireland:

- There is a lack of strategic identification of people with disabilities as a specific group within the broader victim constituency, both at a central government policy level and in the practice of organisations. This is also reflected in a lack of data collection on people with disabilities as victims of crime, and a lack of coherence of data collection mechanisms between different agencies in the criminal justice system.
- Some agencies (victim support agencies in particular) have undertaken disability awareness training, but other agencies/professionals, such as the judiciary and Courts Service appear to have undertaken little, if any.

Respondents' perceptions of people with disabilities 'experience of the criminal justice system

- The criminal justice system can be intimidating for people with disabilities. Individual support, whether from a key worker, family member, or advocate, was seen as vital to enable people with disabilities to report crimes and follow the case through.
- Respondents stressed the importance of attitudes and knowledge of the Gardaí at reporting stage. Concerns were raised about the consistency of knowledge across the Gardaí in terms of working with people with disabilities as victims of crime.
- Issues of capacity were seen as a key stumbling block for people with disabilities in the criminal justice system (both at first reporting, and in terms of their progression to prosecution).
- In the court setting, victims' experiences are very much influenced by the attitude of judges and barristers, and the way in which accessibility is understood (not just in terms of physical access, but also explaining the 'jargon' of the courtroom).

- Respondents were positive about special measures for vulnerable witnesses, but there is uncertainty about the extent to which they are being used in the context of people with disabilities.

Improving practice

Suggestions for better practice from respondents included:

- disability awareness training for key agencies in the criminal justice system;
- providing information and education to people with disabilities about how the criminal justice system and their rights as victims of crime;
- changes in specific policy and legislation;
- creating coordinated access and personalised support for people with disabilities who are victims of crime.

Facilitating access to justice for people with disabilities as victims of crime in Ireland

Drawing together the literature review and interview findings, the report sets out a number of proposals to make Ireland's criminal justice system more responsive to the needs of people with disabilities as victims of crime. These include:

(i) **Development of a research strategy to address the significant data gaps that exist in terms of knowledge about people with disabilities as victims of crime in Ireland.** A critical starting point in trying to understand the situation of people with disabilities as victims of crime in Ireland is the need for data on a range of areas. We suggest that these should include the following:

- Statistical data on crime prevalence rates experienced by people with disabilities, based on type of crime, and also impairment type. There is scope

for exploring how extraction of this data might take place from already existing surveys such as the Crime and Victimisation module on the Quarterly National Household Survey, the Garda Public Attitudes Survey and the National Disability Survey.

- Quantitative data on the number of cases that are reported to Gardaí involving someone with a disability; on how many of these reported cases reach court; and the outcome of these cases.

- Qualitative analysis of the experiences of people with disabilities who have encountered the criminal justice system as victims of crime.

- A qualitative investigation of cases which go to the DPP where disability appeared to be a significant factor, and their outcome.

- A more in-depth investigation of 'special measures' as set down in Ireland's Criminal Evidence Act 1992, and how far these are working (or not) for people with disabilities. In particular, there is a need to know (i) how far the role of the intermediary as set out in section 14 is being implemented, who these intermediaries are, and how effective this role appears to be, and (ii) how far other special measures, such as use of video-link and removal of wigs and gowns are being implemented for people with 'mental handicap' or 'mental impairment', and with what effect. Currently, evidence on this area is limited (with the exception of Delahunt, 2010; 2011).

(ii) Making visible people with disabilities as victims of crime at a strategic policy level.

The research revealed a need for the agencies of the criminal justice system and related bodies (including government bodies involved with formulating policy related to victims) to recognise people with disabilities as victims of crime, and the distinctive ways in which they may be affected. Some agencies have flagged the needs of people with disabilities at a strategic level; in general, however, there is a lack of strategic recognition of the needs of people with disabilities as members of the broader victim constituency.

(iii) **Creating fora for communication between criminal justice agencies regarding people with disabilities as victims of crime.** There is a need to create fora for communication between criminal justice agencies regarding people with disabilities as victims of crime. In the context of sexual abuse, this is something that has been proposed by the Law Reform Commission's (2011: 221) consultation paper, which "provisionally recommends that national standards be developed concerning safeguards from sexual abuse for "at risk" adults, *including protocols on cooperation between different agencies*" (emphasis added). However, we would argue that this needs to operate in the context of all types of crime. One example of this is the Justice Disability Steering Group, formed in Scotland as a collaboration between key agencies in the justice sector and disability organisations. The Group has sought to address barriers that people with disabilities experience in the justice system and make recommendations to improve practice.

(iv) **Improving access to information on the criminal justice system and procedures for people with disabilities.** Many procedural barriers could be mitigated by making the criminal justice system more accessible and transparent in the way it is presented to people with disabilities. This includes making adjustments to physical accessibility, and providing clear information about process and procedures. Accessing information throughout the process of reporting a crime and going to court is of vital importance for people with disabilities, as for other crime victims. Information is required in relation to how to report a crime and how the criminal justice system works; what happens at different stages in the criminal justice procedure; and how to access support (either via special measures set down in legislation, or through crime victims' organisations).

(v) **Providing individualised support to people with disabilities at all stages of their encounter with the criminal justice system.** There is a need to ensure a more systematised and individualised form of support at all stages of the criminal justice process for people with disabilities. The assistance of a specific individual has been an element of many jurisdictions' 'special measures' for vulnerable witnesses, and Ireland's Criminal Evidence Act 1992 also makes provision for an intermediary.

However, it is unclear who that intermediary should be, and support currently operates in an ad hoc manner, depending on the networks available to the individual. Support needs to be available for people with disabilities throughout the process from the point of reporting the crime, through to after the trial, when it has been shown that support networks often dissolve. A summary of some examples of support mechanisms drawn from different jurisdictions is set out in Table 1.1.

Table 1.1: Measures and supports across jurisdictions to assist people with disabilities in the criminal justice system

Reporting	Accessing court	Post-trial
Specialist text service for Deaf/hard of hearing people to access emergency services	Witness profiling initiatives/Witness Care Units to prepare witness for court	Role of intermediary in assisting victim in putting together Victim Impact Statement
Reporting hotline aimed specifically at people with disabilities who experience abuse	Use of registered intermediary/third party in court	Maintenance of support networks after the trial
Identification of intermediary to assist in police interview	Use of other special measures for vulnerable witnesses including removal of wigs/gowns, use of videolink testimony, and out of court statements.	Maintaining information flow from authorities re progress of the case and on claiming expenses and compensation; provision of accessible information.
Outreach work by police with people with disabilities	Use of sign language interpreters/induction loops if necessary	
Accessible police/ Gardaí premises and information.	Accessible court premises and information.	
Referral to crime victims' support organisations by police	Disability training for judiciary and barristers.	
Disability training for law enforcement agencies		

(vi) **Monitoring practice as regards people with disabilities and the use of 'special measures' for vulnerable witnesses.** Ireland, like many other jurisdictions, has put in place measures to support those witnesses deemed to be vulnerable or intimidated. Given that these are some of the key measures set down in law designed to support and protect people with disabilities as witnesses, it is vital that the application of these special measures are monitored: how often are they used, for example, and with what outcome? How do people with disabilities experience the measures? There is a need to address these questions if we are to build a picture of how they are working for people with disabilities as victims of crime.

(vii) **Harmonising different legislative and policy contexts which shape the responses of the criminal justice system to people with disabilities as victims of crime.** There is a need to address some of the disjunctures in legislation and policy which may have a detrimental effect on the attempts of people with disabilities to seek redress for crimes perpetrated against them. Recent moves in terms of introducing mental capacity legislation and revising section 5 of the Criminal Law (Sexual Offences) Act 1993 are clearly important in this regard. More broadly, however, there are divergent approaches in how civil law and criminal law in Ireland interprets disability. If people with disabilities are to experience access to justice, it would seem imperative that there is a recognition across all legislation that disability is an outcome of disabling structures in society as much as an individual, medical impairment.

(viii) **Providing training on working with people with disabilities to different professional groups involved in the criminal justice system**, including the Gardaí, Office of the Director of Public Prosecutions, Courts Service, and crime victim support organisations. The ways in which this awareness raising might be undertaken are multiple and in other jurisdictions have taken the taken the form of:

- Training guides (booklets and DVDs) produced for law enforcement officers. For example, in the United States, the Office for Victims of Crime, under the Department of Justice, has produced a series of guides for law enforcement officers which address working with people with disabilities. These include *First*

Response to Victims of Crime (2008)*, First Response to Victims of Crime Who Have a Disability* (2002), *Victims With Disabilities: Collaborative, Multidisciplinary First Response* (2009), as well as a video and discussion guide on *Meeting the Needs of Underserved Victims* (2005).

- Disability awareness training for police run by disability organisations.
- Action research projects with police officers to develop training modules for future education.

1. Introduction: setting the context

1.1 Background: People with disabilities as victims of crime

A significant amount of international research has demonstrated that people with disabilities are more likely to be victims of crime than their able-bodied counterparts (Hoong Sin et al., 2009; Lewin, 2007; Sobsey, 1994, Williams, 1995). While attention has often been drawn to the context of institutional abuse experienced by people with disabilities in Ireland (McCormack et al., 2005, O'Brien, 2010), harassment and violence may also occur in the community. There is no clear statistical information in Ireland on rates of crime and victimisation as they pertain to people with disabilities, as neither of the two main sources of information on crime - the Gardaí Public Attitudes Survey and Crime and Victimisation module on the Quarterly National Household Survey (QNHS) - provides a breakdown of figures based on disability. Similarly, the National Disability Survey, administered by the Central Statistics Office (CSO) in 2006, did not collect data on people with disabilities as victims of crime.

Obtaining consistent estimates of rates of abuse and crimes perpetrated against people with disabilities is difficult, not just because definitions of crime and abuse may vary between jurisdictions but also because surveys may fail to include people living in group settings; it is also widely acknowledged that under-reporting of crimes is a significant issue (Watson and Parsons, 2005; Lewin, 2007; Williams, 1993; 1995). However, international surveys provide some indication of crime and victimization rates amongst the disabled population: statistics from the United States' National Crime Victimization Survey (NCVS) in 2008 found that the rate of violent crimes perpetrated against people with disabilities was double that of people without disabilities, and that people with disabilities were two to three times as likely to experience violent crime (for example rape/sexual assault, robbery, aggravated assault and simple assault) than people without disabilities (Harrell and Rand, 2010). Data from the British Crime Survey 2009/10 has also suggested that "disabled people

are significantly more likely to be victims of crime than non-disabled people" (Office for Disability Issues, 2011[2]).

Internationally, the extent to which people with disabilities' reports of crime and abuse are dealt with effectively by the criminal justice system has increasingly come under scrutiny. Data from the British Crime Survey 2009/10 found that people with disabilities were less likely than able-bodied people to think that the criminal justice system was fair (Office for Disability Issues, 2011[3]). Meanwhile, a number of high profile incidents in the UK in which people with intellectual disabilities were attacked and murdered have focused attention on the failings of the police to respond to, and take seriously, reports of abuse. These have led to awareness-raising campaigns by disability organisations targeted particularly at the police and judiciary, as violence and abuse against people with disabilities has become constituted as a hate crime under England and Wales' Criminal Justice Act 2003 (Lovell, 2007; Perry, 2004; Quarmby and Scott, 2008; Roulstone et al, 2011).

In Ireland, while the recognition of the rights of victims of crime has come to the fore in recent years, it is unclear whether people with disabilities have been acknowledged as part of the wider victim constituency. Practice regarding victims' rights has been informed by developments at European Union (EU) level. These developments include the *Framework Decision on the Standing of Victims in Criminal Proceedings* published in 2001 which seeks to ensure minimum rights for victims of crime, including 1) access to information, 2) right to compensation, and 3) a right to be heard (Kilcommins et al., 2010). The publication of the Victims Charter by the Department of Justice, Equality and Law Reform in 1999 (and updated in 2010), and the establishment of the Commission for the Support of Victims of Crime both bear witness to a shift towards recognising the rights and needs of victims in the Irish criminal justice system. However, we know little about whether people with disabilities have benefited from these developments in the context of seeking redress for offences perpetrated against them.

[2] Accessed at http://odi.dwp.gov.uk/disability-statistics-and-research/disability-facts-and-figures.php#js.
[3] Accessed at http://odi.dwp.gov.uk/disability-statistics-and-research/disability-facts-and-figures.php#js

International literature demonstrates that people with disabilities are likely to under-report incidences of abuse, and may encounter a number of difficulties in terms of seeking redress through the agencies of the criminal justice system. These include:

- A lack of support and advocacy in terms of reporting crimes,
- Attitudinal perceptions amongst the police and judiciary about disabled people's capabilities,
- Issues such as physical access to courtrooms

(Hoong Sin et al., 2009; Keilty and Connelly, 2010; McLeod et al., 2010a, 2010b, 2010c, 2010d).

Insofar as victims of crime in Ireland are described as still having significant unmet needs in the justice system (Kilcommins et al., 2010), it is likely that the needs of people with disabilities as part of this group are particularly acute.

This report takes people with disabilities' access to justice as its starting point, by exploring how the criminal justice system in Ireland recognises and responds to the needs of people with disabilities who report having experienced a crime or abuse. It examines the barriers people with disabilities experience in seeking redress at investigation, prosecution, trial, sentencing and post-sentencing stages of the criminal process. Drawing on international comparisons, the report explores innovations in terms of strengthening the ways in which the criminal justice system responds to people with disabilities. Some jurisdictions have sought to put in place measures to raise awareness of the needs of people with disabilities in relation to seeking redress, and improve the efficacy with which the criminal justice system responds to people with disabilities. In reviewing international literature and practices, the report explores such initiatives and their potential for learning in the Irish context.

1.2 Aims and objectives of the research

The aim of this research is to explore how the criminal justice system responds to people with disabilities, with a view to informing debates about good practice in terms of

recognising the rights of people with disabilities as victims of crime and abuse. The research adopts a comparative approach by drawing on both national and international perspectives, particularly as regards innovations to strengthen the responsiveness of the criminal justice system to the needs of people with disabilities. The specific objectives of the research are:

- To explore the barriers that people with disabilities who report crime and abuse face in accessing the criminal justice system in Ireland and internationally.

- To compare the legislative tools and frameworks across different jurisdictions which seek to protect the rights of, and facilitate redress for, people with disabilities who report crime and abuse.

- To analyse the specific policies and practices that agencies of the criminal justice system and victim support organisations have in place to facilitate people with disabilities' access to justice.

- To explore national and international innovations which may contribute to strengthening the way in which the Irish criminal justice system responds to the needs of people with disabilities.

1.3 Defining terms and parameters

1.3.1 The criminal justice system

In definitional terms, we recognise the criminal justice system as comprising a number of agencies that people with disabilities may encounter in reporting crime or abuse. In Ireland, these include victim support organisations, An Garda Síochána, the Courts Service, Office of the Director of Public Prosecutions, and the Probation Service. These agencies also reflect the different stages that people with disabilities may move through in seeking redress, including: reporting and recording the offence; seeking redress through the court system

which may involve acting as witnesses; and receiving appropriate support to help deal with the impact of the crime or abuse. Victim support services have a vital role to play in providing such support throughout the process. However, it is also important to note that a number of other individuals and agencies may play a significant role in this regard, and may also act as the first line of reporting for people with disabilities, including family members, and staff of social and health care agencies.

1.3.2 Crime or abuse?

In the report, we refer to people with disabilities as victims of crime, rather than victims of abuse. Abuse itself is a wide-ranging term that can cover a multitude of different actions perpetrated against a person: it can encompass physical, sexual, verbal, psychological or financial abuse (Brown, 2003). However, one of the difficulties of the term is that it may not reflect the seriousness of the action perpetrated. Many people may not see themselves as victims of crime because they under-estimate the seriousness of what they have experienced, or see victimization as part of their everyday reality (Walklate, 2007). As Williams (1995: xiii) summarises in the context of people with learning disabilities:

> "The distinction between 'crime' and 'abuse' is important. Frequently, the language used concerning people with learning disabilities diminishes the seriousness of an incident...For a person with learning disabilities we use 'sexual abuse' when for another woman we would say 'rape' or 'sexual assault'; 'abuse' of someone with learning disabilities is often 'assault' of anyone else; most 'financial abuse' is really theft".

Abuse also may not accurately reflect how the action is perceived through the eyes of the criminal justice system and criminal law. People with disabilities are subject to, and should be able to avail of protection from, criminal law in the same way as other citizens; once an incident is reported by a person, the perpetrated action is treated as a potential 'crime', and the individual is perceived as a 'victim'. It has to be acknowledged though, that the point at which someone becomes a 'victim of crime', and the boundaries between 'crime' and 'abuse', are not always clear cut. For example, there may be numerous situations where cases of abuse are not defined as crimes by criminal codes, but are in contravention of a

person's civil or human rights, as is recognised by the UN *Declaration on Victims of Crime and of Abuse of Power* (1985)[4] (Williams, 1995). Walklate (2007) also highlights the potential of the criminal justice system to see some categories of people as more justifiable and 'deserving' victims than others. Whilst recognising the complexity of these issues, for the purposes of this report we suggest that people with disabilities can be victims of *crime*, rather than solely of abuse.

1.3.3 The victim in the context of disability

It has been acknowledged that literature emanating from the study of victims of crime, or 'victimology', has yet to address people with disabilities as a specific category of victim. Neither has there been much engagement within disability studies regarding people with disabilities as crime victims, or regarding their experiences with the criminal justice system (Madriaga and Mallett, 2010). However, there is a growing recognition within victimology that the experience of being a victim of crime – including the experience with criminal justice agencies – is structured differentially depending on the positioning of social groups in society. Some victims, for example, are seen as more deserving than others based on their perceived vulnerability (Walklate, 2007). Those perceived as more vulnerable, and hence more 'legitimate', may therefore receive more attention.

For people with disabilities, however, this vulnerability can be a double-edged sword: in discussing the application of hate crime law in the area of disability, Roulstone et al (2011: 352) argue that the societal construction of disabled people as vulnerable "unhelpfully ensures that safeguarding and adult protection measures often take precedence over criminal justice responses where disabled identities are constructed as vulnerable, at risk, thus denying many disabled people the right to be taken seriously in the criminal justice system...". Many people with disabilities would reject terms such as 'victim' and 'vulnerable', as such language can feed into constructions of disability which emphasize individualised notions of personal tragedy. For the purposes of this study, we wish to acknowledge the concept of disability which emerges from the interaction of societal

[4] See http://www.un.org/documents/ga/res/40/a40r034.htm.

structures and individual impairment, the outcome of a society which fails to take into account the needs of people with impairments (Oliver, 1990). In this context, the criminal justice system is a network of institutions which has the potential to create disabling barriers for people with impairments (see for example, Calderbank, 2000; Chappell, 1994), and, in so doing, contribute to the 'secondary victimization' often experienced when the system fails to recognise and respond to the victim of crime (Walklate, 2007).

1.3.4 Terminology regarding disability and mental health

This report covers people with disabilities across a range of impairment categories, including people with physical and sensory impairments, people with intellectual impairments, people experiencing mental ill health, and those with chronic illnesses which may lead to limitations on daily activities. The terminology regarding disability varies across national contexts, and therefore within different literatures. In relation to intellectual disability in particular, literature from the US frequently refers to 'mental retardation' or 'mental handicap'; in the UK, 'learning disability' or 'learning difficulty' are more commonly used terms. For the purposes of this report, we use the term 'intellectual disability' to refer to people within these categories of impairment. Similarly, in referring to 'people with disabilities' or 'disabled people', in the main we adopt the former as this reflects a concern by the disability movement in Ireland to put the person first, before the disability. In other countries, such as the UK, 'disabled people' is more commonly referred to, reflecting, to some extent, a collective political identity shaped by the social model of disability, in which disabled people "prefer to put their disabled status up-front" (Brown, 2003: 21).

1.4 Methodology

The research conducted for this report is based on two components. The first component consists of a literature review drawing on both national and international literature. The review was used to explore the barriers that people with disabilities experience in accessing the justice system, the different legal instruments which frame the system of redress, and innovations in policy and practice as regards responsiveness to people with disabilities. In

selecting international comparisons, common law countries with broadly similar judicial systems to Ireland were utilised, in particular the United States, Australia, New Zealand, Canada and the UK. The review identified different types of literature, including:

- International peer-reviewed publications in academic journals, which were either theoretical or empirical in approach.
- Policy documents produced by statutory agencies and civil society organisations.
- Qualitative and quantitative research reports commissioned by organisations.
- Literature that is published, and that which is unpublished ('grey' literature).
- Examples of legislative provisions, framework decisions, common law principles and constitutional rights that protect people with disabilities.

A number of social science, health and law databases were used as the basis of the search, and search terms clearly defined at the beginning of the review process. A list of the search terms and databases searched can be found in Appendix A. In addition to searches of academic databases, searches were undertaken via the internet, and specific journals targeted. Contact was also made with researchers working in the area, to uncover further relevant material. The literature selected for review is set out in Appendix B.

The second phase of the research involved thirteen semi-structured interviews with key stakeholders in the arena of disability and justice, including representatives of the agencies of the criminal justice system. The interviews sought to elicit understandings of disability within the Irish criminal justice system, to identify any specific policies and practices addressing the needs of people with disabilities, and consider opportunities for strengthening the efficacy with which the concerns of people with disabilities are addressed. Appendix C provides a more detailed discussion of this part of the research, whilst Appendices D and E provide the participant consent form and sample interview topic guide.

1.5 Key issues emerging from the literature

It is important to highlight a number of trends that emerge from the literature reviewed, and which shape the focus and boundaries of the literature review:

- There is a **significant amount of literature which deals with people with disabilities' experiences of the criminal justice system from the perspective of the offender, rather than the victim**. While we recognise that there may be some overlaps in terms of issues (for example, access to appropriate support in the courtroom or the need for interpretative aids), we have not included this research unless it covers people with disabilities as both offenders *and* victims. In the context of this research, we consider the experience of the victim of crime to be distinct from that of the offender.

- **The majority of the literature on people with disabilities as they experience the criminal justice system is focused specifically on people with intellectual disabilities.** Some studies do consider people with disabilities as a generic group, and there is a limited amount of literature on people with hearing impairments, or who are defined as D/deaf[5], as victims of crime. However, there is an overall emphasis on people with intellectual disabilities, and this applies to literature which discusses the different stages of the criminal justice process, from reporting the crime through to post-trial experiences. As French (2007: 16) notes, it is important not to let this bias obscure the fact that people with different impairments are also victims of crime and have their own experiences of the criminal justice system: "The absence of formal research in relation to other impairment groups should...not be understood as the absence of any problems for these groups".

- The third, and related, feature of the **literature is the focus on *capacity* and *informed consent*.** As Brown (2003: 95) notes, the notion of consent "hinges on the capacity to indicate consent in a given situation; to be adequately informed and understand enough about the consequences of the decision...and remain free from undue pressure or coercion when making the decision". Within the literature, there

[5] The annotation D/deaf is used to distinguish between culturally Deaf sign language users and other categories of deaf people.

is a concern with assessing not just the capacity of people with disabilities to consent in cases of sexual abuse and violence, but also their capacity to be reliable reporters of crime and witnesses in court. In Ireland, the Law Reform Commission's (LRC) (2006) report on *Vulnerable Adults and the Law,* and ongoing debates regarding mental capacity and sexual offences (LRC, 2011), highlight the complexity of addressing this issue which is vital to the protection of the rights of people with disabilities.

- **There is a dearth of literature in the Irish context on people with disabilities' experiences of the criminal justice system.** Reports have been published which focus on the experience of victims of crime in Ireland more generally (Kilcommins et al., 2010), on the availability of support services for victims of crime (Bacik et al., 2007), and on specific types of offence, including sexual abuse and violence (McGee et al, 2002; Hanly et al., 2009) and domestic violence (Watson and Parsons, 2005). Some of these reports do make reference to people with disabilities (see for example, McGee et al (2002) on the sexual abuse of people with intellectual disabilities, and Watson and Parsons' (2005) study in which questions were asked regarding domestic violence amongst people with longstanding health problem; see also Bartlett and Mears (forthcoming)).

  Guidelines have also been published by the government on abuse as it pertains to children and older people, and these also have relevance in the context of people with disabilities (Department of Children and Youth Affairs, 2011; Department of Health and Children, 2002; Health Services Executive, 2008), whilst general frameworks to protect service users from abuse have been set out in the Health Services Executive's (HSE) *Trust in Care* (2005), and Health Act 2007. Generally, however, while court cases cited in the media have brought to light some of the difficulties that people with disabilities face in getting their voices heard within the criminal justice system (see for example, Delahunt, 2010), people with disabilities in Ireland are 'invisible victims' (Williams, 1995), whose needs and experiences of the criminal justice system are largely undocumented and unrecognised.

1.6 Structure of the report

The introduction in Chapter 1 sets the context, outlines the aims and objectives and methodology and defines terms. Chapter 2 documents legislative and policy developments relating to victims' rights in Ireland which shape people with disabilities' treatment by the criminal justice system in Ireland and serves as a baseline for understanding people with disabilities' experiences of the criminal justice system. The rest of the report is divided into three parts:

Part I: The literature review (Chapters 3, 4 and 5). The review has been constructed around the different stages that people who have experienced a crime or abuse go through as they access the criminal justice system. Throughout, we draw attention to international comparisons in terms of policies and practices, and set out potential barriers and facilitators in people with disabilities' access to the justice system. The chapters in the section are structured as follows:

- Chapter 3 considers the experience of people with disabilities' in terms of their initial contact with the criminal justice system, as an incident is reported, recorded and investigated. In particular, this chapter focuses on responses by the Gardaí and police in other jurisdictions towards the reporting and initial investigation of an offence.

- Chapter 4 considers the process of prosecution, when a person with disabilities may have to go to court and act as a witness in a trial. It considers measures that have been employed in some jurisdictions to support 'vulnerable witnesses'.

- Chapter 5 explores literature around the post-trial experience, and considers issues such as post-trial support, information about sentencing and offender release, and where relevant, the process of seeking compensation.

Part II: Exploring the Irish context: findings from qualitative interviews (Chapter 6).

- Chapter 6 discusses the findings of qualitative interviews undertaken with key agencies in the criminal justice system and related organisations.

Part III: Discussion and conclusions (Chapters 7 and 8).

Part III discusses the findings from the lit review and the interviews and concludes with key findings that sets Ireland in an international context:

- Chapter 7 summarises the key barriers that people with disabilities face in accessing the justice system across the three stages of reporting a crime, accessing court, and post trial experiences.

- Chapter 8 sets out potential facilitators which would make Ireland's criminal justice system more accessible to the needs of people with disabilities as victims of crime.

2. Developments in victims' rights in Ireland: implications for people with disabilities

2.1 Introduction

This chapter documents some of the legislative and policy developments relating to victims' rights in Ireland, which provide a broader context to people with disabilities' experiences of the criminal justice system. Internationally, there has been growing recognition of the interests and needs of victims in the criminal justice system over the past few decades, where previous emphasis had been predominantly on the rights of the *offender* (O'Hara, 2005). The result, in Ireland and in other jurisdictions, has been legislative developments which seek to enhance the support provided to victims, particularly in terms of their role as witnesses in court. Thus Ireland's Criminal Evidence Act 1992, which we discuss further in chapters 3 and 4, outlines special provisions for certain groups of vulnerable witnesses, including children and those defined as having a 'mental handicap'. In this chapter, we discuss these changing legislative and policy contexts which have implications for people with disabilities as victims of crime.

2.2 The emergence of the 'victim' and victimisation studies

A number of factors have been suggested as facilitating an increased awareness of victims in western criminal justice systems over the past few decades. The introduction of state victim compensation programmes can be viewed as an early attempt to move victims away from the periphery of the criminal process.

Specific victimological studies became more prominent from the 1950s and began to direct the criminological gaze away from its focus on offenders. The introduction of mass victimization surveys, commencing in the 1970s in the US before also being employed in the early 1980s in the UK (Hoyle and Zedner 2000), drew attention to the under recording of crime, repeat victimization, fear of crime, and victims' experiences with various criminal justice agencies such as the police, prosecutors, trial judges, and other court personnel.

In Ireland, studies such as that undertaken by Breen and Rottman in 1985, O'Connell & Whelan in 1994, and Watson in 2000 began to highlight the experiences of victims. Victimisation studies commenced in 1998 with the introduction of a crime segment into the QNHS (follow up studies were conducted in 2003 and 2006). However, it is notable that no specific information is collected on people with disabilities as victims of crime within these studies.

Increased self-activism also ensured that victims of crime became more visible. The first Rape Crisis Centre, for example, was established in Dublin in 1977 and Derek Nally established Victim Support in 1985 (Cohen, 2006; Coffey, 2006; Rogan 2006a; Cotter, 2005).

Finally, as a result of increasing concerns about rising crime rates in western countries from the 1970s onwards, there has been a partial reorientation of the criminal justice system as it "reinvents itself as a service organisation for individual victims rather than merely a public law enforcement agency" (Garland, 2001: 122).

2.3 Legal developments affecting people with disabilities as victims of crime

The Irish courts, legislature and politicians are beginning to take more account of the interests of victims of crime and there has been an expansion in service (welfare) and procedural (participatory) rights. There are a number of different forms of legislation that frame people with disabilities' encounters with the criminal justice system as victims of crime. These include:

- Legislation which frames the evidence-giving process in court and makes provisions for specific groups. Examples of this include the Criminal Evidence Act 1992 and Criminal Justice Act 1993.
- Criminal law which makes specific provision for people with disabilities, such as the Criminal Law (Sexual Offences) Act 1993.
- Anti-discrimination legislation which encompasses affirmative action measures such as the Disability Act 2005 and Equal Status Acts 2000-2008.

2.3.1 Developments in legislation regarding evidence-giving.

The move towards the "mainstreaming of victim-centred justice" (Goodey, 2005: 35) in Ireland is evident in a number of developments in the ways in which victims of crime are able to give evidence in court. These include:

- the employment of intermediaries, live television links and video testimony for witnesses and victims of crime;
- the removal of wigs and gowns when conducting an examination-in-chief or cross-examination of a child witnesses;
- the abolition of the mandatory requirement on judges to warn juries of the dangers of convicting on the basis of uncorroborated or unsworn victim/witness testimony;
- restrictions on the admissibility of the prior sexual history of victims;
- the protection of the identity of victims in sexual offence cases;
- separate legal representation for rape victims where an application is made to admit previous sexual history;
- the reduction of victim alienation through the use of victim impact statements;
- the ability of the DPP to appeal unduly lenient sentences; and
- provisions for the payment of compensation to victims in respect of any personal injury or loss caused by a crime.

Other developments in the system reflect growing awareness of the issues involved and include:

- A greater awareness of the reasons why a complainant may not have made a complaint of a sexual offence at first reasonable opportunity but still avail of the **doctrine of recent complaint**[6] (see, for example, *People (DPP) v DR* [1998] 2 IR 106)

[6] In a case involving a sexual offence, a voluntary complaint made at the first reasonable opportunity after the commission of the alleged offence is admissible to demonstrate consistency and credibility on the part of the complainant.

- A relaxation of the exclusionary rule on **opinion evidence** in certain circumstances[7]
- The introduction of a provision which makes it clear that the **absence of resistance** by a victim in a rape case does not equate with consent (section 9 of the Criminal Law (Rape) (Amendment) Act 1990)
- Tighter restrictions that offer victims better protection against unnecessary and distressing information being raised about their **sexual histories**[8]
- **Separate legal representation** for sexual offence complainants where an application is made to admit previous sexual history (section 34, Sex Offenders Act, 2001)
- Greater protection of the **identity of victims**[9] **and witnesses**[10] in criminal cases.
- The introduction of measures to restrict **unjustified imputations at trial against the character of a deceased or incapacitated victim or witness** (s. 33 Criminal Procedure Act 2010)
- The introduction of an exception to the **rule against double jeopardy** when new and compelling evidence becomes available (Part 3, Criminal Procedure Act 2010)
- The introduction of **bail conditions** requiring a bail applicant to refrain from going to specific locations or to meet specified persons
- The creation of a statutory offence of intimidation of witnesses or their families (s 41 of Criminal Justice Act 1999)

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[7] Section 3(4)(b) of the *Domestic Violence Act* 1996, for example, permits an applicant for a barring order to provide opinion evidence that he or she has a legal or beneficial interest in the place of residence that is not less than that of the respondent.

