“Show me a justice system that’s open, transparent, accessible and inclusive”\(^1\) Barriers to Access in the Criminal Justice System for People with Disabilities as Victims of Crime

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This paper considers the barriers that people with disabilities in Ireland face in accessing justice through the criminal justice system when they are victims of crime. It draws on qualitative research with key actors working within the agencies of the Irish criminal justice system, along with disability organisations, victim support organisations and health and social care providers. The research identifies a number of barriers which can be differentiated in terms of those operating at a strategic policy level, and those happening ‘on the ground’ when disabled people encounter the justice system in reporting a crime or going to court as a witness. The research found a lack of recognition of people with disabilities as victims of crime amongst many agencies of the justice system, an absence which is compounded by a failure to collate data on disabled people as victims of crime. On the ground, inconsistent practices regarding how gardaí, barristers and the judiciary respond to people with disabilities act as a major barrier, as do limits to the accessibility of spaces of justice such as courthouses and garda stations. The paper suggests that greater responsiveness from the justice system will need to reflect an understanding of disability which acknowledges the structural, institutional and attitudinal barriers which turn biological impairment into a disabling experience.

I - Introduction

Recent years have seen an increasing focus on how different social groups and sectors of society are affected by the impact of crime and how, if at all, the criminal justice system recognises and responds to their needs.\(^2\) The needs of children as crime victims and witnesses in the criminal justice system for example have become more widely recognised, as special measures have been put in place to facilitate evidence-giving and mitigate some of the potentially traumatic effects of the criminal investigation process. One group that we know little about in Ireland in terms of their experiences of the criminal justice system is people with disabilities. International research has shown that people with disabilities are often at greater risk of experiencing crime than their able-bodied counterparts, and encounter significant barriers in accessing the justice system.\(^3\) These barriers include a lack

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\(^1\) The quotation is taken from one of the participants in the research study.


of support and advocacy in terms of reporting crimes; negative perceptions amongst law enforcement agencies about disabled people’s ability and competence to be reliable witnesses; and a failure to provide adjustments to facilitate access in terms of both the physical environment and information. In many cases, crimes do not even reach the justice system due to an under-reporting of offences, whilst of those crimes that are reported, only a small proportion are likely to proceed to successful prosecution. The result is that people with disabilities are frequently denied the right to equal access to justice.

This paper seeks to address the lacuna in our knowledge about disabled people’s access to, and experience of, the criminal justice system in Ireland. While there has been a growing awareness and exploration of the needs of the broader victim constituency in Ireland in recent years, very little is known about people with disabilities and their relationship to the justice system. Part of the reason for this is the current lack of data collected on the area: official surveys and statistics on crime in Ireland, such as the Crime and Victimization module on the Quarterly National Household Survey, do not collect data on people with disabilities as a specific sub-group, whilst the National Disability Survey launched in 2006 does not ask people with disabilities about crime as an issue. Studies exploring specific types of crime in Ireland – for example, sexual abuse or domestic violence – have provided some data on people with disabilities, and particularly people with intellectual disabilities. Bartlett and Mears’ analysis of incidents of sexual abuse disclosed to Rape Crisis Network Ireland between 2008 and 2010 demonstrated that disabled people experienced “more multiple incidents of sexual violence” than their able-bodied counterparts.


