

Chapter 6: Court Procedures and Compensation

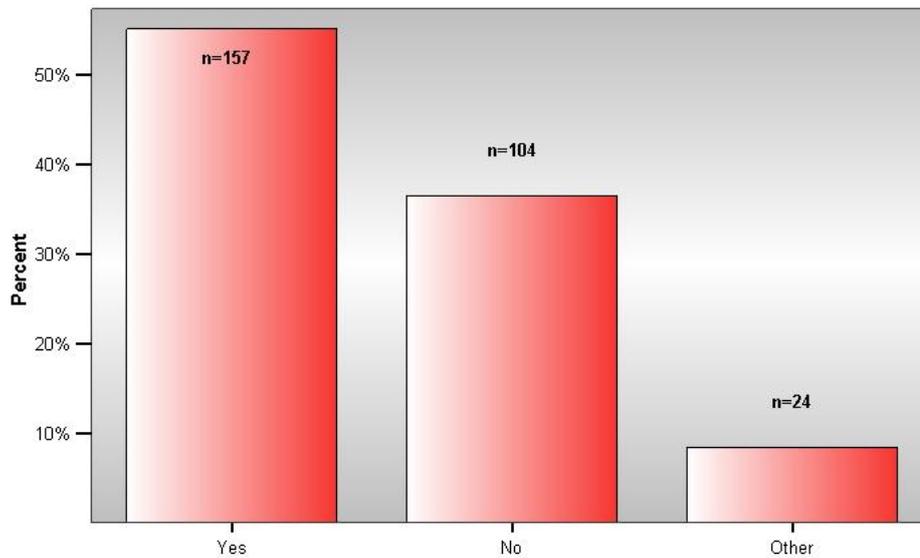
6.0 Introduction

Such research as has been conducted on attrition rates (Leane et al 2001) indicates quite clearly that many victims do not report, and even if they do report, fail to have their complaints successfully processed through the courts. The court experience of victims has to be central to any study of their needs in relation to the criminal process. Court procedures determine how a victim is treated and dictate the manner in which his or her story is elicited and heard. It is essential in assessing the ability of the criminal justice system to meet victims' needs to review the way in which victims currently experience the process itself in terms of decision making, hearing, procedures, personnel and judgment. Hence this survey included questions regarding victims' experiences of the process and procedure of our courts including arrangements for seating and audibility as well as adjournments and delay. Questions were also posed regarding support received from victim support agencies and criminal justice personnel in the courts, and victims' understanding and acceptance of the reasoning for decision-making as well as the reality of their experience of specific procedures. The experiences of those who do go through the court system may influence decision-making by future victims as to whether to proceed with their complaints. Therefore court procedure is an important element in securing accommodation of victims in criminal justice. The extent to which victims receive appropriate expenses for their participation in the process is also an important issue. In terms of outcomes it also needs to be considered whether the financial compensation that may be forthcoming meets victims' needs, and whether the sentences imposed carry a sufficient sense of reparation. This chapter will consider the findings generated in this research regarding victims' needs and experiences in relation to court procedure, expenses and compensation.

6.1 Victims' Experiences of Court Procedures

55.1% of respondents (157) in this study had experience of court procedures and identified their cases as having proceeded to the court system. 36.5% (104) of respondents said that their case had not proceeded to the court system, with 8.4% (24) indicating that their cases had not yet proceeded further.

(Fig 6.1: Cases Proceeding Through the Court System (Victim Postal Survey))



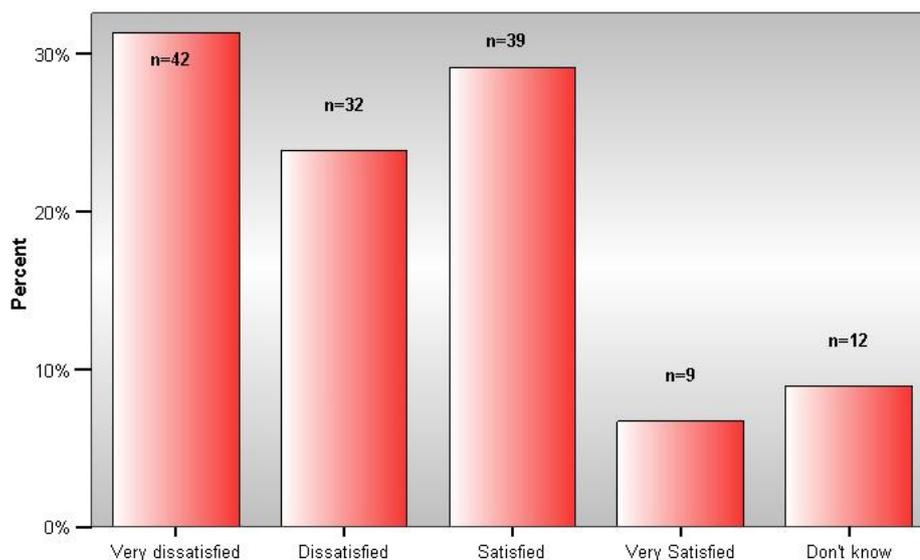
Over one-third of the respondents indicated that their complaints did not proceed to court. The issue of attrition in the criminal justice system is well documented. After reporting a crime, attrition can occur for a variety of reasons including withdrawal of a complaint, the use of cautioning, Garda inability to identify or locate the alleged perpetrator, and a decision by the prosecutor not to prosecute. For example, in a study undertaken in New South Wales in 1996 in relation to four crimes (burglary, motor vehicle theft, assault and robbery), it was found that only 7.5% (33,457) of the incidents of victimisation (446,000) were brought before the courts for trial, and only 4.2% (18,901) of offenders convicted (Mukherjee 1997). As part of a report on tracking attrition rates in reported rape cases in eleven European countries, Paul O'Mahony tracked 100 sequentially-reported rape cases in Ireland after the 1st April, 2004. He discovered that an alleged perpetrator was identified in 79 out of the 100 cases; only 18 suspects were charged and 16 of these proceeded to court. Of these 16, 8 were convicted at the time the report was completed (Lovett and Kelly 2009).¹ Hanly et al (2009: xxviii), in a study of 597 rape files received by the DPP between 2000 and 2004, found that the DPP prosecuted just under one-third of prosecutable cases (i.e. the total number of cases excluding those cases in which the complainant had withdrawn the case). Of those that went to trial, nearly 60 per cent resulted in a conviction or a guilty plea in respect of at least one charge. Having regard to these

¹ See also M. Leane et al (2001).

studies, the attrition rate of 36.5% indicated in this study does not appear overly high, though care should be taken to the very limited comparative use to which such statistics can be employed given the different types of offences surveyed and the kind and size of the populations sampled.

In terms of progressing complaints and incidents through the criminal process, the victims' subsequent experiences of court procedures as revealed in the victim postal survey were overwhelmingly unsatisfactory. This is apparent from figure 6.2 below where 55.2% of relevant respondents declared themselves very dissatisfied or dissatisfied with their overall court experience.

Fig 6.2: Satisfaction with Court Experience (Victim Postal Survey)



The experiences of the victims of this survey in terms of court procedures cluster around a number of issues which the majority experienced. These can be usefully and broadly classified as issues of delay; communication (which includes downgrading of charges or refusal to prosecute); architecture and seating in court; the sensitivity of court professionals; a lack of information about and understanding of the legal system; and the handling of Victim Impact Statements.

6.2 Delay

The issue of delay relates in the main to the experience of adjournments in a case and the consequent uncertainty as to when the case will eventually be heard. Bacik *et al* (2007) recommended that measures should be put in place to ensure a reduction in delays in court processes. The Irish Council for Civil Liberties report also recommended an ongoing commitment by the criminal justice agencies to the expeditious hearing of criminal trials subject to the defendant's right to fair procedure and right to a fair trial (ICCL 2008: 38). Similarly Hanly *et al* (2009: xxxiv) noted that 'every possible means of reducing delay should be explored' particularly once a case is returned for trial. Delay causes anxiety to victims and also practical difficulty with regard to court attendance, which is particularly acute if the hearing of the case is in another county or indeed country.

Court is postponed on many occasions. [For example I had] a friend coming from Holland, two times being all day in court waiting..."

(Victim of sexual offence/domestic violence)

Barry, a victim of assault experienced the investigative process as very long and he was also frustrated that the court case was put off several times due to adjournments. In the meantime he met his attacker on several occasions, something which made him feel very uncomfortable.

The court case dragged on for a year and a half, two years. It was adjourned, back and forth. The guard was helpful enough...I knew at that stage that the ball was rolling and that they couldn't do much more before it got before the court...I would have liked, I suppose, if they could have done something to keep this guy away from me in the meantime but nothing happened there.

(Barry)

Kate, a victim of domestic violence, had a safety order in place for herself and her daughters which allowed the Gardaí to arrest her husband immediately after he attacked her. Kate's husband was eventually brought to court after the arrest and barred from their house. One of the frustrations for Kate was the constant court adjournments.

The guards never got in touch with us from the 16 September until February...Nothing at all...Absolutely nothing...About two weeks before...we had been in court from September and it had been put off and put off....

(Kate)

Another long time elapsed between the crime and the trial in a case of dangerous and careless driving. Valerie was injured and her father killed in the accident which took place in August 2006. The case did not go to trial until November 2008 and Valerie had to embark on a stressful journey involving many elements of the criminal justice system. The accident had taken place in a different county and Valerie and her sisters needed plenty of notice in order to make sure that they could attend court in that county when the accused appeared. This, however, was not taken into consideration by the process.

It was the Tuesday before the August bank holiday weekend. The Superintendent rang about 12 midday to say that a woman was being charged and was being brought into the district court that afternoon. I was very upset and very annoyed, very angry with him on the phone: "You know I wanted to be there every step of the way...You should have let me know at 9 o'clock this morning because I could have got organised", and I was very upset about that because I wanted to be there. He said he didn't know it was going to happen then...We heard nothing, there seemed to be a lack of communication....

(Valerie)

In Valerie's case there was no liaison officer appointed who might have facilitated better communication between Valerie and the Gardaí and perhaps also between the Gardaí themselves.² Those victims who were allocated a liaison officer appeared to be more satisfied with the investigative process compared to those who did not have this support.

The woman who murdered Mary's mother was arrested very soon after the incident and brought to a psychiatric hospital. The trial was adjourned several times due to the defendant's inability to attend. Mary remembers having the notice with the date of the trial on her fridge and worrying herself sick in anticipation of the day.

² The Victims Charter (1999: 8) notes: 'when a suspect is charged, the Gardaí will tell you...the time, date, and location of the court hearing of the charges against the accused'.

Because this person was up in [mental hospital] we weren't told... We'd be given this date for the court and I always remember I put it on the fridge and I couldn't function... All I saw was the date on the fridge... My brother, his wife, my husband and myself would go to court and the name of this person would be called and all they'd say is "too ill to attend" but nobody telling us beforehand... and there'd be another date and that could be another three months... or a break for the summer... I think ours went for about two years.... [T]he actual case only lasted a day...

(Mary)

Respondents to the victim survey shared this overall perception of inefficiency in the criminal process due to delay. Such delays undoubtedly constituted secondary victimisation as highlighted by the following comments from respondents to the victim survey:

Faster responses at the time of the person reporting to the gardaí or support services... I reported my abuser in 2001 and have still to conclude court...

(Victim of sexual offences)

Waiting for court case to happen [is] very difficult... To hear DPP's decision on charges [is] very slow. When in court – no idea when your case will be heard despite listings, court never follows assigned listings. No communication, have to turn up every day even though defence may be aware...

(Victim of sexual offences and false imprisonment)

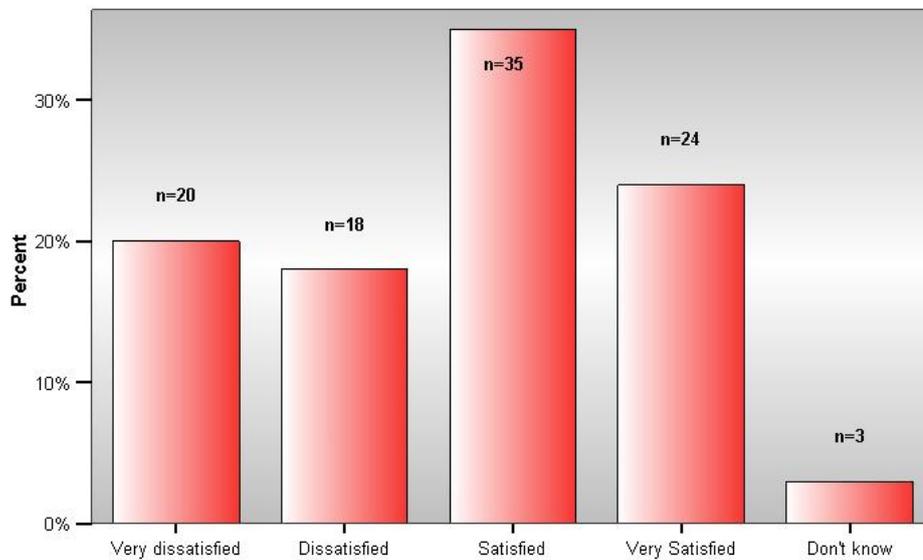
[My] case was adjourned 3 times which prolonged the stress I was suffering.

(Victim of violence/criminal damage)

6.3 Information Provision on Court Procedures

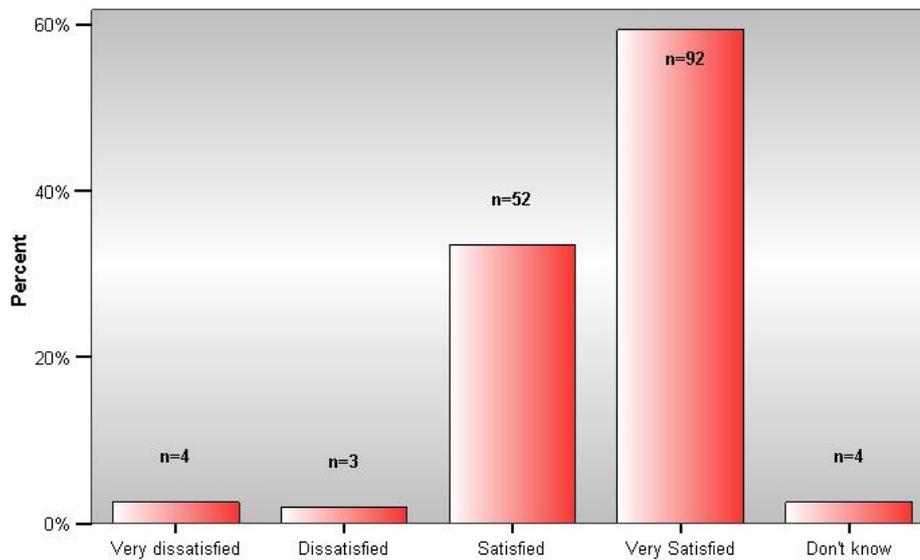
In order to assess the quality of information provided to victims in relation to court procedures, the survey asked a number of questions to determine the overall level of victim satisfaction in this area. To begin with, the survey participants were asked to rate their satisfaction with the provision of information by court officials/staff on court procedures. Of the 100 respondents who identified this question as being relevant to them, 59% (59) were either satisfied or very satisfied; 38% (38) were either dissatisfied or very dissatisfied with the information provided by court officials/staff, and 3% (3) did not know whether or not they were satisfied.