[8] Section 3 of the *Criminal Law (Rape) Act* 1981, as amended by section 13 of the *Criminal Law (Rape) (Amendment) Act* 1990 now provides that, except with leave of the court, no questions shall be asked in cross examination about the sexual experience of a complainant. Previously in a rape case where the defence was one of consent, the trial judge was obliged 'to allow unpleasant charges to be made against the complainant in connection with her past; he should not indicate to the jury that he disapproves of this being done'. *People (DPP) v McGuinness* [1978] IR 189

[9] See, for example, section 7 of the Criminal Law (Rape) Act 1991, as amended; section 11 of the Criminal Law (Human Trafficking) Act 2008; and section 252 of the Children Act 2001.

[10] See section 181 of the Criminal Justice Act 2006.

- The ability of the DPP to appeal **unduly lenient sentences** (s 2 of the Criminal Justice Act 1993, as amended by section 23 of the Criminal Justice Act 2006) and
- Provisions for the **payment of compensation** to victims through a non-statutory scheme introduced in 1974, and a statutory scheme introduced under section 6 of the Criminal Justice Act 1993 (Kilcommins et al., 2004; Rogan, 2006a; Fennell 2010; Vaughan and Kilcommins 2010).

In the next sections, we set out how such provisions impact specifically on people with disabilities. In so doing, we provide significant legal detail, as nowhere else in the Irish context are these provisions documented insofar as they apply to people with disabilities.

2.3.1.1. Use of live television links

Ordinarily, the adversarial nature of the Irish criminal process requires that witnesses are examined *viva voce* in open court. In recognition, however, of the trauma that this may impose on victims of specified sexual or violent offences (LRC 1989, 120-121), section 13 of the Criminal Evidence Act 1992 provides that victims, among other witnesses, can give evidence in such cases *via* a live television link. In the case of victims of such offences who are under the age of 18[11] **or are persons suffering from a 'mental handicap'(s 19), there is a presumption in favour of giving evidence via television link (s. 13(1)(a))**. In all other cases, leave of the court is required (s. 13(1)(b). More recently, section 39 of the Criminal Justice Act 1999 provides that where a witness is in fear or subject to intimidation in any proceedings on indictment for an offence, that person may, with leave of the court, give evidence through a live television link. Section 29(1) of the Criminal Evidence Act 1992, as substituted by section 24 of the Extradition (European Union Conventions) Act 2001, attempts to accommodate witnesses who are outside the State from having to attend to give evidence at trial. It provides that in any criminal proceedings, a witness other than the

[11] The Criminal Evidence Act 1992 originally set this age at 'under 17', but this was amended by section 257(3) of the Children Act 2001.

accused may, with leave of the court, give evidence through a live television link.[12] The use of such a provision was contested in the Irish courts in the cases of both *Donnelly v Ireland* [1998] 1 IR 321 and *White v Ireland* [1995] 1 IR 268 on the grounds that it constituted an unlawful interference with an accused person's right to fairness of procedures. In neither case was the challenge successful.

More recently, in *D.O'D v Director of Public Prosecutions and Judge Patricia Ryan* (Unreported, High Court, 17th December, 2009), the applicant had been charged with having sexual relations with two mentally impaired persons. He sought leave to quash the order of the trial judge directing the use of video link facilities pursuant to section 13(1)(b) of the Criminal Evidence Act of 1992. The applicant contended that the giving of evidence by video link by the two complainants would create a real risk that he would not get a fair trial because the giving of evidence by them by way of live video could or would convey to the jury that they were persons with mental impairment, a matter which he disputed as part of his defence. The High Court upheld his claim, holding that evidence by video link in the circumstances carried with it a real risk of unfairness to the accused which probably could not be remedied by directions from the trial judge or statements from the prosecution. In the case, the prosecution applied for evidence to be given in this way under s. 13(1)(b) of the Act of 1992. Had the application been made under s. 13(1)(a) of the Act of 1992, it would have involved a finding that both of the complainants suffered from a mental handicap. The only material put before the trial judge which expressly considered the ability of either complainant to give evidence were the statements of psychologists.

The defence objected on the grounds that it would create an inference that the complainants were vulnerable persons and persons who suffered from a mental impairment, if permitted to give evidence by way of video link. In essence, the defence argued that the issue of their mental impairment would be pre-determined and would impinge on his client's right to a fair trial. The trial judge directed that the evidence should

[12] Since 2001, it also applies to extraditions proceedings and in particular to persons whose extradition is being sought. See also section 67 of the *Criminal Justice (Mutual Assistance) Act* 2008 which provides that a witness can give live television link evidence from another designated state.

be given by video link under 13(1)(b) of the CEA 1992. On appeal to the High Court, O'Neill J over turned this decision. He stated:

> In my judgment, it is clear that evidence by video link in the circumstances of this case does carry with it a real risk of unfairness to the accused person which probably cannot be remedied by directions from the trial judge or statements from the prosecution. Manifestly, s.13 of the Act of 1992 provides for the giving evidence by video link for offences such as the ones the applicant is charged with. The discretion which the Court has under s.13(1)(b) to order evidence to be given in this way or to direct otherwise raises the difficult question as to how the Court is to achieve a correct balance between the accused's right to a fair trial and the prosecution's right in an appropriate case to have evidence given by video link. It is clear that what is required is a test that achieves the correct balance between these two competing rights.

He went on to note:

> Where the Court reaches the conclusion that the giving of evidence in this way carries with it a serious risk of unfairness to the accused which could not be corrected by an appropriate statement from the prosecution or direction from the trial judge, it should only permit the giving of evidence by video link where it was satisfied by evidence that a serious injustice would be done, in the sense of a significant impairment to the prosecution's case if evidence had to be given in the normal way, viva voce, thus necessitating evidence by video link in order to vindicate the right of the public to prosecute offences of this kind. The fact that the giving of evidence viva voce would be very unpleasant for the witness or coming to court to give evidence very inconvenient, would not be relevant factors.

Having established the test, the judge went on to hold that the trial judge did not achieve "the correct balance in this case between the right of the applicant to a fair trial and the right of the first named respondent to prosecute the offences in question on behalf of the public".

2.3.1.2. Use of intermediaries

Under section 14 (1) of the Criminal Evidence Act 1992, witnesses may, on application by the prosecution or the defence, **also be permitted to give evidence in court through an**

intermediary in circumstances where they are using the live television link and are under 18 years of age or are persons with a 'mental handicap' who have reached that age in relation to a sexual offence or an offence involving violence. The trial judge can grant such an application if he or she believes that the interests of justice require that any questions to be put to the witness be put through an intermediary. Questions put to a witness in this manner shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his or her age and mental condition the meaning of the questions being asked.

2.3.1.3 Removal of wigs or gowns

While evidence is being given through a live television link pursuant to section 13(1) of the Criminal Evidence Act 1992, (except through an intermediary) neither the judge, nor the barrister or solicitor concerned in the examination of the witness, shall wear a wig or gown. Moreover if a child or a person with a mental disorder is giving evidence *via* a television link in respect of a victim impact statement, the same rule applies (s 5 Criminal Procedure Act 2010).

2.3.1.4 Admission of videorecordings, depositions and out of court statements

Given the emphasis placed by our adversarial system on the orality of the proceedings, pre-trial statements are not generally permitted in the criminal process. The rationale underpinning the exclusion of such statements is that they constitute hearsay and ordinarily are excluded because they court is deprived of the normal methods of testing the credibility of the witness. A pre-trial statement for example is not given on oath; the demeanour of the witness making the statement cannot be observed by the trier of fact; and the defence has no opportunity to cross-examine the witness. The absence of this latter safeguard is of particular importance. More recently, however, it has been recognised that an overly rigid application of the hearsay rule can lead to injustice. Provision has accordingly been made for the admission of videorecordings, depositions and out of court statements in certain circumstances.

Under section 16(1) of the Criminal Evidence Act 1992, for example, it provides **that a video recording of any evidence given by a person under 18 years of age or a person with a mental handicap through a live television link at the preliminary examination of a sexual offence or an offence involving violence shall be admissible at trial.** It also renders admissible at trial a video recording of any statement made by a person under 14 years of age or a person with a mental handicap (being a person in respect of whom such a sexual offence or an offence involving violence is alleged to have been committed) during an interview with a member of the Garda Síochána or any other person who is competent for the purpose, provided the witness is available at trial for cross examination. This provision is, as Delahunt (2011: 6) notes, "undoubtedly a practical step towards making the testimony of child witnesses and witnesses with an intellectual disability more easily heard within the criminal justice system". In either case the video recording shall not be admitted in evidence if the court is of opinion that it is not in the interests of justice to do so. In *The People* (*DPP) v XY,* for example, the accused was charged with section 4 of the Criminal Law (Rape) (Amendment) Act 1990 after it was alleged that he forced a woman with an intellectual disability into performing the act of oral sex with him. In the case, the trial judge admitted as evidence a DVD recording of an interview with the complainant. This pre-trial recording was admitted as examination-in-chief testimony (LRC 2011; Delahunt, 2010).

More general provision for the admission of depositions (and video recordings) at the pre-trial stage are now made under section 4G of the Criminal Procedure Act 1967, as amended. It provides that a deposition by a witness may be admitted in evidence at the trial of the accused if it is proved that—

(a) The witness is dead, is unable to attend to give evidence at the trial, is prevented from so attending, or does not give evidence at the trial through fear or intimidation.
(b) The accused was present at the taking of the evidence, and
(c) An opportunity was given to cross-examine and re-examine the witness.

The trial court retains a discretion to exclude such evidence if it is of the opinion that it is necessary in the interests of justice. Moreover, under section 255 of the Children Act 2001,

a judge of the District Court, when satisfied on the evidence of a registered medical practitioner that the attendance before a court of any child would involve serious danger to the safety, health or wellbeing of the child, may take the evidence of the child concerned by way of sworn deposition or through a live television link in any case where the evidence is to be given through such a link. This relates to certain specified offences including cruelty against children, causing or procuring a child to engage in begging, allowing a child to be in a brothel, and causing or encouraging a sexual offence on a child, the murder or manslaughter of a child, any offence involving bodily injury to a child, and most sexual offences (Walsh 2005, 21).[13]

Part 3 of the Criminal Justice Act, 2006 makes provision for the admission of a statement made by a witness in any criminal proceedings relating to an arrestable offence. It can be invoked either by the prosecution or the defence. It can occur in circumstances where the witness, although available for cross examination, refuses to give evidence, denies making the statement, or gives evidence which is materially consistent with it. The statement can then be admitted if it is proved that the witness made it, it is reliable, was made voluntarily, and direct oral evidence of the fact concerned would be admissible. The statement must be given on oath or affirmation or contain a declaration by the witness that the statement is true to the best of his knowledge or belief, or, the court is otherwise satisfied that when the statement was made the witness understood the requirement to tell the truth. In determining whether the statement is reliable, the court will have regard to whether or not it was given on oath or affirmation or was video recorded, if there is other evidence to support its reliability, and the explanations of the witness, if any, in refusing to give evidence. The court must also be satisfied that the admission of the statement would not be contrary to the interests of justice.

[13] The rules set out in section 4F(3)of the *Criminal Procedure Act* 1967 apply to the taking of evidence under section 255 of the *Children Act* 2001. These rules provide as follows: a) when the evidence is being taken, both the accused and a judge of the District Court shall be present; (b) before it is taken, the judge shall inform the accused of the circumstances in which it may be admitted in evidence at the accused's trial; c) the witness may be cross-examined and re-examined; d) where the evidence is taken by way of sworn deposition, the deposition and any cross-examination and re-examination of the deponent shall be recorded, read to the deponent and signed by the deponent and the judge.

2.3.1.5. Eyewitness identification of perpetrators of crime

In some instances eye witness identification of the perpetrators of crime will be required at the pre-trial and trial stages of criminal process. This can be very traumatic for witnesses, particularly those who are the alleged victims. There are no one-way mirror identification systems in Garda stations, and very often the victim may find himself or herself in the same room as the accused. Moreover, at a pre-trial identification parade, the witness will, according to the Garda Síochána *Criminal Investigation Manual,* generally be asked to 'place his/her hand on the identified person's shoulder' though fortunately it is now that case that this practice has been relaxed and the witness can, if he or she requests, make the identification by pointing and describing the person in question (Walsh, 2002: para 6.55). Making an identification in court can also be difficult for a witness. More recently, efforts have been made to alleviate this trauma. Persons giving evidence via television link under section 13 of CEA 1992 and section 39 of the Criminal Justice Act 1999, as referred to above, **shall not now be required to identify the accused at the trial of the offence if the accused is known to them (unless the court in the interests of justice directs otherwise).** Moreover, evidence by a person other than the witness, that the witness identified the accused as being the offender at an identification parade, shall be admissible as evidence.

2.3.1.6. Victim Impact Statements

The reduction of victim alienation has also occurred through the use of victim impact statements. Section 5 of the Criminal Justice Act 1993 made provision for the court to receive evidence or submissions concerning any effect of specified offences on the person in respect of whom an offence was committed. These offences relate to most sexual offences and to offences involving violence or the threat of violence to a person. Section 5 initially presupposed that the victims of these offences were capable themselves of giving evidence of the impact that the crime had on them (O'Malley 2009). To combat the narrowness of this presumption, the Irish courts began as a practice to admit the evidence of family members of homicide victims (see *DPP v O'Donoghue* [2007] 2 IR 336). As a result of the introduction of section 4 of the Criminal Procedure Act 2010, a 'person in respect of whom the offence was committed' now includes a family member of that person when that person

has died, is ill or is otherwise incapacitated as a result of the commission of the offence. A family member may also give evidence under section 5(3)(b)(ii) of the Criminal Justice Act 1993, as amended, where the victim of the specified offence suffers from a mental disorder (not related to the commission of the offence). **Under section 5A of the Act, a child or a person with a mental disorder may give evidence of the impact of the crime through a live television link unless the court sees good reason to the contrary.[14] Moreover, where a child or a person with a mental disorder is giving evidence through a live television link pursuant to section 5A, the court may, on the application of the prosecution or the accused, direct that any questions be put to the witness through an intermediary (provided it is in the interests of justice to do so)** (s 5B Criminal Justice Act 1993, as inserted by section of the Criminal Procedure Act 2010).

The only purpose for which a victim impact statement can be received at sentencing stage is to describe the impact of the offence on the victim (or on the family members if the victim has died as a result of the offence). It cannot be used (i) to adduce further evidence, (ii) to suggest the evidence that should be imposed, or (iii) to make fresh allegations. The prosecution bears the responsibility of ensuring that the statement restricts itself in this regard. The prosecution and defence may also examine the victim on any evidence given in respect of the impact of the crime (*People (DPP) v C(M)* (Unreported, Central Criminal Court, 16 June 1995).

2.3.1.7. Establishing the competency of witnesses to testify

The Irish criminal process works off the assumption that all witnesses are competent to testify in court. If a dispute arises as to the competence of a particular witness, the party calling that witness bears the legal burden of proving that he or she is in fact competent. At common law, a witness demonstrates competence by showing that he or she understands the nature of an oath and is capable of giving an intelligent account.[15] Testimony in civil and

[14] Provision is also made for any other witness, with leave of the court, to give victim impact evidence via a television link

[15] The determination as to whether a child understands the nature and consequences of an oath is one for the trial judge. See *AG v. O'Sullivan* [1930] IR 553.

criminal proceedings normally requires that the evidence has to be given on oath or affirmation. As was noted in *Mapp v Gilhooley* *1991+ IR 253, 'the broad purpose of the rule is to ensure as far as possible that such *viva voce* evidence shall be true by the provision of a moral or religious and legal sanction against deliberate untruth'.

Issues of competence primarily arise in respect of witnesses who are children or are persons with a mental disability. The law relating to both categories has become more accommodating in recent years. Traditionally, for example, a child could only give sworn evidence.[16] Such evidence could only be given if, in addition to satisfying the intelligibility criterion, the child also could demonstrate that he or she understood 'both the nature and consequences of an oath' (*R v Brasier* (1779) 1 Leach 199). A more secular common law approach however began to emerge in the 1970s in relation to sworn evidence; the determining factor was 'whether the child has a sufficient appreciation of the solemnity of the occasion and the added responsibility to tell the truth, which is involved in taking an oath, over and above the duty to tell the truth which is an ordinary duty of normal social conduct' (*R v Hayes* [1977] 2 All ER 288). More recently, section 27 of the Criminal Evidence Act 1992 was enacted which provides that in any criminal proceedings the evidence of a person under 14 years of age may be received otherwise than on oath or affirmation if the court is satisfied that he or she is capable of giving an intelligible account of events which are relevant to those proceedings.[17] Significantly, and as we shall see later, section 28(1) abolishes the mandatory requirement that the unsworn evidence of a child be corroborated; a trial judge now has a discretion whether a jury should be given a warning about the dangers of convicting on the unsworn evidence of a child.

Persons deemed to have a mental impairment were traditionally excluded from giving evidence at trial. The common law, however, then altered, and **permitted such a witness to**

[16] If a child was capable of giving an intelligible account, but did not understand the importance of telling the truth under oath, it was still possible for him or her to give unsworn testimony under section 30 of the 1908 Children's Act, as amended by section 28(2) of Criminal Justice Act of 1914. Such testimony however needed to be corroborated.

[17] See also section 255 of the Children Act 2001 which provides that the evidence of a child under 14 years of age may be taken or received otherwise than on oath or affirmation if the court is satisfied that the child is capable of giving an intelligible account of events which are relevant to those proceedings. It relates to certain specified offences mentioned in part 12 and schedule 1 of the Act.

testify provided he or she was capable of understanding the nature and consequences of an oath, was capable of giving an intelligible account, and the mental disorder did not impede his or her ability to give evidence at trial (*R v Hill* (1851) 2 Den 254). If a witness has communicative difficulties, an interpreter may be provided to aid with the giving of evidence. In *People (DPP) v Gillane* (Unreported, Court of Criminal Appeal, 14 December, 1998), for example, it was held that it was permissible for a witness to give identification evidence for the prosecution in a case. This was despite the fact that he believed that staff at the Mater Hospital had inserted a microchip into his head. As the court noted, though the witness 'had very strange ideas about what was done to him when he had an operation on his head some twenty years before in the Mater Hospital, [this] does not mean that he was incapable of giving evidence'.

If, however, a mentally impaired person was not able or permitted to give sworn evidence, there was no means by which unsworn evidence could be given. In *DPP v JS* (Unreported, Circuit Court, 1983), for example, a moderately mentally impaired complainant could not answer questions as to the nature of the oath or the nature of a lie at trial. She made no response when asked by the judge what the moral and legal consequences of telling a lie were. In the result, she could not be sworn and, as there was no independent evidence in the case, a *nolle prosequi* (no prosecution) was entered (LRC 1990, 10). Similarly, *DPP v MW* (Unreported, Circuit Court, 1983) a moderately impaired complainant alleged that she was raped in a car. The accused was charged with two counts, rape and unlawful carnal knowledge of a mentally impaired person. At the rape trial, the trial judge ruled that she was competent to take the oath. Her testimony at trial, however, was held to be contradictory and the judge directed an acquittal. Subsequently the accused was tried with the second count, unlawful carnal knowledge of a mentally impaired person. On this occasion, however, her preliminary answers on questions pertaining to the nature of an oath were less satisfactory, and the trial judge declined to have her sworn. As there was no independent evidence in the case, the prosecution was compelled to enter a *nolle prosequi*. (LRC 1990, 10)

Section 27(3) of the Criminal Evidence Act 1992 now provides that the evidence of a person with a 'mental handicap' may be received otherwise than on oath or affirmation if

the court is satisfied that the person is capable of giving an intelligible account of events which are relevant to the proceedings. In *O'Sullivan v Hamill* *1999+ 3 IR 9, O'Higgins CJ noted:

> Unsworn evidence is provided for from a person with a mental handicap 'if the court is satisfied that he is capable of giving an intelligible account of events which are relevant to those proceedings'. In my view, before that section comes into play there are two requirements on which the court has to be satisfied - (1) that the person has a mental handicap, and (2) that he is capable of giving an intelligible account of events which are relevant to the proceedings. Clearly there must be an inquiry.

Determining the answers to these questions in that inquiry at trial may require expert medical opinion evidence. A corroborative warning may need to be given to the jury in respect of the testimony of a witness suffering from a mental disability (*People (DPP) v Molloy* Unreported, Court of Criminal Appeal, July 28, 1995).

Determining the capacity of a witness to give an intelligible account can give rise to significant difficulties, however. In the recent *Laura Kelly* case, the complainant, who has Down Syndrome, alleged that she was sexually assaulted at a 21st birthday party. The family claimed that shortly after Ms Kelly was put to bed, a family member entered the bedroom and saw a man in bed with her. It was alleged that Ms Kelly had most of her clothes removed and that the man was naked from the waist down. However, at trial, Ms Kelly, who had 'a mental age of four', was deemed incompetent to testify and the case was dismissed. Ms Kelly's mother stated:

> She [Laura] was brought into this room in the Central Criminal Court and asked questions about numbers and colours and days of the week which had no relevance in Laura's mind. She knew that she had to go into a courtroom and tell a story so the bad man would be taken away. "It was ridiculous. There is no one trained in Ireland to deal with someone similar to Laura, from the Gardaí up to the top judge in Ireland and the barristers and solicitors" (McEnroe, 30 March, 2010).

In another context, traditionally, too, the spouse of an accused was not competent to give evidence for the prosecution in a case, except in the case of rape or violence perpetrated on

that spouse (R v. Lapworth [1931] 1 KB 117).[18] This was justified on the basis of marital unity (the law made no distinction between the accused and the spouse) and the importance of preserving marital harmony. The constitutionality of this rule was challenged in *People DPP v JT* (1998) 3 Frewen 141. The complainant was a 20 year old woman who had Down Syndrome who alleged that she had been sexually abused by her father. At trial the spouse of the accused and the complainant's mother gave evidence that at the end of a television programme concerning child sexual abuse, her daughter expressed delight that the wrongdoer in the programme was eventually brought to justice. As a result of questioning her daughter on the issue, it emerged that the complainant's father had allegedly perpetrated similar abuses as those illustrated on the programme. The accused was convicted but appealed on the basis, inter alia, that his spouse was incompetent to testify for the prosecution. In upholding the conviction, Walsh J examined the common law rule and declared that its application on the facts of the cases would be in violation of Article 41 of the Constitution which protected family rights.

Section 21 of the Criminal Evidence Act 1992, as amended by section 257(3) of the Children Act 2001 now provides that in any criminal proceedings a spouse of the accused is competent to give evidence for the prosecution. Such a spouse, however, is only compellable to give evidence at the instance of the prosecution in the case of an offence which involves violence or the threat of violence to the spouse, a child of the spouse or of the accused, or any person who was at the material time under the age of 18 years, or is a sexual offence alleged to have been committed in relation to a child of the spouse or the accused, or any person who was at the material time under the age of 18 years (Jackson 1993 202). More extensive compellability requirements for the prosecution exist for former spouses under section 22(2) of the same Act.

2.3.1.8. Corroboration rules

Over the years the common law also devised particular corroboration rules in respect of certain categories of 'suspect' witnesses such as sexual complainants, children, accomplices

[18] There were also some other specific statutory exceptions.

and so on. Ordinarily, an accused person in a criminal trial can be convicted on the testimony of one witness alone. However, for suspect witnesses such as those cited above, a warning of the dangers of convicting on such evidence in the absence of corroboration had to be given to the jury. The previously fossilised exclusionary assumptions underpinning the perception of some victims/witnesses in the Irish criminal justice system is evident, for example, in the law on the corroboration of sexual complaints. In the past the evidence of a complainant in a sexual offences case required a mandatory warning to the jury on the dangers of acting on such evidence alone. This rule was justified "by the fear that complaints of sexual offences may sometimes be the product of spite, jealousy, psychological denial of having consented, or a reaction to having been jilted; that women with nothing to lose might seek to subject a man of high social standing to blackmail; and that the accusation of rape is easily made, but difficult to defend" (Healy, 2004: 157). More recently, however, these essentialised notions about the traits and motives of sexual complainants have largely been abandoned and the trial judge now has discretion whether or not to give such a warning to the jury (s 7 Criminal Law (Rape) (Amendment) Act 1990).

In respect of the unsworn testimony of child witnesses, corroboration by some other material evidence was also required to obtain a conviction against an accused party. This could not be the unsworn evidence of another child. In *Attorney General (Kelly) v Kearns* (1946) 80 ILTR 45, for example, the defendant was charged with attempted carnal knowledge of a girl aged 9 (RB), indecent assault of the same girl, and indecent assault of two other girls also aged 9 (AH and MC respectively). Two of the girls gave evidence that they were in the defendant's house together and that each saw the unpleasant acts being perpetrated against the other (RB and AH). The other girl (MC) gave evidence that on a different date she was also in the defendant's house and that he also indecently assaulted her. Playmates of the three complainants also gave unsworn testimony that the three complainants went into the defendant's house.

Molony J held:

> Corroboration is a statutory requirement in the case of the unsworn testimony of a child of tender years. Sec. 30 of the Children Act, 1908, has the proviso "(a) A person shall not be liable to be convicted of the offence unless the testimony

> admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused." …*I+t is quite clear from the vast number of authorities that, to quote from the headnote in *Rex. v. Coyle [*1926+ N. I. 208 , 'the unsworn testimony of a child of tender years admitted by virtue of section 30 of the Children Act, 1908 , could not be corroborated within the meaning of proviso (a) to that section, by the unsworn testimony, similarly admitted, of any number of such children'.

Since there was no other evidence in the case, the prosecution failed, demonstrating the harshness of the rules on corroboration. For the sworn evidence of children, a mandatory warning had to be given of the dangers of convicting on such evidence in the absence of corroboration. More recently, the legislature has moved away from the operating assumption that the evidence of children was inherently flawed or unreliable. Section 28(1) of the Criminal Evidence Act 1992 abolished the requirement that the unsworn evidence of children had to be corroborated and s 28 (2)(a) abolished the mandatory warning about the dangers of convicting on the sworn evidence of children in the absence of corroboration. Section 28(3) of the same Act also provides that the unsworn evidence of a child may corroborate unsworn evidence given by any other person,[19] ensuring that the decision in *Kearns* will not reoccur.

In respect of witnesses with a mental disability, there is no statutory law requiring corroboration or that a corroboration warning be given. However, there is some case law support for the view that in the case of such witnesses, a warning should be given of the dangers of convicting on the testimony of such witnesses in the absence of corroborative evidence (see, for example, the Australian case of *Bromley v R* (1986) 161 CLR 315).

In Ireland, in *The People (Director of Public Prosecutions) v. M.J.M* (Unreported, Court of Criminal Appeal, 28th July, 1995), in a sexual offence cases, a trial judge invoked his discretion to give a warning under section 7 of the Criminal Law (Rape) (Amendment) Act 1990 in a sexual offences cases, in part, based on the mental status of the complainant, and in particular the fact that she had a childlike mind. **It should be noted however that the Law Reform Commission in Ireland suggested in 1990 that there should be no corroboration requirement in respect of persons suffering from a mental disability (1990, p. 24).**

[19] The unsworn evidence of a child could always be corroborated by sworn evidence.

2.3.2 Affording 'special protection' to people with disabilities in criminal law

Certain pieces of criminal law in Ireland make provision for the criminalisation of conduct which involves the exploitation of persons who are defined as 'mentally impaired'. Section 5 of the Criminal Law (Sexual Offences) Act 1993 is one example of this, and states that:

> A person who—(*a*) has or attempts to have sexual intercourse, or (*b*) commits or attempts to commit an act of buggery, with a person who is mentally impaired (other than a person to whom he is married or to whom he believes with reasonable cause he is married) shall be guilty of an offence.

Section 5(2) goes on to state:

> A male person who commits or attempts to commit an act of gross indecency with another male person who is mentally impaired shall be guilty of an offence…

For both offences, a defence is provided for an accused if he or she can show that at the time of the alleged commission of the offence he did not know and had no reason to suspect that the person in respect of whom he is charged was mentally impaired. For the purposes of the section, *mentally impaired* 'means suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation'. Prosecutions for offences under section 5 are at the discretion of the DPP.

There are a number of difficulties with these offences. To begin with, it has been suggested that it is not appropriate to use the term 'mentally impaired' to describe persons with disabilities (LRC 2006). The Law Reform Commission also noted in a Consultation Paper on Capacity that "a regrettable effect of section 5 of the 1993 Act is that, outside a marriage context, a sexual relationship between two 'mentally impaired' persons may constitute a criminal offence because there is no provision for consent as a defence in respect of a relationship between adults who were both capable of giving a real consent to sexual intercourse" (2005: 141). The Commission went on to note that this may in fact breach Article 8 of the European Convention on Human Rights in relation to respect for private life

(p. 143). There is also an evident gap in the provision in that it covers buggery, intercourse and acts of gross indecency between males, but not unwanted sexual contact more generally**.**

In *The People* (*DPP) v XY,* the accused was charged with section 4 of the Criminal Law (Rape) (Amendment) Act 1990 after it was alleged that he forced a woman with an intellectual disability into performing the act of oral sex with him. Such a sexual act did not come within the scope of section 5 of the 1993 Act. On this issue, White J in the case noted that "[i]t seems to me that the Oireachtas when they introduced the 1993 Act did not fully appreciate the range of offences needed to give protection to the vulnerable" (as quoted in LRC 2011: 191). Given the lack of evidence of an assault or hostile act on the part of the accused, the trial judge directed the jury to acquit the defendant, stating that that the judiciary could not fill a 'lacuna in the law' (ibid: 192).

A recent Law Reform Consultation Paper on *Sexual Offences and Capacity* was published in October 2011. The Consultation Paper contains a detailed review of the current law on sexual offences involving persons with a disability. It provisionally recommended that section 5 of the Criminal Law (Sexual Offences) Act 1993 should be repealed and replaced. (2011, para. 5.120). In its place, it recommends that any "replacement of section 5 of the Criminal Law (Sexual Offences) Act 1993 should cover all forms of sexual acts including sexual offences which are non-penetrative and sexual acts which exploit a person's vulnerability" (para 5.122). It also "recommends that there should be a strict liability offence for sexual acts committed by a person who is in a position of trust or authority with another person who has an intellectual disability" (para. 5.121).

There are also notable absences of the protection of people with disabilities in other relevant pieces of legislation. For example, under the Prohibition to Incitement to Hatred Act 1989, it is an offence to incite hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, or membership of the travelling community or sexual orientation. Significantly no mention is made of disability as a criterion in this piece of legislation.

It is also the case that disability may be viewed as an aggravating factor at sentencing stage when assessing the gravity of an offence in which a person with a disability has been a victim. Standard aggravating factors include the use of excessive force, particularly degrading or dehumanising behaviour, breach of trust and so on (O'Malley, 2009). Though there is little jurisprudence on the area, there is no reason why a sentencing judge in Ireland could not regard the fact that the crime was committed against a person with a disability as an aggravating factor. In England and Wales, such a viewpoint is made explicit through the enactment of section 146 of the Criminal Justice Act 2003. This imposes a duty on courts to increase the sentence for any offences aggravated by hostility based on the victim's disability or presumed disability (Hoong Sin et al., 2009: 11; Crown Prosecution Service, 2007). Such 'hate crime' legislation emerged in part in response to a series of high profile murders of people with intellectual disabilities and a campaign mounted by disability organisations (Thomas, 2011; Sherry, 2000). The implementation of such legislation, as well as providing greater protection from hostility and harassment for people with disabilities, also provides a source of information on the extent of such hostility against people with disabilities, as disability hate crime cases taken under this law are recorded for statistical purposes.