5 Mencap, Barriers to Justice (London: Mencap, 1997).


7 H. Bartlett and E. Mears, Sexual Violence against people with disabilities: data collection and barriers to disclosure (Galway: Rape Crisis Network Ireland, 2011) at 9.
Such findings highlight a pressing need to explore how people with disabilities experience the criminal justice system in Ireland. The data in this paper is based on a study that was conducted for the National Disability Authority between June 2011 and February 2012. The study sought to explore the barriers that people with disabilities who report a crime face in accessing the criminal justice system in Ireland and internationally, and compare the legislative frameworks, policy and practice tools across different jurisdictions which seek to protect the rights of people with disabilities who report crime. To that end, the study comprised two elements: firstly, an international literature review was undertaken across common law countries with the aim of exploring key barriers facing people with disabilities in their access to the justice system, and policies and practices that have been put in place to mitigate these barriers. The second part of the study involved qualitative research with key stakeholders who form part of, or are connected to, the criminal justice system in Ireland: thirteen semi-structured interviews were conducted with representatives from agencies including the Director of Public Prosecutions (D.P.P.), Courts Service, Victims of Crime Office at the Department of Justice and Equality, Health Service Executive, victim support organisations, disability organisations, and a member of the judiciary. Unfortunately, we were unable to secure the participation of a member of the Gardaí and recognise this as a limitation of the study given the significance of their role in dealing with the reporting and recording of crime. The interviews sought to ask participants about their perceptions of how people with disabilities experience the Irish criminal justice system, as well as how their organisation recognises and responds to the needs of people with disabilities, if at all. All interview participants were asked to sign a consent form, and with the exception of three interviews, all were recorded and transcribed verbatim, and sent back to the participant to check for factual accuracy. The interviews proved to be a vital component of the research, given the paucity of official statistics and literature about people with disabilities in the Ireland.

The paper is divided into four sections. We first set out some of the key barriers that have been identified in international literature regarding disabled people’s experiences in the justice system. We then move on to explore some of the issues that shape disabled people’s interaction with the Irish criminal justice system, and the barriers they face, drawing on the material from interviews. In doing so, we consider the barriers from two perspectives: firstly, we explore the strategic identification (or lack of) people with disabilities as victims of crime in Ireland; and secondly, we consider some of the practical challenges people with disabilities face in accessing and using the criminal justice system in Ireland.

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disabilities as victims of crime in the work of agencies of the justice system and victims of crime, and consider how agencies understand and define disability within this context. Secondly, we consider the barriers that people with disabilities face ‘on the ground’ when they encounter the justice system in the reporting of crime and when attending court as a witness. We conclude by considering potential ways forward in making the justice system more accessible for people with disabilities.

II - Constituting Barriers: Understanding Disability and Disabled People’s Access to the Criminal Justice System

Wide ranging research undertaken in the U.K., U.S. and Australia has highlighted the significant marginalisation and barriers that people with disabilities experience in accessing the criminal justice system. Some of these barriers have come to light in high profile cases where disabled people were physically and mentally abused, and in some cases murdered, both in community and institutional settings. In a number of cases of ‘hate crime’ against people with disabilities in the U.K., for example, police were criticised for their failure to take reports of abuse seriously, and to respond in an appropriate manner.\(^9\) Disabled people are often perceived to be at greater risk of crime because of their vulnerable status, given their frequent dependence on carers and/or family members or friends. However, allowing a person to be defined solely in terms of their vulnerability has been shown to have unhelpful consequences in the context of disabled people as victims of crime. A number of commentators have suggested that disabled people’s vulnerability has often led to crimes against them being taken less seriously; they stress the importance of recognising acts perpetrated against people with disabilities as crimes and not just abuse.\(^10\) Many disabled people themselves may under-estimate the seriousness of acts perpetrated against them, or view what they have experienced as being a part of their everyday reality. Meanwhile, agencies of the state often view people with disabilities and the risks they face in terms of adult protection procedures, rather than supporting them to access redress through the criminal justice system in the same way as other citizens.

Societal perceptions of disabled people and their (in)capacity is central as a barrier in understanding their lack of access to the justice system. Our emphasis on barriers in this

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paper is borne out of a desire to focus analysis on an understanding of disability which reflects the interaction of societal contexts and structures with biological impairment in terms of shaping the experience of disability.\textsuperscript{11} Disability scholars and the disabled people’s movement have made a significant contribution to our understanding of disability by drawing a distinction between biological impairment and the social and cultural construct that is disability. They have highlighted how understandings of disability have been dominated by a medical model of disability in which the root of the problem for disabled people is their physical (or mental) impairment; as an individual who is deemed to be ‘abnormal’ in some way, physical or mental rehabilitation, or ‘cure’, is society’s requisite solution. Rather than trying to ‘fix’ impairment, disability scholars and people with disabilities themselves argue the need to move towards a social model of disability which recognises the barriers that society presents to people with impairment, thus creating the experience of disability\textsuperscript{12}. Whilst recognising some of the limitations of this model and these debates, our analysis is grounded in an understanding which reflects the interactions of these two sets of influences; in this context, if one is to explore how people with disabilities encounter the criminal justice system, one has to understand the system as a series of structures, processes and attitudes which have the potential to act as barriers and disable people with impairments.