Fig 6.3: Satisfaction with information received about court procedures from court officials/staff (Victim Postal Survey)



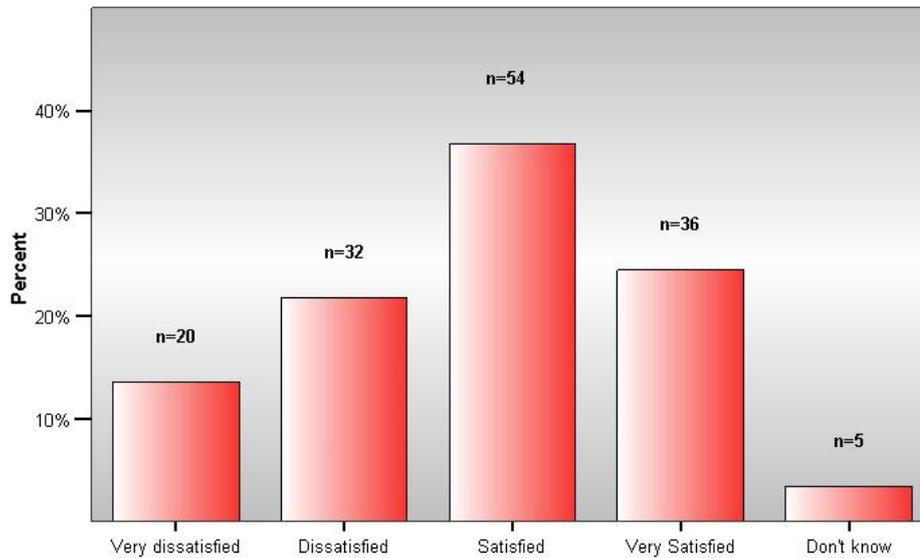
A very positive response was reported in relation to information provided by support organisations about court procedures. Of the 155 relevant respondents, 93% (144) indicated that they were either satisfied or very satisfied with the information provided by support organisations about court procedures; 4.5% (7) indicated that they were either dissatisfied or very dissatisfied, and 2.5% (4) indicated that they did not know.

Fig 6.4: Satisfaction with information received about court procedures from support organisations (Victim Postal Survey)



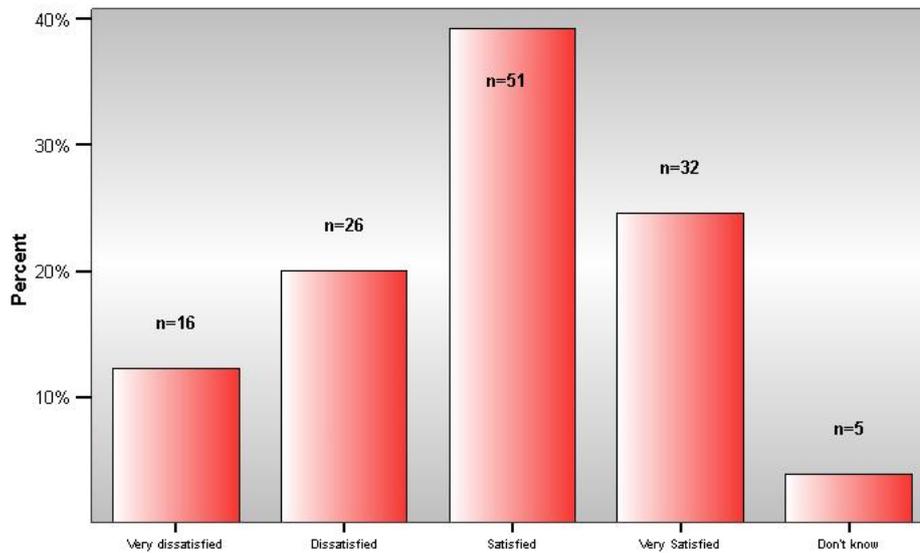
In relation to information received about court procedures from the Gardaí, 61% (90) of relevant respondents indicated that they were either satisfied or very satisfied; 35.5% (52) indicated that they were either dissatisfied or very dissatisfied; and 3.5% (5) indicated that they did not know.

Fig 6.5: Satisfaction with information received about court procedures from the Gardaí (Victim Postal Survey)



Finally, where the solicitors provided the court information, 64% (83) of relevant respondents indicated that they were either satisfied or very satisfied; 32% (42) indicated that they were either dissatisfied or very dissatisfied, and 4% (5) indicated that they did not know.

Fig 6.6: Satisfaction with information received about court procedures from a solicitor (Victim Postal Survey)



It is clear from these results that information on court procedure was provided by a variety of sources. While for the most part, participants reported that where they did receive information, their experience of that was generally either satisfactory or very satisfactory (particularly for the information provided by support organisations), a number of respondents to the victim survey recounted experiences of receiving insufficient information or receiving it in a manner which was less than satisfactory. Some respondents referred to the lack of information provided in respect of the court hearing:

Better information of what will happen in court before court.
(Victim of false imprisonment/domestic violence)

Put it on the net so victims can track cases, have id number and we can see if it [is] going to court etc. [You should have a] right to know when offender is out of custody...

(Victim of domestic violence/false imprisonment)

Ensuring comprehension of the court process through translation of information into the victim's own language also proved a difficulty for some respondents who highlighted the need for adequate translation services:

Properly certified professional interpreters in court are needed...I am a Lithuanian national who was given a Russian speaking interpreter who was originally Latvian. That meant that we had to communicate in Russian which is my second language and the interpreter's quality of Russian language was poor and we could hardly understand each other.

(Victim of sexual assault)

Leaflets, brochures about court procedures in different languages.

**(Victim of sexual assault, abduction,
false imprisonment, domestic
violence),**

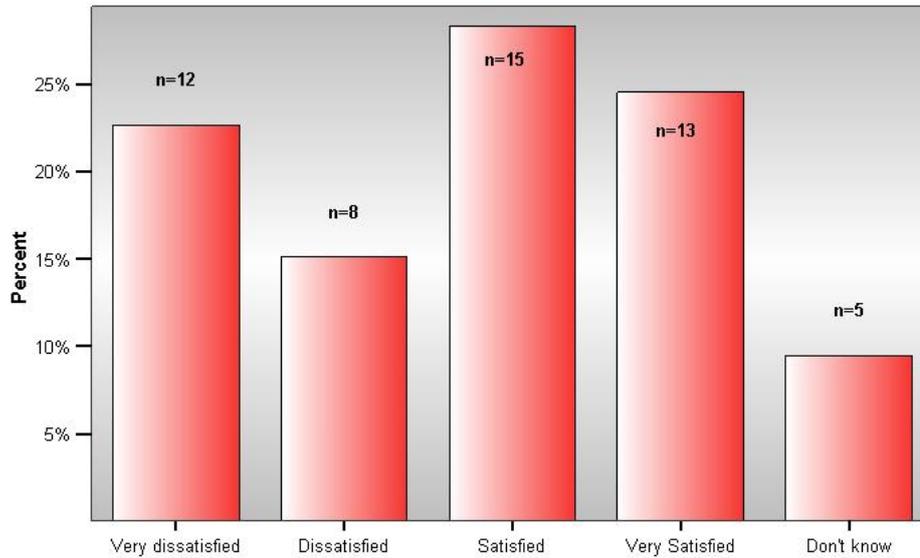
I had to find help on the Internet in a website for Polish people in Longford. Reading English is hard...I am a university student. I know how to get around. How do other people get help if they not working or have internet?

(Victim of False imprisonment/domestic violence)

6.4 Prosecution decision-making and contact

Of those who had contact with the prosecutor/DPP before or during the court case, 53% (28) expressed themselves as satisfied or very satisfied with the service provided. 38% (20) indicated that there were either dissatisfied or very dissatisfied, and 9% (5) were unsure as to whether they were satisfied or not.

Fig 6.7: Satisfaction with Service of prosecutor/Director of Public Prosecutions before or during the court case (Victim Postal Survey)



A number of the interviewees gave positive feedback on the DPP’s office. Carol, for example, a victim of sexual assault as a child, felt supported by the prosecuting barrister from the DPP’s office.

I met with the prosecuting barrister, somebody from that office [DPP]... Very good, she was very, very nice, she was oozing understanding. The state solicitor was there as well, and the detective sergeant was there... Everything in the court process was explained to me from start to finish...

(Carol)

Meeting with the DPP was also seen as positive by Catherine and her siblings prior to the court case about their brother’s murder. Catherine was particularly happy with the opportunity to email a contact person in the office for further enquiries regarding procedures.

At the time [meeting the DPP] we thought it was very good... We went in and met [name] who was the chief senior counsel and the

junior...They told us how the murderer could plead and what could happen on each of those pleas. They told us how the case would proceed if he didn't plead guilty. They showed us around the court and when we were leaving, there was a girl, [name]. She was a legal executive and she was our liaison with them and we could ring her and ask about anything, not about evidence, about procedures.

(Catherine)

Some respondents in the survey also expressed dissatisfaction with the office of the DPP. Reasons for dissatisfaction included downgrading charges, no presence at the sentencing hearing, not giving reasons for a decision not to prosecute, and poor standards of communication with victims. The downgrading of charges or refusal to prosecute by the Director of Public Prosecutions was a cause of concern for some victims.³ Two victims had very negative experiences of dealing with the DPP. Ted, who had been assaulted by his son-in-law, could not understand why the DPP had downgraded the severity of the charge. Furthermore, at the day of the trial he met with the state prosecutor very briefly before the hearing.

When the case was coming up, I couldn't get support from anybody. I was disappointed with the DPP, because when I went to the police, when the original crime happened, the police put it down as a charge 3 as regards to the severity of the sentence and it was supposed to go before a jury. But the DPP lowered it down to a lesser court...just before a judge⁴...I didn't agree with that...I went to the superintendent in [the garda station] and I asked him would it be possible to meet the DPP because the case was coming up and I couldn't see anyone to discuss the case with...I should have some consultation with them before the case comes up...because the person that committed the crime, he went to his solicitor the day after the crime, so he had nearly a year to prepare his case, so I didn't meet the person from the DPP until 10.20a.m. on the morning of the hearing...She knew very little about it as well...

(Ted)

³ In the qualitative interviews undertaken with 12 complainants as part of their study on rape, Hanly et al (2009: 214) noted that 'all indicated that knowing the reasons behind the prosecutor's decision was very important, and that they should not be excluded from decisions that would have a significant impact on their life (sic)'.

⁴ An assault causing harm under s. 3 of the Non Fatal Offences Against the Person Act 1997 is a hybrid offence; it can be tried summarily or on indictment. This determination rests initially with the prosecutor. If the prosecutor elects for a trial on indictment, this decision is not open to challenge unless some malpractice warrants a judicial review. If the election is for summary disposal, the District Court judge must be satisfied that the offence is of a minor nature. If not so satisfied, he or she should refuse jurisdiction to try the offence summarily. Under s. 3, a person guilty of an assault causing harm is liable on summary conviction to imprisonment not exceeding 12 months and to a fine of £1,500, or to both. On conviction on indictment, a person will be liable to imprisonment for a term of imprisonment not exceeding 5 years, to a fine, or to both.

Ted was further annoyed with the DPP's office for not turning up at the following sitting when the judge delivered her decision on the case. His only support was the investigating Garda whereas the defendant was supported by his legal team who appealed to the judge to get a dismissal.

Another victim, John, tried to contact the DPP's office after learning that they had decided not to prosecute the man who had sexually assaulted him. He was particularly annoyed with the investigating Garda who delivered that news to him late on a Friday night and then felt that he had done his job.

He [investigating Garda] was quite blasé – I asked him who could I contact in the DPP's [office], who could I go to next?" He said: "I've done my job, you have to go to the DPP".

(John)

John contacted the DPP and sent a five-page-long letter outlining his case again and also submitted all relevant documents he felt should have been included from the Gardaí. The DPP reconsidered the case but decided a second time not to go ahead with the prosecution, directing the Gardaí to caution the accused instead.

The DPP should possibly have met with me...because they made their decision on paper...[I] don't know what information they had from the guards...I gave the guards minute details...What details went to the DPP from the guards I don't know...

(John)

This concern about communication from the DPP led some respondents to call for reasons to be given when a decision is made not to prosecute unless there are compelling reasons not to do so.⁵

Reason why DPP decide to not prosecute or at least get evidence back so can take a civil case.

(Victim of false imprisonment, domestic violence, criminal damage, stalking)

Carol, a victim of sexual assault as a child, who was happy with the understanding initially provided by the DPP's office, was very frustrated over the fact that the DPP had decided not to go ahead and prosecute three other members of her family.

⁵ The DPP has recently piloted a scheme where reasons are given for prosecutor decisions in homicide cases where the alleged offence occurred on or after 22 October, 2008. Under the scheme, reasons for decisions not to prosecute, or to discontinue a prosecution, are given on request to parties closely connected with the deceased.

...As regards the DPP, you have no access to the DPP, you go through the guards and the guards tell me that even the DPP don't tell them everything, even though the DPP decided not to go ahead with three people that I had made accusations against you are given no reason whatsoever, so that's all very, very frustrating...
(Carol)

The standard of communication with the DPP's office⁶ experienced by some victims was highlighted in this research.⁷ Valerie, whose father was killed in an accident caused by a woman accused of dangerous and careless driving, was highly critical of the poor communication the family had with the DPP's office.

The first offer from the DPP's office of any sort of communication with us was the day of the prosecution, two and a half years later... We had requested a meeting, because we felt with the lack of communication between the Gardaí and the state solicitor, on numerous occasions we had requested that we should all have a meeting together... We couldn't pin the state solicitor down to do it... They made it impossible... We just felt we were on the bottom of everybody's ladder, that we were nobody's priority, how much more priority can you get than a life has been lost?

(Valerie)

The need for better communication with the DPP's office was also mentioned by some respondents to the victim postal survey, when asked to identify what measures could be taken to improve service provision to victims.

...Better communication with DPP's office... Lesser charges not to be dropped when a more serious charge is taken into account.