2.3.3 Putting supports in place: anti-discrimination legislation and affirmative action measures

Whilst people with disabilities are subject to the provisions of criminal law and law pertaining to the evidence-giving process, other forms of legislation impact on people with disabilities' experiences of the criminal justice system. For example, the Disability Act 2005, which is discussed in more detail in chapter 4, sets out obligations on public service providers, including the Gardaí and courts service, to provide information to people with disabilities in accessible formats, and also to make their premises accessible. Such provisions follow on from other anti-discrimination legislation, such as the Equal Status Acts 2000-2008, which prohibit discrimination on nine grounds, including disability, and seek to ensure service providers make reasonable accommodation for people with disabilities.

2.4 Policy Developments

A number of policy developments have taken place which position the victim more centrally in the criminal justice system in Ireland and have implications for people with disabilities. These include the Victims Charter and other guidelines published by different agencies within the criminal justice system.

2.4.1 The Victims Charter

The **Victims Charter** has marked an important policy development for crime victims in Ireland (McGovern 2002; Rogan 2006b). This Charter was produced by the Department of Justice, Equality and Law Reform in September 1999. It reflects the "commitment to giving victims of crime a central place in the criminal justice system". As such it amalgamates for the first time "all the elements of the criminal justice system from the victim's perspective" (1999: 3).

In 2005, a review of the entire Charter was undertaken by the Commission for the Support of Victims of Crime and in 2010 a revised *Victim's Charter and Guide to the Criminal Justice System* was produced. This attempts to increase the information available to victims of crime from the Crime Victims Helpline, the Gardaí, the Courts Service, the Director of Public Prosecutions, the Prison Service, the Probation Service, the Legal Aid Board, the Coroner's Service and the Criminal Injuries Compensation Tribunal. It sets out the entitlements a victim has from these various services, but it does not confer legal rights.

Significantly, there is only one reference to victims with disabilities in the Charter. In the Garda section, a commitment is made as follows: "if you have any form of disability we will take your special needs or requirements into account" (Department of Justice and Law Reform, 2010: 17). In contrast, the *Code of Practice for Victims of Crime* in England and Wales, which has lawful authority, specifically provides an enhanced service for vulnerable victims. A vulnerable victim includes a "person suffering from a mental disorder or otherwise has a significant impairment of intelligence and social functioning, or has a physical disability or is suffering from a physical disorder" (Office for Criminal Justice Reform, 2005: 4).

2.4.2 Commitments from the Gardaí

The Gardaí have given a number of commitments to victims of crime including an assurance regarding the provision of information on the progress of a case and on the prosecution process, as set out in their Victims Charter which states:

> All members of the An Garda Síochána will treat victims with dignity and respect – whatever your gender, race, religious beliefs, ethnic origin, sexual orientation, age, nationality, disability, economic circumstances, marital or family status, or if you are a member of the Traveller community' (An Garda Síochána: June 2010).

The Garda Victim Liaison Office, for example, is responsible for developing Garda Policy on victims of crime, and for ensuring the implementation of the Garda aspect of the Victims' Charter. Garda Family Liaison Officers have been introduced to provide support to victims of crime affected by traumatic crimes. Garda Ethnic Liaison Officers are trained to provide specific support and advice to victims of racist incidents. The Gardaí also provide a liaison scheme for the Lesbian, Gay, Bisexual and Transgender Community. There is little information available, however, on Garda approach to victims with disabilities, although the Gardaí make commitments in their Diversity Strategy, particularly in relation to the implementation of the Disability Act 2005.

2.4.3 The Office of the Director of Public Prosecutions and Courts Service

The Office of the Director of Public Prosecutions has published four documents which have implications for victims' experiences of criminal justice organisations: *The Role of the DPP* (2010); *Going to Court as a Witness* (2010); *Statement of General Guidelines for Prosecutors* (2001, and recently revised in 2010); and, *Policy on the Giving of Reasons for Decisions Not to Prosecute* (2008). The Courts Service has also issued a number of publications including *Going to Court,* a guide to going to court for child and young witnesses as well as parents and guardians, and *Explaining the Courts* (2010). The Committee for Judicial Studies also recently published a guide for the Irish judiciary, entitled *The Equal Treatment of Persons in Court: guidance for the judiciary* (2011). It includes a section entitled 'Guidance on appropriate treatment of persons with disabilities' (pp. 124-125). Aside from this development, it is notable that no specific commitments are made within the literature of

the DPP and Courts Service to facilitating people with disabilities as victims of crime. However, both agencies are subject to the provisions of the Disability Act 2005 regarding provision of accessible information and buildings, and many courthouses have sought to make physical adjustments for people with disabilities, such as putting in wheelchair ramps and induction loop systems.

2.4.4 Victim support organisations

The needs of crime victims in Ireland are also addressed by a wide variety of **victims' organisations.** These operate both at the national and local level. In Ireland, these groups include Advic, Amen, the Court Support Service, National Crime Victims' Helpline, Rape Crisis Centres, Support after Homicide, Irish Centre for Parentally Abducted Children, Irish Tourist Assistance Service, One in Four, Sexual Violence Centre Cork, Survivors of Child Abuse and so on. A significant proportion are specialised in nature dealing with specific types of victim or services but there are also some key national groups. For example, the national Crime Victims Helpline, which represents a proactive initiative to support crime victims, was launched in 2005. It is funded by the Commission for the Support of Victims of Crime and offers support to victims of crime in Ireland. Similarly the Court Support Service provides support to witnesses and victims both before and during court proceedings, including pre-trial visits and court accompaniment during proceedings. It has stated in its strategic plan for 2011-2014 that it hopes to promote its service among groups who may be 'isolated, vulnerable and/or disadvantaged' and includes people with disabilities within this cohort.

Furthermore, as far back as 1974, a Criminal Injuries Compensation Tribunal was established to administer a scheme designed to alleviate some of the financial difficulties experienced by victims of violent crime and their families. The purpose of the scheme was to compensate individuals for losses arising from personal injuries as a result of violent crime or acquired while assisting another individual in preventing a crime or saving a human life. Individuals eligible to apply for compensation under this scheme include the injured person(s), the immediate family of the injured person(s) if the victim has died as a result of the crime, or those responsible for looking after the injured party.

2.4.5. Administrative shifts: the Justice for Victims Initiative

A number of administrative moves — as part of a *Justice for Victims Initiative* — to increase the level of support to victims of crime have also been implemented in Ireland. These include:

- A new executive office, the **Victims of Crime Office**, which was established in the Department of Justice to support crime victims in 2008. The core mandate of the Office is to improve the continuity and quality of services to victims of crime, by state agencies and non-governmental organisations throughout the country.
- A reconstituted **Commission for the Support of Victims of Crime** was established in September, 2008. Working with an annual budget from the Department of Justice and Equality, the Commission provides funding for services and supports to victims of crime. The Commission also works to improve cohesion and consistency of service and information available to victims of crime.
- A **Victims of Crime Consultative Forum** held its first meeting in January 2009. It provides a forum for victim support organisations to put forward the views of victims with a view to shaping strategy and policy initiatives.
- A **Victims' Rights Bill** was also initiated in 2008 to make provision for the treatment of and rights of victims of criminal offences. More recently, the first commitment in the Justice and Law Reform section of the Programme for Government, 2011-2016, indicated a requirement for legislation to strengthen the rights of victims of crime and their families, including greater use of victim impact statements and statutory rights to information.

2.5. EU developments

A number of key developments in the European Union have promoted recognition of the needs of victims within criminal justice systems. In 1999, the European Commission adopted a communication entitled *Crime Victims in the European Union – standards and actions*. In March 2001, the Council adopted a *Framework Decision on the Standing of Victims in*

Criminal Proceedings, which provides for minimum rights to be ensured in all the territories of the EU (including the right to be heard and furnish evidence, access to relevant information, the opportunity to participate, and the right to compensation).

The European Commission also issued a proposal for a *Council Directive on Compensation to Crime Victims* to reduce the disparities in the compensation schemes of various member States. The Council adopted this Directive on the 29th of April, 2004. The Directive ensures that compensation is easily accessible in practice regardless of where in the EU a person becomes the victim of a crime.

Similarly the Committee of Ministers of the Council of Europe adopted Recommendation Rec (2006)8 on assistance to victims of crime on the 14th June, 2006. It sets out various provisions and recommends that member states be guided by them in their domestic legislation. These provisions relate to (i) the role of public services and victim support services, (ii) the provision of information to victims, (iii) the right to effective access to other remedies, (iv) state compensation, (v) insurance, (vi) protection of physical and psychological integrity (vii) confidentiality, and (viii) training.

There are other pieces of EU law facilitating the provision of compensation to crime victims from the offender. The Regulation on *Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters*, for example, provides that the victim may sue the offender for damages in the same court that deals with the criminal proceedings, if this is possible under national law. The same Regulation also lays down how a crime victim can enforce a judgment for damages against the offender in another member State. Internationally, the General Assembly of the United Nations adopted the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* in 1985. The document is not legally binding but does set out the minimum standards for the treatment of victims of crime. It has been described as providing “a benchmark for victim-friendly legislation and policies” (Van Dijk 2005: 202).

More recently the European Commission has identified as a strategic priority the protection of victims of crimes and the establishment of minimum standards. In May 2011, it put forward a proposal for a Directive establishing minimum standards on the rights, support

and protection of victims of crime (European Commission, 2011). It includes (i) provisions on information rights for victims including those with disabilities,(ii) right of access to victim support services, (iii) right of victims to have their complaints acknowledged, iv) the right of victims to be heard, (v) the rights of victims in the event of a decision not to prosecute, (vi) the right to reimbursement of expenses, (vii) the identification of vulnerable victims (children and persons with disabilities are identified as at a particular risk of harm, and therefore are in need of special measures), (viii) right to avoidance of contact between victim and offender, (ix) the protection of vulnerable victims during criminal proceedings, and (x) the training of practitioners who have contact with victims. The draft Directive has been endorsed by the Irish Government.

2.6 Continuing problems in recognising the needs of victims of crime

Notwithstanding the increased recognition of victims in the criminal process, it remains the case that many of the needs of victims continue to be unmet.

A lack of knowledge among criminal justice agencies and actors about the needs of victims of crime is a key issue. For example, one study showed that 51% of members of the legal profession were unfamiliar with the provisions of the Victims Charter (McGrath, 2009).

There are many reported difficulties with the provision of information to victims. The European Commission suggested in 2004, for example, that the provision of information was not secured by "simply issuing information booklets or setting up websites, without the authorities actively providing individual victims with information" (2004: 5). The Irish Council for Civil Liberties (2008: 21) takes a similar position noting the "lack of initiation on the part of the State actors in their role as information-providers" to victims of crime.

Similarly the SAVI (Sexual Abuse and Violence in Ireland) Report (2002) identified barriers for accessing law enforcement, medical and therapeutic services for those abused and their families. Lack of information from the Gardaí and medical personnel was the main source of dissatisfaction with the services provided. Specifically, the Gardaí were seen to provide inadequate explanations of procedures being undertaken, and medical personnel were seen

as needing to provide more information regarding other available services and options. In relation to counselling services, time waiting to get an appointment was the major source of dissatisfaction.

There remains a problem with the under-reporting of crime, as is more fully documented in chapter 3 of this report.

Other issues that cause concern to victims include harassment, intimidation by the process (Kelleher and O'Connor, 1999); attrition rates (Hanly et al, 2009; O'Mahony, 2009); the lack of private areas in courts; difficulties with procedural rules and legal definitions (e.g. consent in rape cases) (Bacik et al, 1998); delays in the system (Hanly et al, 2009); the lack of opportunity to participate fully in the criminal process; and inadequate support services.

Significantly for the purposes of this research, the lack of recognition of vulnerable witnesses in Ireland has also been identified. In December 2007, Ivana Bacik and her colleagues at Trinity College Dublin published a *Report on Services and Legislation Providing Support for Victims of Crime.* Among other things, it recommended that (2007: 10-11):

> Specific provision should be made…for vulnerable and intimidated victims. A specific definition should be developed for each category and a statement of the additional supports which are to be made available to such victims. Useful models for such supports may be found on other jurisdictions…The creation of a statutory definition of vulnerable and intimidated witnesses should be considered, as well as guidelines on the identification of intimidated and vulnerable witnesses and measures to provide protection and reassurance to intimidated witnesses…Guidelines should be issued in order to ensure that appropriate interview methods are used in respect of vulnerable or intimidated witnesses, and providing for a full range of investigative and pre-trial support measures.

Bartlett and Mears (forthcoming) recently analysed Rape Crisis Network Ireland data on incidents of sexual abuse, disclosed by people with disabilities between 2008 and 2010. They also conducted an online survey of people with disabilities. They identified a number of problems including 1) under reporting, 2) fear of being disbelieved or blamed, 3) dissatisfaction with professional services such as the Gardaí, and 4) difficulties of accessing general services. Elsewhere it has been noted that "the greatest impediment to

accommodating complainants with mental disabilities lies in our assumptions about what is necessary to ensure a fair trial for an accused…*A+ more nuanced understanding of what a fair trial requires would facilitate a more effective utilisation of existing accommodations as well as the development of new ones" (Benedet and Grant 2007: 547). In Ireland, Delahunt (2010) makes a similar point, suggesting that we continue to "endure a situation where our adversarial system risks imposing a secondary trauma on the complainant". She went on to note:

> As the courts move towards pre-trial deposition, legislation is required which will take the vulnerable witness out of the trial process entirely by giving all of his or her evidence pre-trial. For the complainant, having his or her testimony deposed[20] soon after the alleged incident will mean not having to endure the considerable delay waiting for the case to come to court…We have legislation here which is 20 years out of date [referring to the Criminal Evidence Act 1992], which is limited in respect of the offences to which it applies, which contains archaic, undefined terms, which does not provide statutory guidelines for Gardaí or courts to work within, and which does little to safeguard the interests of either the complainant or defendant.

2.7 Conclusions

The last few decades have witnessed a shift in terms of victims' rights in Ireland, as legislative and policy measures which seek to promote and support victims in the criminal justice system have come into operation. At the same time, the emergence of a network of support organisations outside the statutory criminal justice agencies is providing assistance to victims in many different forms. As part of the wider victim constituency, people with disabilities are covered by the same criminal law as other people, and should have equal access to support services provided to victims of crime. Yet, we remain limited in our knowledge of how people with disabilities are affected by, or are able to avail of, such services and legal and policy provisions. It is with these issues that the next part of the report is concerned, as we look at the experiences of people with disabilities' at the different stages of the criminal justice process.

[20] A deposition is an out-of-court statement of a witness that is reduced to writing for later use in court.

PART I

THE LITERATURE REVIEW

3. First encounters with the criminal justice system: reporting, recording and investigating crimes.

3.1 Introduction

The initial steps of engagement with the criminal justice system, for a victim following a crime, involve the reporting and recording of that crime. In Ireland, this process can involve several agencies including the Gardaí, victim support organisations and social services/care-giving networks, and families of the victims. The updated Victims Charter 2010 produced by the Victims of Crime Office under the Department of Justice and Law Reform contains commitments from the Crime Victims Helpline and the Gardaí, amongst other agencies. For example, the Gardaí state their commitment to 1) responding quickly to, and investigating, a complaint, 2) providing the contact details of the station handling the case as well as a PULSE incident number which is referenced to the case, and 3) keeping the victim informed as the case proceeds. There has however been little discussion of, or research on, victims with disabilities' experiences of reporting and recording crime in Ireland. Literature emanating from the United States, Canada, Australia and Britain provides some insights into the experience, including the barriers and challenges people with disabilities face in their initial attempts at seeking redress for abuse through the criminal justice system. These include:

- the under-reporting of crime;
- perceptions of victims with disabilities held by police, including the identification of disability, and by extension, the recognition of vulnerable and intimidated witnesses (VIWs);
- issues of perceived capacity of people with disabilities to act as 'reliable' reporters of crime, particularly in light of the emphasis on the orality of criminal proceedings;
- levels of referral to, and availability of, support services for victims of crime with disabilities.

As the first point of contact with the criminal justice system, it is clear that the police, or, Gardaí, play a very significant role in shaping the way in which an alleged offence is handled, and whether it proceeds to trial. It is perhaps for this reason that many of the initiatives that have been developed internationally to improve the access of people with disabilities to justice, focus on facilitating a better understanding of disability on the part of the police, and creating more effective communication between police and people with disabilities as victims of crime. We highlight some of these initiatives towards the end of the chapter.

3.2 Under-reporting of crimes and abuse by people with disabilities

A discussion of the reporting and recording of crime by people with disabilities cannot be set in context without referring to the *under-reporting* of crime, which is a prevalent phenomenon among the mainstream victim population in Ireland and internationally. According to a survey of crime victims conducted for Ireland's Commission for the Support of Victims of Crime, "slightly more than 1 in 5 respondents did not report the crime to the Gardaí" (Kilcommins et al, 2010: 31). According to the same report, decisions on whether or not to report a crime were influenced by factors such as victims' perceptions regarding the effectiveness of the criminal justice system and whether criminal proceedings were likely to be successful, as well as how far they expected their claims to be taken seriously.

The reasons for the under-reporting of crime that pertain to the mainstream victim population are arguably compounded for people with disabilities, and whilst rates of under-reporting are difficult to calculate, international literature acknowledges significant under-reporting of crime amongst the disabled population (Guidry Tyiska, 1998; Sharp, 2001; van den Bergh and Hoekman, 2006; Lewin, 2007; Petersilia, 2001). As an example, a study of abuse and harassment amongst people with learning disabilities in the UK conducted by Mencap titled *Living in Fear* found that only 17% of participants who had experienced some form of abuse reported it to the police (Mencap, 1999). Meanwhile, in a survey of hate crime amongst people with disabilities in Scotland, just under half of those who had experienced feeling frightened or who had been attacked, reported it to the police. Of those who did report in the latter study, "three-quarters...said that whilst the police had taken

details of the incident, they were generally unable to stop the attackers" (Disability Rights Commission and Capability Scotland, 2004: 27).

Such a statement bears witness to people with disabilities' concerns about engaging with the criminal justice system, and the perceived effectiveness of the police in dealing with their reports of crime and victimisation. A number of authors have proposed reasons for the particularly low rates of reporting of crimes amongst people with disabilities (Petersilia, 2001; Lewin, 2007; Hoong Sin et al. 2009, Hayes, 2004; Joyce, 2003). These include:

- lack of knowledge about how to report a crime, and lack of access to support in doing so;
- communication difficulties, and lack of physical access to police premises;
- fear of the consequences of reporting and of authority;
- uncertainty about whether an incident should be defined and reported as a crime in the first place.

The dependence of many people with disabilities on carers or service providers, whether in the community or in residential institutions, is a further significant variable in the picture of reporting and under-reporting of crime against people with disabilities. For example, in the case of people with intellectual disabilities, Petersilia (2001) suggests that people may be financially or emotionally dependent on the person who has perpetrated a crime or abuse against them, therefore leading them not to report the abuse or victimisation.

Studies also show that people with disabilities are often more likely to report a crime to a third party than directly to the police, leaving the judgement about whether to engage law enforcement agencies in the hands of carers, service providers and families. The danger of this, however, is that third parties may choose to do nothing. The Mencap (1999: 11) study noted that some 54% of people with learning disabilities who report abuse do so to staff members, but for over half of this group, the abuse continued after reporting. As Lewin (2007: 170) suggests, one possible reason for the lack of reporting in this context is the perception that "abuse in residential settings or when the perpetrator is close to the victim is looked upon as a private or family matter". This is also highlighted in an extensive study

commissioned by Australia's Office of the Public Advocate which found that many institutional crimes against people with intellectual disabilities are not reported due to peer pressure amongst staff not to report, uncertainty amongst staff about what types of incidents should be reported to the police and which should be dealt with internally, and concerns from staff that they did not want to put the person with learning disabilities through the stress of dealing with the criminal justice system (Johnson et al., 1988).

The latter point is connected to the wider issue of the construction of people with disabilities as 'vulnerable', and the failure to recognise abuse perpetrated against them as a criminal offence. There is a balance to be struck between rights and protection, but the overwhelming construction of people with disabilities as vulnerable suggests that intimidation or harassment often become seen as a 'natural consequence' of having an impairment. Quarmby and Scott (2008) in their report on disability hate crime in the UK, note how this construction has an impact in contributing to arguments that people with disabilities should not live independently, and has led some people with disabilities to not report incidences of hate crime for fear of intervention from police and/or social services, in which they may have to cede any independence that they already have (see also Hoong Sin, 2009).

Perceptions, attitudes, and practical issues regarding lack of clarity in reporting procedures, all have a role to play in the under-reporting of crime and abuse as it affects people with disabilities.

3.3 The experience of reporting a crime

Reporting, recording and investigating a crime are complex processes. Victims of crime must first be able to convince police that an incident has happened; if it is taken seriously by the officer(s) in question, the crime may be recorded, an interview undertaken, and a statement made. Decisions are then made by the police or Gardaí about whether to investigate the case further and, in conjunction with the relevant prosecution service, whether to bring the case to trial. There are few studies that track people with disabilities as they move through the criminal justice system. However, it is clear that people with disabilities who encounter

the system can experience significant disadvantage at the different stages in the reporting process. For example, Quarmby and Scott's (2008) report *Getting Away with Murder*, demonstrates how people with disabilities' reports of abuse were not listened to, or taken seriously by police in the UK. Other studies have pointed to the very low proportion of cases involving people with intellectual disabilities which are taken to court and prosecuted (Brown et al., 1995; Mencap, 1997). A study undertaken by UK charity Mencap entitled *Barriers to Justice* (1997) estimated that there were some 1,400 suspected cases of sexual abuse against people with learning disabilities a year, but only a quarter were investigated by the police and less than 1% were prosecuted successfully. The aforementioned study on disability hate crime in the UK also found that successful outcomes of prosecutions were less likely for 'disablist incidents' compared to hate crime involving racism or homophobia (Quarmby and Scott, 2008).

In the Irish context, what limited research exists on this area pertains to people with mental illness and intellectual disability in cases categorised as rape. In a survey of 'rape' case files received by the DPP between 2000 and 2004, Hanly et al. (2009) found that 13.1% (78) of their sample involved a complainant with a history of mental illness. Of these 78 cases, only two were prosecuted. Analysis has also recently been conducted by the DPP's Prosecution Policy Unit in cases initially categorised as 'rape' between 2005 and 2007. In relation to files received by the DPP from the Gardaí in 2005, the analysis found that 3.7% (11) cases involved complainants with a history of psychiatric illness, none of which were prosecuted (Law Reform Commission, 2011; Hamilton, 2011). 5.8% (17) of cases involved someone with a learning disability, and of these cases, only four were prosecuted, whilst another was withdrawn by the complainant (Hamilton, 2011).

The reasons for the gap between reporting and prosecution as they are discussed in international literature appear to be multiple, but it is clear that first encounters with the police have a significant influence on how, if at all, a case proceeds (McAfee et al., 2001). Keilty and Connelly's (2010: 282) research on the experiences of women with an intellectual disability in Australia making statements to police regarding sexual assault provide helpful insights in this regard. They found that a lack of confidence by the police in the courts to deliver acceptable outcomes, a desire to protect female victims from the excessive trauma

of the court experience, as well as the belief that protection of the victim from future assault is more important than prosecuting the suspect, all led to police not completing statements or proceeding to prosecution. They argue that such interventions by the police at the stage of making a statement have adverse implications: "Reticence to put forward cases filters the number of cases proceeding to trial, thus limiting the extent to which courts are exposed to and are forced to cater for witnesses with intellectual disability" (Keilty and Connelly, 2010: 282).

While we explore some of these barriers regarding police perceptions in more detail in the next section, one significant factor which influences the way in which justice is delivered in countries such as Ireland, UK, the US, Australia and Canada, and has the potential to disadvantage people with disabilities, relates to the common law system. Common law systems, unlike the inquisitorial systems which characterise many European countries, are adversarial in nature, relying heavily on the giving of oral evidence which can be challenged in court through cross-examination. The 'principle of orality' and the confrontational nature of the common law system has been shown to be extremely stressful, and no more so than for those witnesses deemed to be vulnerable (Burton et al., 2006). Research has shown that "sometimes the police tested the resolve of...witnesses...by being as brutal to the victims in the police station as defence lawyers were likely to be in court" (Burton et al., 2006: 1). People with disabilities are likely to face extreme challenges in such a process, where the requirement to 'perform' in giving evidence is central to the process of prosecution. It is for this reason that many countries have introduced special measures for vulnerable witnesses which are laid out in chapter 4.

3.3.1 The influence of police perceptions and attitudes

Given their role as the gatekeepers to the criminal justice system, the attitudes and dispositions of police towards people with disabilities who are victims of crime have a significant bearing on those victims' experiences of seeking legal redress. McLeod et al's (2010b: 5) study of the court process for people with intellectual disabilities and mental illness in England note that victims' views regarding how they were treated at the initial reporting stage were very much connected with how interested and empathetic the police

officers appeared. As they note, reporting a crime or making a statement can be a stressful experience, and finding the right language to communicate an incident can pose challenges, particularly for people with intellectual disabilities. Police perceptions' about people with disabilities, not least regarding their capacity to be reliable reporters and witnesses of crime, have been shown to be key in understanding how incidents of abuse or harassment are subsequently dealt with.

A small, but growing, body of work has explored police attitudes and perceptions towards people with disabilities in Australia, the US and UK (see for example, Bailey et al., 2001; Chown, 2010; McAfee et al., 2001; McAfee and Musso, 1995; Modell and Mak, 2008). These studies suggest that police officers often endorse general stereotypes about people with intellectual disabilities being vulnerable and lacking the capacity to be competent witnesses. Keilty and Connelly (2010), for example note how police officers in Australia held myths about women with learning difficulties, that they were sexually promiscuous and lacked credibility as complainants. McAfee et al's (2001) comparative survey of police officers in the US and Australia also notes how police officers stated that they were more likely to be sympathetic if the victim of a crime was someone with intellectual disabilities, thereby reinforcing notions of vulnerability, whilst Modell and Mak's (2008) US research found that many police officers had difficulty distinguishing between different disabilities, most particularly intellectual disability and mental illness. The latter study also raised concerns about the lack of awareness of autism as a specific impairment, a finding backed up by research in the UK (Chown, 2010). Awareness of disability is variable therefore, and stereotypical views abound which in turn shape police practices.

3.3.1.1 Identification/disclosure of disability

A number of authors have noted that a problematic issue is how, and at what point, a person's disability is identified and disclosed in the process of reporting a crime (Law Reform Commission New South Wales, 1993; Sanders et al, 1996; Burton et al., 2006). For police officers, the issue of identifying a disability is not always straightforward. For example, Sanders et al (1996) in their study of police forces, social services departments and health authorities in England and Wales note that the existence of a learning disability is not

always readily apparent, and people may hide their impairments. Other authors have noted how police rely on personal experience to identify learning disability, based on assumptions about people's behaviour and appearance (Howard and Tyrer, 1998). A failure to recognise a victim's disability, and therefore their rights and requirements, has serious ramifications for the equitable treatment of people with disabilities by the criminal justice system. For example, Sanders et al's (1996: 2) study noted that the failure to recognise learning disabilities in witnesses meant that "police did not always use appropriate interviewing techniques. The police practice of constructing witness statements which witnesses then sign, meant that the nature of the witness' disability was not always clear to the prosecutor who later reviewed the case". A further study conducted on special measures introduced in the UK for vulnerable and intimidated witnesses also noted that police often experienced difficulty in the early identification of vulnerable witnesses, with some people not being identified as requiring special measures until they reached court, by which point it was too late to put any intervention in place (Burton et al., 2006). This finding points to the importance of communication between different agencies in the criminal justice system, and engagement between the police and other agencies such as the Courts Service, victim support organisations, and health and social care agencies who may be working with the individual.

3.3.1.2 Perceptions of capacity

A key stereotype which has been shown to shape police practices towards people with disabilities is the widely held perception that they lack the capacity to be credible reporters of crime, and therefore poor witnesses (Hoong Sin et al., 2009). There is little doubt that people with intellectual disabilities can experience particular difficulties in recalling and communicating an incident. They may be more prone to suggestibility and the need to appease a questioner. However, as Sanders et al. (1996) note, few people with learning disabilities experience difficulties with all three elements (memory, communication and suggestibility), and research has shown that alternative questioning approaches can elicit more accurate information (Gendle and Woodhams, 2005). It is therefore clear that police need to appreciate different ways in which people with intellectual disabilities (and other

disabilities) communicate if they are not to be written off as unreliable witnesses. This also involves the crucial task of police checking that victims understand what is being said, and that they also understand the process of seeking redress.

3.3.2 Variability in police policies, practices and procedures

In all jurisdictions, law enforcement agencies have to work within the confines of the law, policies and procedures. However, studies have shown that the reality of the police's response to people with disabilities and crime against people with disabilities can differ significantly. Whether in the initial recording of crime, or the investigation which involves interviewing the person with a disability, police procedures are subject to variability. For example, Bailey and Barr (2000) found significant variability in the way cases involving people with intellectual disabilities who had experienced sexual assault were dealt with by police forces across the UK. Few had specific policies in place in relation to dealing with sexual abuse involving people with intellectual disability, and of those who responded, some 66% said that the teams who investigated child abuse cases were also responsible for investigating cases involving adults with learning disability. This is potentially problematic for the way in which it conflates issues affecting children with adults with intellectual disability, increasing the possibility of infantilising people with learning disabilities. Bailey and Barr's (2000) concern was that a lack of clear policies on dealing with such cases could lead to individual attitudes of police personnel becoming influential, attitudes which, as the previous section has shown, are not always appreciative of the needs and rights of people with disabilities.

A recent study commissioned by Mencap into the police's response in the UK to disability hate crime also points to some of the variations with police practice. For example, the report noted that "there was little consistency in the structures that the different police services...had in place to tackle hate crime" and that a range of different personnel within the service often dealt with reports of hate crime (Mencap, 2010: 4). Indeed, it is the first contact that can be the most important for the person reporting a crime, and a lack of experience of disability on the part of this person can be problematic. McCleod et al's (2010b) study of court users in England noted that in very occasional circumstances a

special-needs trained police officer would be present when an interview was being conducted, and statement made. However, this was not the case in all police forces across England. Such differences, and often a lack of clear policies and procedures regarding how to deal with cases involving people with disabilities, can lead to a failure to investigate crimes against people with disabilities, and is also a reason why legislation and initiatives have been put in place in several jurisdictions to support people deemed to be vulnerable witnesses of crime.

3.3.3 Supporting people with disabilities in their encounters with police

The difficulties raised above, including the attitudes of the police and lack of clear procedures, have led to a number of developments in different jurisdictions designed to support people with disabilities as vulnerable witnesses. A number of authors have also pointed to the need for disability awareness training for police officers, which we address in this section.

3.3.3.1 The Introduction of 'special measures'

Certain jurisdictions have put in place specific measures to support people with disabilities when they report a crime, measures which in some cases are enshrined in legislation. Many of these form part of initiatives aimed at the more general category of 'vulnerable and intimidated witnesses' (VIWs). The terminology of being a vulnerable witness may not sit easily with the goals and language of the disability movement, but nevertheless provides access to a potential source of support in negotiating the adversarial justice system. While we consider the provisions made under initiatives to support VIWs in more detail in Chapter 4, VIWs are generally deemed to include children, people with disabilities, and people vulnerable to intimidation. Measures also vary across jurisdictions, but have been shown to include:

- flexibility in types of evidence that are considered admissible;
- changes in the way evidence can be provided;

- changes to the requirements governing the competence of witnesses and of the need to give evidence under oath (Reid Howie Associates, 2002a).