In conducting the international literature review, we explored barriers across three different stages of the criminal justice process from the crime victim’s perspective: reporting and recording the crime, going to court as a witness and the post-trial experiences. Across all three stages, a number of different types of barriers emerge. The first of these might be termed \textit{structural barriers}. The criminal justice system can be viewed as a structure which comprises a number of different agencies and related organisations, including the police/Gardaí, D.P.P., Court Service, Probation Service, as well as victim support organisations. International research has highlighted how a lack of integration of these different structures, or agencies of the system, can act as a hindrance to people with disabilities in terms of their needs being met. For example, lack of joint working or communication across agencies may not be occurring; one example from a U.K.-based study related to a failure of the police to communicate a victim’s impairment and their need for


special measures to the court service.\textsuperscript{13} Similarly, there is often a failure to communicate between victim support agencies and statutory agencies, with the police failing to refer victims of crime to support organisations.\textsuperscript{14} There are also structural barriers within individual agencies, not least in terms of the division of labour regarding who takes responsibility for dealing with people with disabilities as victims of crime, particularly in the context of first reporting.\textsuperscript{15}

Procedural barriers are also significant in hindering people with disabilities’ equitable access to justice. The numerous procedures that are involved in reporting a crime and following it through to trial have been shown to be confusing and intimidating for people with disabilities; people can often be unsure about how to go about reporting a crime or who to approach, whilst the procedures and processes involved in giving evidence, whether in terms of being interviewed by police or in court have been shown to be problematic. In particular, the common law system is built on an adversarial system in which the principle of orality is key. It is a principle that benefits those witnesses who have the ability to articulate their point of view coherently and persuasively, and informs the processes through which evidence is first recorded by the police and presented in court. The adversarial system has been shown to disadvantage certain categories of witness; in the context of people with intellectual disabilities, their competence as witnesses may be called into question, whilst people with speech impairments and those people who are D/deaf or hard of hearing may have difficulty presenting themselves as credible witnesses.\textsuperscript{16} Such barriers point to the need for appropriate adjustments and supports for people with disabilities, which may include communication and/or interpretative aids, greater flexibility in how procedures and processes in the justice system take place (for example, taking more frequent breaks in the giving of evidence) and adjustments which makes the spaces of the justice system (courtrooms, Garda stations and so on) more physically accessible.

In many cases, processual and indeed physical, barriers are closely related to the attitudes and understandings of disability which pervade the justice system and those working


\textsuperscript{14} Kilcommins \textit{et al.}, supra note 6 at vii.


Different groups of professionals within the system – from police through to barristers and judges - have often been unaware of, or made assumptions about, the capabilities of people with disabilities; this is reflected in the way people with disabilities may be cross-examined in court or even deemed to be reliable reporters of crime in the first place. Keilty and Connelly’s study of police in Australia\(^\text{18}\) provides a striking example of this. In their study of reports of sexual assault made by women with intellectual disabilities, they found police were often reluctant to pursue the case because they were concerned about the vulnerability of the victims and whether they were would be seen as credible in the witness box; they held little confidence in the courts to deliver acceptable outcomes, and believed that protecting the victim from future assault was more important than prosecuting the suspect. As they note “reticence to put forward cases filters the number of cases proceeding to trial, thus limiting the extent to which courts are exposed to and forced to cater for witnesses with intellectual disabilities”. In this way, assumptions of vulnerability have the potential to circumscribe disabled people’s equal treatment as citizens within the justice system.