(Family Victim of Homicide)

Waiting for court case to happen [is] very difficult... to hear DPP's decision on charges [is] very slow. When in court – no idea when your case will be heard despite listings, court never follows assigned listings. No communication, have to turn up every day even though defence may be aware... so left waiting around for nothing...

(Victim of sexual offences and false imprisonment)

⁶ The ICCL Report on the human rights of victims in the criminal justice system (2008) recommended a proactive service on the part of the office of the DPP to engage with crime victims. It suggested that this service should include procedures for contacting every victim or their family on receipt of a case file and the arrangement of pre-trial meetings at least two weeks before the trial date. The adoption of such measures would certainly go some way to meeting victim needs in relation to communication and information in relation to the court process.

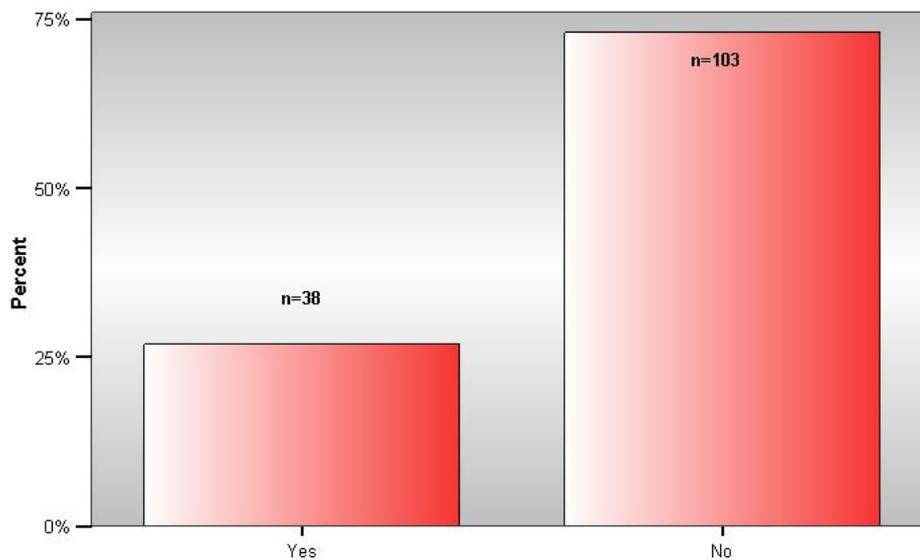
⁷ In Hanly's study of rape in Ireland, it was noted that the most common reasons for complaint withdrawal related to complainant fears about their appearance in court. The study went on to note (2009: 258): "Actively seeking the victim's wishes in decision-making, and especially maintaining communication with the victim throughout the process, may reduce the incidence of withdrawal." See also O'Mahony (2009).

6.5 Court architecture and the organisation of the court hearing

The experience of victims emerging from the study regarding the architecture and design of our court rooms is that they do not appear ‘fit for purpose’.⁸ Many victims referred to inaudibility and difficulty in securing seating, which are very basic ‘service’ type requirements for victims (Ashworth 1998: 33). Bacik et al (2007) have recommended that courtroom facilities be improved to ensure victims have adequate space and to separate them from accused persons. The Irish Council for Civil Liberties Victim Report (2008) also recommended that private and secure waiting areas should be made available for victims and their families and that they should be afforded entry to and exit from the courthouse in a private fashion.

Of the 141 relevant responses to a question in the survey on the issue of access to a separate waiting room, only 27% of respondents (38) reported access to a separate waiting room before the trial, with 73% (103) reporting no such access.

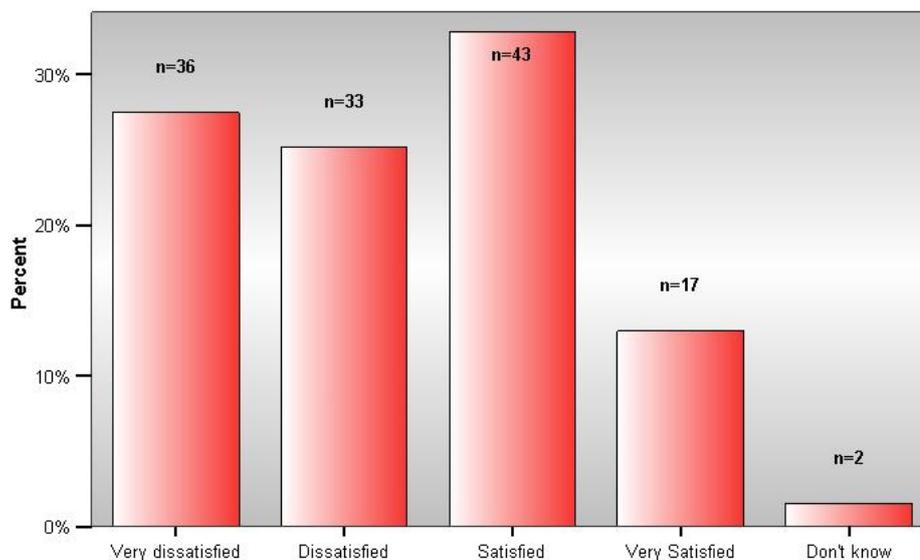
Fig 6.8: Access to a Separate Waiting Room (Victim Postal Survey)



⁸ Complainants interviewed as part of Hanly’s study (2009: 215) also expressed support for the provision of adequate services in court such as separate waiting facilities. One complainant, for example, noted (2009: 215): ‘I had to pass by the accused and his traddle of neighbours...it was just the way the courts were set up’.

When asked to rate their satisfaction with the adequacy of the reserved seating or space provided for victims and their family/friends in the court room, more than half of the respondents who answered the question indicated that they were not satisfied. 69 of the relevant 131 respondents (52.67%) indicated that they were either dissatisfied or very dissatisfied, 60 (45.80%) indicated that they were satisfied or very satisfied, and 2 (1.52%) indicated that they did not know whether they were satisfied or not.

Fig 6.9: Satisfaction with adequacy of reserved seating or space provided for victims and their family/friends in the court room (Victim Postal Survey)



When asked to identify how the criminal justice system could be improved many respondents commented on the need for improved waiting rooms in court.

[In] court [there] should be somewhere private to sit and wait.
(Victim of domestic violence/criminal damage)

They should always have a waiting area separated from the other side...
(Victim of domestic violence)

Room for improvement within the courts:...[there] should be a family room during trial near court.

(Co-victim of murder/manslaughter)

Not let him (accused) wait in the same area of the court house...

(Victim of false imprisonment, domestic violence, criminal damage, stalking)

Private place to wait in court and that my support person should be in court with me if I ask for her, she had to stand outside and I got confused in court and would have liked to talk with her...

(Victim of sexual offences, domestic violence, assault)

Although some victims indicated that they did not wish to be in a separate room during the hearing as they wanted to be present for all of the case, the absence of the option of such a facility is obviously a cause for concern. This is all the more so as most victims experienced the court proceedings as chaotic and pointed out the inevitability of being in close proximity to and encountering the alleged perpetrator in the course of the case.

Paul, whose daughter was murdered, describes the court experience as frightening but also appreciates the support he received from various people during the trial.

Daunting, absolutely daunting...I don't think I'd ever been in court before.... In fairness to the lads...[They] brought me around and showed me around the court house and they explained what's going to happen and what's not going to happen...

(Paul)

There was no allocated seating for Paul and his family but he did not seem to be affected by the close proximity to the accused. He also chose not to stay in a separate room which was offered to him during the trial as he wanted to be present and listen to everything that was being said.

[The accused] sat very close, he was here in a box...They said that there was a room if we wanted to go to a room and not stay and listen to all of it...No, didn't avail of it...You stare at me, I stare at you...I think I unnerved him quite a lot by doing so...It was daunting...

(Paul)

The defendant's guilty plea was welcomed by Paul who had dreaded that his daughter's cousins and friends would have to be called as witnesses.

My biggest fear was to put the teenagers at the stand...Again they had to listen to what actually happened to [my daughter]...[I was] afraid they'd lose their marbles...[I] didn't want that to happen because they were petrified...When

he turned around to say he was guilty there was a sense of relief...Thanks be to God, they don't have to go through that....

(Paul)

Bernice, a co-victim of homicide, described how her first impression of the court was very negative and not at all what she had expected. This related both to the physical conditions of the court room itself but also to what was said.

When I got there it was just...Four Courts...big drama, big act and a play...lots of lies.... [I] thought it was going to be pure and right...I wanted to stand up and say "that's not true!", not a true picture at all...[I] couldn't believe...how close the accused was to the witnesses, to the family...This guy was left walk around the court...no handcuffs...I know you're innocent until guilty but he was already in jail...[He] had been sentenced for five years... This guy was coming out walking around with everybody else...I was quite scared...[What] if I lose the plot and murder him?....

(Bernice)

I can't understand why it's allowed to happen [that the accused can walk freely around the courts]...It was my first time in [the] Four Courts....[I] would have seen prisoners handcuffed to officers, petty criminals. They would have been handcuffed...and here's someone who's been charged with [murder walking around freely]...If he wanted to kill someone else he could have done too...This went on for a couple of weeks.

(Bernice)

The architecture of the court room including the facility for the accused to move around freely was commented on by Gerry, a victim of kidnapping. He was shocked to see the privileges granted to the defendants during the court process. At one stage the prosecuting team and everyone else connected to them were ordered out of the court.

The criminals who were being tried...I was shocked over the amount of leeway they had as regards pulling in witnesses. One of the lads tried to take on the case...The immediate start meant any witnesses who hadn't given evidence had to go outside the court, so it was like another kick to us, you know, the criminals inside and here we were banished outside the court room not hearing our own case...That was evoking some legalese law that you can't be in the court room listening for fear of prejudice. I thought that was appalling...I felt that it empowered the accused unfairly...and then to go on and [say]:"I've no further case, I'm pleading guilty".

(Gerry)

Another relative of a murder victim, Catherine, had similar views as Bernice on the physical state of the actual court room and the crowds of people trying to get a place to sit.

The court itself is a total circus...I have never in my entire life witnessed anything that was so casual and incompetent...We arrived, we weren't sure whether our case would be heard or not...You have to be through the experience of waiting for a whole year...You're totally hyped up...Will my brother come from Australia, will he not?...Will there be enough judges? There could be five cases and only three judges...They said because it's the first day of the legal term it'll be ok because there won't be any carry over... When our fellow pleaded guilty, they said it probably will be heard [quickly]...I was dreading the thought of going into court...The one thing that I wished for was that [my brother] would not be attacked in court...because nothing but negative things had been said all along and the true story had never come out. Virtually nobody knows the name of the fellow who killed [my brother]...I thought that at least when he pleaded guilty we're safe. Hopefully the judge will give the murderer a bit of a slating for the horrible violent thing he did....

(Catherine)

Catherine and her siblings had been offered court support but declined as they felt they did not need extra support. Their brother was home from Australia and their sister from England. Twelve of their murdered brother's friends were also there. The liaison officer pointed out the accused to Catherine.

We went in [to court]. They were selecting juries, there were four trials starting...They were hanging from the rafters, people everywhere...He [accused] had a shaved head, he didn't look like a killer...Nobody is guaranteed a seat, except the judge, the legal team and the jury. Our fellow wasn't seated...Our murderer was leaning up against a wall...He was not handcuffed or anything but now apparently a lot of judges object to handcuffing until they're found guilty....

(Catherine)

There were three other cases before the case involving Catherine's brother. When it came to their case the defence said that their client pleaded guilty and the liaison officer told Catherine that he probably would not be sentenced that day.

We were sitting on steps up in the gallery...The judge got a bit more animated when he was telling the juries what their duties were...A lot of them looked as if they fell out of bed...Maybe they don't think they'll be selected then if they look like rag bags...Jurors sworn in and sent out...We now are in the front so we can stand and lean over and see what's going on downstairs...Jurors have lovely seats...The jurors are sitting with the accused...How can anyone allow that to happen? I thought this is a circus, it's crazy...

(Catherine)

Suddenly there was a change and the jury was sent out. The liaison officer told Catherine that he would be sentenced and that they had to follow her quickly downstairs to the body of the court in order to hear anything.

As we get to the junction of the stairs...he's been brought up the stairs...My daughter literally touched off him...We could have attacked him...if we were like that...She got such a fright...

(Catherine)

Mary, a co-victim of homicide, experienced multiple adjournments to the trial due to the defendant's inability to attend.

It was a joke in a sense, because on the day of the trial we were standing in the hall and she was standing over where the mirror is with her family, and we're standing here, and when we were in court I'd say she was down there and we were here, which is a joke, an absolute joke....

(Mary)

Mary remembers having court support on the day and that she was concerned about her 15-year-old daughter who had to go as a witness. She also had her husband and brother with her in the court room. Mary did not want her father to come to court as she tried to prevent him from knowing the gruesome details of how his wife had been murdered. The fact that it involved neighbours of the family did not make things easier for Mary.

It was dreadful, because the neighbours...they would have been friends growing up and they only live two doors from us...She [the accused] comes from a huge family and they did come down to us after and they said: "...just because we're standing there, don't for one moment think that we're taking sides"...The whole thing was horrible...It was awful...She should have been kept away from everyone, from her family...She was a murderer and she should have been kept away, she shouldn't have been left mix with our neighbours...just kept maybe in a cell until it was time for her to be brought up...My husband had to sit like that the whole time with his foot out and he kept me in more or less at the wall so I wouldn't jump up at her...That shouldn't happen, that's not right.

(Mary)

The victims of assault had also negative experiences of being confronted with their attackers in the court room. There was no separate seating arrangement and few courthouses could offer separate waiting rooms. They were also very frustrated over the frequency with which they attended court for the whole day only to be told that the case would not be heard.

It was a long drawn out thing...I find it very hard to understand the process... I had to be in [court] on a certain day at 9.30 in the morning. I was told by my solicitor before that that there's no possibility that it would go ahead but you still had to be there and I'm self employed and that meant a day off work... Standing in the court completely wasted [my time] for no reason and that happened on three of four different days... You still have to be there because if the judge calls your name and you're not there there's a problem...

(Barry)

I'm sitting here [in the waiting room] and looking straight over at them, and that wasn't a one-off, that was over four or five visits...So I had to spend four or five days staring at them before we were called into the main room...

(Barry)

Ted also felt intimidated while attending court at the trial of his son-in-law who had assaulted him. The court did not have facilities to offer a separate waiting room area or separate seating for the accused and the victim. Ted did not want to bring family members, apart from his daughter, with him to the court as he feared his sons would get angry hearing the defendant's story.

It was a big court room, the judge was up at the top...His family would come up behind us and start whispering things, you know. I just ignored them...I think they were trying to make me lose my cool in front of the judge...I'm the victim and I'm treated like the person who committed the crime...

(Ted)

Gerry, a victim of kidnapping, similarly to Paul declined the offer to use a separate waiting room in the court house as he did not want to miss anything:

I didn't want to be in a room...Taking in every minute of it...Otherwise you might as well be at home.