For example, as mentioned in Chapter 2, Ireland's Criminal Evidence Act 1992 has made provisions for pre-trial video recorded evidence to be presented in court. Section 16 (1) of the Act applies to victims who are either under 14 or have a 'mental handicap', and allows recording of evidence "during an interview with a member of the Garda Síochána or any other person who is competent for the purpose" (Criminal Evidence Act, 1992). However, as Delahunt (2010) notes, the legislation is problematic as the complainant may still have to suffer the trauma of undergoing cross-examination in court.

The police are arguably the frontline in identifying vulnerable witnesses and putting special measures in place, although research has suggested that they often fail to do so, or may presume what types of support VIWs might need (Burton et al., 2006). Many measures relate to the court process, but one of the first interventions that police can be required to make is to engage an intermediary where they feel the victim requires it. For example, one of the special measures introduced by the Youth Justice and Criminal Evidence Act 1999 in England and Wales is the provision of the Registered Intermediary, who can assist in communication between the witness and police at investigation stage, as well as in pre-trial meetings, and in court (O'Mahony, 2009). In Scotland, a similar provision known as the Appropriate Adult Scheme (whilst not set down in legislation) is achieving increased usage in the justice system, and is offered to witnesses, victims and suspects who are described as 'mentally disordered' (http://www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult). There is little doubt that for victims, having an individual to accompany them through the process of reporting can offer significant support, whether that person is known to them, or is an independent professional. For example, McCleod's (2010b) study of court users in England noted that victims with learning disabilities and mental illness found themselves less anxious when a familiar person was with them; it also enabled police to flag their vulnerability and need for support at an early stage. Box 3.1 illustrates some more of these initiatives in comparative context.

Box 3.1: initiatives aimed at providing a 'support person' to facilitate people with disabilities in the reporting and investigation of crimes

The Independent Third Person programme in the State of Victoria, Australia is a service provided to people with a cognitive disability or mental illness during interviews with police. ITPs are volunteers trained by and registered with the Office of the Public Advocate in Victoria and provide communication support to individuals, as well as help them understand their rights. The service is available to victims of crime as well as offenders.

Source: http://www.publicadvocate.vic.gov.au/services/108/

Under the **Law Enforcement Powers and Responsibilities Regulation 2005,** New South Wales, Australia, people with disabilities are classified as 'vulnerable persons'. If it is established that a person has a disability, the person should have the right to a support person when being interviewed by the police, whether they are a victim or offender. The support person can be "a carer, case worker, legal representative, guardian or... interpreter".

http://www.police.nsw.gov.au/community_issues/disabilities

It should be noted that police forces have also put in place other support mechanisms for people with disabilities, particularly around issues of accessibility, although these may not be enshrined in legislation. Many of these initiatives do not necessarily stem from legislation regarding VIWs in the criminal process, but from more general anti-discrimination or human rights legislation which sets out the need to make 'reasonable adjustments' or accommodation for people with disabilities.

In the UK, a number of police forces are signed up to a scheme called Police Link Officers for the Deaf (PLOD), which exists to offer outreach and support to the Deaf community (SignHealth, 2011), whilst police in a number of other jurisdictions have established emergency text messaging services for people who are Deaf and hard of hearing: the New Zealand Police's 111 TXT service is an example of this (http://www.police.govt.nz/deaf-txt; Rubin and Dunne, 1994).

In Ireland the Gardaí's Diversity Strategy and Implementation Plan 2009-2012 sets out a number of statements of intent and 'successes' it has had in the area of disability. A number of these 'successes' are set out in Box 3.2.

Box 3.2: Gardaí's Diversity Strategy and Implementation Plan 2009-2012: Successes regarding disability

- A study is underway into the provision of text phones for persons with hearing disabilities to enable members of the deaf community to communicate by text with the Garda Síochána.
- Braille Embossers are being introduced in each Garda region, to issue written communications which are accessible to persons who have a visual impairment.
- Any new literature being produced by An Garda Síochána will take account of its obligations under the Disability Act 2005.

Adapted from An Garda Síochána (2009) *Diversity Strategy and Implementation Plan 2009-2012: 'Beyond Legal Compliance'.* P.16.

3.3.3.2 The need for disability awareness training

The apparent lack of awareness regarding the specific needs of people with disabilities amongst police forces is attributed by several authors to the lack, or variable nature, of disability awareness in police training (Chown, 2010; Petersilia, 2001; McAfee and Musso, 1995). In a survey of police academies in fifty states in the United States, McAfee and Musso (1995) noted that most states provided training in the area of mental illness and in skills such as crisis intervention, but there was great variability in the amount and type of training provided. Similarly, a report in the UK notes that there is no training in Deaf awareness within national police training (SignHealth, 2011). Other studies have sought to evaluate and demonstrate the benefits of awareness raising events in changing police attitudes: for example, Bailey et al's (2001) evaluation of a training event aimed at police officers in Northern Ireland concluded that the event led to a positive shift in attitudes towards people with an intellectual disability.

It is not surprising then, that disability awareness training amongst law enforcement agencies is seen as crucial to changing responses to people with disabilities who are victims of crime. In the US, the requirement to make 'reasonable accommodations' under the American with Disabilities Act, has been "interpreted by Congress and the US Department of Justice as requiring disability training for police" (McAfee et al., 2001: 161), whilst a number of initiatives have sought to provide training for police forces, often led by crime support services or organisations of people with disabilities themselves.

In Ireland, as far back as 1996, the Commission on the Status of People with Disabilities (1996) recommended that Gardaí and others working in the area should receive disability awareness training. The Gardaí Diversity Strategy (2009: 16) notes its intention of "[d]eveloping competence, expertise and external linkage to promote internal inclusion of those with disabilities and external response to citizens with disabilities", and "raising awareness of disability issues in the current Garda Síochána *Diversity Works* training Programme."

Further international initiatives regarding police training are set out in Box 3.3.

Box 3.3 Training initiatives/guidance on disability for police/law enforcement officers

The **Office for Victims of Crime**, under the United States Department of Justice, has produced a series of guides for law enforcement officers which address working with people with disabilities. These include *First Response to Victims of Crime* (2008)*, First Response to Victims of Crime Who Have a Disability* (2002), *Victims With Disabilities: Collaborative, Multidisciplinary First Response* (2009), as well as a video and discussion guide on *Meeting the Needs of Underserved Victims* (2005).

Cleartalk is a project which was developed through research involving police officers and other stakeholders in New South Wales, Australia, to improve the communication of police with people with learning disabilities. The outcome of the project was a set of modules to be used in training police how to communicate more effectively with people with intellectual disabilities. (See Brennan and Brennan (1994) *Cleartalk: police responding to intellectual disability.* New South Wales: Charles Sturt University. Accessed at http://www.criminologyresearchcouncil.gov.au/reports/25-92-3.pdf

3.3.4 Availability of/referral to support services

Another crucial part of the picture in the reporting and recording of crime is the role that support services have to play in facilitating people with disabilities to report a crime in the first instance, but also in providing support from that point onwards. Given that people with disabilities are often more likely to report to a third party than directly to the police, the need for specialist support services is significant. This also requires better joint working between police and potential referral bodies, and awareness amongst police of the existence of such services. Evidence to date suggests that in the Irish context at least, such awareness does not always exist. For example, under the Victims Charter 2010, it is the commitment of the Garda Síochána to inform victims of crime or traumatic incidents in writing of the helpline and other support services available. However, Kilcommins et al's (2010: 173) report on the needs and concerns of the victim population in Ireland found "an insufficient awareness of the Crime Victims Helpline". They state that "the fact that a number of the professional/community organisation respondents lamented the lack of a central referral organisation for victims again highlights a lack of awareness of the existence and role of the Crime Victims Helpline" (ibid). In terms of accessibility, the Crime Victims Helpline offer an email and text service, and such non-verbal points of access facilitate its usage by, for example, the Deaf community as well as persons who experience difficulty with speech. However, there is a question about how far such a service would be known about amongst people with disabilities.

In a number of other jurisdictions, specific services for people with disabilities who have been victims of crime have been introduced, many of which act as a first point of contact for people with disabilities. A number of these are set out in Box 3.4. They range from telephone hotlines to special guidance developed for people with disabilities regarding how to deal with, and report, crime and abuse. Such services are significant in facilitating people with disabilities to report a crime and also provide on-going support as they move through the criminal justice system.

Box 3.4: Examples of specific support services for people with disabilities to assist reporting of crime

The Disability and Abuse Hotline, Australia, is a national hotline that people with disabilities can ring or contact by email to report abuse. The hotline can discuss with the caller how to resolve the complaint and put them in touch with an advocate if required. The hotline is funded by the Australian Government through the Department of Families, Housing, Community Services and Indigenous Affairs, but is operated by People with Disability Incorporated.

http://www.disabilityhotline.org/

VOICE UK is a national organisation in the UK which provides support to people with learning disabilities who have experienced crime or abuse. It runs a telephone hotline which people can ring, and also provides training on issues such as hate crime and 'achieving best evidence' to different organisations, including the police.

http://www.voiceuk.org.uk/

3.4 Conclusion: barriers and facilitators in reporting a crime

The experience of reporting a crime can be a stressful process, in which people with disabilities can find themselves confronted with barriers. These barriers can mean that people with disabilities fail to report crimes. Or when they do and their claims are not taken seriously, cases may then not proceed to court. This undermines the role of criminal law in protecting the rights of, and providing redress for, people with disabilities. The literature has identified barriers and facilitators in the process of reporting a crime.

3.4.1 Barriers to reporting and recording of crime

- **Uncertainty on the part of people with disabilities,** and third parties, regarding what constitutes a crime, and when reporting of an incident should take place. People with disabilities can often believe that abuse does not warrant reporting.
- **Lack of trust and fear by people with disabilities** of the criminal justice system, and police as a source of authority.

- **Negative perceptions held by police personnel** regarding people with disabilities, and particularly people with intellectual disabilities, which can lead to reports of crimes not being taken seriously. Police tend to hold stereotypical views about people with disabilities as lacking capacity and competence as witnesses.
- **Lack of disability awareness of police personnel**, which can lead to a failure to identify people with disabilities as vulnerable witnesses, or recognise where they may need further supports.
- **Lack of accessible police stations, information and modes of communication.** For example, Deaf people may have difficulty in making contact with the police in an emergency situation.
- **Lack of clear recording procedures** for crimes as they relate to people with disabilities.
- **Variability in police policies and practices** relating to who deals with people with disabilities when they report a crime.

3.4.2 Facilitators to the reporting and recording of crime

- **Early identification of people with disabilities as vulnerable witnesses** so that supports can be put in place if necessary.
- **Police officers trained in disability awareness**, able to identify disability and recognise when appropriate supports need to be put in place.
- **The provision of accessible information** for people with disabilities regarding the process of reporting a crime, as well as accessible police premises and communication supports such as sign language interpreters in police interviews.
- **The presence of an intermediary** who can support a person through the reporting and interviewing process.
- **Greater communication between police and service providers** such as health and social care agencies that people with disabilities engage with, as well as the disability community itself.
- **Availability of specialist victim support services** who are experienced in working with people with disabilities, and can provide advice and support.

4. Accessing justice through the courts

4.1 Introduction

The experience of going to court has been documented as one which is often traumatic for victims and their families (see for example McCleod et al., 2010c; Ellison, 1999). Having to relive the events of the crime at the centre of the case is an ordeal and if the structures, systems, and practices of the court system and associated agencies fail to take victims' needs into account, the experience of going to court can result in what has been termed 'secondary victimisation' (Walklate, 2007).

Access to a fair trial through the courts has been set down in European and human rights legislation, although this has often been in the context of the rights of the defendant. However, the European Commission's *Framework Decision on the Standing of Victims in Criminal Proceedings* (2001) recognises the need to protect the rights of victims, and highlights the need to provide information to victims at all stages of criminal proceedings. Moreover, it notes that "Member States should take steps similar to those taken for defendants to ensure that communication difficulties regarding understanding of and involvement in criminal proceedings are minimal for victims that have the status of witnesses or parties to the proceedings"(European Commission, 2001[21]). This chapter examines in detail the understanding of victims with disabilities as vulnerable witnesses in the legal process, issues of capacity among such victims and attitudes among the judiciary towards such witnesses. Throughout, it considers in more detail some of the special measures that have been put in place to improve the court experiences of disabled victims of crime and their families.

The key agencies of the court system include the Courts Service, the Office of the Director of Public Prosecutions (DPP) and the Probation Service. In Ireland, upon the reporting of a serious crime to the Garda Síochána, a file is prepared and sent to the DPP. It is the role of the DPP to decide whether there is enough evidence to prosecute the person accused of the crime, and to determine what crime the accused should be charged with. In the Victims

[21] Accessed at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:en:PDF

Charter (Department of Justice and Law Reform, 2010), the Office of the DPP states that victims' views will be taken into account when taking the decision whether or not to prosecute. Also, the DPP commits to revisiting decisions taken when victims do not agree with the outcome. In circumstances where a decision is made to bring the case to trial, the DPP commits to arrange for the victim to talk to the prosecution solicitor and barrister before the court case begins should they wish to, and will explain to the victim what they can expect to happen in court. In the Victims Charter, the Probation Service commits to helping victims in the preparation of a victim impact statement, to supporting victims who are invited to attend family conferences for young offenders, and explaining the meaning of the different orders that they operate for the court, upon request. This may be done in person, on the phone, or in writing, depending on the circumstances.

There are two main sets of issues that people with disabilities face in negotiating the process of going to court. One is what might be termed **court systems and procedures,** which includes issues such as the provision of information to the individual victim prior to, during, and after their court appearance, as well as the process of negotiating court buildings and premises. The other relates to the **evidence-giving process,** and the challenges this raises for people with disabilities, as for other vulnerable witnesses. Legislation in different jurisdictions which recognises the needs of vulnerable witnesses has put in place measures to address a number of these concerns, with the aim of making the court process less hostile and intimidating for victims of crime. However, it should be acknowledged that many of these measures were first introduced to assist children as witnesses, and whilst there has been growing recognition of people with disabilities as vulnerable witnesses, it is still the case that there has been considerably more emphasis (and indeed research) on special measures as they apply to children (Reid Howie Associates, 2002a, 2002b; Baksi, 2011). For example, in England and Wales, provisions made under the Youth Justice and Criminal Evidence Act 1999 mean that all children under the age of 17 are automatically entitled to a number of special measures in certain types of cases, such as use of CCTV in court, and pre-recorded video evidence. In the context of supports for people with disabilities, however, it is not just vulnerable witnesses legislation which has a role to play: anti-discrimination legislation, such as the Disability Act 2005 in Ireland, Disability Discrimination Act (DDA) 2005 in the UK, and Americans with Disabilities Act (ADA), are also

significant in ensuring that positive action measures are implemented, and the rights of people with disabilities are protected in the court system.

4.2 Negotiating the agencies of the court system: two prevailing issues

4.2.1 Encountering barristers and the judiciary.

The process of going to court brings people with disabilities into contact with another range of professionals and service providers, including administrators of the court system, barristers and judges. Jurors, whilst not professionals per se, are also part of the court experience and may make judgements about a person's competence to be a reliable witness. Encounters with these groups are significant, as their perceptions and understanding of disability can often shape responses to people with disabilities in court.

A number of authors have pointed to a failure on the part of legal professionals to understand the capabilities of people with learning disabilities, or adapt their questioning of this group in court to facilitate 'best evidence'. Birch (2000) and Sanders et al (1996), writing in the UK context, point out the need to acknowledge that people with learning disabilities are not a homogenous group, with Birch (2000) highlighting the requirement for decision makers in the criminal justice system – in which she includes prosecutors, judges, magistrates and jurors – to be fully educated about the background of the individual witness.

Jurors have been shown to perceive evidence provided by people with learning disabilities as unreliable (Stobbs and Kebbell, 2003). Such a perception may not be helped by defence counsel, who, even if they are aware of the witness's background, may still utilise a person's disability to create doubt around their testimony, thereby reinforcing unhelpful assumptions by the jurors about people with learning disabilities' (in)capacity (Birch, 2000). Such assumptions may also be present in the stages prior to the courtroom, in terms of decisions that are made regarding whether a witness with disabilities is deemed to be 'vulnerable' and therefore eligible for special measures which exist in some jurisdictions. For example, research in England has highlighted how special measures may not be applied because a

witness is deemed to be 'too vulnerable', something attributed to "a cultural difficulty that the police and Crown Prosecution Service often have or have often had in conceptualising people with major disabilities as witnesses" (Burton et al., 2006: 12).

Within the courtroom setting, it is the judge who manages the court process; he or she has responsibility for ensuring the fair trial of the defendant, but must also have due regard to the interests of witnesses, particularly those deemed to be vulnerable and who may have to recount a traumatic incident. In their examination of a selection of cases taken to court in England and Wales in which people with learning disabilities acted as witnesses, Kebbell et al. (2001) note the important role of the judge in intervening to ensure clarity in questioning. However, they also state that "many judges want to intervene, but lack the necessary knowledge of people with LDs to do so" (Kebbell et al, 2001: 101). It would seem apparent that there is a need for the calls for training outlined in the previous chapter to extend to the portfolio of the judge and their capacity in the carriage of justice in courts of law.

4.2.2 Partnership working and communication between agencies of the criminal justice system

In the criminal justice system, victims of crime experience a series of different agencies. Their initial contact point may be the police/Gardaí, but if the case goes to trial, they are likely to have to engage with the court service and legal personnel. A number of studies have noted that effective communication between these different parties is crucial if the experience of the victim of crime is to be as positive as possible. Research has shown this often not to be the case, however. For example, Burton et al's (2006) study of special measures for vulnerable witnesses in England and Wales noted that police often failed to communicate a witness's vulnerability to other agencies, including the Crown Prosecution Service, thereby meaning that such agencies could not make their own assessment of the victim's needs for special assistance prior to the trial. This also meant that special measures for victims were often applied for too late, as the person's 'vulnerability' was only identified

for the first time by the Witness Service[22] when the person attended court. Their research also found that despite police and staff from the Crown Prosecution Service claiming that they had strategy meetings around cases involving VIWs, no examples could be found of this in the cases that they examined.

Similarly, McCleod et al's (2010c) study of court users with learning disabilities and mental illness in England noted that where the witness was happy to have their impairment disclosed to the court, they were unclear about who should be responsible for this. In certain cases, the research found that whilst the person had disclosed their impairment to the police, legal personnel or court staff in the pre-trial phase, this had not always been communicated to the judiciary or magistrates involved in the hearing. This, in turn, often proved highly stressful for the victims, who felt unprepared to disclose their condition to the whole courtroom in public. For Burton et al (2006), such examples of mis-communication could be avoided for vulnerable witnesses if pre-trial visits to the court became a staple part of the supports provided to victims of crime. Box 4.1 outlines an initiative aimed at avoiding lack of communication between different criminal justice agencies.

Box 4.1: Witness Care Units

Witness Care Units in England and Wales provide 'a single point of contact for victims and witnesses from the point of charge until the conclusion of the case' (Lee and Charles, undated: 8). The initiative is part of a collaboration between the police force and the Crown Prosecution Service under the 2005 'No Witness, No Justice' programme. The scheme facilitates a detailed needs assessment of the needs of the witness, which informs the remainder of their journey through the criminal justice system. Such an integrated approach can safeguard against a vulnerable category of witness not receiving the support they need.

[22] The Witness Service is a service run by the national charity, Victim Support, to provide independent support to victims of crime who act as witnesses. The Witness Service is available in every criminal court in England and Wales, and is independent of the police and court service (http://www.victimsupport.com/).

4.3. Giving evidence in court

4.3.1 Setting the context: the principle of orality

The principle of orality is a prominent feature of the adversarial process in the Irish criminal justice system, as it is in comparable common law jurisdictions such as the United States, Australia and England. It is described as "the belief that juries are best able to assess the honesty of defendants and witnesses if they give direct oral evidence in person in court" (Burton et al., 2007: 8). This belief clearly benefits those witnesses who have the ability to articulate their point of view, and describe the crime to which they were subjected, in a clear and persuasive manner. As such, the principle of orality has implications for the manner in which certain witnesses are perceived as credible or otherwise. Witnesses who experience speech difficulties may be particularly impeded by the prevalence of oral evidence in the common law system. Another significant group affected is the Deaf community for whom the use of Sign Language as first language means that Sign Language interpretation is necessary for equitable access to court proceedings. Brunson (2008) warns that interpreters who are insufficiently skilled to operate in environments such as the courtroom may mean that only partial support is provided to D/deaf people (see also Mertens, 2000; Miller, 2001).

It has been argued that one of the problematic consequences of the principle of orality is that those professionals involved in the prosecution often avoid talking to prosecution witnesses, for fear of being seen to 'coach' them and affecting their evidence; this is in marked contrast to defendants, who regularly confer with their counsel. Research has suggested that the perceived need to keep a distance often leaves vulnerable witnesses unsupported and has impeded the use of pre-trial special measures meetings, where witness' needs could be discussed (Burton et al., 2007). It is important to note that any supports and special measures provided – including expert witnesses, interpreters, intermediaries and witness support service workers – are not prohibitively confused with coaching, thus allowing VIWs to avail of the supports to which they are rightfully entitled.

4.3.2 Questions of competence and capacity

The legal system is predicated on the assumption that witnesses have the required capacity to be competent to give evidence in trials. Traditionally, the ability to understand the terms of a religious oath in court has been held as a reasonable indicator of one's competence to testify, and of the subsequent reliability of their evidence. However, this frequently led to the exclusion of certain groups of witnesses – including children and people with intellectual disabilities and mental health conditions – from testifying. It is well-documented that people with intellectual disabilities are still today often deemed to be incompetent as witnesses (see for example Milne and Bull, 2001; Stobbs and Kebbell, 2003), and a number of commentators are highly critical of assessing a person's capacity to give evidence on the basis of being able to understand an oath (Birch, 2000; Gudjonsson, Murphy and Clare, 2000). For Birch (2000: 3), "to hold that an adult who is able to give a clear account of events and to deal with questioning about it has no voice in criminal proceedings simply because he is unable to understand an oath is indefensible".

The extent to which a person with intellectual disabilities has to demonstrate competence – and how this competence is to be assessed – varies across jurisdictions. In England and Wales, the Youth Justice and Criminal Evidence Act 1999 draws a distinction between being competent to testify and the ability to take an oath, and presumes that a witness is competent unless they are unable to understand the questions put to them, or their answers to the questions put to them cannot be understood. The Vulnerable Witnesses (Scotland) Act 2004 also abolishes the competence test, in which "the court is no longer entitled to ask preliminary questions of the witness to ascertain whether the witness understands the different between truth and lies, and the duty to give truthful evidence (Scottish Executive, 2005: 5). Presumptions of competence exist in a number of other jurisdictions, including Australia. In Ireland, the law relating to the competence of people with intellectual disabilities is the same as for child witnesses aged under 14. Under the Criminal Evidence Act 1992 in relation to criminal law and the Children Act 1997 in civil proceedings, if a court is satisfied that a person with a mental disability is capable of giving an intelligible account of the events which are relevant to the proceedings then the court may receive that evidence from the person, despite the fact that it is not sworn (a safeguard ordinarily required).

Nevertheless, questions over the determination of people with intellectual disabilities to be competent witnesses continue to be contested in Ireland. The intellectual disability organisation, Inclusion Ireland, has argued that many cases involving people with intellectual disabilities are failing to proceed because the victims are deemed incompetent either before, or when they reach, court. For example, they cite one instance in which a girl with Down Syndrome, who was allegedly sexually assaulted, was deemed to be incompetent as a witness by the judge in the Central Criminal Court; as a result, the case was thrown out (Inclusion Ireland, 2011[23]).

Moreover, current legislation in force relating to capacity in Ireland dates back to the Lunacy Regulation (Ireland) Act 1871. Whilst the Scheme of the Mental Capacity Bill was published on the 5th of September 2008 (Donnelly, 2008), and new mental capacity legislation is due to be published in 2012 (Law Reform Commission, 2011), at present there exists a status-based definition of capacity which has the potential to act to the detriment of people with intellectual disabilities where they are called as witnesses. There are also no guidelines for the judiciary on what constitutes capacity, or how that capacity might be assessed. As the Law Reform Commission's report *Vulnerable Adults and the Law* (2006: 10) notes, "if it is shown that a person lacks capacity for some reason, the current law sometimes has the effect of completely changing their status from a person with capacity to a person without capacity". It was concluded that the "all-or-nothing status approach to capacity should be reformed" (ibid).

Within the broader literature, there is debate concerning the assessment of the competency/capacity of people with intellectual disabilities (Faccini and Saide, 2011; Willner, 2011). Green (2001) argues that psychological assessment can be used to make a judgement on the extent to which the evidence of a person with intellectual disability can be relied upon, but the best way to do this is subject to debate. For example, a tool known as the Gudjonsson Suggestibility Scale is often used in assessments of a person's capacity to be a reliable witness by providing some indication of how likely a witness is to confabulate, and or respond to suggestive questions in interview or cross-examination. Gudjonsson et al.

[23]http://www.inclusionireland.ie/ACCESSTOJUSTICEFORPEOPLEWITHADISABILITYHAMPEREDBYANTIQUATEDLAW.htm

(2000) suggest capacity of people with intellectual disabilities can be assessed by combining the suggestibility scale with further intelligence testing and interviewing of the person, to provide information to the court and jury on the abilities of the person. A number of authors have however critiqued the use of such a scale (see for example, Beail, 2002; Willner, 2011). Willner (2011: 117) explains that "the high levels of suggestibility typically shown by people with intellectual disabilities are related to poor memory for information presented in the GSS, and that when testing is based on personally significant events, suggestibility scores fall dramatically".

However a person's competency/capacity is assessed, commentators agree that it is crucial that the court, and jurors, have information about their capabilities, so that decisions are not based on assumptions or stereotypes. Stobbs and Kebbell (2003) suggest that the way forward lies in the use of expert witnesses in court to provide information on the capabilities of the person with intellectual disabilities. In their study of mock-jurors' perceptions of people with intellectual disabilities as witnesses, they found that the use of expert evidence went some way to countering the negative assumptions held by jurors regarding the capacity of people with intellectual disabilities.

Other authors (for example, French, 2007) raise the issue of identifying cognitive disability among witnesses by legal practitioners, particularly as it may not be externally apparent. He urges that such professionals always look beyond traits such as communication, recall, comprehension and concentration in each of their clients in an effort to establish an accurate witness profile. This can include seeking information from their clients' family members, considering their source of income and any contact they may have with disability or mental health support organisations. An initiative in the UK, set out in Box 4.2 below, seeks to provide early identification of the competencies of people with learning disabilities, and put necessary supports in place.

Box 4.2: Witness profiling Initiative, Liverpool, UK

A Witness Profiling Initiative has been pioneered by the Investigations Support Unit of Liverpool City Council in conjunction with the Crown Prosecution Service's Policy Directorate This entails an assessment, at investigation stage, of the potential of vulnerable witnesses, or witnesses with learning disabilities, to be credible and competent witnesses in a trial. The profile that results from the assessment is an asset to all involved in the case, as it not only enables witnesses to be prepared to be able to give evidence, but also lends advice to counsel on how to ensure the witness gives best evidence. This initiative is directly responsive to a number of difficulties in the criminal justice system that impede the course of justice, namely the principle of orality, methods of questioning employed by barristers in the process of cross examination, and perceptions of disabled and vulnerable witnesses held by the judiciary.

(Source: Foster, undated: 11-15)

4.3.3. Witness questioning and the process of cross-examination

As we saw in the preceding section, an important issue exists around appropriate interview techniques when engaging with witnesses who have intellectual disabilities. Ternes and Yuille (2008) highlight concerns that persist around interrogative suggestibility, acquiescence, and confabulation when interviewing such witnesses, and stress the need for appropriate interviewing techniques that reduce the likelihood of these occurring. It is obviously important that such techniques be employed by barristers of law who interact with witnesses, particularly during the intimidating experience of cross examination. Stobbs and Kebbell (2003) argue that there are circumstances in which people with learning disabilities can give accurate testimony, despite the fact that they appear to have difficulties in terms of memorising and retrieving information. Such accurate testimony centres on the methods used in eliciting information from witnesses and the styles of questions used. For example, it is suggested that people with learning disabilities provide the most accurate responses to open, free recall questions (Milne and Bull, 2001; Stobbs and Kebbell, 2003).

The questioning styles used by barristers, particularly when the victim is under cross examination, can have a profound, and often detrimental, impact on the evidence provided by the witness if the legal professional is not aware of the accommodations necessary for

effective communication with persons with learning, developmental or intellectual disabilities. For example, the use of specific questions, and those which seek to elicit a closed response (a yes/no answer, for example) can be problematic for people with intellectual disabilities. Kebbell et al (2001: 98) state that "hostile lawyers in particular use constraining and coercive questioning strategies which have a particularly negative impact on the testimony of witnesses with LDs". Other authors have noted that people with learning disabilities may answer questions even though they do not understand the question, for fear of being seen as uncooperative or stupid, and have stressed the need for support and accommodation for victims with disabilities in understanding court proceedings, as well as education and training for legal professionals in such circumstances (Ericson and Perlman, 2001; Kebbell et al., 2001). Provisions have also been laid down in legislation which provide for the judge to intervene if he/she deems the questioning to be inappropriate. Box 4.3 illustrates one example of this.

Box 4.3: Court controls over the questioning of witnesses

Section 26 of the **New South Wales Evidence Act 1995 No. 25** relates to the court's control over questioning of witnesses. The court can make orders in relation to how witnesses are to be questioned; the use of documents and things in the process of witness questions; the order in which parties may questions a witness, and the behaviour of any person in connection with the questioning of witnesses.

Source:http://www.legislation.nsw.gov.au/xref/inforce/?xref=Type%3Dact%20AND%20Year%3D1995%20AND%20no%3D25&nohits=y

4.3.3.1 Intermediaries and the role of communication support

Facilitating accurate evidence from witnesses with disabilities may involve a requirement to provide communication support or an intermediary, to ensure clarity of meaning between the witness and the court. Reid Howie Associates (2002b) note that communication support for people with disabilities in court may take different forms: people with physical impairments, such as hearing impairments, may require communicative support in the form of sign language interpreters, or technical aids to hearing such as induction loops within

courtrooms. People with intellectual impairments may require a "cognitive interpreter" (Cooke and Davies, 2001: 85), an intermediary who seeks to ensure that witnesses understand the questions that are put to them during the trial, and that their answers are also understood (Plotnikoff and Woolfson, 2008). In the case of people with hearing impairments, where the spoken language may not be the first language, many jurisdictions make provisions to allow for sign language interpreters in court; Box 4.4 provides examples of this. Aids to communication such as symbols, communication boards and electronic equipment may also provide assistance, and are among the special measures listed in England and Wales' Youth Justice and Criminal Evidence Act 1999 (Cooke and Davies, 2001). These can also help to counter the negative impacts of the prevailing principle of orality, by facilitating non-verbal evidence to be given in a court of law.

Box 4.4: Interpreting provisions in court

In the **United States**, under the Federal Courts Improvement Act of 1996, and Americans with Disabilities Act, federal courts are required to provide reasonable accommodations to people with communications disabilities. This includes sign language interpreting. The Court Interpreters Act (28 USC 1827) provides that the Director of the Administrative Office of the United States Courts determines the qualifications of certified interpreters.
http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters.aspx

In New South Wales, Australia, interpreters in court are provided for under Section 30 of the Evidence Act 1995 "A witness may give evidence about a fact through an interpreter unless the witness can understand and speak the English language sufficiently to enable the witness to understand, and to make an adequate reply to, questions that may be put about the fact."
http://www.judcom.nsw.gov.au/publications/benchbks/local/interpreters.html

The **New Zealand Sign Language Act 2006** makes provision for the right to use New Zealand sign language in court. This provision applies to the parties, witnesses, or lawyers in court, or any member of the court. The court or tribunal arranges an interpreter.