### III - Situating People with Disabilities in the Irish Criminal Justice System

The last few decades have witnessed a shift in terms of victims’ rights in Ireland, as legislative and policy measures which seek to promote and support victims in the criminal justice system have come into operation. Developments in evidence-giving (such as using live television links and video testimony) have sought to facilitate access to the justice system and reduce secondary victimisation for crime victims. The establishment of a range of victim support organisations is also providing assistance to victims in many different forms. That said, research has shown that victims of crime in Ireland still experience significant difficulties in their encounters with the justice system: these include a lack of information provided to victims about the criminal justice process and how their case is proceeding; a lack of awareness amongst statutory agencies about available supports (including support organisations) for victims; variable empathy and sensitivity to victims’ needs amongst the Gardaí and other legal professionals; and difficulties in terms of the court experience (for example, understanding court processes and delays in court procedures).\(^\text{19}\)


\(^{18}\) J. Keilty and G. Connelly, supra note 4 at 282.

\(^{19}\) Kilcommmins et al., supra note 6 at ix.
Given the marginalisation that people with disabilities experience in society, the aforementioned challenges can only be magnified for disabled people who find themselves in the position of being victims of crime.

In the sections that follow, we draw on the interview material to explore the barriers facing people with disabilities as victims of crime. We approach our analysis from two angles. Firstly, we consider barriers that exist at a policy-oriented, strategic level, by exploring the extent to which agencies within, and allied to, the criminal justice system are recognising people with disabilities as part of the victim constituency in their work. Such recognition (or lack thereof) is closely related to data collection on people with disabilities and also raises questions about the definitions of disability that agencies employ in their work. Secondly, we focus on barriers that face people with disabilities ‘on the ground’ when they come into contact with the criminal justice system: as becomes evident, attitudes and practices of those working within the system have a significant role to play, as do practical issues such as physical access to buildings. Through this analysis, we seek to highlight the barriers that pervade the justice system at many different levels: from those agencies concerned with policy as it pertains to victims of crime, down to encounters between crime victims and the ‘public face’ of the criminal justice system.

A. Hidden Victims: Barriers in the Strategic Recognition of People with Disabilities as Victims of Crime

As stated in the opening section of this paper, there is a discursive lacuna in the knowledge that exists about the experiences of people with disabilities as victims of crime in Ireland. One of the aims of the interviews therefore was to determine what the landscape of understanding around disability looks like amongst those working within the agencies of the criminal justice system. This is linked to the reality that the victim population is a diverse constituency and therefore the agencies of the criminal justice system, along with victim support organisations, should be able to respond effectively to a continuum of social and cultural backgrounds, and to the needs of individual victims. The research uncovered significant variance among attitudes towards disability and the manner in which it is conceptualised, with this variation extending to the strategic identification of people with disabilities as victims of crime; definitions of disability, if any, which are in use; the collation of data on people with disabilities as victims of crime; and disability awareness training.
The revised Victims Charter of 2010 includes a commitment by the Gardaí to meeting the requirements of victims with disabilities, as the Charter states: “if you have any form of disability we will take your special needs or requirements into account”.20 Further to this, the Courts Service and D.P.P. have staff responsible for ensuring their respective organisations meet obligations under the Disability Act 2005, as regards making information accessible to people with disabilities, and making their services more accessible. Some evidence of the strategic identification of people with disabilities within the work of certain agencies exists: in a four-year strategy document compiled by Cosc, the National Office for the Prevention of Domestic and Gender-based Violence, for example, Action 6.4 of the strategy seeks to “identify and promote suitable State service responses in relation to domestic and sexual violence for vulnerable or high-risk groups (including Travellers, people with a disability, older people, migrants, and young people)”.21 The Crime Victims Helpline also noted that they were seeking to address disability in their strategic plan.

These examples aside, the interviews yielded an overwhelming sense that people with disabilities are not being strategically identified as a victim group, either by victim support organisations, or those engaged at a central government policy level in dealing with victims’ issues. Despite the fact that recent decades have witnessed the emergence of a victim-centred paradigm in legal discourse, the response of one participant based in a central government policy unit concerned with victims of crime suggests that the perception of the victim as being on the margins of the criminal justice process persists:

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

It is clear from this respondent’s view that the implication of this idea of victims as ‘marginal’ has been to delay the project of more focussed considerations of sub-categories of victims drawn along identity lines including gender, sexuality, ethnicity and disability. The

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same respondent alluded to the fact that budgetary limitations place constrictions on the availability of funding to support the collation of detailed data regarding specific groups of victims, particularly in instances where it may be seen to compromise the provision of frontline services for victims and their families.