(Gerry)

This was not the case for the women who attended court in relation to domestic violence incidents. According to them the court experience was as bad as, and some times even worse than, the violence they had experienced in the home. Tracy, for example, waited over a year for the assault case to go to court and found the experience terrifying.

It was nerve-racking...I had to sit across from him in the court room...I didn't want to be there, I only had my daughter in May...If I didn't go to court I could have been locked up [for] contempt of court...Why should I have been locked up? I didn't know what to expect. I never pressed charges against anyone...Scary...First time in a court room...really scary.

(Tracy)

Brendan had a lot of views on how family court procedures should take place in order to minimise the feeling of intimidation for people involved.

The waiting areas leave a lot to be desired. Ok, the Circuit Court in Phoenix House down here, they have private places where people can go in, but there's only five of them...There's about 60 people in court so all the others just have to stay around and they're staring at each other...I think that for family law, which is presently in camera, it should be a small room, where it's not intimidating. It's just an ordinary room, it's not the actual court room itself. The judge and the court clerk should sit with the two people at either end; it

should be a special room, not the ordinary open court, but the court would be cleared. It's in camera, but you're in this court room and the judge is up there, looking down at you, it's intimidating...I know if I wasn't in the job that I'm in (Garda) it would have been very, very intimidating...I would probably have walked away from it...I was never afraid of court, I was never afraid of getting up and telling my story...

(Brendan)

Kylie wished that she would not have been confronted with her ex-boyfriend.

It was absolutely horrible. He was sitting right beside me at one stage...It was the worst...I never want to do it again...[I] remember at one stage...[a] friend asked me to come out have a cigarette as I was shaking...He [the accused] came out, followed me out...all cocky in front of me...In the end my father copped...and [the support worker] copped and they were out in a shot...

(Kylie)

Kylie and her father spent around four/five days sitting in court from early in the morning until late in the evening waiting for the case to be heard. This frustrated her father in particular as he was losing days off work. Kylie, however, was more upset over having to see the man who had assaulted her so badly.

Kylie went ahead with the court case as people told her she would protect other women in the same situation if she did. In hindsight, however, she felt that it was not worth it as her ex-boyfriend was never imprisoned for his wrongdoing. The terrifying experience of attending court also influenced Kate's daughter to ultimately withdraw her case as Kate's husband awaited trial for assault.⁹ Kate and her daughter had, like other participants in this study, attended court on several occasions waiting for the case to be heard. The investigating Garda had informed them that the accused was out on bail but they had to find out the dates for the court hearings themselves.

No waiting room, sitting in the public gallery, sitting up at the back of court... It kept getting put off...We were told when, after the first time, we were told the dates so we went to the next one in case we were needed...We knew that it was coming up...The guards weren't telling us...

(Kate)

Kate and her daughter felt very alone in the process and in great need of someone who could have helped them understand the legal terms. The crowded conditions of the court room were also intimidating, in particular as Kate's husband was well known in the town.

⁹ In addition to assaulting Kate, Kate's husband also allegedly assaulted her daughter.

We could have been sitting beside each other, a couple of steps up like that...and everybody is crammed in...So when the guard put up his finger and called [my daughter] she had to walk through everybody...So everybody got a good look and my husband is well known in the town...They know her...So everybody knew...It was a horrible experience for her...but she was strong enough, and she did go.

(Kate)

Kate would have preferred if her daughter had been able to stay in a separate room while attending court and waiting for the case to be heard.

A little room for a victim that they don't have to be looking at the person who's after abusing them...in the court room...My husband sat in the court room, arms folded, head up high, like the big lord I am. My daughter was cowering in her chair afraid to turn her head because she didn't want him to think she was looking at him...There should be a little waiting area for victims away from the person...It's despicable...I think domestic violence is a different crime...Even if you're waiting for the case to be heard...to sit in the court room for hours and hours, it's not right...There should be a little area where you can be taken to....

(Kate)

Clodagh, another victim of domestic violence, went to the court on her own to obtain a protection order,¹⁰ as the Garda had advised her to do. Although she was terrified of her husband and his abuse, the dealings with the legal professions proved to be as frightening to her.

I decided that I had to go...I'm going to have to do this on my own...I went in shaking, terrified, sick to the pit of my stomach, and I asked this lady where it is and...She spoke down to me...I think women should be there for women... They're very quick to judge, when you're feeling so down, you couldn't get any lower and then you meet that [attitude]...and I went in and I seen the clerk...and she was lovely, she was completely the opposite...“You're in court...they call you when you're ready”... “What? Today?”...I put my head down because I didn't know what to do...Next thing this guard came out and he said to me: “Are you in court today?” [I said:] “I think so...what do I do?” They call out your initial and you say yes...is that it? ...You will be called... I sat down with my head down again for hours, and I went in and the judge was there and the clerk and that guard...“Put hand on bible and swear”...I was absolutely terrified and the fear of the court room never left me. It scared the living daylights out of me...He [judge] says: “I'm giving you a protection order...Go to the barracks and hand it in and keep one and give it to him.

(Clodagh)

¹⁰While waiting for the court to hear an application for a safety order or a barring order under the Domestic Violence Act 1996, as amended, a complainant can request an immediate order, called a protection order. The protection order has the same effect as a safety order. It only lasts until the full court hearing of the safety/barring order. In exceptional circumstances the court can grant an interim barring order. This is an immediate order, requiring the violent person to leave the family home.

Clodagh was physically sick with worry about letting her husband know that she had obtained a protection order against him. Initially she did not know what it meant and so it was explained to her that if her husband did anything to her she could pick up the phone and ring the Gardaí and he would be arrested.

Clodagh did what she was told and her husband did not show any reaction at all; neither did he talk to her about the upcoming court case. He appeared in court the day it was listed. Clodagh remained terrified during the proceedings. Her husband, however, defied the Judge and refused to give his side of the story resulting in a safety order¹¹ for five years.

He [husband] was back behind me. I could see him with the corner of my eye, I'd prefer if he couldn't see me directly...I thought this is too open, too intimidating...court itself, the judge, everything is intimidating...I can't handle the court, scary...[The] judge looked at [the defendant]: "I see you have no solicitor...Do you realise what a protection order is?" [The defendant replied:] "No?"[The judge said:] "I'm going to tell you" and that's when I got the gist of it. "I'm going to tell you, you don't lay a finger on her, you don't look at her in a bad way, you don't make her feel unsafe, you don't swear at her, you certainly don't hit her...If you do, she could pick up the phone and ring the guards. The guards would come out and pick you up and you'd be in prison overnight and you'd be barred from the family home for six months."...So that part was good. [The judge also said:] "She can't change her mind...Even if she does...that's tough on her because we'll pick you up anyway...Tell me your side of the story." So he said: "no." [The judge said:] "I'll give her a safety order for five years! Go up to the guards and register"...I thought the judge was on my side when he said that, but looking back, looking at him, how arrogant was he [husband]?

(Clodagh)

Paradoxically, Clodagh experienced both intimidation and support in the court in relation to her case. This was also the situation for Valerie, a victim of dangerous and careless driving which caused the death of her father. This court case, as already discussed, had been adjourned several times over a period of two years, before it was heard. Valerie described the actual court room itself as overcrowded.

It was a nightmare...The District Court, it's like Paddy's market. Everybody is in and out, in and out, you can barely get in, you can barely get out, calling for people out in the hall...It's busy...On each occasion she [the accused] was

¹¹ A safety order is an order of the court which prohibits a violent person from further violence or threats of violence. It does not oblige the person to leave the family home if he or she resides there. A safety order will be granted where the court considers that there are reasonable grounds for believing that a person's safety or welfare is at risk.

sitting in the seat before we arrived in...We found a seat in between, God knows, trying to find and scrambling for seats...I could have met her anywhere. On one occasion I came out...I said to my godfather: "I'm going to use the wheel chair toilets because I know I'm not going to meet anyone in the toilet when I'm washing my hands because I don't want to meet her face to face, I don't want to hear what she has to say directly to me..."

(Valerie)

It went to trial in November, it was first on the list. The judge decided, when he heard what was on the list, it would take priority...[She was] still pleading not guilty to the charge of dangerous driving causing death...This woman had, on the Tuesday, Wednesday, Thursday, not just her sister with her but she had her parents and siblings...She was one of seven, all seven, their partners.... There was just the four of us...We went in to court initially...It was a big enough court room...We saw where they were and we went over to the side and sat in a different area...[On one occasion] we couldn't physically get in to the room...We were outside in the corridor at the time...

(Valerie)

The wait for justice was even longer for Carol who had been sexually assaulted by family members in her childhood. Her experience of the court was similar to the others in this research: too crowded, hard to get seating and hard to hear what was being said.

Horrible court experience...Everybody is squashed in...hard to hear...so many people...Everything is heard together...20-30 for mention...Anything from a burglary...no TV-license...very tight. Very fast moving...hard to hear... so many people there...

(Carol)

Carol's experience of court would have been much worse if she had not been supported by the court support service. She was not offered a separate waiting area¹² and felt intimidated by the defendant and other family members.

No separate waiting area...If I wasn't aware of the court support services I would have sat next to perpetrator...No reserved seating...They could have sat next to us...I was relying on people who were with me to protect me...Let the guards know I was nervous...At least five-six members of my family [were] intimidated...I thought [the system is] in no way facilitating victims....

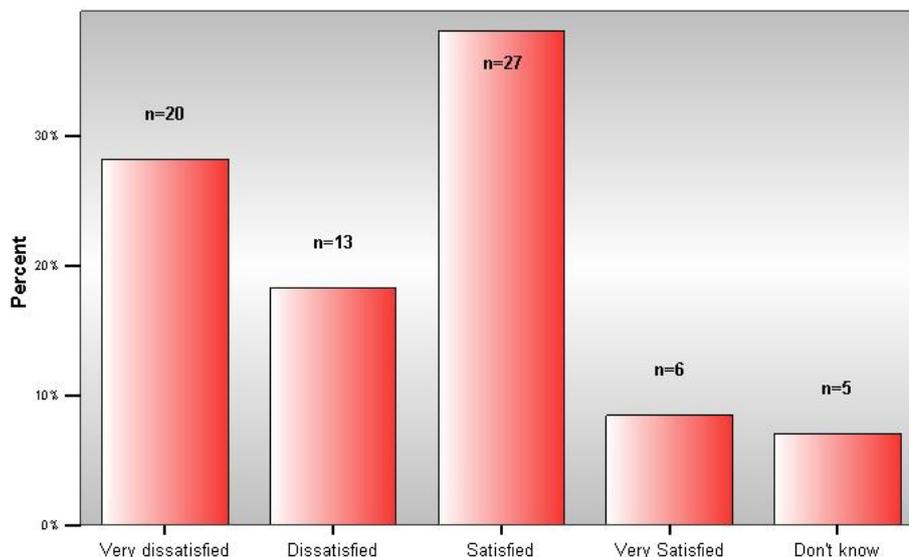
(Carol)

6.6 Sensitivity of Court Professionals and the Court Process

¹² The new Criminal Courts of Justice complex in Dublin includes a safe and secure area for victims and witnesses in criminal cases (White 2007: 1-5).

Bacik et al (2007) identified the lack of sensitivity from judges and other legal professionals as well as language and literacy problems for victims as being amongst the issues raised by many victim support organisations. In this study, respondents were asked to rate their satisfaction with the experience of being called as a witness in court. Of the 71 relevant responses, 46.5 % (33) indicated that they were dissatisfied or very dissatisfied, 46.5% (33) indicated that they were satisfied or very satisfied, and 7% (5) did not know whether they were satisfied or not.

Fig 6.10: Satisfaction with the experience of being called as a witness in the case (Victim Postal Survey)



The legal profession, solicitors and judges are singled out for both positive and negative mention, particularly in terms of their communication regarding the facts or issues involved in court cases, quite apart from the ultimate legal decision or verdict itself. It seems that most victims appreciated a positive communication from a judge, in particular expressing an appreciation/acknowledgement of their point of view even if the outcome did not reflect that perspective.

In the case of Valerie, for example, she and her family were agreeable to accepting a lesser charge and the defendant was given the maximum sentence for careless driving

and lost her driving license for a year. Valerie recalls the judge saying that if it had been up to him she would have lost her license for a longer period. The judge was also noticeably angry over how the defendant had been granted free legal aid.

Judge got totally irate... “How did she qualify for the free legal aid?...A complete abuse of the system...This case would had been dealt with and would have helped the [name] siblings far greater but it’s been dragged out.” And he totally acknowledged all of that...I tried afterwards to get a copy of the sentencing speech but it was impossible to get it, only if you appealed... He went to great length to explain the difference between dangerous driving and careless driving and for her to realise what she had done...We really felt he (the judge) understood where we were coming from...

(Valerie)

The Judge’s comments were the only positive outcome of the two and a half year long ordeal for Valerie and her family.

Paul, whose daughter had been killed, experienced the role of the prosecuting barrister and judge as very positive in terms of articulating and appreciating his story:

...[The prosecuting barrister’s] opening speech [was the] most remarkable speech I’ve ever heard in my life...The guy had everything down to a tee... He told me exactly what he was going to do...It was there in black and white...from the reports...Even the judge said: “I don’t want to hear anymore”...He was actually very moved with what was going on...

(Paul)

Paul also found the judge very sympathetic and understanding as he spoke to him after the trial and looked at photographs of his daughter. He also had the opportunity to meet him at a later stage in connection with meetings organised by the support group AdVIC.

[The trial Judge]...I found him [to be] an absolute gentleman...[I have] met him in Dublin a couple of times since...Absolute gentleman...No bullshitting...straight down the line...He came down afterwards and asked could he look at the photographs...

(Paul)

On the other hand a negative communication resulted from the Judge calling Kylie, a victim of domestic violence, ‘a child’:

...Before I even got up I was crying...The judge scared me more than anything...not very empathetic...A man’s man...terrifying...The one person that I was afraid wouldn’t believe me...He kept calling me ‘a child’...When we split up I was nearly 20...

(Kylie)

Similarly Mary resented the Judge referring to her mother who had been the victim of murder as ‘an old lady’¹³ .

I felt that the judge was so disrespectful in the sense that he didn’t know my mother’s name, he just kept calling her the “old lady.”...I just thought it was so disrespectful...He should have known her name...At one stage I just wanted to jump up and say to him that old lady has a name...

(Mary)

The availability of a solicitor for Heather and Anne’s separate cases was not a panacea for alienation from the legal process or language. Heather was a victim of domestic violence with an ongoing parallel separation and custody case. Her limited comprehension of the legal system caused her to take a decision to withdraw her case against her husband, a decision she later regretted.

