

National Strategy on Domestic, Sexual and Gender-based Violence, 2010-2014

Final Review and Proposals for New Strategy

Introduction

- ✓ Please complete the questions below which relate to your area of work or experience.
- ✓ Be specific in your answers referring to particular actions under the National Strategy and to data, evaluations and reviews where possible.
- ✓ A key section of the questionnaire asks you to say what you can do under the next strategy. Actions need to be feasible, do-able and ambitious. Any wish lists under this heading should be labelled as such.
- ✓ The questions are purposefully open-ended. Please be as specific and as comprehensive as possible in your answers.
- ✓ Please remember specific developments or actions in relation to vulnerable or high risk groups, including Travellers, people with a disability, older people, migrants, young people, pregnant women and those involved with substance abuse.
- ✓ Do not expect to fill in each and every subheading; the subheadings are meant to prompt your memory.
- ✓ It is better to spend time developing the comment than agonising over which subheading it should go under.
- ✓ Do not get lost with all the subheadings; there are basically five questions:
 - 1. What was good about the strategy?**
 - 2. What was not good?**
 - 3. Have you any evidence either way?**
 - 4. What do you want to do in the next strategy?**
 - 5. What should others do?**
- ✓ Your submission will be published on the Cosc website with the final review.

Name of your organisation: Office of the Director of Public Prosecutions

Positive developments

As a result of actions under the current Strategy what, if any, positive developments have occurred in relation to domestic, sexual or gender-based violence under the following headings:

1.1 Victims' experience of state services

In an effort to assist victims to express, in their own words, the impact on them or their families, of personal (including sexual) violence, this Office developed, in collaboration with a working group comprising of staff from the Victims of Crime Office of the Dept. Of Justice and An Garda Síochána, the publication: "Guidelines for Making a Victim Impact Statement". Launched on 5th July 2013, this leaflet is in Q & A format and answers, in plain language, questions most often asked by victims who are asked to make a victim impact statement.

1.2 Victims' experience of voluntary sector services

1.3 Accountability of perpetrators (see below at 1.9)

1.4 Awareness and attitudes

1.5 Prevention

1.6 Policy making or service planning

1.7 Research or data collection (see below at 1.9)

1.8 Structures or processes to support the strategy (consultation, meetings, six monthly review reports etc.)

1.9 Outside the Strategy what, if any, have been the positive developments in relation to domestic, sexual or gender-based violence, generally or under any of the categories above, in the period 2010-2014?

Initiatives Outside the Scope of the Cosc Strategy.

The Office of the DPP made a detailed submission to the development of the Draft National Strategy on Domestic, Sexual & Gender based Violence, 2010-2014.

That submission recommended, inter alia, a disclosure regime that would strike an appropriate balance between the defendant's right to a fair trial and the complainant's right to privacy and access to appropriate remedial medical/psychological treatment.

Non-Party Disclosure

In further pursuance of this objective, this Office entered into discussions with a broad range of statutory and non-statutory agencies with a view to sensitively managing our disclosure obligations in relation to material held by non-parties. Following lengthy negotiations, a number of Memoranda of Understanding (5 to date) have been settled, including in January 2013, an agreement with the Dublin Rape Crisis Centre, and in April 2013, with the Health Services Executive (including the newly established Child & Family Agency).

These Memoranda of Understanding are working well, alleviating some of the common difficulties which had in the past arisen in relation to disclosure of what is often very sensitive material held by therapists/social workers/counsellors. What is particularly important to non-parties are the conditions that an accused/their legal representative are required to agree to, namely:

- (i) This material will be retained in the custody of the legal representatives (Solicitor & Counsel) at all times;
- (ii) It will be copied and used as necessary by the solicitor and/or Counsel [only] for the purposes of the trial;
- (iii) It will be accessed or used by any accused or witness only under the supervision of the said solicitor and/or counsel;
- (iv) No accused or witness will be permitted to take copies of this material into their sole custody outside the supervision of the said solicitor and/or counsel unless directed by Order of the Court and on prior notice to the Office of DPP
- (v) At the conclusion of all criminal proceedings, (including any appeal) the disclosed material (including all copies) will be returned to the ODPP for secure archive storage.

Further:

Sexual Assault Treatment Unit (SATU)

The Office of the DPP is now represented on the inter-agency committee reviewing the National Guidelines for Sexual Assault Treatment Units (SATU Guidelines). In addition, this committee has developed additional guidelines, which, if adopted, will provide an additional pathway for non-reporters, with the potential, for the first time, to collect and securely store forensic samples, from a person who has not as yet made the decision to report the sexual assault to An Garda Síochána. This is so that in the event of subsequent reporting, such vital evidence is available to aid the investigation/prosecution process. Current practice precludes the collection and storage of such samples outside of the formal reporting structure.

Research /Data collection

Rape File Audit

The Office of the DPP undertook an internal research project which examined trends in rape cases for the years 2005 - 2007. The purpose of the project was to build a comprehensive picture of the prosecution of rape cases in this jurisdiction and in particular, to further understand and explain the points of attrition (non-progression) of such cases at various stages of the process. The key findings of this research, together with an analysis of the reasons for decisions not to prosecute, were presented in the DPP's Annual Report 2010 (pub. July 2011).

Separate Legal Representation

The Office of the DPP assisted with a collaborative research project between Dublin Rape Crisis Centre (DRCC) and Trinity Law School (lead researcher Prof (and Senator) Ivana Bacik of Trinity Law School) seeking to establish the effectiveness of the provisions¹ which allow for limited separate legal representation in circumstances where an accused applies for leave to adduce evidence of a complainant's previous sexual history.