Victim support organisations who deal directly with victims however displayed an ethos of inclusivity and a commitment to making adjustments to support all victims. Several respondents explained that the utmost effort is taken to ensure that the requirements of individual victims with disabilities are sufficiently met. This might involve arranging face-to-face meetings where the organisation operated primarily on the basis of a phone line; bringing skills and expertise (for example, staff trained in sign language) from one support centre to another; and visiting people in their homes where appropriate. As one respondent noted:

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

That said, responses are often reactionary, and in other agencies, responses to victims of crime with disabilities appear to operate on an ad-hoc basis. For example, a representative from the Courts Service noted how, in relation to disability, complaints formed a basis for reaction:

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

The inherent danger of such an approach is that it relies on victims themselves to make complaints. If this does not occur, the problems may not be made manifest to those who are in a position to amend the structures and procedures in place.

Lack of a strategic recognition and response to people with disabilities appears to be closely tied to a lack of information and data collection about disabled people as victims of
crime. Collation of data and maintenance of records regarding people with disabilities as a specific crime group appears to be sporadic, if not completely absent, albeit with some exceptions: Rape Crisis Network Ireland, for example, has a database which facilitates identification of survivors of sexual violence who have disabilities. It was suggested by one respondent at central government policy level that:

...the State is paying victims organisations to provide support to victims so the simple question, ‘how many people are being helped?’ [...] trying to get that figure robustly [...] That’s the priority....

Nationally, there is no centralised monitoring or support of data collection, and regional efforts are not compiled to provide a comprehensive overview of what is happening country-wide to support victims of crime with disabilities, or indeed to discover how many such victims are seeking assistance. The same issues are relevant to the practice of processing complaints made to the Courts Service, with one representative responding:

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

At the Office of the D.P.P., the number of cases involving complainants with disabilities can only be deciphered by a case-by-case trawl, further to which the complainant’s disability must have been noted in the case file presented to the D.P.P. by Gardaí. It is important to bear in mind that only a certain number of cases reach the attention of the D.P.P., with many being dealt with by Gardaí at local level. It is also significant to note that the D.P.P. works on a basis of definition of disability set out in criminal law. Therefore, people with disabilities are only identified in the eyes of the D.P.P. where the case relates to Section 5 of the Criminal Law (Sexual Offences) Act 1993. Inadequate practice by the organisations in relation to data collection and maintenance of records of service use by people with disabilities, begs the question of how such organisations can hope to advance the services being offered for crime victims with disabilities, or identify their requirements.

The definitions of disability which inform professional practice in statutory bodies and voluntary organisations involved in the assistance of victims of crime also formed a
focus in the interviews. This is significant as definitions formally adopted inform practice and perpetuate cultures of understanding, so the extent to which they are in place or not can impact on attitudes held by staff and the manner in which they respond to people with disabilities. The research uncovered considerable variation in the responses offered. Among the more focussed responses were those with legislative points of reference and a keen awareness of obligation under the *Disability Act of 2005*, which included the following:

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

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

In contrast, other responses demonstrated a starkly deficient understanding of the Disability Act 2005, with one respondent stating that “It hasn’t – well I mean we hope we’re not breaking the law […] But I mean we don’t have buildings under our control.” The lack of awareness evident here was replicated in discussions with other interviewees, one of whom acknowledged the inadequacy of not having an operational definition of disability to inform practice:

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

Another respondent in the area of policy pertaining to victims of crime responded to the same question, “No. Because it’s not a central issue, and to be honest […] that’s the blunt fact of it”. Such responses raise questions about the peripheral nature of disability-related issues on the agendas of victim-related organisations in Ireland and the consequences this may have for victims negotiating the agencies of the criminal justice system and seeking to access victim support.