It was in the District Court...I was very, very vulnerable...I was twelve months in the house and just beginning to get it right...The refuge lady came with me...I remember [the solicitor] said to me: “If you don’t give witness today the judge won’t think any less of you and he wants you to know that.” I took from that that in fact I was urged not to give it [evidence at trial]...I had my family bombarding me. I had [ex-partner] bombarding me [to drop charges]...I remember coming out saying to the girl [support group]: “I’m so happy it’s over now, he’s agreed to attending MOVE [Men Overcoming Violence], he’s agreed to pay, I think it was €25,000...for my share of the house...leave the child custody as it was...”I remember coming out feeling very happy, we’ll be able to get on with our lives...kids being able to settle...

(Heather)

Next thing I knew, and yes, I was fundamentally at the time very happy thinking this is over now...But I didn’t know I withdrew it [the case]...I still thought something would be done...I remember that guard coming up to me, that woman garda and asked me, and [I said]:“oh, we did a deal at the end of the court room and [ex-partner] has agreed to go to MOVE.” I told her everything...and I remember her sighing and walking away but she never educated me either....¹⁴

(Heather)

Another reason why Heather agreed not to pursue the assault case was the pressure she had been put under from other people, including her own family, who did not want her ex-partner to have a criminal record. They argued that it would affect her children negatively and that she should get on with life now that she had left him. Heather’s wish to facilitate a good relationship between her children and their father

¹³ Judicial insensitivity is not without precedent. Hanly et al (2009: 209) in their study recorded that one of the interviewees, who found the judge to be highly insensitive, stated that ‘the judge wished the accused a merry Christmas and didn’t even acknowledge who I was’.

¹⁴ The implications for Heather of withdrawing the assault case are detailed later in the chapter.

was another factor in her decision. The timekeeping practices in the court caused further difficulties for Heather in her role as a witness. Balancing child-care responsibilities with the hours of the court caused her a lot of worries. Heather recalls that the court case was running so late one day that she was not able to collect her children before the crèche closed.

When I went in to the court room that day, we were there all day [My solicitor] said judge [name] rises every day at 5 o'clock, his wife comes and collects him for his dinner and he's gone. If we're not in the court before 5 o'clock we won't be seen, and I was still there at 5 o'clock and we weren't seen...The crèche was closing...All I was thinking was: "who'll collect my children?" And I remember ringing the crèche asking can somebody stay back I'm going to be late....

(Heather)

Another issue of concern to victims is the role of the media. Some respondents expressed unhappiness with the intrusiveness of the media:

The right to privacy is huge. The press are far too intrusive. That added to our stress.

(Co-victim of murder/manslaughter and sexual offences)

After verdict, [there] should be a media-press room. It is a danger giving interviews on the street.

(Co victim of murder/manslaughter)

Catherine, whose brother was killed, also documented the insensitivity of the media in the court room:

When [my sister] was making her victim impact statement, there were three journalists in front of us, and when [my sister] was in the middle of it, the middle journalist just got up and left court...In order to get out she had to move the fellow beside her and he had to lift up all the bags to get out...It was horrific...People are totally insensitive...They could show some sensitivity...

(Catherine)

The inability of the system to literally hear or understand certain stories or experiences is clearly revealed by the findings in this research. An undercurrent of prejudice regarding the treatment of victims, whereby they are differently received in terms of whether they are perceived as good victims or bad victims would seem to emerge from the survey. Catherine for example, believed that her brother was regarded as a less worthy victim because he was gay and his encounter with a stranger which led to his death was relayed as something quite consensual.

The senior counsel had said to us in the grand hall beforehand [that they would] try and place some of the case on records...So I thought it was all for the good...He's supposed to be on my side...So next thing he stands up and says: "My Lord, I just want to..." We couldn't hear half of what's being said because there are no microphones, only the judge seems to have a microphone...The sergeant from [garda station] is called up...My brother from Australia nearly broke my fingers, he started to question him along the lines, the story he brought out was 100 percent the murderer's story. It sounded like two acquaintances, who were gay, met in town had few jars, went back to [brother's] apartment, had a row about sex, [brother] asked him to leave, he ran in to the kitchen, got a knife, asked him for cash, [brother] said no, there was a scuffle, [brother] pushed him and next thing there was blood on the ground. At that point [name] ... said: "My Lord, why is he distressing the family with all this?" And the judge said: "I agree, stop"...I was thinking why is he bringing up the murderer's story?...And the defence is leaping in to protect us, what is he thinking?

(Catherine)

Many victims were also very frustrated by the general insensitivity of the court process. This insensitivity took the form of delay, humiliation, the crowded nature of the proceedings, and the lack of separate waiting areas.¹⁵ As alluded to in section 6.2 on delay, for example, frequently having to attend court for the whole day only to be told that the case would not be heard was difficult for many victims.

Anne, a victim of domestic abuse for over 37 years, was one of many participants in this study who was terrified of the court procedures. Her first time in the court house was when she tried to obtain a barring order against her husband.

The first time I went into the court house in my slippers and nightdress under my coat...I was told to go to my doctor...I didn't know I had to go to the guards first...I didn't know how to do it...My doctor drinks with my husband...Well, then you're in real trouble...but I did take out the barring order...because I was terrified of my husband...He did all of that...I'm not going to go in to somebody who's drinking with my husband...

(Anne)

Anne's husband took her to court in order to get a separation. This experience had a very negative impact on Anne.

I was trembling, I was shaking...[I will] never forget that feeling as long as [I] live...When I went into court I was with [a new barrister]...[I was] in a fog...just following them...third time in court...Next thing he was called in...I thought it would be fixed up outside...Husband telling judge about the

¹⁵ On separate waiting areas, see section 6.5.

useless person he had married...I wasn't called up at all...Judge said to him to stop that sniping about me. I felt really bad that he was allowed to say [that about me]...She [the judge] stopped him after about five minutes...He was going on about all that stuff...I felt horrible...She did tell him to stop but I think they were enjoying it...The barrister and the lady judge...They couldn't feel what I was feeling...I felt I was being raped...I was shaking...

(Anne)

Anne never felt that justice was done in her case and she was left feeling totally unsupported by everyone involved, including her own solicitor.¹⁶ Catherine, as mentioned earlier, had views on the physical state of the actual court room and the crowds of people trying to get a place to sit.

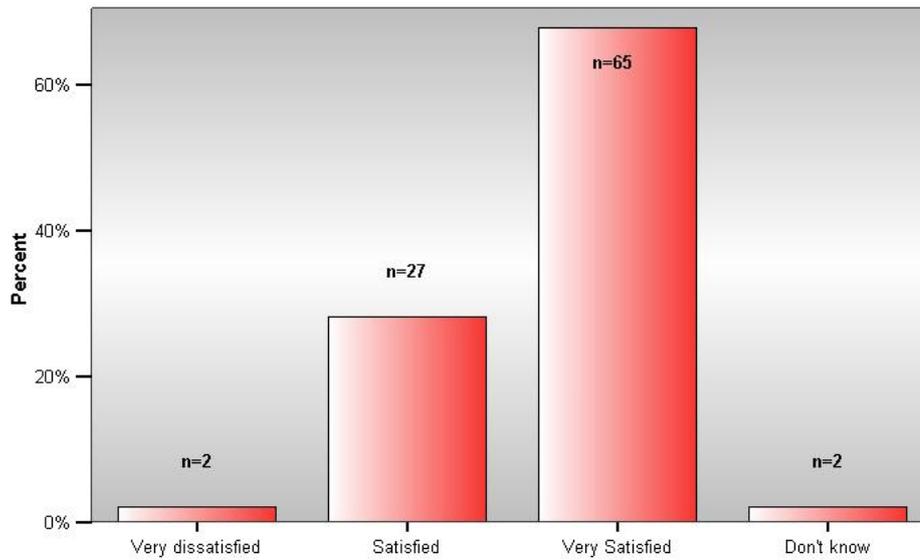
The court itself is a total circus...I have never in my entire life witnessed anything that was so casual and incompetent...We arrived, we weren't sure whether our case would be heard or not...You have to be through the experience of waiting for a whole year...You're totally hyped up.

(Catherine)

Court accompaniment is one important means of minimising the negative impact of a victim's experience of court. The victim postal survey, which asked respondents to indicate their level of satisfaction with court support they received from support organisation personnel, revealed very high levels of satisfaction with the service provided. Of the 96 respondents who had used such a service, 96% (92) reported that they were very satisfied or satisfied with the level of support received from support organisation personnel. Only 2% of respondents (2) indicated that they were very dissatisfied with the support received from support organisation personnel, while a further 2% (2) indicated that they did not know whether they were satisfied or not.

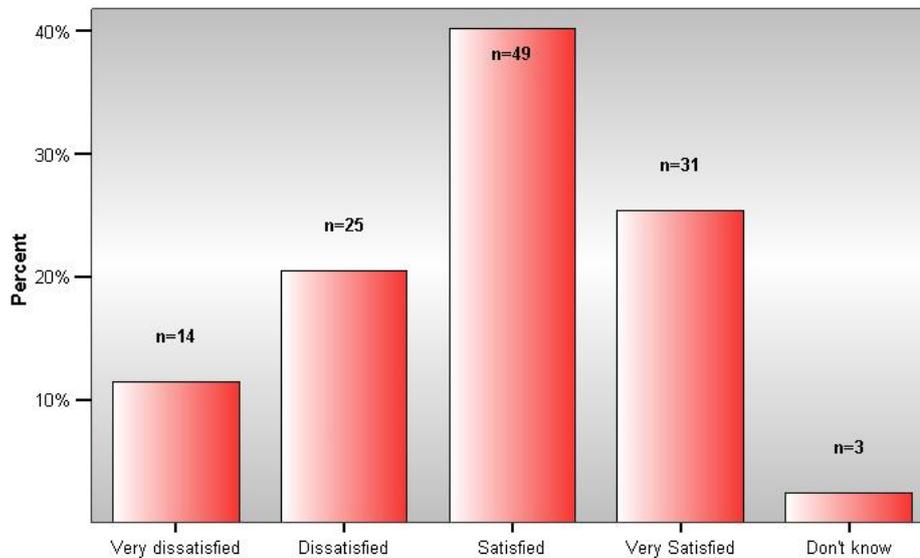
¹⁶ Hanly *et al* (2009: 208) in their study document similar observations by rape victims. As one victim noted: "I just found that you are extremely vulnerable and you're very broken and you're extremely sensitive...you have to defend...because the way the criminal justice system is...[Y]ou have to go through the process of...being examined, making statements, being questioned, being ridiculed, asking about the most private details of the assault, the rape or whatever, the attack. You get very little support...you're in a very lonely kind of place." Another victim in that study noted (2009: 209): "A victim in court is treated with very little respect".

Fig 6.11: Satisfaction with support received from support organisation personnel in the court room (Victim Postal Survey)



Participants were also asked to rate their satisfaction in relation to the support they received from a solicitor or legal team in the court room. Of the 122 relevant responses, 32% (39) indicated that they were either dissatisfied or very dissatisfied; 65.5% (80) indicated that they were satisfied or very satisfied, and 2.5% (3) did not know whether they were satisfied or not.

Fig 6.12: Satisfaction with support received from solicitor/legal team personnel in the court room (Victim Postal Survey)



The counselling I received has been wonderful. My court accompany was of a tremendous help during the court process, as was my solicitor.

Female (30-39) Irish Sexual offences/Domestic Violence

Overall it is clear that where victims used either a support organisation or a legal advisor to provide support in relation to the court process, their experiences were largely positive.

6.7 Understanding of the Legal System.

Bacik et al (2007) have recommended the provision of more detailed information about court procedure should be co-ordinated at a national level. The ICCL Victim Report (2008) similarly recommended that measures should be developed to ensure that victims are acquainted with the court complex and informed of the legal arguments/rulings in plain language. A lack of understanding of the law, the legal system or indeed the legal basis or significance of a decision within the trial is a very striking and fundamental feature revealed in this research.

When victims were asked to identify areas where the criminal justice system could be improved, information about the legal process was identified as in need of improvement :

Information about abuse and also legal system.

(Victim of domestic violence, false imprisonment/stalking)

In some cases a victim's lack of information about aspects of the legal process related to the details of the case such as in the case of the admissibility of evidence (e.g. photographs) or the limitations of the admissibility of a Victim Impact Statement. It also related, more fundamentally perhaps, to the overall implications of the proceedings for the victim's future in terms of subsequent disputes and the resolution of custody issues. In part this is a product of the confusion or conflation of domestic violence and marital issues by victims; but it is also revelatory of how some victims can be advantaged — and others relatively disadvantaged — by their knowledge or lack of knowledge of the system. If equipped with knowledge of the system, victims are empowered to judge for themselves the best route to take in their overall particular circumstances rather than having the issue determined by the advice of a legal representative who may be more focused on resolving the immediate legal issue before him or her.

Heather was a victim of domestic violence with an ongoing parallel separation and custody case. Her partner was, however, never prosecuted for the assault, something which she regrets bitterly. Lack of knowledge in combination with lack of support from her own solicitor made her withdraw her case. As discussed above, a reason why Heather agreed not to pursue the assault case was pressure from others, including her own family, who did not want her ex-partner to have a criminal record.

Heather's life, however, turned upside down as her ex-partner pursued shared custody and won this later in family court. This became a nightmare for Heather who had applied for a new job in another part of the country in order to be nearer to her own family.

After the DPP's case was withdrawn, Heather's ex-partner accused her of making a false statement against him. He brought her to court wanting full custody of their children as Heather proceeded with her plans to move to take up her new job. This was held against her in court.

[My ex-partner's barrister] said her client's access shouldn't be reduced because Mrs X is taking a career move 20 miles away....[I was portrayed] as a career minded bitch who had no respect for the connection of children to their father and in fact I was the opposite...

(Heather)

Her ex-partner's violent behaviour was never an issue during the family court hearings. In fact, the situation became the opposite where Heather was portrayed as a bad mother who put her career before her children's needs.

I took my children out of abuse and out of violence and the court threw them right back in there...to the man who had caused all the violence and all the abuse...If a man has been criminal in his home why leave him have the power...He should have been prosecuted.... [The] solicitor knew the system. I didn't...I didn't meet any DPP, I didn't know I could...I thought they were above me somehow, that this was just a process. I was total novice and I only learnt after the event.... My heart was in the right place...

(Heather)

Heather argues that her attempts to put her children first by withdrawing the criminal complaint backfired on her when she lost full custody of her children. She feels that the case became a battle between solicitors and barristers who fought their cases regardless of how the children would be affected by the outcome.

Children also paid a heavy price in Brendan's case, where his wife had accused him of sexually assaulting them. Social workers had placed the children in foster care as the investigation proceeded. Brendan's experience as a Garda however was a considerable help to him as he knew the procedures that had to be taken before he could gain access to his children again.