4.4 Court procedures and processes

4.4.1 Accessibility to court buildings and spaces

It has been noted in Irish and international reports (including Kilcommins et al, 2010: ix) that the physical environment of the courthouse and courtroom can pose significant challenges for witnesses. Kilcommins et al. (2010: 183) note that the lack of a separate waiting venue for witnesses and defendants can be a cause of distress among victims of crime in Ireland, and confrontation between the witness and defendant can undermine the role of provisions for vulnerable and intimidated witnesses (Burton et al., 2007). Efforts have been made in other jurisdictions to improve witness experiences in this regard. For example in the UK, the Office for Criminal Justice Reform's (2005) *Code of Practice for Victims of Crime* contains a number of commitments which pertain directly to proceedings in court. Specifications include that separate waiting areas be provided for victims and the accused, and that victims who are witnesses should not, if possible, have to wait longer than two hours before giving evidence.

People with disabilities arguably face a range of other barriers in accessing courtrooms and premises. The intimidating nature of the court environment and premises can be compounded for people with intellectual disabilities. Research from England highlights that people with learning disabilities "tended to mention that the formality and authority of the court building was intimidating" (McLeod et al., 2010c: 5). People also reported struggling to find their way round due to poor signage, and finding the jargon used by court personnel to be intimidating and confusing (Birch, 2000; Beebee, 2010; Udell and Diller, 2007). Physical accessibility can be problematic, and whilst provisions have been made in various pieces of legislation to secure the rights of people with disabilities in this regard (such as Ireland's Disability Act 2005: see Box 4.5), barriers can still arise. For example, Udell and Diller (2007) state that while the Americans with Disabilities Act (ADA) works to remove discrimination on the grounds of disability, access to courthouses and court proceedings remains tenuous owing to architectural barriers, court practices including inflexible scheduling, lack of sufficient knowledge on the part of court officials, and inadequate signage, making information difficult to access. Indeed, it is often not just improving physical access which

could improve accommodation for people with disabilities in the court setting; thought given to scheduling of hearings and to the use of frequent breaks during the trial can also be significant. Pre-trial visits to the courthouse have also been shown to provide reassurance to witnesses through a familiarisation with the court environment (McCleod et al., 2010c).

Box 4.5: Provisions set down in Ireland's Disability Act 2005

In Ireland, court buildings and courtrooms are subject to measures set out in the Disability Act 2005. This includes the provision that public buildings are made accessible to people with disabilities, as far as is practical; that public service providers seek to 'mainstream' their services for people with disabilities with those for other citizens and appoint an Access Officer for this task; and that information for people with visual and hearing impairments, is made as accessible as possible, where it is requested. Published information affecting people with intellectual disability should also be produced in an easy-read format.

http://www.oireachtas.ie/documents/bills28/acts/2005/a1405.pdf format.

4.4.2 Countering the hostility of the court environment

A number of provisions which have been set out in legislation pertaining to vulnerable witnesses seek to lessen the intimidation felt by people with disabilities in the courtroom. These may assist in improving the quality of evidence given. These provisions include measures designed to make the court environment appear less hostile, such as the removal of wigs and gowns by judges, and the giving of first evidence in a video-recorded interview. The application of these provisions to people with disabilities varies across jurisdictions. For example, in relation to Australia, Reid Howie Associates (2002b: 21) note that practice is variable across states but that "virtually all allow special arrangements for evidence-giving to some adult witnesses with an intellectual disability, including the use of screens and CCTV, and in some cases, the use of videotaped evidence. These are predicated on the assumption (in most cases) that support measures should be available to all categories of witnesses and, therefore, those available for adults with an intellectual disability parallel those for children". In Ireland, the Victims Charter reflects such developments in the following commitment:

> Video link facilities are available in a number of courtrooms – subject to order of the Court, these may be used by vulnerable witnesses when they are giving evidence. If these facilities are not available in the courtroom you are attending, the Court may order the hearing to be moved to a courtroom where such facilities are available, so that you can give evidence by video link
>
> (Department of Justice and Law Reform, 2010: 24).

Delahunt (2010) notes the admission by a judge of pre-trial video-recorded evidence relating to an alleged sexual assault of a person with an intellectual impairment for the first time in Ireland, under section 16 (1) (b) of the Criminal Evidence Act 1992 (see also Delahunt, 2011). Whilst the move is significant, she argues much more is needed to protect the needs of vulnerable witnesses.

It is also clear that the court experience for people with disabilities would be improved if they were supported in their visits to court by one or more individuals, whether family members, carers or court staff themselves. For example, McCleod's (2010c: 11) study noted that court users with learning disabilities and mental health conditions in England felt that they needed "informal practical and emotional support" throughout their day at court, including updates on progress. They also stated needing this support when they first arrived at the court building and while waiting for the hearing. In Ireland, Victim Support at Court is one example of an initiative established to provide such support to prosecution witnesses: further details on this service are set out in Box 4.6. It is apparent, then, that holistic forms of support, provided before and during the hearing, and both inside and outside the courtroom, may be required to make people with disabilities' court experience a less stressful one.

Box 4.6: Victim Support at Court, Ireland

Victim Support at Court is a voluntary organisation, funded by the Commission for the Support of Victims of Crime. The service is currently available in the Central Criminal Court, Circuit Court and District Court in Tallaght, and provides volunteers who are trained to give support to prosecution witnesses and their families in court. This support can take place both before and during the trial, and includes facilitating a pre-trial visit to the courtroom for the witness, as well as providing emotional support on the day(s) of the trial. A room is also provided in the Four Courts, which witnesses and their families can use for the duration of the trial.

Source: http://www.courtsupport.ie/index.html

4.5 Conclusion: barriers and facilitators in the court process

The literature identifies a number of potential barriers which may negatively affect people with disabilities' experience of the court process, and a range of facilitators which may serve to support disabled people as witnesses in court proceedings.

4.5.1 Barriers in the court process

4.5.1.1 Barriers in court systems and processes

- **Lack of accessibility** of many courtroom buildings. This may include physical accessibility and unclear information and signage.
- **Lack of other adjustments made to accommodate people with disabilities:** for example, lack of flexibility around hearing times, or not factoring in or not using frequent breaks during trials.
- **Intimidating nature of court buildings and lack of separate waiting areas** for victim and accused.
- **Confusion due to the use of legal jargon** in the court process, both inside and outside the courtroom.
- **Failure on the part of agencies such as the police to identify and communicate a person's impairment** to court personnel, which would facilitate putting in place special measures.

4.5.1.2 Barriers in evidence-giving

- The **emphasis in the adversarial justice system on 'orality'** – giving evidence verbally in person – has the potential to disadvantage people with disabilities with communication difficulties, or who require specific supports to communicate (for example, sign language interpreters).
- **Negative assumptions of legal personnel and jurors** regarding people with disabilities' capacities to be reliable witnesses. Studies have shown there is often uncertainty on the part of barristers and judiciary regarding how to best communicate with people with intellectual disabilities.

- **Types of cross-examination questioning** can significantly disadvantage a person with intellectual disabilities.
- **Lack of clear guidelines to provide supports for people with disabilities as vulnerable witnesses,** such as providing 'supporters' in court, and allowing different modes of giving evidence, such as through CCTV or pre-recorded evidence.
- **Lack of clarity in terms of determining the competence and capacity** of certain groups of people with disabilities to be 'reliable' witnesses.

4.5.2 Facilitators to giving evidence in court and the court process.

The literature has identified a number of facilitators which may assist people with disabilities in their experience at court. Special measures provided differ significantly across jurisdictions and it is beyond the scope of this report to assess the effectiveness of these measures. However, it is clear that people with disabilities require support in a number of different forms, including:

- **Pre-trial preparation/support.** This may include a pre-trial visit to the courtroom, or initiatives such as the witness profiling programme which provide assistance on what to expect in the courtroom.
- **Provision of support for communication and cognitive interpretation,** where required.
- **Provision of informal support** throughout and during the court hearing. This may be from family, a carer, or service provider.
- **Provision of regular, and accessible, information to the witness** regarding the progress of the case throughout the trial.
- As with other vulnerable witnesses, **provision of measures which make the court environment and process of evidence-giving less intimidating**. This may include removal of gowns/wigs, use of screens and CCTV, and pre-recorded video evidence.

Such facilitation, in turn, may require...

- **Identification of a person's disability and communication of their support needs** to court personnel and the judiciary before the case reaches trial.
- **Information and training provided to judges and barristers** regarding how best to communicate with witnesses with disabilities, and with intellectual disabilities particularly.
- **Clear guidelines** on assessing a person's competence and capacity to be a reliable witness.
- **Creation of accessible court environments,** whether in terms of information, physical access, or flexibility in court scheduling to adapt to the needs of the disabled witness.

5. Post-trial experiences

5.1 Introduction

This chapter is concerned with the experiences of people with disabilities as victims of crime towards the end of the trial, and following the court process.

Issues which emerge at this stage in the criminal justice process include:

- the experiences of making a victim impact statement;
- the legal and emotional support made available at the time of sentencing and immediately after;
- experiences of seeking compensation or reimbursement; and
- access to information for the victim over the duration of the offender's sentence.

Compared to the literature available on other dimensions of the court experience, there is little literature or research on post-trial experiences, particularly as they relate to people with disabilities as victims of crime. Consequently, we look to issues emerging from work on victimology, and consider people with disabilities' experiences in the light of debates raised in the previous two chapters. It would be a mistake to think that the experience of the criminal justice process, or indeed impact of the crime or abuse, ends for the victim at the end of the trial. Rather, there can be a need for continued support for the victim, including clearly distinguishable lines of communication through which information about the case can continue to be provided to the individual after the trial.

5.2 Victim Impact Statements

Many, but not all, jurisdictions make provision for victims to provide victim impact statements which are presented at the sentencing of the accused, where a guilty verdict is reached. Ireland is one such jurisdiction, where victim impact reports were introduced into Irish law under Section 5 of the Criminal Justice Act 1993. In this regard, the Victims Charter (Department of Justice and Law Reform, 2010: 61) states that:

> "Where the victim applies to tell the court about the effect of a sexual or violent crime on them, the court must hear that evidence. This is known as a 'victim impact statement'. The statement can be made in person or through a legal representative".

Kilcommins et al (2010), Rogan (2006b), and Samuels (2007) are among the authors who acknowledge that a significant positive aspect of a witness giving a victim impact statement is that such statements legitimate the victim as a party to criminal proceedings (Goodey, 2005), and can help them feel more valued in the justice process. In addition, Kilcommins et al's (2010) research suggests that a victim impact statement can provide a sense of closure to victims who take the opportunity to have their say and explain how they have been affected.

Considering the relevance of victim impact statements to people with disabilities who are victims of crime, we return to the principle of orality, on which interactions in the criminal justice system are founded. If victims are to avail of the 'voice' provided by victim impact statements and the opportunity to give an account of the crime perpetrated on them, they need a strong command of written and spoken language. This has implications for people with learning and intellectual disabilities whose literacy levels can be significantly lower than those of non-disabled victims. Under the Victims Charter, the Courts Service commits to providing interpreter support to witnesses who do not speak English when the law or court permits a victim impact statement to be made. It is unclear whether this provision extends to non-speaking witnesses which includes members of the Deaf community who use sign language. The Charter does state, however, that current legislation is under review for amendment so that, in instances where a victim cannot speak for themselves, their family may do so. There is also the issue of support for the victim to be considered in giving the statement. Kilcommins et al (2010: 185) state that "victims require clear and standardised guidance on what can be contained within the statement". Questions abound concerning the role of registered intermediaries for disabled victims in this process, and nothing is stated about who might support victims with cognitive difficulties and compromised or limited powers of expression. One might also ask whether issues of competency will also permeate the credibility of certain vulnerable witnesses' statements. We saw in chapter 4 that giving evidence in court can be an anxious ordeal in an intimidating environment for many people with disabilities; one could reasonably understand how the process of

composing and delivering a victim impact statement could also induce anxiety and stress. Under the Victims Charter, the Probation Service commits to preparing impact reports with victims when ordered to do so by the courts, but the extent to which this service is equipped with sufficient disability awareness, and appropriate communicative strategies remains undocumented in the Irish context.

5.3 Applying for compensation

Under Article 7 of the *European Council Framework Decision on the Standing of Victims in Criminal Proceedings* (2001), victims are entitled to seek reimbursement for expenses incurred while participating in criminal proceedings connected with the offence perpetrated upon the victim. Kilcommins et al (2010) note the low level of uptake of such reimbursement of expenses in their study, despite a commitment by An Garda Síochána under the Victims Charter to provide information to victims. In their research recommendations they suggest that "information on the systems available for the reimbursement of court expenses should be provided by the Gardaí on a systematic basis to victims of crime" (Kilcommins et al, 2010: 185 – 7.19).

A victim of crime may wish to seek compensation for harm endured as the result of a crime. Among the few references internationally which specifically engage with this issue in the context of the needs and rights of disabled victims of crime, the National Office for Victim Assistance (Guidry Tyiska, 1998: 12[24]) in the US states that:

> "OVC [Office for Victims of Crime] should work closely with State victim compensation administrators to identify issues and service gaps related to the long-term medical and mental health needs of crime victims with disabilities when developing crime victim compensation guidelines".

In Ireland, under the Victims Charter, the Crime Victims Helpline commits to providing victims with information on how to look for compensation if it is applicable to their case; in a call to the helpline, individuals can find out if they might be entitled to any compensation due to an injury resulting from a crime. Further to this, among the commitments of the

[24] Accessed at http://disability-abuse.com/cando/documents/disable.pdf

Criminal Injuries Compensation Tribunal are providing information to help victims complete the application form and sending a written decision on the case to the victim (Department of Justice and Law Reform, 2010).

One of the notable differences between what is set down by the Criminal Injuries Compensation Tribunal under the Victims Charter in Ireland, and what is promised by the Criminal Injuries Compensation Authority in England and Wales under The Code of Practice for Victims of Crime (Office for Criminal Justice Reform, 2005), is that the latter makes a more explicit commitment to timeframes. For example, the Irish document commits to sending a written decision on a case to the victim and "paying any compensation due as quickly as possible" (p54). In contrast, the Criminal Injuries Compensation Authority commits to responding to correspondence where necessary within 20 working days (2005: 17 – subsection 13.4), and if a decision letter cannot be sent within 12 months of the application for compensation, applicants will be notified of its status at that time (ibid: 17 – subsection 13.6).

Rogan (2006b) highlights the disparity between the non-legally binding Charter in Ireland, and the statutory rights afforded to victims by the Home Office's Code of Practice in the UK. Such a disparity is significant for all victims in Ireland, as the degree of control one feels over the legal process is significantly reduced when timeframes of response are not defined and are open to variation on a case-dependent basis. It is arguable that having such uncertainty embedded into the procedural framework of the compensation process can be problematic for vulnerable witnesses. Those with mental health issues, for example, who are prone to feelings of anxiety and depression, may endure secondary victimisation at the hands of the criminal justice system under such circumstances. Kilcommins et al's (2010) report recommends that victim support organisations should provide information to victims about compensation; such organisations may also be an effective channel through which to deliver accessible information which recognises the specific support requirements of people with disabilities who are victims of crime. These specific supports may include assistance with difficult terminology on compensation application forms, and mediation with the Criminal Injuries Compensation Tribunal or representatives from An Garda Síochána regarding reimbursement.

5.4 The victim in relation to the trial outcome: sentencing, leaving court and life after the trial

There is a substantial lacuna in the literature regarding people with disabilities' post-trial experiences, with the notable exception of the fourth report produced by McLeod et al (2010d) as part of the series commissioned by the UK's Ministry of Justice. This report outlines a number of difficulties for victims with learning disabilities and mental health conditions at the time of sentencing, including difficulties understanding terminology used by judges. This is an issue which can be magnified by anxiety and feelings of intimidation by the formality of the courtroom setting, and which led the witnesses in their study to leave the courtroom as soon as proceedings were finished, even if they required some clarification of issues, or wished to ask questions. The issue of identification of disability is also significant in this context, with some court users feeling that if the judge had been aware of their condition they would have adapted their communication style throughout the hearing (McCleod, 2010d).

While intimidating, the court can at least be a space which is clearly delineated and can help to ensure that victims and offenders do not come into contact. McLeod et al (2010d) discuss how, in travelling home from the hearing, victims may have to come into contact with offenders, and may feel a worsening of symptoms of depression if the case had a negative outcome. They also warn of the dangers of victims with mental health difficulties being alone when receiving the outcome of a case (ibid: 9):

> "Even in serious cases where advocates and mental health practitioners provided intensive support and monitoring, court users could be alone when informed of the outcome. This can constitute an emotional 'flashpoint', and the consequences of isolation at this time could be serious for those with severe mental health conditions".

Throughout their report, McLeod et al (2010d) suggest a number of facilitators which may go some way to easing the anxiety felt by people with disabilities at this stage in the justice process, including the use of sympathetic expression and tone of voice by judges, being taken for a cup of coffee after hearing the sentence, and having company when leaving the court. They also note that "some court users expressed surprise that certain advocacy services ceased contact immediately following the trial, which left them feeling abandoned

at the time they felt that they needed the most support" (McLeod et al, 2010d: 11). This is something which has been addressed in the international literature, as it is recognised that support networks may need to be kept in place following a trial's conclusion. Guidry Tyiska's (1998) report for example, calls for a collaborative effort not only between criminal justice agencies and victim assistance organisations, but also with community-based organisations such as schools, social services, citizen groups and religious centres, to ensure a longstanding support system can be put in place for people with disabilities as victims of crime beyond their formal involvement with the agencies of the criminal justice system.

Regarding life after the trial, the issue of access to information remains a crucial one. In the context of the role of police, Kilcommins et al (2010: 177) noted how several of their respondents in Ireland depicted being perceived as a nuisance when asking for information regarding their case and its investigation. This contrasts to a UK example of good practice in police communication with witnesses upon a trial's conclusion which is provided by McLeod et al (2010d: 8), who note how "witnesses in criminal cases who had ongoing police contact throughout the case were usually telephoned by this officer if they received the outcome at home".

A final issue relates to information received by victims regarding the release and discharge of the offender from prison, where a sentence has been served (Kilcommins et al, 2010). Under the Victims Charter, the Prison Service sets out a commitment to make every effort to prevent an offender in prison from causing further upset to victims. They also state that they will provide information on the release of offender(s), whether temporary or at the end of their sentence, if and when victims of their families request this knowledge, as well as providing information on prison transfers and parole board hearings in cases where the sentence is of eight years' duration or more. It is unclear at this juncture how far people with disabilities have been provided with such information in the context of specific cases, however, and this is therefore something which warrants further attention.

5.5 Conclusion: barriers and facilitators in the post-trial period

5.5.1 Barriers

- **Victim Impact Statements.** Problems associated with effective communication skills and linguistic capacity can mean that certain witnesses may not effectively articulate the impact a crime had on them without the necessary support.

- **Anxiety experienced when sentencing has taken place and the time comes to leave the courtroom.** At this point, the regulated and monitored separation of victims from witnesses finishes as both parties, and their familes, rejoin the public sphere. This leaves the victim and their families susceptible to encounters for which they may not feel ready and, in the instance of a trial with a negative outcome, may leave victims feeling disempowered.

- **Poor supply of information** to witnesses regarding the case after the trial, and in relation to reimbursement for court expenses and compensation to which they may be entitled.

- **Dissolution of support networks post-trial.** There is a tendency for victim advocacy networks to remove their involvement with a victim upon the trial's closure, a time when the need for emotional support and advice may be as acute as during the trial itself.

5.5.2 Facilitators

- Provisions need to be made for **the roles of intermediaries and appropriate adults to be extended to the process of compiling Victim Impact Statements**, not only for purposes of technical linguistic support, but also to ensure that the victim achieves appropriate levels of support during the often traumatic process of compiling a statement.

- The literature points to a need for **systematic approaches to the provision of information relating to procedures for claiming expenses and compensation in accessible formats**, perhaps through the channel of victim support organisations.

- There needs to be a **co-ordinated inter-agency response from the Gardaí, Victim Support organisations, the Victim Liaison Officer in the Irish Prison Service and the Crime Victims Helpline** to ensure that there is a strong base of support for victims in the medium- to long- term period following the trial, so they do not suffer feelings of isolation or exclusion which may compound the victimisation they have already endured.

PART II

EXPLORING THE IRISH CONTEXT: FINDINGS FROM QUALITATIVE INTERVIEWS

6. Exploring the Irish context: findings from qualitative interviews

> "The judicial system is a barrier of itself – because I mean you have to be literate, you have to have capacity, you have to be able to prove beyond all reasonable doubt, it's not a system built for people who are vulnerable, or people who don't have means, and people who don't have really good representation, and people that can understand very complex processes, you know - show me a judicial system that's open, transparent, accessible and inclusive."
>
> (Respondent, health and social care provider)

6.1 Introduction

This chapter presents findings from the semi-structured interviews conducted with individuals with agencies of the criminal justice system and related organisations that have a role to play when a person with a disability becomes a victim of crime. Appendix C provides more details of the organisations contacted and the conduct of the interviews. As highlighted in the opening section of this report, there is a dearth of research on people with disabilities as victims of crime and their experiences of the criminal justice system in Ireland. The interviews provide a starting point in addressing this data gap, and while they cannot be assumed to be representative of all actors in the justice system, they are nonetheless informed by professional practice and experiential engagement with victims of crime and/or people with disabilities. It is important to acknowledge that the organisations interviewed work in different ways with victims of crime. Some are responsible for policy formation and strategic coordination, such as the Victims of Crime Office and Cosc; others work on the frontline dealing directly with victims of crime. The DPP, whilst dealing with specific cases of crime, does not have direct contact with victims. These different positions inform interviewees' responses. The chapter is structured around a number of key themes, including:

- **The strategic identification of people with disabilities as victims of crime, and awareness of disability issues within the organisations** (including the definitions of disability employed by organisations, and whether they collected data on people with disabilities as victims of crime).

- **Perceptions held by interviewees about the experience of victims with disabilities in the criminal justice system** at the different stages of reporting a crime, going to court, and post trial experiences.
- **Proposals for better practice** in terms of improving the experience of people with disabilities as victims of the crime in the Irish criminal justice system.

6.2. Disability awareness and the identification of people with disabilities as victims of crime

Summary
This section explores how the organisations are identifying people with disabilities as victim of crime; the extent to which definitions and understandings of disability are informing their practice; their role in collecting data relating to victims with disabilities; and the undertaking of disability awareness training.

- People with disabilities are often not strategically identified by agencies as a specific group, or priority, amongst the victim constituency. Identification or supports provided tend to operate on an 'as the need arises' basis.
- Definitions of disability employed by the different agencies vary; some agencies see no need for a definition of disability to inform their work.
- There is a lack of data collection on people with disabilities as victims of crime, and a lack of coherence of data collection mechanisms between different agencies in the criminal justice system.
- Some agencies (victim support agencies in particular) have undertaken disability awareness training, but other agencies/professionals, such as the judiciary and Courts Service appear to have undertaken little

6.2.1. Identifying people with disabilities as victims of crime

As Chapter 2 highlighted, certain organisations within the CJS in Ireland have made commitments to people with disabilities in the Victims Charter, most notably the Gardaí. The Courts Service and DPP also have staff responsible for making sure their respective organisations meet their obligations under the Disability Act 2005. Cosc, the National Office

for the Prevention of Domestic and Gender-based Violence is an organisation that identifies people with disabilities as a group within the context of its four year strategy on domestic and gender-based violence, as represented in Action 6.4 (Cosc, 2010: 10). This action seeks to "identify and promote suitable State service responses in relation to domestic and sexual violence for vulnerable or high-risk groups (including Travellers, people with a disability, older people, migrants, and young people) (Cosc, 2010: 10). The Crime Victims Helpline also noted that they were seeking to address disability in their strategic plan.

The overwhelming sense from the interviews, however, is that people with disabilities are not being strategically identified as a victim group, either by victim support organisations, or those engaged at a central government policy level in dealing with victims' issues. One interviewee explained this in the following terms:

> "I think the issue at the moment is to get all victims treated consistently according to the Victims Charter, and for some level of consistency across the system, with the police, in the courts and so on...So that's what's consuming our, that's what's using our energy and that we're focusing on and the victim is marginalised in the criminal justice system...To look at the 'marginalised within the marginalised' is difficult because even to get the victim's agenda on the table at all requires a lot of efforts".

Viewing people with disabilities as the 'marginalised within the marginalised' raises concerns about how well-equipped the criminal justice system is to deal with the diversity of needs presented by the victim population, a constituency that as other authors have argued has only begun to receive identification in the criminal justice system in recent years (Kilcommins et al., 2010). However, it seems that budgetary issues may also play a role how far the needs of specific groups are taken into account. For example, the same respondent noted of policy pertaining to another victim constituency:

> "That sensitivity in relation to gay and lesbian issues is very important, but we didn't have the funding. It was either provide funding for direct frontline services or do the research, and we didn't, or do the training, and we didn't, so the same way with disability. I think that trade-off would be there".

While several of the organisations dealing directly with crime victims did not have a disability-specific strategy or policy, there was however a commitment displayed to 'doing their best' for victims in order to meet any specific requirements they might present and to offer the best possible support service. This might involve arranging face-to-face meetings where the organisation operated primarily on the basis of a phone line; bringing skills and expertise (for example, staff trained in sign language) from one support centre to another; and visiting people in their homes where appropriate. As one respondent noted:

> "We have people who are incapacitated or disabled who are not able to leave home who are victims of crime, we arrange home visits for them. We treat people with disability the same as we treat anybody else to the best of our ability...we do go the extra mile to ensure that they are supported".

Discussions with people involved in victim support showed that while there may not be specific frameworks for assisting victims with disabilities, the philosophies of inclusivity underpinning their practice towards victims generally would indicate a willingness to accommodate them. One individual explained that:

> "...our ethos *…+ is respect for each caller. *…+ Each caller is an individual and unique and our whole purpose in every call is to respond to the needs of the caller as expressed by them not as we decide. We're non-judgmental, we're confidential, *…+ we're embracing".

Similarly, in relation to access to the courts, another respondent stressed that "Well, for the Courts Service point of view, everybody is equal and if you have to get into a court room or if you want to give evidence, then you are as much entitled to do that as anybody else".

Whilst there is little doubt that there may be a commitment to seek to facilitate people with disabilities, there is also evidence to suggest that such responses are often devised in a reactionary way to issues that arise. Representatives of victim support organisations and the Courts Service spoke about how their services respond to the challenge of meeting the specific requirements of victims with disabilities on an 'as the need arises' basis. For example, in relation to the Courts Service, a representative noted that complaints would usually be a basis for action:

> "Somebody says 'there is a problem here,' and we say' right, how can we fix it?' *…+ really, we do need people to come to us and tell us that there is a problem here. I think it's, I don't know if it's the best way, but it's the best way we have of sorting out problems".

A danger of such an approach however is that people with disabilities may not complain about the service, and therefore actions or adjustments may not be taken. A proactive approach, which reaches out to people with disabilities, rather than assuming they will complain, needs to be considered.

6.2.2. Definitions of disability used

Definitions of disability adopted by agencies and organisations are significant because they may shape attitudes of staff towards people with disabilities, and inform how they respond to people with disabilities as victims of crime. The interviews revealed variation in this regard. Some organisations cited legislative definitions, and referred to their obligations under the Disability Act 2005, for example. Others did not perceive a need for a definition of disability, and indeed when asked about the Act stated "It hasn't – well I mean we hope we're not breaking the law *…+ But I mean we don't have buildings under our control." Some of the more focused responses included:

> "We use the NDA definition. If it interferes basically with your working life, or your social life, am, we just go by what the NDA says."

> "Well from my point of view we use the definition under the Disability Act plus the Equal Status Act, plus the Employment Equality Act, which are not the same definition. But you know that's what we're guided by so that's the one that we use."

> "I tend to go with the functional and situational definition of capacity, that's where I start from. I'm very wary of expressions that imply a static state that cannot be changed such as the old fashioned 1993 Act Mentally Impaired."

In other instances, such understandings were absent. Most significant, though, were the variations in attitudes towards the need to define disability. One representative from a victim support organisation replied as follows:

> "No, we don't no, no, we don't...that is probably something we should have and something we could have, but we don't, and you know we're non-judgmental so if somebody tells us they have a disability we just accept they have a disability…".

Another respondent in the area of policy pertaining to victims of crime responded to the same question, "No. Because it's not a central issue, and to be honest *…+ that's the blunt fact of it". The lack of perceived need to consider disability has the potential to circumscribe the organisation's understanding of the diversity of victims of crime; it raises questions about the peripheral nature of disability-related issues, and how this might impact on the experiences of people with disabilities as they proceed through the criminal justice process.

6.2.3. Collecting data on people with disabilities as victims of crime

The lack of identification of people with disabilities at a strategic level is closely connected to a lack of data collection in the area. The research has found variations in record keeping practices between agencies of the criminal justice system and other organisations that engage with people with disabilities who become victims of crime. At a central government policy level, it was suggested:

> "...the State is paying victims organisations to provide support to victims so the simple question, 'how many people are being helped?' *…+ trying to get that figure robustly *…+ That's the priority…".

The same respondent suggested that the nature and profile of the victim support sector in Ireland can be attributed to the low expectations that exist around data collection: "they're small *and voluntary+ organisations and the more information you ask people to do *…+ The more cumbersome it gets with them, but also the less accurate it becomes…". In terms of numbers of victims of crime with disabilities, then, there is little in the way of centralised data maintenance, by for example, the Victims of Crime Office, and any events taking place on a region-by-region basis are not collated to inform a more comprehensive understanding of the situation nationally. A number of the victim support organisations we spoke to did say that they recorded data on the clients they had assisted, and a number were able to provide a gender breakdown of this data, as well as type of crime that the person had contacted them about. Rape Crisis Network Ireland has one of the most developed data collection

systems in relation to people with disabilities. While RCNI states clearly that "survivors and supporters of survivors attend rape crisis services for support and counselling; data collection is secondary to this purpose" (2011, p.18) the efforts made to collate information on an extensive database which takes into accounts types of disabilities, has contributed to publications such as COSC's 2011 report entitled *Domestic and Sexual Violence Services in Ireland: Service Provision and Co-ordination* (see also Bartlett and Mears, forthcoming).

In terms of the agencies of the criminal justice system, in particular the Courts Service and DPP, again data collection mechanisms are limited. For example, in discussing complaints and requests for access assistance in the Courts Service, a representative stated:

> "Some of them [service users] contact me directly, some of them go to the local office. I mean I mightn't get all of the queries or complaints or requests for assistance. Sometimes people will just go to their local court office and I will never hear about that".

In the case of the DPP, information available about particular cases where people with disabilities might have been involved as complainants can only be identified through a trawl through files, an exercise which was carried out for the purposes of Hanly et al. (2009) and analysis included in the recent LRC Consultation Paper (LRC, 2011). Moreover, it is important to note that only a certain proportion of cases come to the attention of the DPP, as others are dealt with locally by Gardaí. In the case of people with disabilities, the DPP works on a basis of definition of disability set out in criminal law. Therefore, people with disabilities are only identified in the eyes of the DPP where the case relates to Section 5 of the Criminal Law (Sexual Offences) Act 1993. There are then significant limitations in terms of gaining a full and accurate picture of the number of people with disabilities who are victims of crime, and how many cases proceed to prosecution.