Inconsistency is also hallmark of the approaches to disability awareness training among the agencies of the criminal justice system and victim support organisations. Among
some interviewees, there were positive indications of emerging awareness of the importance of such training, particularly amongst victim support organisations. However, evidence of disability awareness training initiatives, or indeed an acknowledgement of their importance, was significantly less prominent among the respondents in statutory agencies and those professionals in the criminal justice system. For example, a representative of the Courts Service explained that, “I know there was some disability awareness training a few years ago, but it just fell by the wayside”. One interviewee based in a disability organisation explained how sometimes organisations can be unreceptive to the idea of disability training for staff, with the consequence that outdated ideologies around disability and engaging with people with disabilities persist:

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

The inconsistencies outlined above relating to data collection, training and strategic identification of victims of crime with disabilities all convene to inform the perceptions formed around people with disabilities, which in turn infiltrate organisations and inform the work of those involved in engaging with victims of crime. In the next section of the paper, we address the barriers that face people with disabilities when they negotiate the criminal justice process, particularly in terms of the first reporting of a crime, through to going to court as a witness.

B. Barriers ‘on the ground’: Disabled People’s Encounters with the Criminal Justice System

As international literature has noted, disabled people face numerous barriers in terms of reporting a crime and attending court. The approach and attitudes of professionals working within the system, and system practices, have a huge role to play in shaping how victims experience the criminal justice system, and this was no less the case in our own research. Interviews revealed that victims often face inconsistency in the treatment they receive in engagements with criminal justice personnel. One representative working in the area of victim support alluded to this as follows: ‘victims’ of crime experience depends on
the individual Garda that they meet - some are terrific, some are fantastic and some are not, and there are huge barriers when you meet up with them”.

Clearly, the treatment received while dealing with members of the Garda Síochána at this initial, often traumatic, reporting stage can shape the individual victim’s experience and ultimately impact upon the overall progression of the case. It became clear in conversations with respondents working with health and social care providers, disability organisations and victim support agencies, that victims’ experiences are significantly determined by these initial encounters. Some respondents relayed positive experiences they had had when supporting victims with disabilities, when relationships are forged with local members of An Garda Síochána. One social worker, with experience of working with victims with intellectual disabilities, explained as follows:

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

However, not all encounters with the Gardaí were explained in such positive terms. A lack of awareness or knowledge on the part of Gardaí of the communicative, social and emotional needs of people with intellectual disabilities can prove to be a significant barrier, as the following service provider depicted in their experience of accompanying a victim to report a crime:

One of those interviews, I think it took nine solid hours […] now that has to be noted somewhere as that wasn’t appropriate. This was one young woman who has an intellectual disability who was ready to pull out on hour one. And then you’d have to say well what are we doing, are we initiating her to go or encouraging her to go further, unnecessarily and yet she felt so – so violated that she needed to be – the acknowledgement needed to be given that yes that was wrong.
Considered one after the other, these reflections on victim experience highlight the lack of standardisation in practice among Gardaí. One respondent noted that training is available for Gardaí in the area of specialist victim interviewing techniques, but there is no guarantee that such personnel will be available in instances where it would be appropriate, nor is it certain that such trained personnel will be the ones to engage with victims with disabilities. This can lead to scenarios whereby interviews are conducted by Gardaí without training in essential communicative strategies, or indeed without comprehensive understanding of a victim’s disability. While Gardaí can be ‘sensitive’ to the needs of a victim with an intellectual disability, this is ultimately insufficient when knowledge is lacking. Indeed, this comes into sharp focus when we consider the orality implicit in the process of reporting a crime. In an interview with a representative from a disability organisation, it was made clear that without the ability to articulate one’s experience in clear spoken language, disclosure of a crime by a victim can be acutely compromised, particularly when criminal justice personnel do not possess communicative strategies which match the needs of that victim:

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

Once a crime has been reported, the time taken for a case to progress can prove frustrating for many victims, and it would seem that there is a need for encouragement and reassurance for people with disabilities, as with all victims of crime. As explained by one health and social care provider, individual support is essential to ensure the equitable treatment of complainants with intellectual disabilities through the duration of the criminal justice process, and this is arguably an area where the agencies of the criminal justice system could do significantly more in terms of supporting the work of those assisting victims with disabilities: “I think of all the cases...I’m not sure what would have happened if we hadn’t been there. It would have been very, very difficult for them to access...”.