At least 20 times in court...I'm not a lay person because I know the way the courts work and I knew that the system takes time and it did take time...I was delighted the way the court worked in the end...Maybe not at the time...At least I knew that they [children] were taken into care, that was a big decision that the court made, and a good one that they made...The children were in serious, serious danger. My wife was quite capable of killing herself, killing the children...I went along with the system, if you try and fight the system and try and insist on something you will never ever get anywhere...I went along with the system of the HSE, with the guards and the courts and that's the only way you can do it, there's no alternative...

(Brendan)

Judging by the above two cases, it makes a huge difference to victims if they are informed and educated regarding legal issues and procedures. Heather, for example, felt like a novice and learned in hindsight what she should have done. Brendan, on the

other hand, knew how the court works and that he had to follow the rules, although it meant that the children lost both their father and mother while the investigation proceeded.

Prior to her court case, Tracy's ex-husband had sought and won custody over their two children. Tracy believes that if the assault case had been heard before the custody case she would not have lost her children. She had tried to get a copy of her statement from Gardaí to use in the custody case, but this was not permitted:

I picked up with him [abuser] and we had a brief relationship. Then we broke up and then I was beaten up and my two children were taken off me and given to my ex-husband...because they said if I didn't protect myself, how could I protect my children?...

(Tracy)

A lack of information about rules of evidence regarding admissibility can also result in victims sometimes feeling unable to tell their story in court. In part, this lack of knowledge about evidentiary rules and criminal and civil procedures could be ameliorated by good communication with lawyers and court officials.

Ted, a victim of domestic violence, was anxious that his photographs of his facial injuries would be used as evidence, as well as his medical records. They were, however, not allowed to be used as they had been submitted by him and not the state prosecutor.

They took one or two photographs in the police station...but I seen them the actual day of the court and they were very bad...For facial injuries it was absolutely ridiculous...They just showed there were marks on my face but they couldn't show the severity of it...

(Ted)

I brought along the photographs on the day of the trial and the DPP was shocked....and she said to the judge "can I use them as evidence?" So of course his guy [accused's lawyer] jumped in then and said; "no, you can't use them as evidence." And they went off then and discussed all this and the judge said: "no, it's too late".

(Ted)

Photographs taken by Tracy's father which indicated the extent of her injuries after a domestic violence incident, were not allowed as evidence in her case; neither were CD-recordings of the accused's threats to her. The judge, however, believed Tracy and sentenced the man to eight months in prison. The investigating Garda told Tracy

afterwards that it was over and that she did not have to fear this man again. Tracy, however, was never told that the man later paid his bail¹⁷ and was out after two weeks.

No one told me...word of mouth from Mum. I felt really let down from the courts...Once a woman beater always a woman beater.... It's not his first..., eight nine ten record since of beating women...After two weeks he was out...I think I should have been notified that he was out on bail, that he paid his bail.

(Tracy)

The issue of access to information was another factor which led to dissatisfaction with the legal system. Ted, a victim of domestic violence, believed that the defendant's legal team was allowed more time and access to documents in comparison to him.

...So the judge then adjourned sentence, it was in October.... He [the accused] brought along a junior barrister and a solicitor...and they had a mountain of papers...The history of this, the history of that...And I was told that I wasn't allowed to bring notes...That's absolutely ridiculous, I'm there on my own... I had never been in a courtroom in my life before...It's pretty unnerving, I don't like it, you know...

(Ted)

Several victims in this study expressed frustration and disbelief over not having access to the same information as the defendant and his/her legal team. This was particularly the case for those people who had lost a close relative through murder.

I feel he's our brother, he's dead....The only ones who can see the book of evidence is the murderer and his legal team...That's not right...I represent the victim because he can do nothing for himself...We have the right to know exactly....We should be entitled to know every single thing...I have no faith in the criminal justice system, the victim has not as much rights as the killer...

(Catherine)

He was convicted in early December...I had some questions...but I didn't have all documents in front of me...Once I got the coroner's report, the state pathology report, the autopsy....that put everything together, but even with that I wasn't happy....You weren't entitled to the book of evidence, I kept saying it's ridiculous....You're talking about your child and not anyone else's child...

(Paul)

¹⁷ Indicating that an appeal was taken against sentence, conviction, or both.

We didn't know what was contained [in the book of evidence]. We didn't know until April 2008, maybe what her version of events was, but a loose comment "we all know she fell asleep at the wheel" from [investigating garda], we didn't know where that had come from...Once the book was presented in December we felt that we should have been in the position of seeing it too. We didn't know what they were going to throw at us. We didn't know what everyone else was saying...It was all speculation and lack of control, the whole roller coaster thinking you're getting there and it would all be taken away from you...Not knowing what she was thinking...She knew exactly what I was saying what I had seen...Not knowing her version of events...Not until her plea of careless driving...Very unfair...She broke the law, she killed somebody...but it just seems that all of the rights and entitlements are to the defendant.

(Valerie)

Finally, it is worth noting that a small number of respondents to the victim postal survey, suggested, when asked, that victims should have a right to legal representation:

We should be assigned our own legal solicitor as the victim has no voice if in court and things are been said that are not true. The family should be able to "have that voice" with issues as slander.

(Co-victim of homicide)

Representation similar to what 'criminals' get in court system.

(Victim of robbery/burglary)

6.8 Victim Impact Statements

Under section 5 of the Criminal Justice Act 1993, provision is made for the court to receive evidence or submissions concerning any effect of the offence on the person in respect of whom an offence was committed. The offences in question are limited to most sexual offences and offences involving violence or the threat of violence to a person. Courts also however have a discretion to admit the victim impact evidence of family members of homicide victims.¹⁸ The court may hear the evidence from the person against whom the offence was committed if that person requests it. The only purpose for which a victim impact statement can be received in court is to describe the impact of the offence on the victim. It cannot be used to adduce further evidence, to suggest the sentence that should be imposed, or to make fresh allegations.¹⁹ The

¹⁸ See *DPP v O'Donoghue* [2007] 2 IR 336. See also O'Malley (2009: 885).

¹⁹ In *DPP v O'Donoghue* [2007] 2 IR 336 at 359-360, it was stated: 'It is the view of this court that in the event that a sentencing judge...permits such a victim impact statement to be made [in a homicide

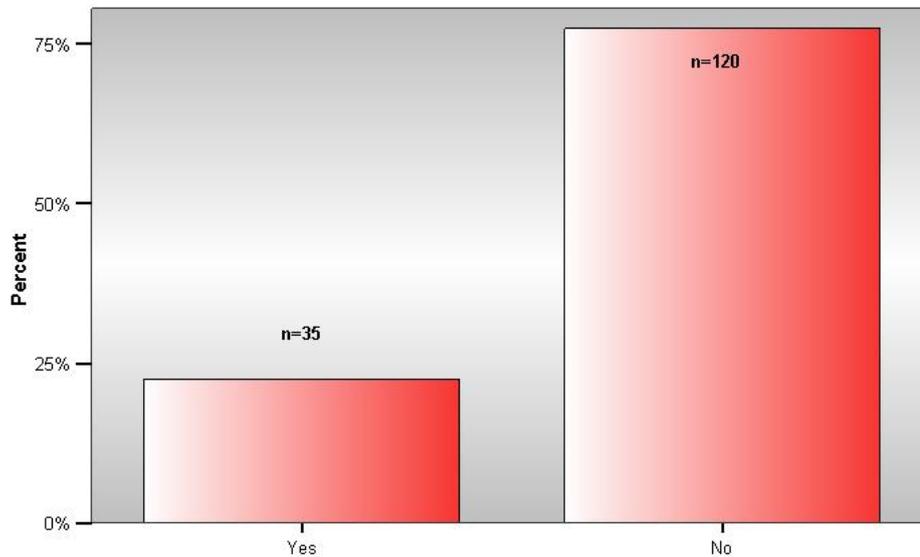
Criminal Procedure Bill 2009 will amend the Criminal Justice Act 1993 to allow for the introduction of victim impact evidence by a family member when the injured person is under 14 years of age, or suffering from a mental disorder, is ill, or otherwise incapacitated. It also proposes to extend the entitlement to adduce victim impact evidence to family members of homicide victims. This was recommended by the *Balance in the Criminal Law Review Group* in March 2007.

The victim survey results demonstrate that we are very far from a situation where a victim impact statement is even commonplace with only 22.6% (35) of respondents whose cases proceeded to court reporting that they were offered an opportunity to give a Victim Impact Statement.²⁰

trial], such a statement should only be permitted on strict conditions. In particular, a copy of the intended victim impact statement should be submitted both to the sentencing judge and to the legal representative of the accused, it being assumed that it will already have been made available to the prosecution. This must be done in advance of the reading or making of the statement itself in court so that both the sentencing judge and the accused's legal representative may have the opportunity of ensuring that it contains nothing untoward. Assuming that the content of the proposed statement meets this requirement, the person who proposes making the statement should be warned by the sentencing judge that if in the course of making the statement in court they should depart in any material way from the content of the statement as submitted, they may be liable to be found to have been in contempt of court. If it be the case that such a departure occurs and involves unfounded or scurrilous allegations against an accused, that fact may be considered by the sentencing judge to be a matter to be taken into account in mitigation of the sentence to be imposed.

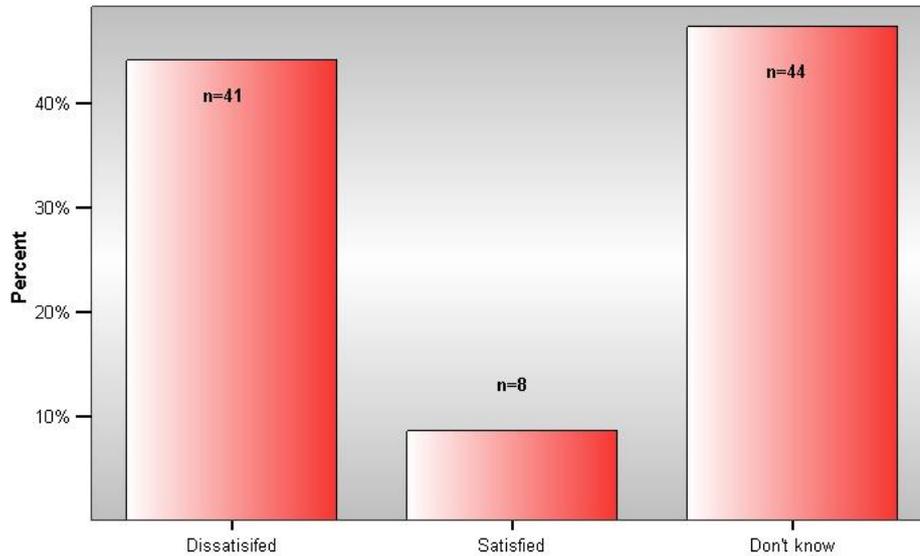
²⁰ It is important to bear in mind, however, that not all respondents would be entitled under section 5 of the Criminal Justice Act 1993 to make such a statement given that the offences involved were not of a sexual or violent nature.

**Fig 6.13: Were you offered an opportunity to give a Victim Impact Statement
(Postal Survey)**



Respondents were also asked how they felt about not being offered the opportunity to make a victim impact statement. Of the 93 valid responses, 44.1% (41) said they were dissatisfied about not being offered the opportunity, 8.6% (8) were satisfied and 47.3% (44) did not know whether they were satisfied or not.

Fig 6.14: How respondents felt about not being offered the opportunity to make a Victim Impact Statement (Victim Postal Survey)



Some of the interviewees in this study resented the fact that they were not given the opportunity to give a Victim Impact Statement. They argued that the effects were serious and long lasting and that their voices should have been heard in court.

Don't even know what victim impact statement is...I would have liked to make one.

(Tracy)

There should have been in my case, a victim impact statement, because it has had a big impact on my life! Absolutely, for people who go through situations like what I've gone through in Family Law, there should be impact statements, and for the children as well.

(Brendan)

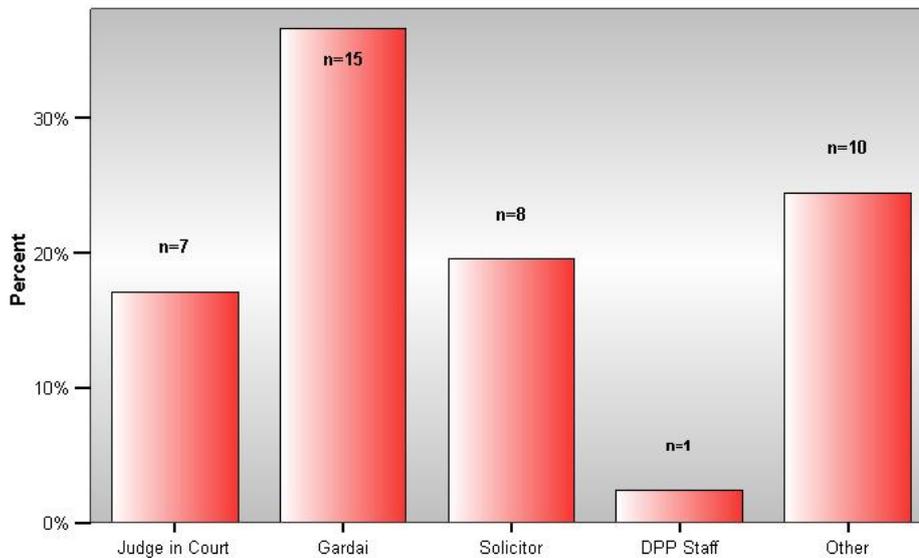
I wanted to make a victim impact statement, but they said no. It's up to the judge's discretion, is it? Any crime committed against you it is a serious crime, especially when your case is not explained.

(Ted)

When asked who had informed them about the opportunity to give a Victim Impact Statement, 36.6% (15) of relevant respondents stated they had heard about the process from the Gardaí; 19.5% (8) identified their solicitor as the source information and

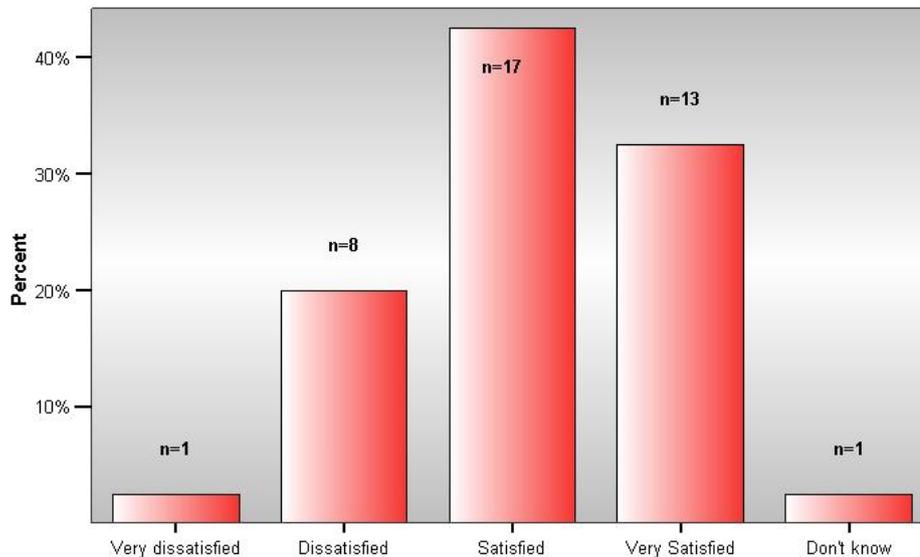
17.1% (7) named the trial judge. Only 2.4% (1) stated that they had heard about the process from DPP staff. Ten respondents listed other sources. These included a rape crisis centre, a social worker, support workers, and a therapist.