The data extraction of this historical study sought to examine a potential cohort of 72 files identified by the Legal Aid Board as having been granted Legal Aid in respect of an application under s.34 of the Sex Offenders Act, 2001. Until this research, no empirical study had been conducted in Ireland specifically aimed at establishing how

¹ s.4A of the Criminal Law (Rape) Act 1981, inserted by s.34 of the Sex Offenders Act 2001

often such evidence is introduced in court. The preliminary findings were reported at a conference launched by Mary McAleese, the then President, in January 2010.

Accountability of perpetrators

Undue Leniency Appeals

Pursuant to the powers under the Criminal Justice Act 1993 (as amended) the Director of Public Prosecutions may seek a review of an unduly lenient sentence, that is, a sentence which substantially departs from sentencing norms to such an extent as to amount to an error of principle. A total of 19 such appeals in respect of sexual offences were heard in the years 2010 - 13 inclusive, (complete data for 2014 is not as yet available). This application is limited to matters dealt with on indictment and no such right of review exists in respect of district court sentences, where a large proportion of domestic violence cases are heard.

Presentations/Submissions on Sexual /Domestic Violence:

- ‘Prosecuting Sexual Offences’: Chaired by The Honourable Mr. Justice George Bermingham, presentation by Liam Mulholland, Head of the Superior Courts Section, & Kate Mulkerrins, Head of Prosecution Policy & Research Unit 24 February 2011, Griffith College.

- Assistance to the Law Reform Commission Report: Aspects of Domestic Violence (LRC 111-2013) available from the LRC at: www.lawreform.ie in relation to:
 - (i) Whether it should be possible to refuse bail for preventative reasons where a person has been charged with the offence of breach of a domestic violence order under section 17 of the Domestic Violence Act 1996

 - (ii) Two elements of the offence of harassment in section 10 of the *Non-Fatal Offences Against the Person Act 1997*. The first element is whether the requirement under section 10 of the 1997 Act that the conduct of the defendant involve “following, watching, pestering,

besetting or communicating” hinders prosecution of the types of harassment common in a domestic violence setting. The second element examined was whether the requirement that the conduct be performed “persistently” for it to amount to harassment allows unacceptable conduct to be prosecuted whilst also ensuring that individuals can behave in unpleasant but permissible ways.

Undesirable developments

As a result of actions or inaction under the current Strategy what, if any, undesirable developments have occurred in relation to domestic, sexual or gender-based violence under the following headings:

- 2.1 Victims’ experience of state services
- 2.2 Victims’ experience of voluntary sector services
- 2.3 Accountability of perpetrators
- 2.4 Awareness and attitudes
- 2.5 Prevention
- 2.6 Policy making or service planning
- 2.7 Research or data collection
- 2.8 Structures or processes to support the strategy (consultation, meetings, six monthly review reports etc.)
- 2.9 **Outside the Strategy** what undesirable developments, if any, have occurred in relation to domestic, sexual or gender-based violence, generally or under any of the categories above, in the period 2010-2014?

The Evidence

- 3.1 What actions did you take to evaluate or review the impact of any of the actions under the National Strategy? Please forward copies of any relevant publications or documents.

- 3.2 Are you aware of evaluations or reviews by others of the impact of any actions under the Strategy? Please forward copies of any relevant publications or documents, or contact details of those who undertook the evaluation.

What can be done better in the future?

By you

What specific actions is your organisation proposing to undertake in the context of a new national strategy on domestic, sexual and gender-based violence, in the period 2015-2019, under any of the following categories.

- 4.1 State services for victims
- 4.2 Voluntary sector services for victims
- 4.3 Accountability of perpetrators
- 4.4 Awareness and attitudes
- 4.5 Prevention
- 4.6 Policy making or service planning
- 4.7 Research or data collection
- 4.8 Structures or processes to support the strategy (consultation, meetings, six monthly review reports etc.)
- 5. What specific actions is your organisation proposing to undertake for victims generally which will also apply to victims of domestic, sexual or gender-based violence, in the period 2015-2019, under any of the above categories?

The Victims Directive

The most significant impending event, with implications for all victims of crime, and victims of sexual and domestic offences in particular, is the upcoming Victims Directive. Due for transposition in the autumn of 2015, henceforth victims will be given the right to receive reasons for decisions not to prosecute in most cases, including, harassment, rape and child sexual abuse.

The Office of the DPP is currently examining the resource and other implications for the Office and the prosecution of crime generally of the various provisions of the Victims Directive.

By others

What other specific actions should be undertaken in the context of a new national strategy on domestic, sexual and gender-based violence, 2015-2019, under any of the following categories?

Who should undertake these actions?

Please also state, with your reasons, if you believe that there should be no further action by anyone under any heading.

6.1 State services for victims

6.1 Voluntary sector services for victims

6.2 Accountability of perpetrators

6.3 Awareness and attitudes

6.4 Prevention

6.5 Policy making or service planning

6.6 Research or data collection

6.7 Structures or processes to support the strategy (consultation, meetings, six monthly review reports etc.)

7.1 What specific actions should be undertaken for victims generally which will also apply to victims of domestic, sexual or gender-based violence, in the period 2015-19, under any of the above categories?

7.2 Who should undertake the actions mentioned above?

And finally

8. Please make additional comments, if any, here.