6.2.4 Training on disability

Interviewees were asked about whether training on disability issues, or working with people with disabilities who are victims of crime, had been undertaken in their organisation. Some organisations, in particular those involved in victim support, noted some positive action

measures in this regard. One crime victim support worker highlighted the emerging awareness of its importance in their organisation:

> "But again it's *disability awareness training+ something that we have talked about and we have new volunteers now that are in training and there is a part of the training is disability awareness and we have somebody who is coming into do that…".

Another victim support organisation outlined efforts that had been made to ensure adequate and appropriate levels of access for service users who are Deaf or for whom English is not their first language:

> "One centre organised basic sign language training for all of their staff through a local deaf community organisation and one of the staff members has particular expertise in sign language. Counsellors from another centre are learning sign language. The reason why both centres decided to do this was because of their awareness of a need within the deaf community locally".

In terms of statutory agencies and professionals within the criminal justice system, disability awareness training was less prominent. For example, a representative at the Courts Service explained that, "I know there was some disability awareness training a few years ago, but it just fell by the wayside". One interviewee based in a disability organisation explained how sometimes organisations can be unreceptive to the idea of disability training for staff, with the consequence that outdated ideologies around disability and engaging with people with disabilities persist:

> "…we have tried to offer, you know we said we'd provide training to, Garda training but I don't think we were taken up on that, it's a difficult one, I think there's probably a lot of ignorance out there and not a lot of understanding and probably a very paternalistic approach to people with intellectual disabilities within the legal system…".

A member of the judiciary interviewed also noted that they were unaware of any disability awareness training available, stating, "if it were optional it's never been put to me that there was some course I could go on". He noted that presentations were made on different issues at judges' conferences, but that disability had not been one of the issues covered. A

recent document from the Committee for Judicial Studies is a first step in seeking to rectify this absence, but again this is something which requires further development.

6.3 Perceptions of experiences of people with disabilities in the criminal justice system

Summary

Respondents had a range of views about how people with disabilities experience the criminal justice system in Ireland, including some of the barriers they face at reporting stage, within the court process, and post trial.

- As for other victims of crime, the CJS can be extremely intimidating for people with disabilities. Individual support, whether from a key worker, family member or advocate, was seen as vital to enable people with disabilities to report crimes and follow the case through.
- Respondents stressed the importance of attitudes and knowledge of the Gardaí at reporting stage. Concerns were raised about the consistency of knowledge across the Gardaí in terms of working with people with disabilities as victims of crime.
- Issues of capacity were seen as a key stumbling block for people with disabilities in the criminal justice system (both at first reporting, and in terms of their progression to prosecution).
- In the court setting, victims' experiences are influenced by the attitude of judges and barristers, and the way in which accessibility is understood (not just in terms of physical access, but also explaining the 'jargon' of the courtroom).
- Respondents were positive about special measures for vulnerable witnesses, but there is uncertainty about the extent they are being used in the context of people with disabilities.

6.3.1 The reporting stage

The process of reporting a crime involves engaging primarily with Gardaí. People with disabilities may also engage with victim support organisations at this stage, and require the

support of an intermediary, such as a service provider or family member. A number of participants highlighted the challenges that people with disabilities can face in reporting a crime: they noted how many people with disabilities may want to play down the incident for fear of causing more trouble; others pointed to the intimidating nature of the criminal justice system, or "the fear-factor", as one respondent referred to it. A number of participants discussed how the experience with the Gardaí has a significant impact on the individual and progression of a case. One representative in the area of victim support stated:

> "victims' of crime experience depends on the individual Garda that they meet - some are terrific, some are fantastic and some are not, and there are huge barriers when you meet up with them".

Such a response was common amongst the health and social care providers, disability organisations and victim support agencies we spoke to. Many of them noted that in cases where they had supported people with disabilities as victims of crime, individual Garda could be very helpful and understanding. Some had forged strong local links with individual Garda officers. For example, one social worker we spoke to stated of a person with intellectual disabilities they supported:

> "she told me what happened, and she was very upset by it, and I said do you realise that's rape, so she decided she wanted to bring a case, so with my support we went to the Gardaí. I found them to be extremely understanding, totally accepted what my role would be in it. I felt very appropriate in the way they dealt with it, with the woman - very sensitive, and if she didn't understand all the questions they would rephrase them and they would allow me to step in to rephrase the questions asked, and when she came up with a statement they gave her lots of time to rework it".

What proves more problematic however, is a perceived lack of standardisation in practice amongst Gardaí; as another interviewee noted, many Gardaí are now trained in specialist victim interviewing techniques, but it is not always clear whether the trained officer will be the one who deals with the person with disabilities who reports a crime, or indeed, whether there will always be someone available who is trained to communicate with people with disabilities. A representative of a disability organisation alluded to the orality of the

reporting process, making clear that disclosure of a crime can be compromised when communicative strategies available to complainants do not match their needs:

> "The initial stage what some people have found was their interaction with Garda stations, if they're mute – if you're going in at 12 o clock at night, there is no one there to take your story, there's no one there to you know, if you don't have access to a sign or interpreter language or if you can't write for yourself and stuff like that, you know that is a big impact for people".

In other cases, where intentions of Garda officers might have been positive, a lack of knowledge of people with intellectual disabilities proved problematic. For example, one service provider depicted an experience when they accompanied a service user to report a crime:

> "One of those interviews, I think it took nine solid hours *…+ now that has to be noted somewhere as that wasn't appropriate. This was one young woman who has an intellectual disability who was ready to pull out on hour one. And then you'd have to say well what are we doing, are we initiating her to go or encouraging her to go further, unnecessarily and yet she felt so – so violated that she needed to be – the acknowledgement needed to be given that yes that was wrong".

The same respondent also addressed the problem of inappropriate interviewing techniques by Garda personnel who did not have the requisite level of understanding of the complainant's intellectual disability:

> "but the minute detail of the incidences and there were a few – there were a number of incidents, dates, times – the Guard in question had no understanding of – "well how long ago did that happen" and "what time was it" and "you said it was such another time", and I'm behind her back saying stop that, you know, you can't do that".

As they went on to say "I think sensitive is fine, but lacking in knowledge is the thing that you'd hit on". A respondent working in a crime victim support organisation also noted that whilst the initial reporting procedure with the Gardaí could be relatively smooth, what proved more difficult for victims of crime was the length of time that a case could take to come to court, or progress; for victims deemed to be vulnerable, this requires constant

encouragement and reassurance. One telling comment from a health and social care provider highlights how vital such individual support is to ensure complainants with intellectual disabilities are treated equitably throughout the criminal justice process, as they stated, “I think of all the cases...I’m not sure what would have happened if we hadn’t been there. It would have been very, very difficult for them to access...”. Indeed, the role of advocacy would appear to be very significant in this regard. A discussion with a representative of the National Advocacy Service for People with Disabilities (NAS) which was launched in March 2011, revealed that advocates within the service have on occasions provided support to victims of crime with disabilities. Where they have done so, it was felt that members of the Gardaí generally welcomed the introduction of advocates to the process, particularly if they did not have much experience or training in communicating with people with disabilities. Advocates can be present in scenarios where liaison is required between service providers, family members and the Gardaí, and seek to ensure that the voice of the person with disabilities is heard. There would therefore seem to be potential for NAS to provide advocacy in such contexts, although it should be noted that the service provides advocacy for multiple different situations and issues, not just in cases where people with disabilities might have been victims of crime.

6.3.2. People with disabilities in court

The challenges that people with disabilities can experience in the courtroom are multiple. A couple of respondents noted how so few cases involving people with disabilities (and particularly people with intellectual disabilities) end up progressing through to court. As one health and social care provider stated, “Getting it past the Guards to the DPP then sometimes is a problem – it stops a lot of the time”. Respondents spoke at length about issues relating to capacity in this regard, but also the approach of judges and legal professionals in their attitudes towards people with disabilities, and measures designed to make the court process less intimidating. We address each of these in turn.

6.3.2.1 Issues of capacity

In an interview with representatives from a health and social care service provider organisation, concerns around the legal system and its construction of the credible witness

were raised. The ramifications which the notion of 'capacity' has for the passage of justice in regard of victims with disabilities are profound:

> "We do have occasions where people we bring along and try to get them to report things, it's stopped on that basis, that they're not going to be credible so there's no point to bring it any further, or they encroach on other things like it's not enough evidence or it's usually not as blatant as they're not able to make a statement it's usually something else".

Other representatives from the same organisation noted the issue more specifically in relation to people with intellectual disabilities:

> "P1: there are four significant levels of intellectual disability - mild, moderate, severe and profound - so we're talking about the people who have mild, maybe low mild, they're the people who there's a chance that can bring it to the court or to the Gardaí. But it's the people, I can name out, I can count out a number of people who have been pregnant through family abuse with a moderate intellectual disability. That will never go anywhere.
>
> P2: And people with severe profound disability who have been assaulted by family members or others – because they're not a credible witness it stops. *…+ Even though somebody might have witnessed it, the person themselves being the victim won't be able to stand up in court and say this person did this, this and this to me, and the Gardaí say look there's no point in taking this to the DPP so it just stops again. "

Some respondents related such difficulties to Ireland's current capacity legislation, which was described by one interviewee as "fairly retrograde". Similarly, Section 5 of the Criminal Law (Sexual Offences) Act 1993 was also seen as problematic, with one representative of a disability organisation observing that despite the legislation outlawing sexual relationships between two people with intellectual disabilities outside of marriage, people were in relationships and having children "below the radar". They went on to note the tensions such legislation creates for service providers: " I suppose bigger service providers are much more, are very, the whole legal thing they go into risk management, risk aversion mode in case they see their names up in lights for condoning something". One health and social care provider noted the contradictions involved in taking a case involving a person with intellectual disabilities as a witness: in one sense, there is a need to highlight their

vulnerability as a victim, whilst at the same time showing they are competent to give evidence:

> "It's difficult, it's like a see-saw, in one way you're saying they're vulnerable and there's a power imbalance and at the same time you're saying, but we absolutely believe they're able to give evidence and that the evidence is truthful".

From the perspective of a member of the judiciary, the importance of having a clear understanding about the witness is key to making a decision on their capacity which is rooted in the broader context of their life. He suggested that evidence such as school reports would be helpful if it they were to be presented in court, noting "These things can be helpful in kind of fleshing out, giving a clear idea of how far the person had capacity to go to in terms of education, just general training, looking after themselves you know, awareness of the outside world etc.". Current work being undertaken by the Law Reform Commission on revising the Criminal Law (Sexual Offences) Act 1993, and definitions of capacity, will be vital in terms of providing a clearer lead on appropriate criteria for assessing capacity in the context of people with disabilities acting as witnesses.

6.3.2.2 Attitudes and approaches of the judiciary and legal professionals

Related to perceptions of capacity, the attitudes and approaches of the judiciary and other legal professionals were seen to be significant in how people with disabilities experienced the court system. A representative of a disability organisation elucidated how interactions between legal professionals and witnesses with disabilities can reinforce traditional constructions of subordination and inferiority:

> "[Indicating direct eye contact between two standing persons] it's a minus sign, you're minusing the person in the wheelchair below you, and that's what you need to look at, we should be doing the V [Indicating direct eye contact with the person in the wheelchair]. *…+ Use the V and that's what we should - that's it".

Speaking about the levels of communicative and literary competence of people with intellectual disabilities, one interviewee stated that it was important that:

> "they have access to people who will deal with them in lay-man's language *…+ to hear a solicitor and barrister quoting stuff at you is kind of way above most of us, our intellect and stuff like that – but for those people we need to have a system in place that will allow them to get the true representation that they need when they do take their issues to court".

This was recognised by a member of the judiciary, who noted the importance of facilitating vulnerable witnesses' needs. As he stated, "I suppose the first thing is not to be patronising, and to recognise that people do have different capacities. Even people with full mental capacity have different intellectual abilities". Another respondent also highlighted how crucial the skills of barristers and judges are with regard to 'getting the best' out of vulnerable witnesses and ensuring equitable access to justice:

> "It's got to do with the understanding and the expertise, the skill really of the lawyers and also the judge who is going to be putting questions and cross-examination, and how clever they are at eliciting information".

The individual skills and attitudes of legal professionals are therefore perceived to have a significant role to play in how well the criminal justice system responds to people with disabilities in the court setting.

6.3.2.3 Accessibility of the court experience and the role of special measures

Respondents also raised issues relating to the accessibility of the court environment for people with disabilities. In an interview conducted with a representative of the Courts Service, the efforts that have been made to make the service accessible for people with disabilities were outlined:

> "...people can come *…+ if they anticipate any difficulties in accessing services. So for example, if somebody knew they were going to court in an old courthouse, we might have to organise a ramp to get them into the courthouse, you know something like that, simple things. Or even disabled parking in the Four Courts, stuff like that".

They also noted developments that had been made in terms of providing induction loops in courthouses. The Office of the DPP similarly noted an adjustment that had been made at a pre-trial meeting in terms of providing a sign language interpreter for a Deaf complainant whose family had limited sign language[25]. However, discussion with a representative from a disability organisation highlighted the need to conceive of access in terms that extend beyond the concept of disability as physical impairment:

> "...accessibility isn't just getting in and out of the building. Accessibility means that the person behind the counter knows what you're talking about because you know if you got in front of them, if they now cannot deal with you on a one-to-one, provide you with what you need, then their service wasn't accessible to you".

Notions of accessibility are also bound up with special measures which have been introduced under Ireland's Criminal Evidence Act 1992 designed to mitigate the intimidation that vulnerable witnesses experience. The member of the judiciary noted the shift in attitude towards this within the judicial community:

> "You know in the old days certainly the common lawyers they would say oh yeah put up the witness and expose that person to the rigours of a good cross-examination...that was the old sort of cut and thrust of the common law system, always highly respected and there was a very strong reluctance to change it. Very much so, I can remember lawyers being aghast at the idea that the complainant might be in a different room with a video camera. So that was a huge change...it's not used that often but I mean when it is used I believe it's effective".

A representative of a crime victims support organisation was also positive in terms of special measures, which when used, could be effective and lessen intimidation. As they noted of the removal of wigs and gowns:

> "courtrooms to anybody are an intimidatory place, and when you see the silks and the gowns coming across you say to yourself – yeah it is, so therefore anything that would make it more of a, kind of a family meeting or maybe kind of a normal meeting...anything that would make them feel more at ease rather than this kind of structure".

In the case of intermediaries, the member of the judiciary noted that he had never seen this measure used, and warned of the danger of that individual not pressurising the person to

[25] Personal correspondence from DPP, 1-12-11.

respond in a particular way. Others, including a representative of a crime victims support organisation, stated of intermediaries:

> "I think it kind of depends, and it depends on the availability with certain other disabilities of mediators, you know sometimes - or intermediaries as they are more properly called, sometimes that person can be absolutely brilliant, knows the person with the intellectual disability very well, has communicated with them before on other occasions, they understand each other, and that person is in turn very well able to explain to the court...but it depends entirely on the level of skill and then the relationship between the two it seems to me".

Another individual working in a different victim support organisation also made the point that the level of service experienced by a victim with disabilities in the various agencies of the criminal justice system always depends on the levels of awareness that exist around that individual's needs, but that in their own experience, their observations have been positive:

> "In any of the times in court, I have seen where people with again, and the varying type of disability, right, and if we're accompanying them that we're in the court and we're there, I've always seen them being treated with respect and accommodated, *providing those involved are aware*…".

In court, as in all other sectors of the criminal justice system, the dispositions and philosophies of individuals can have a significant impact on the experiences of victims. As the previous quotation highlights, moreover, there is a need for those in the court setting to be aware of the person's disability. The literature review noted that disclosure of a person's disability could be an issue in the justice system (for example, with an impairment not being identified until just before a trial, or due to a lack of communication between police and court personnel). This was not particularly noted as an issue by the respondents in this study, with the assumption being that the disability would be discovered by the time a case came to court. Nevertheless, it does raise questions about ensuring that barristers and the judiciary are made aware of a victim's impairment so that they are able to respond appropriately.

6.3.3 Post-trial experiences

A couple of respondents noted issues that may arise following the conclusion of a court case. One interviewee working in the area of crime victim support addressed the difficulties presented to victims by the timeframe that is associated with applying for compensation in Ireland:

> "Yeah. And people who suffer serious injuries, like you know it could be an acquired brain injury or it could be incapacity to work for various reasons as a result of a crime, and in our experience there are a lot of barriers in dealing with the Criminal Injuries Compensation, CICT. You're supposed to apply to them within three months and that's stated on the application form".

There was a concern raised here that crime victims may not be getting the information to which they are entitled about applying for compensation. If one considers the barriers posed to some people with disabilities by communicative and literacy difficulties, then the risk of not getting such information is further compounded. Concerns have also been raised in the literature about support networks dissolving after the trial, and the interviews revealed evidence of victim support organisations recognising this and being proactive in this context. In particular, they highlight the anticlimax that victims can feel upon the conclusion of a trial. As one respondent noted,

> "There is a case at the moment and they've been waiting 18 months, and the verdict will be tomorrow, and because that 18 months has been taken up with – the date, will it happen, will it happen? What's going to happen? What will I hear? I heard very little – then they hear, then there's a lot of attention from our organisation, there's attention from the Guards, there's attention from the State, and then verdict could be – that's it. OK."

Victim support organisations and advocacy networks maintain an importance in supporting victims of crime after a verdict, and it is important that this ongoing need for support is recognised for people with disabilities who may be vulnerable or require assistance to understand the trial outcome.

6.4. Conclusions: making the justice system more responsive

Summary

This section sets out suggestions made by respondents to make the justice system more responsive to the needs of people with disabilities as victims of crime. These include:

- Disability awareness training for key agencies in the criminal justice system.
- Providing information and education to people with disabilities about how the criminal justice system and their rights as victims of crime.
- Changes in policy and legislation (for example, renewed capacity legislation; strengthening the remit of the Victims Charter).
- Creating coordinated access and personalised support for people with disabilities who are victims of crime.

Informing people with disabilities about the criminal justice system

Respondents suggested that it was crucial for people with disabilities to be informed about how the criminal justice system works in Ireland, how they go about accessing it, and what their rights are as victims. A representative of a disability organisation noted that this would be particularly key in a context where the Government's strategy is to move people with disabilities out of 'congregated settings' and into the community. Whilst this was acknowledged as a positive move, it was noted that it could also bring challenges in terms of people with disabilities living in the community and potentially being at greater risk of crime. As the representative of the disability organisation stated:

> "But we also need to educate the people themselves, the person with the disability as to what their entitlements are. If this happens this is where you go, you know this is how you need to protect yourself, this is who's available to help you do that. You know we can't just leave all this stuff to the service provision, we need to empower, capacity build the individuals to do it for themselves and I think if we can strike a balance between the two, they won't be as vulnerable."

Similarly, the representative of the Courts Service noted:

> "I think that a lot of disabled people don't know that they can access, do you know what I mean? That I think that they've never tried. In a situation where an able-bodied person would, that a disabled person might assume that they wouldn't be able to have access. Now I don't know whether we should advertise it or anything, but to me that would be the biggest barrier that you'd see about that...".

Education and awareness raising suggests a need for outreach work with people with disabilities, rather than assuming that they will approach the system themselves. As noted earlier in this chapter and in the literature review, people with disabilities can be fearful of the authority imbued in the criminal justice system, and intimidated by the complexity of legal procedures and processes.

Disability awareness training for agencies in the criminal justice system

Another issue raised by respondents was the need for a framework of structured training and awareness raising for individuals working in the criminal justice system. In particular, one interviewee asserted the need for mandatory disability training among the agencies of the criminal justice system, specifically the Gardaí. In their opinion, raising awareness levels can promote empowerment and the exercise of autonomy by people with disabilities who become victims of crime:

> "We must make sure that everybody is facilitated with that opportunity to tell their story so, the courts service, the Gardaí, *…+ I honestly believe that there should be a disability awareness training down at Templemore. It <u>should</u> be put in there".

In terms of furthering the goal of raising awareness, one health and social care provider noted how a Garda officer had spent two weeks at their organisation on a 'community placement'. Such exercises would seem to provide helpful opportunities for mutual learning, and the building of linkages between agencies.

Developments in legislation and policy

A number of interviewees drew attention to developments in specific pieces of legislation, policy and guidelines as they affect people with disabilities as victims of crime.

- **Capacity legislation and review of the Criminal Law (Sexual Offences) Act 1993.** A number of respondents pointed to the need to revise capacity legislation, and legislation relating to consent of people with intellectual disabilities to sexual relations.

- **Reinforced Victims Charter and legislation pertaining to victims.** Other organisations suggested that they would like to see a legal grounding to the commitments made in the Victims Charter. As one respondent from a crime victims' organisation said, "What we would really like to see is legislation *…+ where there is compulsion on all the agencies to meet the commitment that they've made in the Victims Charter. And also we'd like the see an ombudsman for victims of crime". Whilst many respondents were positive about the Charter and its commitments, they felt it could be better used to demonstrate accountability to victims. One respondent working in victim support called for the use of a checklist across all of the agencies who have made commitments under the Victims Charter in order to track practice across the system:

  > "if we go back to the preparation, to the accountability of ensuring that everybody who is a victim of crime has a right to, according to the victims charter, a service, if it's not ours, if it's whoever's *…+ Any service who will benefit them in doing justice for themselves, and a checklist to ensure that all of this is done, and if it isn't done, well there is going to be a blank somewhere on the checklist, so it goes back to who did not do their job".

- **Frameworks for coordination of services in relation to 'at risk' adults.** While representatives from agencies such as the HSE spoke about the guidelines covering children who may be at risk from abuse, and policies such as *Trust in Care* which covers people with disabilities if an incident happens whilst in the care of the HSE, it was also noted that there were no formal protocols for liaison between agencies for adults who are deemed to be 'at risk' and who exist outside of these statutory frameworks (for example, who may not be under the care of the HSE).

Creating coordinated access and personalised support for people with disabilities who are victims of crime

A number of respondents raised issues related to the need to create more supported access to the criminal justice system for people with disabilities as victims of crime. These suggestions took different forms. One respondent from a disability organisation suggested that in relation to the fragmented nature of services, it would be helpful to have a **freephone number** that people with disabilities could contact for access to a range of services, as they described it "a community-based public service "that would provide information on a whole range of services, including the courts. As they went on, "after that then you have the National Advocacy Service that can help to represent people through the Citizens Information Centres and stuff like that – they would facilitate, they can give that person an advocacy service".

Others also saw the need for a more **individualised, streamlined form of support for the victim of crime with disabilities**, in accompanying them through the whole of the criminal justice system. While the Criminal Evidence Act 1992 puts in place provisions for intermediaries, this is not something that is defined from the beginning of the criminal justice process. As one respondent noted:

> "So what is that whole process of that person engaging with the Gardaí, the lawyers, whatever else it is, going through, I mean if it's a sexual assault who takes them to the sexual assault unit, who links them up with the Rape Crisis Centre, you know who is the person that supports that person in their own way? I mean I'm not, unless I've got this wrong I don't see any legislation of supports which is compulsory to any human being, whether it's disabilities or not".

Indeed, the experience of the interviewees would seem to suggest that without some form of advocacy or individualised support, people with disabilities are often very unlikely to report a crime, or to take it further.

Coordinated access also presupposes **clear linkages between different agencies in the criminal justice system, and related organisations** at both a national and local level. For example, one local health and social care service provider said that whilst they had informal links with their local Garda station, a more formal forum where issues pertaining to people

with disabilities as victims of crime could be discussed could be helpful. In other settings, organisations noted a need for closer working: for example, a crime victims' support organisation noted their frustration when they received referrals from the Gardaí relatively late in the justice process, just before an individual was due to go to court. In this situation, they felt that they were not providing the victim of crime with the best service possible; clearer processes around referrals are therefore necessary.

PART III

DISCUSSION AND CONCLUSIONS

7. Discussion

7.1. Introduction

This chapter brings together some of the key findings from the international literature review and qualitative interviews. It focuses on the overarching barriers that people with disabilities face in their experiences of the criminal justice system as victims of crime, and positions Ireland in the context of international literature and practice. The interviews revealed that Ireland may share much in common with other jurisdictions in terms of the challenges identified in the literature, not least the problem of under-reporting of crime and of attrition in the number of cases proceeding through the justice system. Nevertheless, Ireland has its own legislative, policy and procedural contexts which shape how the criminal justice system responds to people with disabilities, and we highlight the influence of these contexts here. The final chapter then explores how these barriers might be addressed in order to make Ireland's criminal justice system more responsive to the needs of people with disabilities.

7.2. An overarching issue: an absence of data

It is internationally recognised that acquiring data on the incidence of crime against people with disabilities and tracking how far reported cases proceed through the criminal justice system is challenging. As Petersilia (2001) notes, there are very few studies that monitor cases in which people with disabilities report a crime and follow them through to their conclusion. However, in a number of jurisdictions such as the US and UK, national crime surveys do include people with disabilities as a sub-group, which provides a starting point for assessing the prevalence of crime rates for people with disabilities. It is interesting to note in the context of the US that collection of statistics on people with disabilities as victims of crime is set down in legislation: the Crime Victims with Disabilities Awareness Act 1998 makes it incumbent on the National Crime Victimisation Survey to collect data "on crimes against people with disabilities and the characteristics of the victims of those crimes" (Rand and Harrell, 2010: 1). The lack of such statistics in Ireland is a notable absence, and creates difficulties in assessing rates of reported crime and the outcome of such reports.

With a couple of exceptions, few agencies involved in the criminal justice system in Ireland appear to be monitoring or keeping records of people with disabilities who are victims of crime, and the fact that there is no systematic recording of cases which come to trial at District and Circuit Court level also makes it difficult to identify cases where a person's impairment may have been significant. These data absences need to be acknowledged as serious gaps which undermine our knowledge of people with disabilities' experiences, and render them invisible as a group within the broader victim constituency.

7.3. Defining the key barriers

A key aim of this research is to identify the barriers that people with disabilities experience when they become a victim of crime and encounter the criminal justice system. These are barriers that can happen across the three main phases identified as constituting victims' encounters with the system: reporting a crime, attending court, and experiences after the trial. Bringing together the international literature and the qualitative primary research conducted, these barriers can be defined in the following way:

- **Structural barriers** refer to the organisational structure of the criminal justice system, the division of labour between and within institutions, and how far the agencies involved work together. Lack of communication both within and between agencies has been shown to be problematic in other jurisdictions in terms of identifying the needs of people with disabilities (Burton et al., 2006; McLeod et al., 2010c).

- **Procedural barriers** refer to the processes and procedures that people with disabilities encounter when they report a crime or attend court, and which can often create difficulties for the victim of crime who is unfamiliar with such systems. This can involve lacking knowledge of how to report a crime; of difficulties presented by processes of evidence-giving; and of knowledge regarding how to claim compensation.

- **Attitudinal barriers** refer to the awareness and understanding of disability by organisations and different professional groups within the criminal justice system,

including the Gardaí, barristers, the judiciary, or those who work in crime victims' organisations. Understandings of and attitudes towards disability are also manifest in legislation and policy which shape the encounters of people with disabilities with the criminal justice system.

- **Barriers to physical access** refer to practical barriers such as inaccessibility of buildings and information, and lack of availability of appropriate adjustments such as communication aids.

7.3.1. Structural barriers

The research identified a number of structural barriers which shape the experience of the criminal justice system for people with disabilities who are victims of crime. The criminal justice system itself can be interpreted as a series of institutions which have implications for those seeking to access it. Structural barriers manifest themselves in different ways:

- **Relationships between agencies of the criminal justice system**: as a structure, the criminal justice system comprises a number of agencies which work together in processing both victims of crime and offenders. This implies a need for communication and joint working between agencies. However, international studies have shown that joint working may be lacking, which can disadvantage the victim with disabilities; one example that emerged in UK research related to a failure of the police to communicate a victim's impairment, and their need for special measures, to court service personnel (Burton et al., 2006; McLeod et al., 2010c). Joint working between agencies may be particularly critical in the first identification and reporting of a crime, where health and social care providers need to liaise with the Gardaí. Currently in Ireland, there are no clear procedures around such partnership working for adults with disabilities (as there are in England through the *No Secrets* report which sets out guidelines for multi-agency working in protecting vulnerable adults from abuse, for example (Department of Health, 2000)). Clients of the HSE are however covered by the Trust in Care policy, whilst children with disabilities are covered by protocols set out in *Children First* (Department of Children and Youth

Affairs, 2011). Joint working also applies in terms of crime victims' organisations and statutory agencies: as Kilcommins et al (2010) note from their research in Ireland, Gardaí often fail to make referrals to crime victims support organisations. The interviews in this study also raised the issue of referrals being made to support organisations too late in the criminal justice process to provide necessary support.

- **Division of labour within agencies:** Within the agencies of the criminal justice system, it is often not clear who takes responsibility for dealing with people with disabilities as victims of crime. This is particularly the case in terms of the first reporting of the crime to law enforcement agencies, where there may be a need for someone who is trained in working with people with disabilities to speak to and take a statement from the individual. The literature review demonstrated that it is sometimes officers dealing with abuse of children who also deal with people with intellectual disabilities in cases of sexual abuse, thereby reinforcing the infantilisation of people with disabilities (Bailey and Barr, 2000; Mencap, 2010). The roles and responsibilities of different officers are also often not outwardly transparent to people with disabilities themselves when they report a crime. In Ireland, some Gardaí are trained to conduct specialist interviews with children and people with intellectual disabilities in sexual offences cases, but it is unclear whether these officers are always the ones who deal with such incidents when a person with intellectual disabilities presents at a Garda station to report a crime. In our interviews, participants often spoke of there being a specific officer who was known to be helpful in contexts where the crime victim was a person with a disability, but there appeared to be no systematic approach to defining such roles or practices.

7.3.2. Procedural barriers

The criminal justice system comprises a number of distinct, though inter-related, agencies, which each have their own systems and procedures. These procedures have built up around the common law system, which in and of itself has been shown to create barriers for vulnerable witnesses in terms of its reliance of the principle of orality and an adversarial basis for administering justice.

There is a process to reporting a crime; of being interviewed; of going to court; and of giving evidence as a witness. Each of these stages involves negotiating a set of procedures that for many victims of crime are confusing and intimidating, but particularly so for some groups of people with disabilities. Crime victim support organisations have a vital role to play in this context, by helping people explain and negotiate these systems. It should also be noted that in some cases, barriers are created not through a procedure existing, but **because there are no procedures in place or procedures are unclear**. The literature review and interviews revealed that people with disabilities can experience challenges and be disadvantaged in terms of:

- **Procedures in reporting a crime.** People with disabilities can often be unfamiliar with how to go about reporting a crime, or who to approach. They are often likely to approach a third party in initially reporting a crime, so the likelihood of an incident getting taken further also depends on the knowledge of friends, family, and service providers of the procedures for reporting a crime. In the case of children who may have disabilities, or where the individual is a client of the HSE, procedures set down the *Trust in Care* policy and *Children First* respectively, provide the template for reporting crimes to the Gardaí.

- **Interviews and evidence-giving processes.** The processes and procedures involved in giving evidence, whether in terms of being interviewed by police or in court (which may involve cross-examination from barristers and the judiciary) have been shown to be problematic for people with disabilities. Perceptions of competence and capacity come into play, as does the credibility of the witness (Law Reform Commission, 2011). As this research has demonstrated, processes of questioning may not elicit the best evidence from witnesses with intellectual disabilities. A failure to make adjustments in the evidence-giving process – such as not providing regular breaks where a sign language interpreter is being used, or for someone with communication difficulties – can also disadvantage people with disabilities.

- **Systems and procedures of the courthouse**. The procedures of the courthouse, and the way that court business is run, can be something that alienates people with disabilities as victims of crime. The use of legal 'jargon' can be particularly

problematic for people with intellectual disabilities, as can understanding the procedures of the trial. As the review and interviews noted, special measures have sought to mitigate some of these challenges and make court procedures less intimidating: the removal of wigs and gowns, and the use of videolink to give evidence are the most commonly mentioned in international literature. However, within the Irish context there is little data about how people with disabilities experience these special measures and whether they lead to a more 'just' outcome.