Fig 6.15: Who told respondents of the opportunity to give a Victim Impact Statement (Victim Postal Survey)



Of the 40 respondents who made a victim impact statement and rated their satisfaction with the process, 75% (30) expressed that they were satisfied or very satisfied, 22.5% (9) indicated that were dissatisfied or very dissatisfied, and 2.5% (1) indicated that he or she did not know.

Fig 6.16: Satisfaction with the process of making a Victim Impact Statement (Victim Postal Survey)



The clear majority of relevant respondents were therefore satisfied with the victim impact statement process. A key theme brought out in interviews in relation to the victim impact statement was the sense of closure that the process could provide victims. Bernice expressed this view, in relation to both herself and her family, even though her statement was never read out, something she did not mind. The most important thing to her was that her ex-partner's older children had a chance to read out their statements.

[The] liaison guard and [support person]...had gone through all that stuff...I thought I was going to feel better...It was closure for me...It really was closure...[It] was never read out...Ex-partner's oldest son and his daughter wrote one....Son stayed for the whole trial...Only three words taken out...His Victim Impact Statement was read out...I didn't mind [that my statement was not read out]...Sure somebody read it...I had limited it to four pages...I had two smallies...I kept it about myself and my kids and the loss...[I was] aware that it was going to be in there for him (offender) to read...if he ever looks for probation.

(Bernice)

Valerie was very satisfied with the experience of giving her Victim Impact Statement.

Absolutely [positive], the only thing, the only reservation...I felt I had to start in the middle and I didn't get an opportunity to give all what we wanted to give...I didn't get to speak properly about daddy as such. It was more the impact of his death upon us, which we had done it out quite well...We brought down our rough version to our solicitors and basically they polished it up...We were satisfied with the content...The judge did read what I had wanted to...It gave me satisfaction that I knew exactly what was in that statement and I was able to look away from it...[The] barrister wanted me to be more at ease, but she needn't have worried I was well prepared and I was able to deliver it directly down to the defendant who never stood up...You need to hear this...We do welcome a guilty plea...but this is the effect of what you did....Yes, I was glad.

(Valerie)

Gerry, a victim of kidnapping, similarly felt very positive about being able to tell it as it was.

[The victim support organisation] informed [me about the victim impact statement]...Absolutely encouraged [me to make it]...She would have encouraged us saying that this is your chance that you have to really give your account as it has impacted on you...[It was] massively liberating for myself and [my wife]...Telling it as it is...telling the truth of the reality of what went on...It was probably the biggest part of the road to recovery...We had to stick to the script; we nearly had it off by heart.

(Gerry)

However, the interviewees highlighted some concerns about how the Victim Impact Statement process actually functions in the court. In Carol's case she met with the detective in Dublin and went through it as she did not want it to be sent back to her.

I started writing my statement the day I went to the guards...I had written 20-30 statements...[Their] advice [was] not to make it too long...restricted...five-ten minutes...how this affected you...which made it very difficult...[I] kept at it until I was happy with it...Then to be told you're not reading that...²¹It was the only time I had a say in the court during the whole court process of four years.... [It was] extremely important...[I] felt like a number until that day I went on the stand...That was my chance and I still think that it was taken away from me...

(Carol)

[The] seating is not [appropriate]...[You are]looking at the side of the judge's face, he's [the offender] behind my shoulder...Plus I was sitting...I would have liked...little box with a mike...You could not stand...[I was] extremely shaky doing it; [I] would have felt more control standing....

(Carol)

²¹ This issue is further elaborated upon later in the text.

Catherine and her family were also dissatisfied with how the Victim Impact Statement was handled in the court room. First, knowing that it was up to the judge's discretion to allow a statement or not, created unnecessary uncertainty.

The guards told us that...they have to see it all now, and they did say number one that we may not be able to read it at all and number two if we went outside the scope you would be stopped and you weren't allowed to say anything about the murderer...We felt encouraged to make it, but it was so iffy. You're putting a lot of effort drafting it, and sending it into the guards who give it to the DPP who decide whether it's all right or not...

(Catherine)

Even where victims were made aware of and given information about the Victim Impact Statement, difficulties arose for victims in relation to the fact that the opportunity to make a statement was at the discretion of the judge for homicide offences. The uncertain nature of the opportunity to give a statement was something Catherine objected to:

You don't know until you go in to court whether the judge is going to allow that [victim impact statement] or not and I do not think a victim impact statement is so unimportant that it should be depend on whether the judge had a good morning, or a good breakfast, or whether he's in a good or a bad mood. There should be a victim impact statement allowed for everybody or not allowed at all...I don't think it should be at his discretion.

(Catherine)

Similarly, in response to a question on how the system could be improved, a respondent noted:

Victim Impact should be automatic when a guilty verdict is given.

(Co-victim of murder/manslaughter)

Another aspect which victims found difficult was the manner of reception of Victim Impact Statements. A good victim is one that conforms to stereotypical assumptions about the norm. So in the case of Paul, where his daughter was the victim of a killing by her boyfriend, his statement was well received by the court. In the case of Catherine, however, where her brother a gay man who was killed by a stranger, the reception was less than respectful. Catherine and her family were dissatisfied with how the Victim Impact Statement was handled in the court room.

Our fellow stood up then and said: “one of my clients, the victim’s sister, wants to give a victim impact statement”...And he [judge] said: “All right.” He didn’t really care...and as she [sister] walked up I noticed one of the prison wardens throwing his eyes up to heaven as if to say: “I’m going to be here now for another five minutes”...He looked totally bored...and this was a very stressful thing for her...And where you sit,...you’re totally exposed sitting out there...[It is] certainly not what you see in the movies where everybody gets a proper box...And she had to pass by your man, he could have touched her....

(Catherine)

Catherine and her siblings felt clearly that nobody was interested in hearing their Victim Impact Statement. The disruption by a journalist in the middle of this, as noted above, was the ultimate insult to the siblings whose brother had been portrayed as a sex pervert in the media.

It would appear that victims and their relatives are treated differently based on society’s perceptions of “good” and “bad” victims. Thus, a homosexual man who is murdered would perhaps not evoke the same empathy among the public as a raped and murdered young girl. In sharp contrast to Catherine’s case above, there was a total silence in the court when Paul and his ex-wife delivered their Victim Impact Statements at the trial of the murder of their 19-year-old daughter.

The statement that [ex-wife] and I made... You could hear a pin drop... [It is] daunting to put her life into a couple of minutes... We had to make it... What I thought was highly indignant was that the guy got to see it beforehand... If there was anything offensive we had to change it... If there’s anything that he doesn’t like we had to change it. It’s bad enough that he killed her... but to have a look before hand to see what we were going to say about our daughter... There was nothing there, wrote it in such a way, the affect having the guards coming to our house telling us... The two statements were pretty powerful... I think he flinched a fair bit then... It was absolutely crazy stuff... It was horrendous... If I had a gun I would have shot him... I would have gladly gone to prison for the rest of my life... It was sick, it was bad enough what he had done but it was the condition he left her in... The most beautiful girl... He was an absolute animal... Life should be life...

(Paul)

Regardless of the restrictions, Paul experienced the Victim Impact Statement as something positive as he had a chance to tell everybody about his daughter. The restrictions in relation to language and content which govern the giving of Victim Impact Statements were experienced by some victims as a limitation on their ability to literally ‘give voice’ to their experiences and emotions. Carol felt like a number without a voice throughout the court proceedings. Furthermore, the one chance she

had to voice her experience, through the Victim Impact Statement, was also affected negatively by the circumstances dictated by the lawyers.²² Carol had prepared to read out her Victim Impact Statement for many months before the day arrived. She wanted to address her abuser while reading it and she would have preferred to have done it standing up. Furthermore, she had sent it off for approval six weeks prior to the trial but was told to make changes to it only one hour before she was due to read her statement.

I wanted to read out my victim statement... [I] had practised...memorised it...extremely difficult to do...An hour before I was told couldn't read out the statement...[I] wrote statement in way I was comfortable with, my words, YOU did this to me when I was small...You had to say HE...It completely threw me... [The] DPP told me this one hour before hand...I could have cried...I was just really, really angry the fact that they had it six weeks before...[They] printed and handed [it] to me...[I] just felt it wasn't mine...[I]said to [the] barrister: 'I had memorised this...didn't want to read it from the page'...This was my chance...[I was] terrified that I'd slip up on the stand... [It was] not mine...taking the whole thing away from me...after four years' process....the only bit I had to say....

(Carol)

Valerie and her sisters had kept asking various people in the criminal justice system if they would be given the opportunity to give a Victim Impact Statement in their case. Nobody, however, had suggested it to them and it was with very short notice, the day before the sentencing hearing, that they were told that they could prepare one.

We had no victim impact statement prepared. We didn't know we had to do this...I had been asking all along...but nobody had suggested or outlined what we could put in it [in] regards to the content...What was said on that day was that we would wait until the following day; we'd get our victim impact ready...But in the meantime the guard had come down to me and said: "Valerie, you're a good orator, maybe if you could get up there and speak about the impact this has had on you?" And I said, "No...I can't...you get one shot at this and I want it right." So we went back to the hotel with the solicitor and prepared our statement which I gave them the following morning.

(Valerie)

²² The prosecution, which is usually responsible for tendering the victim impact statement before the court, must ensure that the statement is limited to the impact of the offence on the victim. The accused's lawyers should also have the opportunity to view the contents of the statement in advance of the reading or making of the statement in court. See O'Malley (2006: 235-236). In the *Guideline for Prosecutors* issued by the DPP, the prosecutor commits at sentencing stage to ensure 'that the court has before it all available relevant evidence and submissions concerning the impact of the offence on its victims, in accordance with the provisions of section 5 of the Criminal Justice Act 1993' (2006: para 8.14).

It is clear from the study that victims feel better supported if they have the opportunity to voice the impact the crime has had on them, no matter what type of crime they experienced. The victims who made a Victim Impact Statement all confirmed that talking about how the crime had affected their lives helped the healing process to a certain degree. The discretionary nature of the Victim Impact Statement for homicide offences troubled a number of participants in the research leading some to argue that it should be available more as a matter of right. Attention also needs to be given to the question of what may be contained within the Victim Impact Statement. Victims require clear and standardised guidance on what can be contained within the statement, and this should be made available to them before they commence the writing-up process.²³

6.9 Compensation

Compensation for victims of crime has been established as a key right in a number of jurisdictions. The European Union Council Directive on *Compensation to Crime Victims* (2004) founded a cooperation system between all Member States that is designed to ensure that victims of serious crime have access to compensation schemes where an offence is committed in a Member State other than that which is the victim's State of residence. The Directive requires that all Member States have a national scheme guaranteeing 'fair and appropriate compensation to victims of crime'.

There are two main ways in which victims can gain compensation in Ireland—the first is through a non-statutory scheme administered by the Criminal Injuries Compensation Tribunal, whilst the second is a statutory scheme operating under section 6 of the Criminal Justice Act 1993.

The Criminal Injuries Compensation Tribunal is funded by the Department of Justice Equality and Law Reform and was established in 1974. A victim or an immediate family member of a deceased victim can apply to the Tribunal for compensation for expenses and losses suffered as a result of violent crime (or whilst assisting or trying to prevent crime). Compensation is not available to victims who have suffered harm other than person physical injury. Nor is compensation available if the victim has

²³ Hanly et al (2009: 337) make a similar recommendation in their study.

been living with the offender at the time of the injury, which removes victims of domestic violence from the scheme. The scheme only covers out of pocket expenses and bills.

Section 6 of the Criminal Justice Act 1993 provides that where a defendant is convicted of an offence the court may make an order requiring him or her to pay compensation in relation to personal injury or loss suffered by the victim as a result of the offence. The decision as to whether a compensation order should be made is at the discretion of the court. The process is one part of the overall sentencing process and a compensation order can be made either in substitution or in addition to another sentencing option. Section 6(2) makes it clear that the judge will make an order in relation to what she/he thinks is appropriate in the case. However, that amount should not exceed the amount of damages that the court thinks 'the injured party would be entitled to recover in a civil action against the convicted person in respect of the injury or loss concerned'.

The victim postal survey explored respondents' experiences of gaining financial compensation for injury caused by crime. The results show that the vast majority of participants had no experience of the Criminal Injuries Compensation Tribunal. When asked about their experiences of the Criminal Injuries Compensation Tribunal and compensation for personal injuries with short term effects, 97.4% (295) responded that the question was not relevant to them. Similarly, when asked about their experiences of the Criminal Injuries Compensation Tribunal and compensation for personal injuries with long term effects, 98% (297) of respondents indicated that the question was not relevant. Finally, when asked about their experiences of the Criminal Injuries Compensation Tribunal and compensation as a dependant in a fatal case, 98.7% (299) of respondents indicated that the question was not relevant.

The survey also asked about participants' views on receiving compensation from offenders as result of a section 6 compensation order. 95.4% (288) responded that the question was not relevant to them.

Overall the findings show that the vast majority of respondents to the survey had little experience in receiving compensation either through the Criminal Injuries

Compensation Tribunal or under a Section 6 compensation order. When interviewees expressed an opinion about the process of compensating victims they were often critical, at least in relation to the overall place of victims within the criminal justice system which resulted in a sense of being sidelined to the interests of the offender.

Mary, whose mother was murdered by a woman who later pleaded not guilty by reason of insanity, had this to say:

What annoyed me was she went in to Mental hospital...and the facilities that they have in there...What would have happened if I couldn't afford to pay for counselling? Where would I have gone?...I think we got, between father, myself and my brother, I think it was something about £7000 between the three of us...That's what my mother's life was worth...I paid for my mother's funeral. We weren't a wealthy family; my father was just a labourer...He was an old man...So what happens when you couldn't afford it? My husband was working...

(Mary)

Paul felt that the Criminal Injuries Compensation Tribunal did what they could in order to compensate for expenses incurred but that it is impossible to compensate for the loss of an only child who is murdered.