In the context of people with disabilities going to court as witnesses, perceptions around the capacity of victims, attitudes of legal personnel and members of the judiciary

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22 Kilcommins et al., supra note 6 at vi.
towards people with disabilities emerged as being significant in shaping experiences with the justice system. One service provider referred to the difficulties in ensuring cases proceed to prosecution where the person has an intellectual disability, noting, “getting it past the Guards to the D.P.P. then sometimes is a problem – it stops a lot of the time”. This can arguably be linked to the manner in which the legal system in Ireland constructs and imagines the ‘credible witness’, with questions of capacity bearing profoundly on the passage of justice where victims with disabilities are concerned. A conversation with one social care provider yielded the following insight:

And people with severe profound disability who have been assaulted by family members or others – because they’re not a credible witness it stops. [...] Even though somebody might have witnessed it, the person themselves being the victim won’t be able to stand up in court and say this person did this, this and this to me, and the Gardaí say look there’s no point in taking this to the D.P.P. so it just stops again.

The suggestion was made by some respondents that such difficulties are related to the fact that Ireland’s current capacity legislation is, as described by one interviewee “fairly retrograde”, in reference to the Lunacy Regulation (Ireland) Act 1871. The same respondent noted that in the case of Section 5 of the Criminal Law (Sexual Offences) Act 1993, while sexual relationships between two people with intellectual disabilities are in effect unlawful, such relationships are nonetheless taking place and this reality causes tensions for service providers working with people with intellectual disabilities; they cannot be seen to condone such relationships as this may lead to a rebuke of their actions from a legislative standpoint. One social worker noted that there is a contradiction involved in the need to acknowledge the vulnerability of victims with intellectual disabilities while working to ensure that the status of a witness as vulnerable does not eclipse the perception of that person as a credible, capable witness: “It’s difficult, it’s like a see-saw, in one way you’re saying they’re vulnerable and there’s a power imbalance and at the same time you’re saying, but we absolutely believe they’re able to give evidence and that the evidence is truthful”.

A member of the judiciary suggested that a more holistic understanding of the individual’s context and their social and cultural perspective can be valuable in ascertaining whether or not they have the capacity to act as a credible, reliable witness. The presentation in court of information such as school reports, for example, can assist in determining a
witness’ capacity, as “these things can be helpful in kind of fleshing out, giving a clear idea of how far the person had capacity to go to in terms of education, just general training, looking after themselves you know, awareness of the outside world etc.”. Such efforts would be in line with functional understandings of capacity as opposed to outmoded status-based definitions which are recognised as inappropriate in recent legislative review.

In the context of going to court, feeling overwhelmed and intimidated by the presence of legal professionals is a common hallmark of many witness’ experiences. For victims with disabilities, as with all victims, the need for appropriate communication, in clear and accessible terms, is of paramount importance to ensure equity of access to justice proceedings. A representative of a disability organisation elucidated how interactions between legal professionals and witnesses with disabilities can reinforce traditional constructions of subordination and inferiority:

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

It is incumbent upon legal professionals and members of the judiciary to bear in mind the communicative requirements and abilities of individual witnesses, and several respondents noted that particular skills need to be employed by such personnel in order to give fair and equitable treatment to witnesses, and to elicit what has been termed ‘best evidence’. One judge stated that the responsibility of ensuring the criminal justice system responds well to people with disabilities in court lies significantly with legal professionals and their conduct: “It’s got to do with the understanding and the expertise, the skill really of the lawyers and also the judge who is going to be putting questions and cross-examination, and how clever they are at eliciting information”.

The court experience also raises barriers in terms of accessibility. In terms of physical access, wheelchair users and victims with specific mobility requirements need to be able to enter and leave the court room. A representative from the Courts Service outlined the efforts that have been made in this regard:
...people can come […] if they anticipate any difficulties in accessing services. So for example, if somebody knew they were going to court in an old courthouse, we might have to organise a ramp to get them into the courthouse, you know something like that, simple things. Or even disabled parking in the Four Courts, stuff like that.

