

Submission to the Commission on the Future of Policing in Ireland

CARI

Eve Farrelly, Child Accompaniment Support Service Manager

31st January 2018

CARI is the leading voluntary organisation that provides child centred specialised therapy and support to children, families and groups affected by child sexual abuse. Our services include:

1. Child and Adolescent Therapy
2. National Helpline
3. Child Accompaniment Support Service (CASS)- Court and Forensic Accompaniment

In considering its view on the future of policing in Ireland CARI looked at several issues:

1. Historic approach to victims
2. Children as witnesses
 - a. Video as Evidence in Chief
 - i. Recommendation
 - b. Assessment of Need
 - i. Recommendation
 - c. Delays
 - i. Recommendation

Historic approach to victims

The adversarial nature of the criminal justice system gives victims little participatory rights in the administration of justice with regard to the crimes that have been committed against them. The balance between including victims more whilst not impinging on the rights to a fair trial of the accused is a difficult one. A significant step toward this balance will come in the form of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA and Ireland's domestic legislation, the Criminal Justice (Victims of Crime Act) 2017. However, bringing the Cinderella of Criminal Law out from the cold requires a cultural change and shift in our approach to working with victims of crime.

Children as witnesses

Video as Evidence in Chief

One of the changes that we will see taking place for child witnesses relates to their statement being video recorded. The Criminal Evidence Act, 1992 allowed children under 14 and those with a mental disability to have their statement recording admitted into evidence; however they were still required to be present in court to go under cross examination. This age will be set to change to under 18.

Recommendation:

One of the rights that witnesses have before trial is the right to read their statement. In the case of children who have had their statement video recorded, they have the right to watch the recording. Often times it is not appropriate for the child's parents to sit with their child through

Submission to the Commission on the Future of Policing in Ireland

CARI

Eve Farrelly, Child Accompaniment Support Service Manager

31st January 2018

this (as the parents may have to serve as witnesses themselves in the criminal trial), it may be uncomfortable for the child to have other family members sit there and hear that level of detail.

The viewing of the statement is something that, in CARI's professional opinion should not be done in the child's home. Depending on the age of the child, it may not be appropriate or comfortable for them to view it at a police station either. CARI would advocate that this viewing should be done in a neutral environment, supported by a neutral person. Any child that is linked in with the CARI Child Accompaniment Support Service is offered our office which is a child friendly therapy centre to view their statement which can be done alongside a fully trained and garda vetted accompaniment officer.

Assessment of Need

Groenhuijsen (2014)¹ stated that one of the most influential factors that contribute to secondary victimization is the raising of expectations with victims and then not meeting those expectations. Our new legislation will see certain victims be afforded automatic special needs due to their status in society i.e. children. This new provision includes for children to be given an Assessment of Need.

The assessment can be broken down into two sections. The first section deals with protection needs that are directly pertaining to criminal proceedings for example does the victim need to use the video link to give evidence? Or ensuring the victim, where possible, has the same member of An Garda Síochána conducting the interviews. The second section is far more psychologically diagnostic and therefore more problematic. It states that the scope of the assessment shall have regard, amongst other things, to the personal characteristics of the victim, the degree of harm suffered by the victim as well as the relationship between the victim and the alleged offender. An Garda Síochána are not certified psychological clinicians. Their statutory role is that of protection and investigation. The question as to whether this extended remit is fair to An Garda Síochána or appropriate for the victim is a valid one.

This Article within the Directive has received some academic critique. Differential victimology recognizes that victims are not a group but are individual people with individual needs. This assessment of need, although sympathetic to the victim, has been critiqued as neither practical nor feasible and therefore it has been asserted that it will not be able to work (Groenhuijsen, 2014).²

Recommendation:

In order for An Garda Síochána to fully implement this protective measure CARI recommends that an additional resource be allocated to the relevant authorities responsible for the creation, rolling out and record keeping of this assessment.

¹ Groenjuisen, M. (2014). The development of international policy in relation to victims of crime. *International review of Victimology*, 20(1), 31-48.

² Groenjuisen, M. (2014). The development of international policy in relation to victims of crime. *International review of Victimology*, 20(1), 31-48.

Submission to the Commission on the Future of Policing in Ireland

CARI

Eve Farrelly, Child Accompaniment Support Service Manager

31st January 2018

Delays

CARI has been reporting on excessive delays in cases of child sexual violence for a number of years now. We recognize that there are many contributing factors that contribute to this, a number of which are not within the remit of An Garda Síochána.

The length of time that the criminal proceeding takes to complete is important to know. Of the cases that CARI accompanied that closed in 2016 we took 23 cases and analysed their dateline. In the 23 cases that were analysed, the average age of the child at the time they experienced the abuse was 11 years old. The average age for the client when they contacted CARI for accompaniment was 15 years old. The average age for the client when their trial was finished was 16 years old. What our records show is that children on average spend 5 years from between the crime taking place to the end of the criminal proceedings. We need to look at what can and does happen for children within five years. Although not hugely significant for an adult in terms of development five years in a child's life is astronomical.

We appreciate that to ensure due process and to protect the fairness of a trial delays are required and necessary. Our issue is not the delay, rather the length of delay. It is our view that a 5-year time span out of a child's life is too long. This excessive amount of time can lead to the secondary victimization of our already extremely vulnerable.

Three important issues can arise from excessive and repeated delays:

1. The child may age out of protections afforded to them. Should they become adults at the time of testimony the option of video link may not be automatically afforded to them.
2. From an optical point of view the jury may see a rebellious teenager as opposed to a vulnerable 9-year-old. Although the pre-recorded statement goes a long way to address this.
3. Repeated false starts can help prepare a family by building a resilience and providing a familiarity with the process. However, it may also cause significant stressors for families especially if they are travelling from one county to another. In addition, having the prospect of the trial being over and then removed can be devastating.

Recommendation:

CARI recommends that in cases where the victim is a child that the case be progressed swiftly having regard to the impact that repeated and excessive delays may have on children.

Some additional feedback.

CARI would like to formally note that it's interactions with An Garda Síochána both on the ground with investigating police and through its management structure have been, and continue to be at a very positive, productive and inclusive level. We recognize, every day, the extremely difficult work that is done with professionalism and dedication on the part of An Garda Síochána. We have seen time and time again how the relationship between the injured party and the investigating guard has been able to prevent secondary victimization that may have incurred from other moving parts within criminal proceedings and it is testament to these dedicated officers that this can and does happen.

Submission to the Commission on the Future of Policing in Ireland

CARI

Eve Farrelly, Child Accompaniment Support Service Manager
31st January 2018

CARI would like to thank the Commission for its vital work and for seeking CARI's views on this matter. CARI would be happy to assist the Commission in anything further.

If you would like to know more about our work, you can contact our website at www.cari.ie. Should you wish to contact me further regarding this submission or on any aspect of our work you can do so through my email cass@cari.ie or by phone at 01-8308529.