



One in Four

A Response

to

**“The Management of Sex Offenders:
A Discussion Document”**

A Submission

to

**Offender Management Group
Department Of Justice, Equality and Law
Reform**

April 2009

Introduction

One in Four welcomes the publication of “The Management of Sex Offenders: A Discussion Document”. We believe it represents a major step forward in responding to sex offenders in Ireland, and incorporates international best practice in their treatment and management. We particularly welcome the interagency approach proposed, and the discussion regarding services to support offenders in their reintroduction into the community after serving their sentence.

While we acknowledge that the focus of this document is on convicted sex offenders, we wish to draw attention to the fact that it is estimated that fewer than 10% of people who have been sexually abused report the crime¹, and that the majority of sex offenders are living in the community without a conviction.

Since 2004, One in Four has been providing a community based sex offender treatment programme. The introduction of the programme arose at the behest of clients who had experienced sexual abuse in intra-familial settings and who requested an intervention for the person who had abused them. Approximately one third of the participants are self-referred. We currently provide 19 risk assessment and treatment places.²

Based on our experience of providing services to both victims of sexual violence and sex offenders, we appreciate the opportunity to respond to the Discussion Document under the following headings:

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¹ SAVI Report, 2002

² For a more detailed account of the One in Four Programme see Appendix 1.

I. Incentives to Participate in Treatment

International research indicates that participation in effective treatment programmes both in prison and in the community reduces the rate of recidivism. In the Irish context, a low proportion of incarcerated offenders chose to engage in available programmes. It is therefore vital to find ways to encourage sex offenders to participate in treatment.

It is accepted that mandatory treatment programmes are not feasible on ethical and practical grounds. The other option is to introduce incentives to encourage sexual offenders to participate in treatment. One in Four is broadly supportive of such an approach.

The new treatment programmes being introduced in the Prison Service may in themselves be seen as an incentive, addressing as they do broader life issues as well as offending behaviour. These programmes are likely to be seen as more relevant and therefore more attractive to prisoners.

Where the sexual offences have taken place within the family, the provision of family therapy and mediation for all family members including the victim(s) may encourage programme participation.

Other incentives which should be considered include accelerated access to prison training programmes, and consideration for day release, temporary release and early release. Given the practice of remitting up to one third of a sentence for good behaviour, the option of considering non-participation in a treatment programme as bad behaviour, with consequent loss of remission, should also be explored.

Research has shown the importance of post release treatment in reducing recidivism. Early release incentives should therefore include the requirement to attend a community-based treatment programme for a specified period, and, if appropriate, to engage in monitoring and supervision by the Gardai and / or the Probation Service. Failure to meet these requirements should result in re-incarceration, particularly for high risk offenders.

Early release incentives are unlikely to be suitable for very high risk sex offenders who despite treatment remain a danger to the public. In our view, while every effort should be made to engage such prisoners in a treatment programme, public safety must be paramount. He or she should serve the full sentence and be subject to stringent supervision and treatment requirements on release.

The Judiciary have an important role to play in incentivising participation in treatment programmes. There is an array of measures available to judges at the point of sentencing, including suspension of part of the sentence on certain conditions, court ordered supervision etc. However, there is a lack of consistency and coherency in sentencing for sexual offences across the Judiciary. With due regard for the constitutional requirement of separation of powers, we believe that:

- a training programme for judges in relation to the dynamics of sexual violence should be introduced as a matter of urgency
- legislative changes should be considered to introduce post-release treatment and supervision as routine aspects of sentencing

Early release of sex offenders is likely to cause concern to the victims of sexual violence and the general public. In our view this can be addressed through a public awareness campaign which focuses on the treatment of sexual offenders as a child protection measure. Where appropriate, the imposition of a Protection of Persons Order or of Section 10 of the Non-Fatal Offences against the Person Act(1997) could also serve to allay the concerns of the victim.