Further to this, induction loops are being provided in courthouses to assist those wearing hearing aids, and in the course of the research it emerged in one participant interview that the D.P.P. had had experience of facilitating the provision of Sign Language interpretation at a pre-trial meeting with a Deaf complainant. In these two examples, the second sense in which ‘access’ is relevant is made manifest. One representative from a disability organisation highlighted the dimensions of understanding ‘access’ comprehensively:

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

It has been well-documented that court processes and procedures are often inflexible to people’s needs, whilst legal jargon and ways of doing business are opaque to those outside the justice system. Creating accessibility for people with disabilities refers to much more than physical access then; it is about ensuring that there is transparency in procedures, that communication supports are provided if and when necessary, and that people with disabilities – and indeed all victims of crime – have information about what they can expect when they attend court.

**IV - Conclusion: Making Justice More Accessible**

This paper has presented some perspectives and insights concerning the experiences of victims with disabilities in the criminal justice process, from individuals who work directly to provide assistance to victims. While these insights are recognised as being secondary in value to the first hand accounts victims themselves can offer, reflecting on the findings of the interview, we can nonetheless begin to mark out some signposts on the justice landscape which help to identify areas where reforms in service provision, training
and professional practice are necessary, and to discuss how structural, procedural and attitudinal barriers to justice for victims with disabilities might be addressed.

Fundamentally, we identify a need on the part of all agencies in the criminal justice system, and victim support organisations alike, to acknowledge the diversity of the victim constituency. Victims with disabilities are a part of this constituency and have the right to access the justice system in a way which is equitable and uncompromised, and on a par with experiences of non-disabled people. It is essential that adequate, informed and appropriate supports are provided where necessary, and that victims with disabilities are recognised fundamentally as witnesses who possess the capacity to determine where wrong-doing has been committed against them, and as people who are entitled to fairness at the hands of the justice system. Davis\textsuperscript{23} states that “one of the reasons there is resistance to calling attacks against people with disabilities ‘hate’ crimes is because the general ideology toward people with disabilities rules out hate as a viable emotion. In our culture, it is permissible to ‘pity’ or even ‘resent’ people with disabilities [...] but one is generally not supposed to ‘hate’ disabled people.” Such a view can be compounded by the perception of disabled people who are victims of crime as ‘vulnerable’, such that incidents are not dealt with the seriousness they deserve.

In order to address the systemic ableism discussed by Davis\textsuperscript{23} in the context of the criminal justice system, there is an acute need for training of personnel who may encounter victims with disabilities, in appropriate communicative strategies which are rooted in understanding and knowledge, rather than grounded in what is often mal-informed perception. Indeed, interviewees in our research suggested that disability training should be mandatory for personnel in the agencies of the criminal justice system, in particular for members of An Garda Síochána, and that this measure would work to promote empowerment and the exercise of autonomy by people with disabilities who become victims of crime. Devising strategies for such training requires systematic identification of disabled victims in policy development, and this can be informed by data collection and management strategies which need to be far more efficient than is currently the case. The barriers discussed in this paper point to the need for appropriate adjustments throughout the criminal justice process. Strategic review and the compilation of inventories by agencies

\textsuperscript{24} ibid
concerned with victims of crime with disabilities could have a profound impact in terms of creating a more user-friendly, accessible experience for the diverse range of victims of crime in Ireland, including those with disabilities.

Legislative reform is another important context that will shape the Irish criminal justice system’s response to people with disabilities. Several respondents drew attention to the deficiencies of existing law on capacity and the need for legislative revision. The Law Reform Commission’s consultation paper on the Criminal Law (Sexual Offences) Act 1993\textsuperscript{25} and the Assisted Decision Making (Capacity) Bill, which was published in 2013, are both important steps forward in this regard. It was also noted that there are no formal protocols for liaison between agencies for ‘at risk’ adults who are not registered within the statutory frameworks of health and social care providers such as the Health Service Executive, and this scenario clearly needs to be addressed. Indeed, it seems that despite the positive moves embodied in legislation such as the Disability Act 2005 which takes its lead from a disability equality agenda and seeks to ensure the needs of disabled people are mainstreamed across public service institutions, the criminal justice system is one institution (or set of institutions), in which people with disabilities remain marginal and unrecognised; where they are recognised, moreover, it is in terms of their incapacity or dependency. If people with disabilities are to be taken seriously as victims of crime who have needs and rights, such understandings of disability will need to be reconceptualised to take account of the disabling barriers which prevent people with disabilities achieving equitable access to justice.

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