There is a board...Any expenses that were occurred over the time; you can send it off to them and they do an evaluation and they settle for x amount then...The guy there was actually a very, very nice man. But it was a bit more difficult because [ex-wife] and myself are separated...They were very good and very helpful...but you can't put a figure on someone's life at the end of the day...It just helped to pay a few bills...[The] first couple of months you're away in numb land...You don't know whether you're coming or going...They were very good up there, very efficient.

(Paul)

Bernice similarly stated that the loss of her children's father cannot be compensated for by money:

[How can you] put [a] price on emotional loss...[I'm] so devastated...[I've been] out of work for such along time...Such a wreck...[I] have them 24/7 and their dad is not here helping out...Even though he was in a treatment centre he was a very good dad...He would help out.

(Bernice)

The role which financial compensation could play in aiding victims and their families in securing counselling is a theme which reoccurs throughout the survey and interview data. Paul argues strongly that the offender should pay something back to society rather than benefiting from services:

They have rights over you...[It is] a complete shambles...They shouldn't have rights...They should pay to get back to society...They should pay for victim support groups.... [The] offender should be paying compensation...not us looking for funding for groups like AdVIC...I feel again, a constant reminder to them what they've done...Our way of saying to them – you pay for what you've done!...He can get a free education, free gym, free counselling.... Where do I sign up, it sounds like a hotel? No one ever comes up to my door and says are you ok?

(Paul)

Catherine, whose brother was murdered, compares the subsidised counselling that AdVIC provides to relatives of murder victims with what it costs to keep an offender in jail:

AdVIC [charges] only €25 an hour...What does it cost to keep a murderer in prison?...Surely the victim, or the family, if they're poor, should get counselling...Someone told [my brother] you get [€]25,000 if your family member is murdered...[I] feel so bitter towards the state...Even if we give it to charity...

(Catherine)

An ability to sue the offender was also raised by Gerry, a victim of kidnapping, who had very strong comments to make regarding the feasibility for victims to claim compensation or sue the convicted criminals.

The amount of money being spent on those criminals...No financial compensation, it's an absolute ass. We should have been compensated...No one has said you could...One of the first questions I asked and I was told not really...I had a heart attack myself 18 months later...We should have been compensated massively but we weren't and I think that's wrong...We should be able to take those guys to court and sue them.

(Gerry)

Gerry suggests that there should be less funding of offenders and those accused of crime and more funding for victims that are affected:

[There] should be responsibility if you commit a crime. They should be sued as well...Criminals don't worry themselves with these things...but people who aren't victims and who are living their lives nice and cosy and nothing goes wrong in their lives, it's very hard for them to think of the actual victim...That's an insight I have and it's frightening...Your world has completely changed and we were never compensated for that.

(Gerry)

Many other victims in this study advocated for free counselling for victims. John, for example, who was a victim of sexual assault, was upset by the lack of compassion shown to victims of crime:

If there's free legal aid given to criminals, to be quite honest, as a victim of crime I get really annoyed by the level of concern shown for the criminal and the lack of concern for the victim...I have this sentence for the rest of my life...I very much do believe that victims should have free counselling...

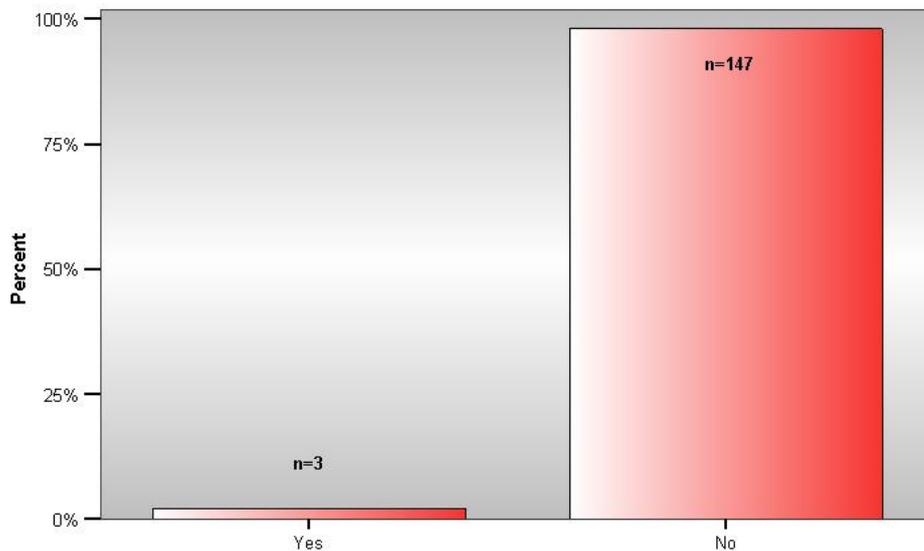
(John)

6.10 Financial reimbursement of expenses

There is also the separate but equally important issue of how well the victim is compensated in the sense of being reimbursed for the cost (literally) of involvement as a witness in the criminal process itself or simply for attendance at court. Whereas the role of the first form of compensation—from the accused or the Criminal Injuries Compensation Tribunal—is somehow to attempt to restore the victim to where s/he was before the incident, the role of expenses is to ensure that the victim does not pay twice through involvement in the criminal justice system. The ICCL Report on crime victims recommended that in line with the European Framework Decision, victims who act as witnesses for the prosecution case should be able to seek reimbursement of expenses. Furthermore, if a victim or his/her family decide to bring civil proceedings, their legal expenses should be met (ICCL 2008: 53).

The victim postal survey asked a number of questions relating to information provision, access and assistance in relation to the system of witness expenses. Participants were asked if they had been advised on any procedure for claiming witness expenses if they were summoned as a witness in a case. Responses revealed that there was a significant deficiency in the provision of guidance in this area. Only 2% of those responding reported that they had been given any advice. This is surprising given that the Victims Charter commits the Gardaí to informing victims of their 'entitlement to court expenses'. The fact that only 3 out of the 150 respondents who were summoned as witnesses in a case were offered any advice would strongly suggest that the Charter is not being upheld in this regard.

Fig 6.17: Were you offered any advice on claiming witness expenses?



Overall the answers to the questions regarding access to witness' expenses clearly show the importance of information and assistance. The level of those claiming expenses is very low²⁴ and the fact that few participants reported receiving key information and assistance in relation to such claims indicates a lack of systematic information provision.²⁵

6.11 Information provision related to post-release of offender

Another information need identified by respondents to this research was in relation to information about offenders after their release. Some interviewees expressed an appreciation of the services of the prison victim liaison officer in this regard and highlighted the fact that they were informed about offenders in relation to release dates and paroles. Paul, for example, highlighted the need to inform victims that they had the right to withhold their queries for information from the prisoners themselves.

²⁴ Three people reported claiming expenses.

²⁵ In the DPP's information booklet, *Attending Court as a Witness*, it is noted (2006: 18): 'The Garda Síochána is responsible for paying witness expenses. This is the cost to you of coming to court to give evidence. These expenses may include the cost of taking time off work, travelling expenses, meals, and if you live in another part of the country, accommodation'.

[Another person] who I found extremely good was the Irish prison services...liaison person...[They give] you an update [on] what's happening to the guy inside there...[The] victim has to write to ask for that, like when he's up for parole...You have to ask for that...Not many people know about writing to the prison services...[The] prison services should inform you...and write at the end "I do not want the prisoner to see"...²⁶

(Paul)

This observation provides further evidence of the fragmented nature of information provision in relation to victims. Throughout this research a central theme has emerged regarding the lack of information available to victims regarding the workings of the criminal justice system and the rights of victims within that system.

The woman who murdered Mary's mother was sent to a mental hospital. The lack of communication between the hospital and Mary and her family has had devastating consequences for Mary.²⁷

That day that I saw her in the restaurant...I was out doing my Christmas shopping and should have been told about things like that, that she was going out shopping that day...I got a phone call from the social worker: "What were you doing in Mental hospital?"...I'm looking out the [car] window at someone that has murdered my mother, not only murdered her, butchered her to bits, and she's out swinging her Christmas shopping and I'm thinking that she's in the hospital...I thought – [I] can't believe this is happening...There she was going in to the pub...I ran after her and I wasn't very pleasant...

(Mary)

Then I got a phone call from social worker... I had to say to her "How dare you ask me what I was doing there." I said: "I can go where I like, what was she doing in the shopping centre?"...I should have been told, more or less, just be aware...that shouldn't happen...There should be someone...[They] just [need to] make a phone call, [to] make you aware that she is out today and it's my fault then if I bump into her...

(Mary)

Mary spent 13 years trying to protect her father from knowing what exactly had happened to his wife. There were also occasions when she feared that the assailant would meet her father.

I used to hide the papers for my father...Then her father died...We did get a phone call to say she was going to the funeral...I think she was handcuffed....

²⁶ Current practice in the Irish Prison Service is to provide, on written request from a victim, information on the release of the relevant offender, and information on the prison regime generally.

²⁷ The Victims Charter does not make provision for notification — even where a request is made by a victim — in respect of releases from psychiatric institutions.

I was so frightened that she'd go up to him [Mary's father] and tell him she was so sorry...All the time [I had] this fear...I was in such a state, I had to go to bed.

(Mary)

Mary's situation is further complicated by the fact that the assailant came from the neighbourhood and her whereabouts are well known. Thus, Mary heard that she had been moved to a centre nearby and that she has been seen at various locations.

I have been on to the Mental hospital and asked them to investigate it...She's been seen in the street drinking beer, this is in the area where I am...I've asked them to let me know, and I never heard anything back...So you can imagine my thoughts on the medical team that is looking after her...and she's asking people have they seen me, that's frightening stuff...I have a letter asking can she be removed...They didn't get back to me...[There is] total disrespect for me and my family...We haven't done anything wrong.

(Mary)

Tell people that if they have someone in [mental hospital] who has murdered someone that they're having a day out, that they're out doing their Christmas shopping...I'd say she was only six years in [mental hospital]...I heard she went away to Turkey...What would have happened if one of my daughters had been on the plane?...That type of stuff frightens the living daylights out of me...I just felt that I should have been told...I could have been on that plane...sitting a few seats away from me...That's horrible stuff.

(Mary)

6.12 Conclusion

The findings outlined in this chapter regarding victims' experiences of court facilities and procedures highlight a number of areas where victim needs are not being met. Poor information and communication flow between the Gardaí, DPP, courts personnel and victims in relation to a range of issues including the timing of hearings, adjournments, delay, prosecutorial decision making, and release dates contributes to negative experiences for victims. Victims in this research reported that delay and adjournments had a significant impact on their negative experience of the court process. It is important that such delays and adjournments be minimised as far as possible.²⁸ Furthermore, a significant minority of respondents in this study expressed dissatisfaction with the office of the DPP. The reasons for this dissatisfaction included the downgrading of charges, the absence of a prosecutor at the sentencing hearing, the

²⁸ See also National Crime Council (2006).

failure to give reasons for a decision not to prosecute,²⁹ and poor standards of communication with victims.

Many participants in the research identified the problems caused by the physical environment of court rooms and the organisation of court hearings. Victims referred to difficulties such as overcrowded courtrooms, an inability to hear the proceedings, a lack of seating, the lack of access to separate waiting areas, intimidation and long periods of time waiting around the courtroom for cases to be heard. Many victims in the study also expressed dissatisfaction with their experience of being called as a witness in court. One reason for this dissatisfaction was negative communications from court personnel. It is clear that summarising the issues at the outset of the case (barrister in Paul's case) or censuring the defendant (judge in Valerie's case) can be enormously significant, and indeed beneficial to the victim irrespective of the (legal) outcome of the case. Equally the use of inappropriate references at times by judges and other legal professionals ('old lady' in Mary's case, and 'child' in Kylie's case) can perhaps quite unintentionally have an adverse effect on the victim's experience of the process. Other reasons for dissatisfaction included the intrusiveness of the media, the perception of bias and the fear of having to give testimony. It is important that those operating the legal system provide an unbiased service to all victims regardless of life style or the context of a crime. The media also bear responsibility here as they utilise so many court proceedings for their own benefit as the basis for news. There is therefore an onus on the media to play a responsible role in reportage and while present in court. It is also clear that where victims used either a support organisation or a legal advisor to provide support in relation to the court process, their experiences were largely positive.

Participants in the research also voiced concern about their misunderstandings and confusion about the legal system. Victims clearly have a need for detailed information about the court process.³⁰ This would enable understanding in advance, of issues such as the book of evidence/admissibility of photos etc. It should also heighten awareness

²⁹ The DPP's 'Reasons Project', which on a pilot basis provides reasons for decisions not to prosecute to the families of victims of crime involving a death, should yield useful information as to how this might be made standard practice and rolled out to other victims.

³⁰ Existing literature includes the Court Service's booklet, entitled *Going to Court: a DVD and booklet for young witnesses* and the DPP's booklet entitled, *Attending Court as a Witness*. These information booklets do not, however, appear to be systematically targeted at witnesses.

of the broader context in which a legal decision is made. This would facilitate an understanding of the distinction between criminal and civil cases and avoid the confusion that seems to emerge from the survey in a clouding of domestic violence/custody issues.

Many respondents were dissatisfied with their inability to make a victim impact statement in their cases. Of the respondents who did make a statement, the clear majority were satisfied with the process, particularly with the sense of closure, healing and support which it provided them with. Some dissatisfaction was expressed with the fact that the opportunity to make a statement was left to the discretion of the trial judge in homicide cases (although this will change if, and when, the Criminal Procedure Bill is enacted). Victims also require clear and standardised guidance on what can be contained within the statement.

This study also shows that only 2% of respondents indicated that they were advised on any procedure for claiming witness expenses if they were summoned as a witness in a case. These responses reveal that there is a significant deficiency in the provision of guidance in this area which is surprising given that the Victims Charter commits the Gardaí to informing victims of their 'entitlement to court expenses'. The importance of ensuring that the Gardaí systematically inform victims of their rights to the reimbursement of expenses cannot be underestimated. Overall the findings also show that the vast majority of respondents to the survey had little experience in receiving compensation either through the Criminal Injuries Compensation Tribunal or under a Section 6 compensation order.

A further issue which this research highlights is victim concerns in relation to the lack of information provided about offenders in the post-sentencing period. Victim apprehension about the reappearance of an offender back into the community necessitates that information is effectively developed and conveyed. In particular, information relating to parole, prison release dates, and any compassionate releases needs to be provided where the victim indicates a wish to receive this information. To this end, targeted information about the existing scheme under the Victims Charter should be undertaken.

Ultimately it would seem that clarity with regard to the aspirations and aims of the criminal justice system, as well as access to knowledge with regard to its detail and structure, lie at the heart of the of meeting victims' needs.