- **Knowing how or whether you are eligible to claim compensation.** Post trial, there are a number of procedures which people with disabilities may have to negotiate. One of these includes seeking compensation, but as a couple of interviewees noted, there is very little available information on the claims process for victims of crime in Ireland.

7.3.3. Attitudinal barriers: awareness and understanding of disability

It is also clear that attitudinal barriers shape the experience of people with disabilities as victims of crime in the criminal justice system. These attitudes and understandings emerge in different ways:

- **Attitudes of different groups of professionals:** as the review highlighted, different groups of professionals within the criminal justice system – from the police through to barristers and the judiciary – have often been shown to be unaware of the capabilities and capacities of people with disabilities, and make judgements regarding the reliability of people with disabilities' accounts of crime.

  Such attitudes are not just significant in the context of those agencies directly involved in the criminal justice system, but also victim support organisations and those who may be engaged in working with people with disabilities, such as health and social care providers, who may be the first port of call for people with disabilities who have experienced a crime. Health and social care providers may view people with disabilities in terms of their vulnerability and want to shield them from the

potential trauma and 'secondary victimisation' that may come from reporting a crime.

- **Definitions of disability in policy and legislation**. Definitions and understandings of disability in policy and legislation have an important role in shaping how society and agencies of the state respond to people with disabilities. In the context of criminal law and the criminal justice system in Ireland, it is clear that current capacity legislation has been unhelpful in terms of framing views about people with disabilities, particularly those with intellectual disabilities. Similarly, Ireland's criminal law pertaining to people with intellectual disabilities and sexual offences has worked on an assumption of the inability of two people with intellectual impairments to consent to sexual relations, thus reinforcing perceptions of people with disabilities' vulnerable status (Law Reform Commission, 2011).

- **Attitudes of people with disabilities to the criminal justice system**. It should also be noted that people with disabilities have understandings of and attitudes towards the criminal justice system which can lead them to not reporting crimes, or not expecting that they may receive 'justice' for a crime that was perpetrated against them. These are often attitudes borne out of fear and trepidation, of concern that their reports will not be taken seriously, and that reporting a crime may mean that they will have independence taken away from them. People with disabilities need to know that they will be taken seriously as victims of crime, and that the criminal justice system exists to serve them as much as any other group of crime victims in society.

7.3.4. Barriers to physical access

At a more practical level, the literature also identified that people can experience difficulties in terms of physically accessing the justice system, through inaccessible police stations or courthouses, for example. Lack of accessibility can also mean a lack of accessible information, and failure to make adjustments for people with disabilities in terms of communication aids, or providing appropriate breaks in proceedings. These issues serve to

compound the procedural barriers that people with disabilities experience in the criminal justice system.

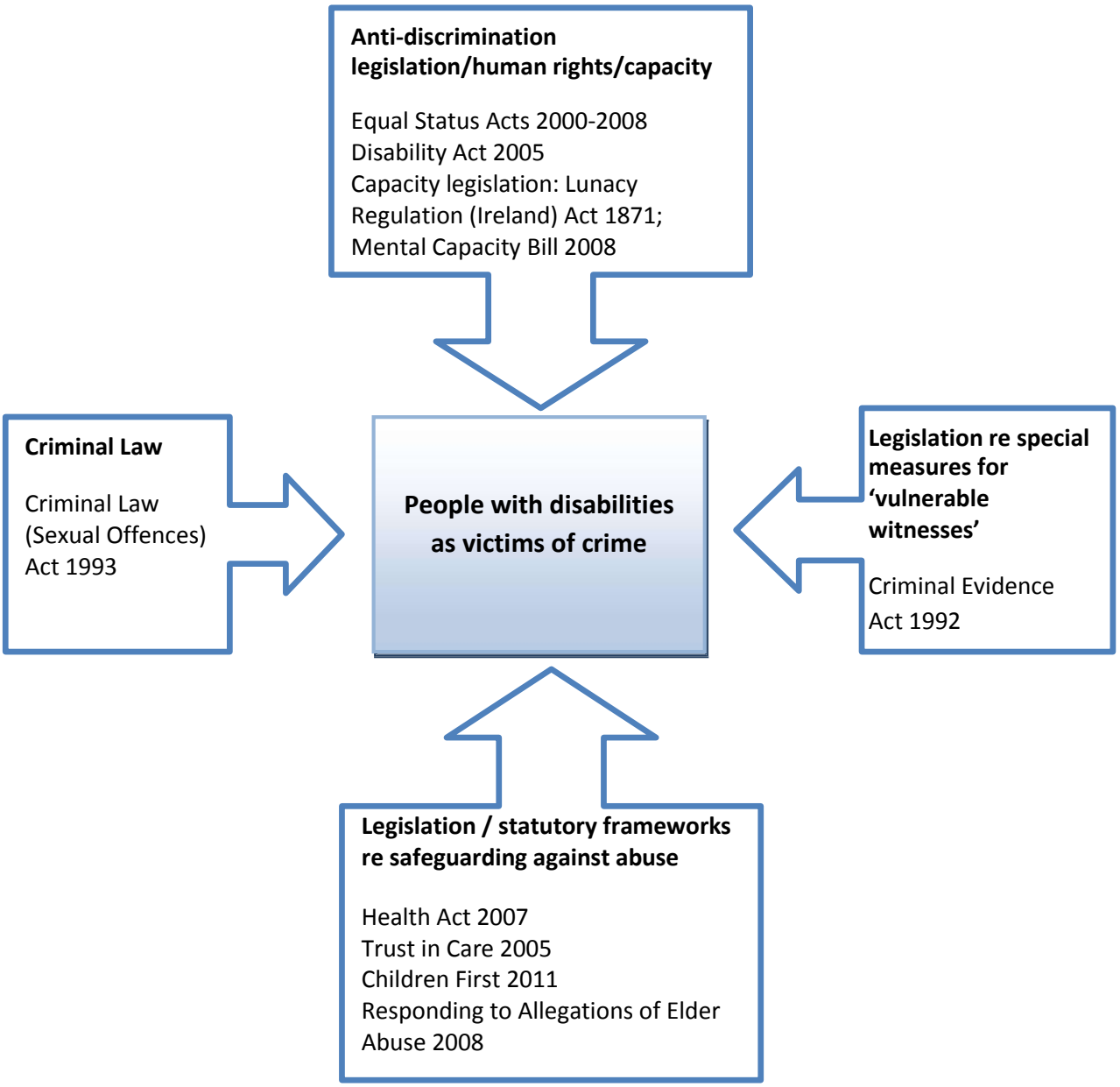
7.4. Disability, victims of crime and the criminal justice system in Ireland: policy and legislative disjunctures.

As chapter 2 demonstrated, Ireland has a number of different pieces of legislation and policy which frame people with disabilities' encounters with the criminal justice system as victims of crime. Some of these relate to criminal law, and to the rights of vulnerable witnesses to have 'special measures' put in place; others have their root in the development of the disability rights agenda in Ireland (see Figure 7.1).

The relationships between these different pieces of legislation and policy directions are complex and sometimes contradictory, and they have arguably led to disjunctures in how the criminal justice system in Ireland understands and responds to people with disabilities as victims of crime. For example:

- The language of disability rights which has emerged in some areas of disability policy in Ireland over the past fifteen years has largely failed to penetrate the criminal justice system. Developments such as the Equal Status Acts 2000-2008, and the Disability Act 2005 are premised on a notion of people with disabilities as a group who have the same rights as other citizens, and for whom disability is as much the product of societal structures as individual impairment. With the exception of its obligations under the Disability Act 2005 to provide accessible information and buildings, the criminal justice system appears to have been relatively untouched by moves to construct disability in social terms, or in recognising the disabling effect of structures and systems in society. This can be witnessed in criminal law: as the Law Reform Commission's consultation paper makes evident, the language of 'mental impairment' in section 5 of the Criminal Law (Sexual Offences) Act 1993 is outmoded and inappropriate. Similarly, the Criminal Evidence Act 1992 refers to people with a 'mental handicap'.

Figure 7.1: Legislation impacting on people with disabilities as victims of crime in Ireland



- Certain pieces of legislation as they impact on people with disabilities appear to be actively contradictory. For example, current legislation regarding capacity which works on the basis of status-based approach to capacity may serve to undermine the chances of a person with an intellectual disability receiving redress for a crime. In the context of section 5 of the Criminal Law (Sexual Offences) Act 1993, the Law Reform

Commission's (2011: 195) consultation paper also highlights that "the current definition of 'mental impairment' which is based on a static definition of capacity has made securing a prosecution under [the Act]...difficult".

- In terms of the identification of people with disabilities as victims of crime, people with disabilities are only visible within the criminal justice system in Ireland where they are mentioned specifically in criminal law, which currently is in relation to section 5 of the Criminal Law (Sexual Offences) Act 1993. Thus, for several agencies in the criminal justice system, identifiable cases involving people with disabilities in effect means cases against people with intellectual disabilities who have experienced sexual abuse. This is a limited way of understanding how people with disabilities are impacted by crime, and also renders identification and analysis of cases where the victim had a disability, or where the crime appeared to be aggravated by the person's disability (as has been set down in 'hate crime' legislation in a number of other jurisdictions), virtually impossible.

- Whilst 'mainstreaming' of people with disabilities in terms of service provision is an active goal within the disability arena, criminal justice agencies do not seem to be recognising people with disabilities as part of the broader victim constituency. Mainstreaming requires that for people with disabilities to be treated equally, special provisions need to be identified and put in place to ensure a 'level playing field'. There is relatively little mention in documents emanating from criminal justice agencies regarding the needs of people with disabilities, and people with disabilities remain hidden as a specific group of 'victims'. The Gardaí's commitment in the Victims Charter is one of the only examples of people with disabilities being identified as potential victims of crime. It should also be reiterated that this Charter is not legally binding.

7.4.1. Central policy, local practice

There appears to be a lack of identification at a strategic policy level of people with disabilities as victims of crime in Ireland. This is reinforced by the lack of recording of data

on people with disabilities as crime victims, both in national statistical surveys, and by government agencies working in the area of victimology; there is also no statutory monitoring of cases taken where people with disabilities have availed of 'special measures'. The lack of strategic identification of people with disabilities in centrally-developed policy and legislation has implications for specific practices at the local level in terms of how victims of crime are dealt with. For example, the interviews revealed that whilst there is often goodwill towards supporting people with disabilities who are victims of crime from crime victim support organisations and individual Garda, this often operates on an informal and one-off basis: indeed, what becomes apparent in exploring Ireland in comparative context is that practices in dealing with people with disabilities are **often ad hoc, rather than systematic**. This is dangerous because the needs of people with disabilities may not be appropriately identified, or identified too late in the justice process.

7.5. Conclusions

People with disabilities experience numerous barriers in their encounters with the criminal justice system, from the stage of reporting, through to post-trial experiences. These barriers have their origins in different places: some emerge from the legislative and policy contexts which frame the criminal justice system, and the structure of the institutions that make up that system. Others emerge from distinct processes and procedures, and the attitudes of those who work on the 'frontline' administering justice. What becomes key is the **need to make justice more accessible** for people with disabilities, whether that be through practical changes such as improving physical accessibility to buildings and information, through to more strategic ones such as facilitating better working between criminal justice agencies, and identifying people with disabilities as a specific group of crime victims at a policy level. We turn to address some of these issues in the final chapter.

8. Facilitating people with disabilities as victims of crime in Ireland's criminal justice system: making justice more accessible

> "States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
>
> In order to help to ensure effective access to justice for persons with disabilities, States parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff."
>
> Article 13: Access to Justice, *United Nations Convention on the Rights of Persons with Disabilities,* 2006: 11[26].

8.1 Introduction

This chapter makes suggestions for improving the accessibility of the justice system for people with disabilities as victims of crime in Ireland. These suggestions are based on our research which has set out the parameters of already existing research on people with disabilities as crime victims and the criminal justice system, and captures perceptions from individuals from a range of organisations about what they consider to be some of the key issues currently for people with disabilities. Our suggestions are made on the basis of these insights, and should be seen as setting an agenda for further debate and discussion. It is beyond the scope of this report to make specific recommendations on particular policies or initiatives. A more in-depth study would need to involve people with disabilities who have experienced the criminal justice system as victims of crime.

[26] http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf

8.2. Developing an agenda for data collection

A critical starting point in trying to understand the situation of people with disabilities as victims of crime in Ireland is the need for data on a range of areas. We suggest that these should include the following:

- Statistical data on crime prevalence rates experienced by people with disabilities, based on type of crime, and also impairment type. There is scope for exploring how extraction of this data might take place from already existing surveys such as the Crime and Victimisation module on the Quarterly National Household Survey, the Garda Public Attitudes Survey and the National Disability Survey.
- Quantitative data on the number of cases that are reported to Gardaí involving someone with a disability; on how many of these reported cases reach court; and the outcome of these cases.
- Qualitative analysis of the experiences of people with disabilities who have encountered the criminal justice system as victims of crime.
- A qualitative investigation of cases which go to the DPP where disability appeared to be a significant factor, and their outcome.
- A more in-depth investigation of 'special measures' as set down in Ireland's Criminal Evidence Act 1992, and how far these are working (or not) for people with disabilities. In particular, there is a need to know:
- How far the role of the intermediary as set out in section 14 is being implemented, who these intermediaries are, and how effective this role appears to be.
- How far other special measures, such as use of video-link and removal of wigs and gowns are being implemented for people with 'mental handicap' or 'mental impairment', and with what effect. Currently, evidence on this area is limited (with the exception of Delahunt, 2010; 2011).

Data from such studies is vital to provide a clearer picture of how people with disabilities experience the criminal justice system, and where the need for intervention is crucial in terms of making the system more accessible.

8.3 Overcoming structural and procedural barriers

In this section, we consider measures which may address some of the structural and procedural factors set out in Chapter 7, and address each in turn. These include:

- Making people with disabilities visible as victims of crime at a strategic policy level.
- Creating fora for communication between criminal justice agencies regarding people with disabilities as victims of crime.
- Improving access to information on the criminal justice system and procedures for people with disabilities.
- Providing individualised support to people with disabilities at all stages of their encounter with the criminal justice system.
- Monitoring practice as regards people with disabilities and the use of 'special measures'.
- Harmonising different legislative and policy contexts which shape the responses of the criminal justice system to people with disabilities as victims of crime.

8.3.1. Making visible people with disabilities as victims of crime at a strategic level

This research has revealed a need for the agencies of the criminal justice system and related bodies (including government bodies involved with formulating policy related to victims) to recognise people with disabilities as victims of crime, and the distinctive ways in which they may be affected. Some agencies have flagged the needs of people with disabilities at a strategic level: for example, Cosc (2010) refers to the need to consider people with

disabilities in its four year strategy, whilst the Crime Victims Helpline mentions the specific needs of people with disabilities in its strategic plan (Crime Victims Helpline, 2011). The Gardaí also mention people with special needs in the Victims Charter. However, they are the only agency in the Charter to do so.

Recent developments on changing section 5 of Criminal Law (Sexual Offences) Act 1993 are also crucial in putting the spotlight on how the criminal justice system treats people with disabilities as victims of crime, and seeks to protect them from exploitation whilst at the same time trying to empower them to engage in consensual sexual relations.

8.3.2 Creating fora for communication between agencies of the criminal justice system and related organisations regarding people with disabilities as victims of crime

Along with identifying people with disabilities at a strategic level, there would appear to be a need for fora in which the needs of people with disabilities as victims of crime can be addressed, and greater partnership between institutions of the criminal justice system introduced. In the context of sexual abuse, this is something that has been proposed by the Law Reform Commission's (2011: 221) consultation paper, which "provisionally recommends that national standards be developed concerning safeguards from sexual abuse for "at risk" adults, *including protocols on cooperation between different agencies*" (emphasis added). We would suggest that such cooperation needs to go beyond the realm of sexual abuse, to all types of crime for people with disabilities; cooperation is something which appears to be necessary both at a strategic policy level, as well as 'on the ground'. In relation to the latter, for example, a couple of service providing agencies interviewed stressed that it would be beneficial to have a more formal relationship with their local Garda station in the event of abuse cases coming to light, for example. Whilst there are formal joint working procedures between the HSE and Gardaí in terms of reporting cases of child abuse, and also procedures where people with disabilities are in the care of the HSE, the lack of formal procedures in relation to adults deemed to be 'at risk', including adults with disabilities, can be problematic.

At a strategic level, one such model for this might be the **Justice Disability Steering Group**. This was formed in Scotland as a collaboration between key agencies in the justice sector and disability organisations. The Group sought to address some of the barriers that people with disabilities experience in the justice system and make recommendations to improve practice. Part of the Group's work revolved around a 'six month involvement programme' which brought people with disabilities together in consultation and participation exercises designed at feeding into the recommendations (Justice Disability Steering Group, 2010: 2).

8.3.3 Improving access to information for people with disabilities as victims of crime

Many procedural barriers could be mitigated by making the criminal justice system more accessible and transparent in the way it is presented to people with disabilities. This includes making adjustments to physical accessibility, and providing clear information about process and procedures. Accessing information throughout the process of reporting a crime and going to court is of vital importance for people with disabilities, as for other crime victims. Information is required in relation to:

- How to report a crime and how the criminal justice system works.
- What happens at different stages in the criminal justice procedure.
- How to access support (either via special measures set down in legislation, or through crime victims' organisations).

As set out in Chapter 2, various agencies within the criminal justice system such as the Courts Service and DPP are starting to provide this information through booklets and DVDs. Moreover, the Disability Act 2005 has had an impact in terms of ensuring information is provided in alternative formats. However, there can still be an issue regarding the transparency of information. In particular, explaining legal 'jargon' in clear terms can be a particular challenge.

8.3.4. Providing support for people with disabilities at all stages of the criminal justice process

A finding from the interviews (and supported by the literature review) was the importance of supporting people with disabilities throughout the criminal justice process. For example, one service provider noted that a particular individual with intellectual disabilities would not have ended up pursuing their case if they had not supported them through what proved to be a lengthy process, and that people with disabilities would be at a particular disadvantage if they did not have an organisation or some other party advocating for them. The assistance of a specific individual has been an element of many jurisdictions' 'special measures' for vulnerable witnesses, and Ireland's Criminal Evidence Act 1992 also makes provision for an intermediary. As stated in the previous chapter, however, it is unclear who that intermediary should be: in Ireland, the establishment of the National Advocacy Service for People with Disabilities (NAS) in 2011 has been a significant step forward in facilitating people with disabilities to exercise their autonomy and independence. It is possible that the organisation might have a role to play in providing independent advocacy support for people with disabilities in the reporting of crimes and court attendance.

Other forms of support may also be required, including communication support such as sign language interpretation, for example. Support needs to be available for people with disabilities throughout the process from the point of reporting the crime, through to after the trial, when it has been shown that support networks often dissolve. This support currently operates in an ad hoc manner, depending on the networks available to the individual. There is a need to ensure a more systematised form of support at all stages of the criminal justice process. A summary of some examples of support mechanisms drawn from different jurisdictions are set out in Table 8.1.

Table 8.1: Summary of support mechanisms for people with disabilities identified in international literature

Reporting	Accessing court	Post-trial
Specialist text service for Deaf/hard of hearing people to access emergency services	Witness profiling initiatives/Witness Care Units	Role of intermediary in assisting victim in putting together Victim Impact Statement
Reporting hotline aimed specifically at people with disabilities who experience abuse	Use of registered intermediary/third party in court	Maintenance of support networks after the trial
Identification of registered intermediary to assist in police interview	Use of other special measures for vulnerable witnesses including; removal of wigs/gowns, use of video link.	Maintaining information flow from authorities re progress of the case
Outreach work by police with people with disabilities	Use of sign language interpreters/induction loops if necessary	
Referral to crime victims' support organisations by police	Accessible court premises	

8.3.5. Monitoring 'special measures' in practice

Ireland, like many other jurisdictions, has put in place measures to support those witnesses deemed to be vulnerable or intimidated. People with disabilities are covered under these provisions to varying extents: for example, the Youth Justice and Criminal Evidence Act 1993 in England and Wales has a more fully developed definition of disability than Ireland's referral to 'mental handicap'. Given that these are some of the key measures set down in law designed to support and protect people with disabilities as witnesses, it is vital that the application of these special measures are monitored: how often are they used, for example, and with what outcome? How do people with disabilities experience the measures? There is a need to address these questions if we are to build a picture of how they are working for people with disabilities as victims of crime.

8.3.6. Harmonising different legislative and policy contexts which shape the responses of the criminal justice system to people with disabilities as victims of crime

There is a need to address some of the disjunctures in legislation and policy which may have a detrimental effect on the attempts of people with disabilities to seek redress for crimes perpetrated against them. Recent moves in terms of introducing mental capacity legislation and revising section 5 of the Criminal Law (Sexual Offences) Act 1993 are clearly important in this regard. More broadly, however, there are divergent approaches in how civil law and criminal law in Ireland interprets disability. If people with disabilities are to experience access to justice, it would seem imperative that there is a recognition across all legislation that disability is an outcome of disabling structures in society as much as an individual, medical impairment. It is beyond the scope of this research to provide recommendations on changes to specific policies and legislation.

8.4. Attitudes and awareness of people with disabilities amongst criminal justice agencies

Another key set of facilitators relates to shifting understanding and improving knowledge within the criminal justice system of the needs of people with disabilities. As the Mencap (2010) report on hate crime in the UK noted, there is a need to raise awareness amongst law enforcement agencies that not all people with intellectual disabilities are 'vulnerable', and that there are ways in which they can be facilitated to give 'best evidence'. This is vital in Ireland where legislation such as the current Lunacy Regulation (Ireland) Act 1871 has reinforced perceptions of people with intellectual disabilities' vulnerable status.

There is some indication that changes in awareness raising within the criminal justice system are happening in Ireland, however: for example a recent publication from the Committee for Judicial Studies sets out guidelines for judges on how to treat people with disabilities, amongst a range of other groups (Committee for Judicial Studies, 2011). Some crime victims' support organisations also noted having completed disability awareness training. The Law Reform Commission's recent consultation paper (2011) notes the training received by Gardaí on mental health issues, but also stresses the need for greater awareness

amongst barristers and legal professionals. Disability awareness training should apply to a number of different professional groups, including the Gardaí, judiciary and barristers, and those working within crime victim organisations, and should provide guidance on working with people with a range of different impairment types. The ways in which this awareness raising might be undertaken are multiple and in other jurisdictions have taken the taken the form of:

- Training guides (booklets and DVDs) produced for law enforcement officers.
- Disability awareness training for police run by disability organisations.
- Action research projects with police officers to develop training modules for future education.

We would therefore concur with the Law Reform Commission's recent recommendation 6.40, which proposes "the development of guidelines for those working in the criminal justice process in identifying current obstacles and examining methods by which the participation of eligible adults in court proceedings could be enhanced...". Such guidelines will be crucial if the needs of people with disabilities are to be understood and taken seriously by criminal justice agencies.

8.5. Conclusions

Ireland's criminal justice system is increasingly responding to the needs of victims of crime, in a context where European frameworks are seeking to protect the rights of victims. From the perspective of disability, developments which seek to protect people with disabilities from abuse are also coming to the fore, whilst positive action measures embodied in the Disability Act 2005 are putting in place accommodations designed to enable people with disabilities to have equal access to services. However, there is still a significant way to go in terms of people with disabilities being recognised as victims of crime with specific needs in Ireland, particularly in a context where current criminal law and capacity legislation remains outmoded and reinforces the vulnerability of people with disabilities. The Law Reform Commission's consultation paper on the Criminal Law (Sexual Offences) Act 2003 and the

Mental Capacity Bill, which is to be enacted in early 2012, are both important steps forward in this regard, but there remain many unanswered questions about the extent of crime against people with disabilities, and how the criminal justice system in Ireland is responding to their needs to ensure they receive equitable access to justice.

Appendix A: methodology for literature review

A number of databases were identified as appropriate sources of literature for the report. These included:

Web of Knowledge

LexisNexis

ASSIA (Applied Social Science Index and Abstracts)

Social Science Citation Index

Sociological Abstracts

Social Services Abstracts (ProQuest)

Pubmed

Westlaw

These databases were searched using combinations of the following terms:

- Disabled/disability
- Abuse
- Crime
- Violence
- Harassment
- Criminal justice system
- Justice
- Judiciary
- Police
- Law enforcement
- Witnesses
- court

Appendix B: Literature reviewed

Author	Date	Title	Publisher	Publication type	Geographical coverage	Impairment specific?	Focus of article/methodology (if specified)
An Garda Síochána	2010	Victims Charter	An Garda Síochána	Policy document	Ireland	N/A	Policy statement
An Garda Síochána	2009	Strategy for Diversity 2009-2012	An Garda Síochána	Organisational strategy	Ireland	N/A	Outlines the planned strategies of the Garda Síochána's operations from 2009-2012 to help the organisation acknowledge and respect difference, including Garda awareness of and attitudes towards disability.
Bailey, A. and Barr, O.	2000	Police Policies on the Investigation of Sexual Crimes Committed against Adults who have a Learning Disability: A preliminary study.	*Journal of Intellectual Learning Disabilities* Vol. 4(2): 129-139	Article	UK (England, Wales and N. Ireland)	Learning disability	Survey of 44 police forces in England, Wales and Northern Ireland to gather preliminary information on the existence of policies for investigating sexual crimes against people with LDs to inform the study of attitudes towards LD.
Bailey, A., Barr, O. and	Aug 2001	Police attitudes toward people with intellectual	*Journal of Intellectual Disability*	Article	N. Ireland	Intellectual disability	Study of police attitudes based on a quasi-experimental methodology: participants' attitudes were measured

Bunting, B.		disability: an evaluation of awareness training.	*Research* Vol. 45 (4): 344-350				prior to and following awareness training on people with IDs, and the results were compared with those of a control group who did not undertake awareness exercises.
Baksi, C.	2011	Vulnerable Witness Training Plea	*Law Society Gazette* Issue 16, 21st April 2011	Magazine news article	UK	N/A	Outlines how the Advocacy Training Council has recommended that criminal and family advocates should be specially trained and certified to handle vulnerable people in court proceedings.
Bartlett, H. and Mears, E.	Forthcoming	Sexual violence against people with disabilities: data collection and barriers to disclosure	Rape Crisis Network Ireland	Report	Ireland	Unspecified	Study involved analysis of RCNI database between 2008 and 2010, an online survey with people with disabilities entitled 'what stops us talking about sexual violence?'
Beail, N.	2002	Interrogative Suggestibility, Memory and Intellectual Disability.	*Journal of Applied Research in Intellectual Disabilities* Vol. 15: 129-137	Article	UK	Intellectual disability	Paper interrogates the effectiveness of the Gudjonsson Suggestibility Scales, which are currently the only tests available to determine the interrogative suggestibility of people with intellectual disabilities who are suspects, complainants and witnesses.
Beebee, J.	26th May 2010	People with learning disabilities in the criminal justice system.	*Nursing Standard* Vol. 24 (38): 35-38	Article	UK	Learning disabilities	Explores difficulties people with learning disabilities experience with police & court service.

Benedet, J. and Grant, I.	2007	'Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Evidentiary and Procedural Issues'	*McGill Law Journal* 52: 515-552.	Article	Canada	Mental disability	Considers how the experiences of women with 'mental disabilities' demand modifications to evidentiary and procedural rules in sexual assault cases to ensure the right of the accused to a fair trial.
Birch, D.	April 2000	A Better Deal for Vulnerable Witnesses.	*Criminal Law Review* 2000: 223-249	Article	UK	Mental illness / learning disability	Paper discusses the Youth Justice and Criminal Evidence Act 1999 and its impact for vulnerable witnesses in the adversarial system.
Brennan and Brennan	1994	ClearTalk: police responding to intellectual disability	Charles Sturt University, New South Wales, Australia	Report	Australia	Not specified	Action research project involving police officers and other stakeholders in New South Wales, Australia, to improve the communication of police with people with learning disabilities. Outcome of the project was a set of modules to be used in training police how to communicate more effectively with people with intellectual disabilities.
Brunson, J.L.	Winter 2008	Your Case Will Now Be Heard: Sign Language Interpreters as Problematic Accommodations in Legal Interactions.	*Journal of Deaf Studies and Deaf Education* 13 (1): 77-91	Article	USA	Deaf	Data was collected from open-ended video-taped interviews with 12 deaf people to examine their experiences negotiating access during interactions with legal authorities.
Brown,	Feb	Safeguarding adults	Council of	Organisa	Europe-	Physical,	Report addresses a broad range of

H.	2003	and children with disabilities against abuse	Europe Publishing	tional report	wide	sensory and intellectual disabilities	abuses and mistreatment committed against disabled adults and children, highlighting the link between disability discrimination and abuse, and discussing measures to safeguard against its occurrence.
Burton, M., Evans, R. and Sanders, A.	2006	Are special measures for vulnerable and intimidated witnesses working? Evidence from the criminal justice agencies.	Home Office Online Report 01/06	Online report	UK	Unspecified	Study explores effectiveness of special meaures for VIWs. Methods included agency surveys, practitioner interviews, estimating VIW numbers, case file tracking and court observations.
Burton, M. et al	2007	Vulnerable and Intimidated Witnesses and the Adversarial Process in England and Wales	*International Journal of Evidence and Proof* 2007 11(1): 1-23	Article	England and Wales	Physical disability / learning disability	Study explored experiences of VIWs in England and Wales.Methods of data collection included national surveys of the police, Crown Prosecution Service, Crown Court Witness Service and Crown Courts; practitioner interviews; random sample of 500 prosecution witnesses in each of the study areas; telephone screening interviews with the sample of 500; tracking of 191 prosecution cases; and observation of 26 contested cases in court.
Calder-	2000	Abuse and Disabled People:	*Disability and Society* 15 (3):	Article	UK	Unspecified	Library-based paper, drawing on use of three case studies from the author's

bank, R.		vulnerability or social indifference?	521-534.				research as supportive evidence.
Chappell, A.L.	1994	Disability, discrimination and the criminal justice system	*Critical Social Policy* 14 (42): 19-33	Article	Britain	Unspecified	Examines the experiences of disabled people in the CJS and sets them in the context of demands for civil rights and an end to discrimination.
Chown, N.	2010	'Do you have any difficulties that I may not be aware of?' A study of autism awareness and understanding in the UK police service.	*International Journal of Police Science & Management* Vol. 12 (2): 256-273	Article	UK	Autism	An autism awareness survey was distributed among the police service to explore awareness and understandings of autism amongst the UK police.
Clare, I. and Murphy, G.	Sept 2001	Witnesses with learning disabilities.	*British Journal of Learning Disabilities* Vol. 29 (3): 79-80	Guest editorial to special edition	UK	Learning disability	Introduces special issue of journal on witnesses with learning disabilities.
Commission on the Status of People with Disabiliti	1996	A Strategy for Equality	Report of the Commission on the Status of People with Disabilities	Report	Ireland	Unspecified	Report outlines the recommendations of the Commission as they apply to sectors of Irish society including education, transport and the legal system.

es							
Committee for Judicial Studies	2011	The Equal Treatment of Persons in Court: Guidance for the Judiciary	Committee for Judicial Studies	Guideline document	Ireland	N/A	Provides guidelines on how to respond appropriately to different groups of people in court, including people with disabilities.
Cooke, P. and Davies, G.	Sept 2001	Achieving best evidence from witnesses with learning disabilities: new guidance.	*British Journal of Learning Disabilities* Vol. 29 (3): 84-87	Article	UK	Learning disability	Examines 'special measures' offered by UK Youth Justice and Criminal Evidence Act 1999 to enable vulnerable witnesses to give improved evidence in court.
Courts Service	2010	Explaining the Courts: An Information Booklet	Courts Service of Ireland	Information booklet	Ireland	N/A	Information booklet explaining the Courts Service
Delahunt, M.	7th Dec 2010	Improved measures needed for vulnerable witnesses in court	The Irish Times	Newspaper article	Ireland	Mental illness / intellectual disability	Article argues that legislation in Ireland on taking recorded evidence from vulnerable witnesses is out of date and draws on the video recorded evidence-in-chief that is admitted under the YJCEA 1999 in England and Wales as an international comparator.
Delahunt M.	2011	Video evidence and s. 16(1)(b) of the Criminal Evidence	Bar Review 16	Article	Ireland	N/A	Explores the use of s.16(1)(b) of the Criminal Evidence Act 1992.

		Act 1992					
Department of Justice and Law Reform	2010	Victims Charter and Guide to the Criminal Justice System.	Victims of Crime Office	Service charter	Ireland	N/A	Sets out commitments of the various agencies comprising Ireland's criminal justice system to victims of crime.
Disability Rights Commission and Capability Scotland	March 2004	Hate Crime Against Disabled People in Scotland: A Survey Report (Focus 15).	DRC/Capability Scotland	Survey report	Scotland	Unspecified	Study explores disabled people's experience of hate crime. 716 questionnaires were sent out to disabled people and their carers, with 158 completed questionnaires included in the analysis. The sample was sourced from Disability Rights Commission's events database, members of Capability Scotland's 1in4 panel and selected users of Capability Scotland's services.
Donnelly, M.	2008	Legislating for Incapacity: Developing a Rights-Based Framework.	*Dublin University Law Journal* (30): 395 – 438.	Article	Ireland	Mental illness / intellectual disability	Paper argues that a fundamental policy goal must be the recognition and protection of the rights of the person lacking capacity, with specific reference to the activities of the Law Reform Commission.
Ericson, K.I. and Perlman, N.B.	Oct 2001	Knowledge of Legal Terminology and Court Proceedings in	*Law and Human Behavior* Vol. 25 (5): 529-545	Article	Canada	Developmental disability	Paper based on research which compared 40 adults with mild developmental disabilities and 40 non-delayed adults in terms of knowledge of legal terms and court proceedings.

		Adults with Developmental Disabilities.					
Faccini, L. and Saide, M.A.	2011	Psychologists' Experience with Interviewing and Analyzing Abuse Allegations of Adults with Intellectual Disabilities.	*Sexual Disability* 29 (3): 291-296	Article – brief report	USA	Intellectual disability	Paper based on survey research with 31 psychologists who work in facilities with adults with ID.
Foster, K.	Undated	Preparation, support and profiling for vulnerable witnesses in criminal court proceedings	*Legal Bulletin*, Issue 8, p. 11-15: Disability Rights Commission.	Organisational bulletin	UK	Learning disability	Explores initiatives established between the Disability Rights Commision and Crown Prosecution Service to support people with learning disabilities in the CJS. This includes 'Witness Profiling'.
French, P.	May 2007	Disabled Justice; the barriers to justice for persons with disability in Queensland.	Queensland Advocacy Incorporated	Report	Queensland, Australia	Unspecified	Report examines the issues associated with the over-representation of people with disabilities as victims of crime, and as suspects, defendants and offenders in the criminal justice system.
Gendle, K. and Woodhams, J.	2005	Suspects who have a learning disability: Police perceptions toward the client	*Journal of Intellectual Disabilities*	Article	UK	Learning disability	Interview data were collected from 8 police sergeants employed by Humberside Police and analysed using qualitative techniques.

		group and their knowledge about learning disabilities	Vol. 9 (1): 70-81				
Grattet, R. and Jenness, V.	2001	Examining the Boundaries of Hate Crime: disabilities and the dilemma of difference.	*Journal of Criminal Law and Criminology* 91(3), 653-698	Article	USA	Unspecified	Paper asks whether victims of crime who face unique barriers when accessing the criminal justice system should be distinguished and treated differently.
Green, G.	2001	Vulnerability of witnesses with learning disabilities: preparing to give evidence against a perpetrator of sexual abuse.	*British Journal of Learning Disabilities* Vol. 29 (3): 103-109	Article	UK	Learning disability	Paper written around a case report based on Ms. S., a 24 year old woman. An assessment was conducted which included intellectual testing and an assessment of Ms. S.'s social functioning and sexual knowledge.
Gudjonsson, G.H., Murphy, G. and Clare, I.C.H.	2000	Assessing the capacity of people with intellectual disabilities to be witnesses in court.	*Psychological Medicine* Vol. 30 (2): 307-314	Article	UK	Intellectual disability	49 men & women with IDs, all of whom were potential witnesses of ill-treatment, were assessed in order to provide advice, initially to the police, about their capacity to be interviewed for judicial purposes.
Guidry Tyiska, C	2007	Working With Victims of Crimes with Disabilities.	NOVA - National Organisation for Victim Assistance	Online bulletin	USA	Unspecified	Paper outlines recommendations for Office of Victims of Crime and the victim assistance field on improving the response in serving crime victims with

							disabilities.
Hanly et al.	2009	Rape and Justice in Ireland: A national study of survivor, prosecutor and court responses to rape	Liffey Press	Book	Ireland	N/A	A three strand research project, involving (i) questionnaire sent to 100 rape victims in Ireland about their experience of the legal process (ii) investigation of 597 files from the Office of the DPP (iii) research of 173 Central Criminal Court cases and 35 transcripts of contested trials.
Harrell, E. and Rand, M.	Dec 2010	Crime Against People with Disabilities	U.S. Department of Justice	Statistical report	USA	Unspecified	Summary of statistics from the National Crime Victimisation Survey 2008 as they pertain to people with disabilities
Hayes, S.	2004	People with intellectual disabilities as victims of crime – the police and judicial response	39th Annual Conference for the Australasian Society for the Study of Intellectual Disability, 9-12 November, Adelaide, S. Australia.	Conference paper	Australia	Intellectual disability	Paper examines challenges people with intellectual disabilities face in terms of the police and judiciary.
Hoong Sin, C., Hedges, A., Cook, C., Mguni,	2009	Disabled People's Experiences of Targeted Violence and Hostility.	Research Report 21, Equality and Human Rights Commission, Manchester.	Report	UK	Unspecified	Study explored disabled people's experiences of hate crime, and involved the conduct of a literature review, semi-structured interviews with 9 stakeholders from key identified agencies, and 30 in-depth interviews

N. And Comber, N.							with disabled people from England, Scotland and Wales.
Howard, T.J. and Tyrer, S.P.	1998	People with learning disabilities in the criminal justice system in England and Wales: a challenge to complacency.	*Criminal Behaviour and Mental Health* Vol. 8: 171-177	Editorial article	England and Wales	Learning disability	Article explores the experiences of and issues affecting arrestees and suspects with learning disabilities.
Inclusion Ireland	Mar 29th 2010	Access To Justice For People With A Disability Hampered By Antiquated Law	Inclusion Ireland	Organisational news release	Ireland	Intellectual disability	This article argues that legislation dating back to 1871 is seriously hampering the right of people with an intellectual disability to access justice through the courts.
Johnson, K., Andrew, R. and Topp, V.	May 1988	Silent Victims; a study of people with intellectual disabilities as victims of crime	Report commissioned by the Office of the Public Advocate,	Report	Australia	Intellectual disability	Study employed an action research framework, and included a literature review, and interviews and meetings with relevant groups over a three month period.
Justice Disability Steering Group - Capability Scotland.	2010	Access to Justice 1 in 4 Poll - Final Report.	Capability Scotland	Report	Scotland	Unspecified	This report describes research exploring disabled people's experience of the Scottish justice system. A self-completion questionnaire was sent to 461 1 in 4 poll members either by mail or email.The questionnaire was also posted on the Capability Scotland website to give an

							additional 116 responses that are included in this report.
Kebbell, M.R., Hatton, C., Johnson, S.D. and O'Kelly, C.M.E.	Sept 2001	People with learning disabilities as witnesses in court: What questions should lawyers ask?	*British Journal of Learning Disabilities* Vol. 29 (3): 98-102	Article	UK	Learning disability	Paper based on an analysis of transcripts of 16 court cases involving witnesses with LDs and 16 matched court cases involving witnesses without LDs.
Kilcommins, S., Leane, M., Donson, F., Fennell, C and Kingston, A.	2010	The Needs and Concerns of Victims of Crime in Ireland.	Commission for the Support of Victims of Crime.	Report	Ireland	N/A	Report discusses the needs of victims of crime in Ireland and their familes, and the extent to which they are met by criminal justice agencies and victim support organisations. Research included: a postal survey of approximately 1,050 victims of crime who had availed of a support service, in-depth interviews with 20 of these victims, a survey of 50 members of the public to determine awareness of support services for victims of crime; and a telephone survey of 23 key community based professionals and employees of community organisations, likely to be in contact with crime victims.
Keilty, J. and	2001	Making a Statement: an	*Disability and*	Article	Australia	Intellectual	Semi-structured qualitiative in-depth interviews were conducted with 27

Connelly, G.		exploratory study of barriers facing women with an intellectual disability when making a statement about sexual assault to the police.	*Society* Vol. 16 (2): 273-291			disability	sexual assault workers and 13 police officers in 7 police Local Area Commands in New South Wales, Australia.
Law Reform Commission	2011	Sexual Offences and Capacity to Consent: Consultation Paper	Law Reform Commission	Consultation paper	Ireland	Intellectual disabilities	LRC's proposals on revising Section 5 of the Criminal Law (Sexual Offences) Act 1993.
Law Reform Commission	2006	Vulnerable Adults and the Law	LRC 83 - 2006	Report	Ireland	Physical/ mental/ learning disabilities	This Report forms part of the Commission's *Second Programme of Law Reform 2000-2007* and deals with the law as it affects older people and persons with physical, mental or learning disabilities.
Law Reform Commission, New South Wales, Australia	1993	People with an Intellectual Disability and the Criminal Justice System: Policing Issues	LRC – NSW Discussion Paper 29	Organisational discussion paper	New South Wales, Australia	Intellectual disability	This discussion paper is concerned with people with an intellectual disability in their contact with the police, be it as suspects, victims or witnesses.
Lee, V.	Undate	Research into CPS		Report	UK	Mental	Report based on a qualitative study

and Charles, C.	d	decision-making in cases involving victims and key witnesses with mental health problems and/or learning disabilities.		of Crown Prosecution Service		health / learning disability	which employed three methods: case file identification, case file review and consultation with stakeholders which was steered by a topic guide. The report highlights the barriers faced by people with mental health issues / learning disability when they encounter the criminal justice system, and the perceptions of them which in turn inform decisions around their credibility as witnesses.
Leggett, J., Goodman, W. and Dinani, S.	2007	People with learning disabilities' experiences of being interviewed by the police.	*British Journal of Learning Disabilities* Vol. 35: 168-173	Article	UK	Learning disability	Paper based on a small scale qualitative research study in which 15 people (13 men, 2 women) who were referred to a county-wide community LDs service and who had been interviewed by the police as suspects in alleged offences were invited to take part in a semi-structured interview to investigate their experiences.
Lewin, B.	Sept 2007	Who Cares About Disabled Victims of Crime? Barriers and Facilitators for Redress.	*Journal of Policy & Practice in Intellectual Disabilities* Vol. 4 (3): 170-176	Article	Sweden	Intellectual disabilities	Data was collected via a postal survey sent to guardians in one Swedish region with questions about suspected abuse against their wards (n=978), of whom 392 had an ID.
Lovell, C.	13th Sept 2007	Task force calls for urgent action to	*Community Care* Issue 1690: 9	Article	UK	Learning disability	Call for action on hate crime against people with learning disabilities.

		stem hate crimes.					
McAfee, J.K. and Musso, S.L.	Jan 1995	Training Police Officers About Persons with Disabilities	*Remedial and Special Education* Vol. 16 (1): 53-63	Article	USA	Unspecified	The police academy in each of the 50 states was contacted in order to obtain information on provision for training officers in the area of individuals with disabilities.
McAfee, J.K., Cockram, J. and Wolfe, P.S.	2001	Police Reactions to Crimes Involving People with Mental Retardation: A Cross-Cultural Experimental Study.	*Education and Training in Mental Retardation and Developmental Disabilities* Vol. 36 (2): 160-171	Article	Western Australia and Pennsylvania, USA	Mental retardation [sic]	136 police officers from Western Australia and 168 police officers from Pennsylvania participated in research which asked them to respond to statement sets taken from authentic police records which featured a mixture of male and female disabled and non-disabled victims and assailants.
McLeod, R. et al	July 2010	Court experience of adults with mental health conditions, learning disabilities and limited mental capacity Report 1: Overview and Recommendations Report 2: Before Court	UK Ministry of Justice Research Series 8/10	Report series	UK	Mental health, learning disability	This study consisted of two phases: the first consisted of desk research, interviews with 27 key stakeholders and consultation with 25 area directors in Her Majesty's Courts service. Phase 2 consisted of research in London and the North East of England including court observations, 143 interviews with practitioners, 61 interviews with court users with mental health conditions, LDs or limited mental capacity, 23 interviews with carers, and journey mapping with

		Report 3: At court Report 4: After Court Report 5: Policy processes, services and practices Report 6: Technical Report					court users.
McCormack, B. et al	2005	Investigating Sexual Abuse: Findings of a 15-Year Longitudinal Study.	*Journal of Applied Research in Intellectual Disabilities* Vol. 18: 217-227	Article	Ireland	Intellectual disability	All allegations of sexual abuse (n=250) involving service users as victims or perpatrators of sexual abuse over a 15-year period in a large Irish community-based service were analysed based on the data extracted from case notes.
McGee, H. et al	2002	The SAVI Report: sexual abuse and violence in Ireland.	Dublin: Liffey Press	Report	Ireland	N/A	A total of 3,120 people were interviewed in the SAVI study. This study used a two-stage approach in which a postal survey was used to initially identify individuals reporting abuse, and who were then invited to take part in a more detailed interview study.
Mencap	April 2010	Don't Stand By: Hate Crime Research Report – Ending disability hate crime together	Mencap	Organisational report	UK	Learning disability	Indepth interviews were conducted with representatives from 14 police services in England about the organisation's approach to tackling hate crime against people with LDs. A focus group of 8 people with LDs was also conducted.

Mencap	1999	Living in Fear	Mencap	Report	UK	Learning disability	5,000 questionnaires were sent to group homes, leisure clubs, disability employment services and self-advocacy groups in England, Wales, Scotland and Northern Ireland. The questionnaire examined the range and nature of bullying experienced by adults with a learning disability.
Mencap	1997	Barriers to Justice	Mencap	Report	UK	Learning disability	Report based on a survey of 285 police officers, 49 barristers and interviews with judges and magistrates around Britain on how, if at all, they are responding to the needs of people with LDs, including whether they have received training on working with people with LDs.
Mertens, D.M.	2000	Deaf and hard of hearing people in court.	Truman et al. *Research and Inequality*. UCL Press, New York: 111-125.	Book chapter	USA	Deaf	Examines the application of an emancipatory paradigm in training for judges and other court personnel to improve access for deaf and hard-of-hearing people.
Miller, K.R.	2001	Access to sign language interpreters in the criminal justice system.	*American Annals Of The Deaf* Vol. 146 (4): 328-330	Article	USA	Deaf	Through analysis of 22 post-Americans with Disabilities Act cases and a survey of 46 professional sign language interpreters working in criminal justice settings, this study considered access issues concerning sign language interpreters in law enforcement,

							courtrooms, and correctional settings.
Milne, R. and Bull, R.	2001	Interviewing witnesses with learning disabilities for legal purposes.	*British Journal of Learning Disabilities* Vol. 29 (3): 93-97	Article	Yes	Learning disability	Provides overview of the research literature examining how best to obtain the maximum quality and quantity of information from people with learning disabilities in a non-biased manner.
Modell, S.J. and Mak, S.	June 2008	A Preliminary Assessment of Police Officers' Knowledge and Perceptions of Persons With Disabilities.	*Intellectual and Developmental Disabilities* Vol. 46 (3): 183-189	Article	USA	Intellectual and developmental disability	124 police officers took part in a ten-question survey which was designed to solicit broad opinions on disability and perceived competence in handling crimes involving individuals with disabilities among police officers.
Obinna, J. et al	2006	Understanding the Needs of Victims of Sexual Assault in the Deaf Community.	US Department of Justice	Report for US Department of Justice	USA	Deaf	Report based on a two-stage study (i) a needs assessment that involved interviewing both service providers and individuals from the Deaf community. (ii) an audit team was assembled to look at systemic ability to address the needs of the Deaf community.
Office for Criminal Justice Reform	2005	The Code of Practice for Victims of Crime	Office for Criminal Justice Reform	Policy document	England and Wales	N/A	Produced collaboratively by the Home Office, Crown Prosecution Service and Department for Constitutional Affairs, the document outlines the obligations of the agencies of the CJS including police, CPS and Courts towards victims of crime.

Office for Victims of Crime	2009	Victims With Disabilities: Collaborative, Multidisciplinary First Response.	US Department of Justice	Training guide for law enforcement officers	USA	Unspecified	Document setting out guidelines for law enforcement officers in working with people with disabilities who are victims of crime
Office of the Director of Public Prosecutions	July 2010	Going to Court as a Witness	Office of the Director of Public Prosecutions	Organisational booklet	Ireland	Learning disability specified (p.17)	This booklet is designed to help people who must give evidence in a criminal trial to understand what happens in court.
O' Mahony, B.M.	2009	The emerging role of the Registered Intermediary with the vulnerable witness and offender: facilitating communication with the police and members of the judiciary.	*British Journal of Learning Disabilities* Vol. 38: 232-237	Article	UK	Learning disability	Article based on a mixed methods study: a 17-question questionnaire was disseminated to 33 intermediaries and unstructured interviews were conducted with 5 respondents. The sample comprised of speech and language therapists, psychologists, teachers, occupational therapists and nurses.
Perry, J.	2004	Is justice taking a beating?	*Community Care,* Issue 1516	Article	UK	Unspecified	Discusses the failure of British CJS, including police, to put into practice hate crime law aimed at protecting people with disabilities.

Petersilia, J.R.	2001	Crime Victims with Developmental Disabilities: A Review Essay	*Criminal Justice and Behavior* 28: 655-694.	Article	USA	Developmental disability	Paper considers why the rates of violence and abuse perpetrated on people with developmental disabilities appear significantly higher than for people without these disabilities and why few of these crimes get reported to police or prosecuted.
Plotnikoff, J. and Woolfson, R.	2008	Making Best Use of the Intermediary Special Measure at Trial	*Criminal Law Review* 2008(2): 91-104	Article	UK	Unspecified	This study entailed a two-year evaluation of the intermediary special measure in 6 pathfinder areas.
Quarmby, K. And Scott, R.	2008	Getting Away with Murder: Disabled People's Experiences of Hate Crime in the UK.	Scope	Report	UK	Unspecified	Report examines the incidence of disability hate crime in the United Kingdom and presents suggestions on its prevention and best practice in tackling the issue.
Reid Howie Associates	2002	Vulnerable and Intimidated Witnesses; Review of Provisions in Other Jurisdictions.	Edinburgh: Scottish Executive Central Research Unit.	Organisational report	Internat-ional perspect-ives	Unspecified, but much focus on intellectual disability	Literature review relating to provision for "vulnerable" witnesses in jurisdictions around the world.
Rogan, A.	2006a	Victims' Rights: Theory and Practice – Part I	*Irish Law Times* (24): 140.	Article	Ireland	n/a	Analyses the reasons behind the growing interest in victims' rights in the criminal justice system in Ireland.
Rogan, M.	2006b	Victims' Rights: Theory and Practice	*Irish Law Times* (24): 151.	Article	Ireland	n/a	This article examines ways in which the rights of victims of crime have been vindicated in Irish criminal justice

		– Part II					system.
Roulstone, A., Thomas, P. and Balderston, S.	2011	Between hate and vulnerability: unpacking the British criminal justice system's construction of disablist hate crime.	*Disability and Society* Vol. 26 (3): 351-364	Article	England	No	Paper based on a policy and legislative appraisal of the field of disability and hate crime. It also draws on the findings of two linked hate crime studies from the NE and NW of England.
Rubin, P.N. and Dunne, T.	1994	The Americans With Disabilities Act: Emergency Response Systems and Telecommunication Devices for the Deaf	Dept. Of Justice	Article	USA	Deaf	Article outlines the provisions of the Americans With Disabilities Act which serve to improve the experiences of Deaf people needing to avail of emergency response, including Deaf-friendly 911 services
Sanders, A., Creaton, J., Bird, S. and Weber, L.	1996	Witnesses With Learning Disabilities.	Home Office Research and Statistics Directorate Research Findings No. 44.	Research findings summary report	UK	Learning disability	Summarises findings of research into the experiences of the criminal justice system by witnesses with learning disabilities. Special measures provided for their assistance are outlined.
Scottish Government	2009	Adults With Learning Disabilities and the Criminal	Scottish Government	Report	Scotland	Learning disability	Proceedings of a conference.

		Justice System: Their Rights and Our Responsibilities.					
Sharp, H.	2001	Steps towards justice for people with learning disabilities as victims of crime: the important role of the police.	*British Journal of Learning Disabilities* Vol. 29 (3): 88-92	Article	UK	Learning disability	Presents some of the difficulties experienced by people with learning disabilities in reporting possible crimes to the police.
Sherry, M.	2000	Hate Crimes Against Disabled People.	*Social Alternatives* Vol. 19 (4): 23-30	Article	Australia	No	Paper stresses the need for hate crime legislation which includes crimes on the basis of disability.
Sign Health	2011	Deaf People in the Criminal Justice System.	SignHealth	Organisation report	UK	Deaf	Provides recommendations on how to make improvements for the Deaf community within the criminal justice system.
Stobbs, G. and Kebbell, M.R.	2003	Jurors' Perception of Witnesses with Intellectual Disabilities and the Influence of Expert Evidence.	*Journal of Applied Research in Intellectual Disabilities* 16: 107-114.	Article		Intellectual disability	Sixty participants read transcripts of a mock trial focusing on the testimony of different eyewitnesses (including a person with LD).
Ternes, M. and Yuille,	2008	Eyewitness Memory and Eyewitness	*Journal of Applied Research in*	Article	Canada	Intellectual Disability	22 participants with IDs and 23 comparison group participants had their photos taken by a confederate. Two

J.C.		Identification Performance in Adults with Intellectual Disabilities	*Intellectual Disabilities* Vol. 21: 519-531				weeks later, they were interviewed about the event and asked to identify the photographer. Two misleading questions, to test for suggestibility, were asked at the end of the interview.
Thomas, P.	2011	'Mate crime': ridicule, hostility and targeted attacks against disabled people.	*Disability and Society* Vol. 26 (1): 107-111	Article	UK	Unspecified	The paper considers 'mate crime', referring to considered actions against disabled people at the hands of someone they consider to be their friends.
Udell, D.S. and Diller, R.	2007	Access to the courts: An essay for the Georgetown University Law Center Conference on the independence of the courts.	*Georgetown Law Journal* Vol. 95 (4): 1127-1154	Article	USA	Physical and psychiatric disabilities	Paper considers access for people with physical or psychiatric disabilities to court buildings and court procedures.
van den Bergh, P.M. and Hoekman, J.	2006	Sexual Offences in Police Reports and Court Dossiers: A Case-File Study.	*Journal of Applied Research in Intellectual Disabilities* 19: 374-382.	Article	Netherlands	Intellectual disability	Paper based on case-file research in which 75 police reports and dossiers at the Public Prosecutor regarding sexual abuse were followed from the initial report to the police up to the conviction.
Williams, C.	1995	Invisible Victims: Crime and abuse against people with	Jessica Kingsley Publishers, London and	Book	UK	Learning difficulties	Discusses the victimization of people with learning difficulties and their experiences of seeking redress.

		learning difficulties	New York				
Williams, C.	1993	Crime Against People With Learning Difficulties.	Norah Fry Research Centre, University of Bristol.	Position paper	UK	Learning difficulty	Paper outlines what is known about crime against people with learning difficulties.
Willner, P.	2011	Assessment of capacity to participate in court proceedings: a selective critique and some recommendations.	*Psychology, Crime & Law* Vol. 17 (2): 117-131	Article	UK	Intellectual disability	Considers perceptions of victims with intellectual disabilities as unreliable witnesses and considers strategies for changing this situation.

Appendix C: methodology for stakeholder interviews

Interviews were conducted with a number of individuals from different organisations and agencies that were perceived as having a role to play or a perspective on, the experiences of people with disabilities in the criminal justice system in Ireland. We wanted to obtain the views of those agencies directly involved in the criminal justice system, as well as those who work with people with disabilities, and victims of crime. The interviews were seen as vital to the study as there is so little publicly available information about these experiences in the Irish context, and sought to combine both participants who work at a policy level, with others who have direct experience 'on the ground' of working with victims of crime and the criminal justice system. The interviews had a number of aims:

- To explore the extent to which the organisations had experience of working with people with disabilities as victims of crime, and whether they employed a particular definition of disability in doing so.
- To obtain perspectives on how people with disabilities as victims of crime currently experience the criminal justice system in Ireland and what, if any, barriers they face.
- To explore how different organisations within the criminal justice system work together in the context of people with disabilities.
- To examine how far agencies collect data on people with disabilities as victims of crime.
- To explore possible facilitators for better practice as regards people with disabilities' experience of the criminal justice system.

The organisations interviewed were as follows:

- Health Service Executive
- Inclusion Ireland
- People with Disabilities Ireland

- Cosc (The National Office for the Prevention of Domestic, Sexual and Gender-based Violence)
- Victims of Crime Office, Department of Justice and Equality
- Rape Crisis Network Ireland
- COPE Foundation
- Crime Victims Helpline
- Support After Crime
- Member of the judiciary
- Office of the Director of Public Prosecutions
- Courts Service
- National Advocacy Service for People with Disabilities

It should be noted that repeated contact was made with the Gardaí but we were unable to secure participation from this agency within the timescale of the study.

Interview participants were initially contacted either by email or telephone and meeting times set up. Interviews were semi-structured in format, and conducted using a topic guide (see Appendix D for a sample guide). On average, the interviews lasted between one and two hours. One interview was undertaken over the telephone and lasted 30 minutes. Participants were asked to give their consent to participate (see Appendix C for the consent form), and the majority of interviews were recorded and transcribed. The transcripts were then analysed using a process of thematic coding, to identify key themes and concepts emerging from the data.

Appendix D: sample topic guide for stakeholder interviews



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People with Disabilities as Victims of Crime: Interview topic guide

Crime victims' organisations

1. Introduction

Explain about the project. Obtain information on role of the individual and the organisation they work for. Aims/priorities of the organisation.

2. Perceptions of people with disabilities as victims of crime

How far do you think people with disabilities are recognised as victims of crime in Irish society?

What do you think the attitudes of the agencies of the criminal justice system (Gardaí, Court Service, DPP etc) are towards people with disabilities who are victims of crime?

What role do you think agencies outside the criminal justice system (e.g social care agencies) have in terms of assisting people with disabilities as victims of crime?

What are some of the key barriers that people with disabilities face in accessing the criminal justice system, in terms of:

- reporting a crime
- going to court/acting as a witness
- the post-trial period: information about offender release etc

How do you think these barriers may differ in terms of people with different impairments?

3. Working with people with disabilities and making adjustments

Does your organisation have a working definition of disability? If so, what is this?

To what extent have you dealt with people with disabilities who are victims of crime?

At what point in the criminal justice process have people with disabilities usually contacted you (e.g before or after reporting the crime, before going to court etc)?

- Do people make contact directly, or is it through an intermediary?

Have you received training in terms of working with people with disabilities? If so, what did this training involve? Is this something that all staff undertake?

In terms of the service offered by your organisation, what adjustments, if any, have been made to facilitate the needs of people with disabilities who are victims of crime and/or abuse?

- How did you identify the adjustments that needed to be made? Through what process?

What engagement do you have with other agencies in the criminal justice system, as well as those outside the system (for example, social care agencies etc), regarding people with disabilities as victims of crime?

- Are you aware of specific policies, practices or procedures made by other agencies in response to people with disabilities?

4. Collecting data/statistics on people with disabilities

Do you collect data on the proportion of cases that involve people with disabilities?

- How is the data collated?
- What type of crimes do they relate to?
- Is the data impairment-specific?

If not, why is this data not gathered?

5. Role of policy and legislation

Are there particular pieces of legislation and/or policy which you think assist people with disabilities in seeking to access the criminal justice system?

Are there any pieces of legislation that you think are detrimental to people with disabilities as they seek access to justice?

How significant do you think the Victim's Charter is in providing assurances for people with disabilities that they will be treated equitably within the criminal justice system?

Are there ways in which you think policy/legislation might be strengthened in Ireland to ensure people with disabilities receive equitable treatment as victims in the criminal justice system?

6. Good practice and developments

What developments do you think are needed in terms of making the criminal justice system more accessible for people with disabilities?

Are you aware of any examples of good practice in terms of working with people with disabilities as victims of crime within the criminal justice system?

In a number of other jurisdictions, the notion of 'hate crime' towards people with disabilities has become embodied in policy and legislation? Do you think this is something that is helpful in terms of addressing the abuse of people with disabilities?

Appendix E: consent form



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National Disability Authority Research Promotion Scheme 2011:

Access to Justice for People with Disabilities as Victims of Crime

The aim of this research is to explore how the criminal justice system in Ireland responds to people with disabilities, with a view to informing debates about good practice in terms of recognising the rights of people with disabilities as victims of crime and abuse. The research adopts a comparative approach by drawing on both national and international perspectives, particularly as regards innovations to strengthen the responsiveness of the criminal justice system to the needs of people with disabilities. The specific objectives of the research are:

- To explore the barriers that people with disabilities who report abuse face in accessing the criminal justice system in Ireland and internationally.
- To compare the legislative tools and frameworks across different jurisdictions which seek to protect the rights of, and facilitate redress for, people with disabilities who report abuse.
- To analyse the specific policies and practices that agencies of the criminal justice system and victim support organisations have in place to facilitate people with disabilities' access to justice.
- To explore national and international innovations which may contribute to strengthening the way in which the Irish criminal justice system responds to the needs of disabled people.

The research is funded by the NDA's Research Promotion Scheme and is a six month project running from June to December 2011. It is being undertaken by Dr. Claire Edwards, Gill Harold and Dr. Shane Kilcommins, School of Applied Social Studies and Centre for Human Rights and Criminal Justice, Faculty of Law, University College Cork.

The research has a two-pronged methodology. The first element of the research consists of a literature review which draws on both national and international literature. The review will be used to explore the barriers that people with disabilities experience in accessing the justice system, the different legal instruments which frame the system of redress, and innovations in policy and practice as regards responsiveness to people with disabilities. The second phase of the research involves approximately ten semi-structured interviews with

key stakeholders in the arena of disability and justice, including representatives of the agencies of the criminal justice system. The aim of the interviews will be to elicit understandings of disability within the Irish criminal justice system, to identify any specific policies and practices addressing the needs of people with disabilities, and consider opportunities for strengthening the efficacy with which the concerns of people with disabilities are addressed.

Contact details for the project: Dr. Claire Edwards, Claire.edwards@ucc.ie, 021 490 2313, or Gill Harold, g.harold@umail.ucc.ie.

Consent Form

Access to Justice for People with Disabilities as Victims of Crime

Please tick the box if you agree

I agree to take part in this interview for the study. ❑

I agree to the interview being digitally recorded and transcribed and understand that the recordings and transcripts will be treated as confidential and securely stored at all times and that only members of the research team will have access to them. ❑

I agree to having direct or indirect quotations of the interview used in publications of the research, on the understanding that they will be anonymised. I understand that I will be provided with a full transcript of the interview for revision ❑

Name: _____

Signed: _____

Date: _____

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