2. Public Identification of Sex Offenders

In general, One in Four is not in favour of the public identification of sex offenders. It is our view that such a system is likely to interfere with the re-integration of sex offenders into the community, interfere with post-release supervision and to provoke ill-informed public reactions.

However, in relation to very high-risk sex offenders public safety must take precedence. It may be necessary for the Gardai to inform particular people of the danger posed by certain offenders in order to protect children and vulnerable adults. This could include, for example, a sporting organisation in the case of a coach, or a parent in the case of a babysitter. This is a difficult area in which to make policy, as decisions would need to be made on a case by case basis, and include inputs from a variety of agencies.

We believe that public concern can be partly addressed by an information campaign which would assist people to understand that sex offenders are not a homogenous group, and that different responses are necessary, depending on the level of risk.

3. The Needs of Victims

People who have experienced sexual violence must be central to any discussion of the management and treatment of sex offenders. This is a diverse population and includes both people who are sexually abused in childhood and those who are victimised in adulthood. The relationship between the victim and the sex offender is also crucial in understanding needs. Most people are sexually abused by somebody they know, and the closer the relationship, the more complex the victim's requirements.³

3.1 Access to the Criminal Justice System

We know that almost a quarter of Irish men and a third of Irish women have experienced some form of sexual violence, but that fewer than 10% of people make a complaint to the Gardai⁴. The implication is that 90% of sexual offenders are never convicted and operate without supervision in the community. If this is to change, the criminal justice system must be made more accessible to victims.

It is very difficult to make a complaint of sexual violence: shame, fear of disbelief, anxiety about the familial response and fear of public stigmatisation are regularly cited by victims as reasons not to contact the Gardai. The process of engaging with the criminal justice system is perceived as intimidating, and many victims who go through the process describe it as traumatising. In the case of adults complaining of childhood sexual abuse the difficulties are compounded by the lapse of time and the challenge of providing exact information regarding dates etc.

Some of the difficulties are articulated in this One in Four client's account of her experience:

*"I made my complaint at a rural Garda Station where there was no designated officer ...I was never informed or updated regarding the process of my case ... my abuser was before the District Court and it was not until it was published in the local newspaper that I was informed. The DPP took a year to make his decision as to whether to proceed with a court case...Over the next three years repeated court dates were set and adjourned often with less than twenty four hours notice...The court hearing was a harrowing experience...I had to give evidence over one and a half days, the trauma experienced by this did not have an impact until many weeks later...My abuser was given a two and a half year sentence with the last year suspended. The severity of the sentence did not equate with the crime and I do feel bitter that in ways I have been hard done by the system as it is ...The heart-sinking tale for all victims is that we are mere witnesses for the State and that is where our role ends"*⁵

The legal status of a victim of crime as a witness for the State means that the victim often feels his/her experience is peripheral to the case. This is compounded in cases of

³ One in Four provides 8,000 hours of psychotherapy and of advocacy services annually to victims of sexual violence

⁴ SAVI 2002

⁵ One in Four Annual Report 2007

sexual violence, where the violation is of the most intimate nature and has a profound impact on the psychological well-being of the victim. With due regard to the rule of law, it is simply not acceptable that a large number of Irish people are denied legal remedy for heinous crimes because the criminal justice system cannot accommodate their needs. One in Four believes that some straightforward procedural changes would improve the way in which victims experience the system and thus encourage higher reporting rates.

One in Four proposes that the following changes should be implemented to facilitate victims of sexual crimes:

- Each victim should have access to clear information about the process of making a complaint to the Gardai, the likely course of an investigation, the role of the DPP, the status of the victim as witness
- Professional non-directive facilitation of decision making for the victim⁶
- Professional support when contacting the Gardai and before and after making a statement
- Nomination of a Garda to liaise with the victim throughout the process. While theoretically this is currently supposed to happen, it actually varies in practice
- Should the DPP decide not to proceed with a prosecution, a general reason should be given to the victim
- Should the DPP decide to proceed to trial, the victim should have access to free legal advice regardless of the nature of the charge and be informed of same by the DPP's office. (Although victims of rape and aggravated sexual assault are entitled to such advice, we have never met a victim who has been informed of this)
- The DPP solicitor should as a matter of course keep the victim informed of the progress of the case (While in theory this is supposed to happen, in practice it depends on the goodwill of the individual solicitor)
- While the alleged sex offender should have sight of the victim's statement, he/she should not be provided with a copy in order to prevent unnecessary breaches of the victim's confidentiality
- The barrister for the prosecution should meet the victim at least one week before the trial, rather than on the morning of the trial as is common practice currently. It is very difficult for the victim to integrate any new information just before the trial begins
- Professional court accompaniment should be provided to support victims emotionally and to help them negotiate the confusing legal procedures
- Given the traumatic impact of giving evidence in open court, consideration should be given to routinely hearing evidence via tele-link
- Training should be put in place for all solicitors and barristers dealing with sexual offences on behalf of the State on the lines developed by the UK Crown Prosecution Service
- With due regard for the separation of powers, the lack of coherency in sentencing must be addressed, including the provision of training for members of the judiciary who hear cases of sexual violence

⁶ One in Four provides a professional Advocacy Service for victims and has achieved an average reporting rate to the Gardai of 25 – 30% by providing clear information and non-directive facilitation.

The reality is that regardless of the supports that are put in place, many victims of sexual violence will choose not to engage with the criminal justice system. Particularly in cases of child sexual abuse within the family, the desire of the victim is often that nobody else should be harmed, and there can be a reluctance to contribute to the imprisonment of a close relative. While it is outside the scope of this document, One in Four recommends that consideration be given to other forms of State intervention which may be more appropriate to this crime. This would include restorative justice approaches allied with community based offender treatment.

3.2 Victims' needs at the time of release of the sexual offender

The release from prison of a sexual offender can be a time of great anxiety for the victim. He or she may be worried about their personal safety. There is also anxiety about coming face to face with the offender in their neighbourhood. A number of our clients have reported meeting the offender without any prior knowledge that he had been released.

While some victims may not wish to be contacted post-trial, we support the view that every victim of a sexual crime should automatically be contacted by the Garda liaison officer who dealt with them during the investigation, be informed of the likely release date of the offender, and provided with contact details to seek further information if they so chose. It would also be helpful to many victims to know that the offender had undergone treatment and would continue to be supervised in the community.

In addition, the victim should be encouraged to bring any concerns about their personal safety to the attention of the Gardai. These concerns, if well grounded, should inform release conditions, including the imposition of provisions such as a Protection of Persons Order, a Safety Order etc.

One in Four also recommends that free professional counselling be made available to the victim as a support at the time of release of the sex offender. This could be provided by the National Counselling Service or other non governmental agencies such as One in Four. It would be crucial that the counselling could be provided immediately.

4. Responding to Convicted Sex Offenders in the Community

As indicated in the Discussion Document, research supports the view that community based treatment programmes have a positive impact on recidivism rates. The challenge lies in creating incentives for sexual offenders to engage with community treatment programmes on release. In addition, there is a need to ensure that such services are available at the time of release, in an accessible location.

If a sex offender has participated in a programme while in prison, and has experienced the treatment as valuable and relevant to his life, it seems reasonable to suppose that he would be more open to voluntarily continuing treatment on release. Post-release follow-up of participants in the new Prison Service Treatment Programme would be useful in exploring this supposition.

Some offenders will voluntarily continue treatment upon release. A client of One in Four who entered treatment under a PRSO says:

“I chose to continue in treatment after the end of the PRSO and I feel I have come a long way in taking absolute responsibility for what I did and that I am entirely to blame...Therapy has helped me to find ways of reengaging with my family and friends...I understand the severity of what I did and believe I will never sexually abuse again”⁷.

For other sex offenders, participation in a community based treatment programme will only occur if incentives are in place. The Judiciary have a crucial role to play at the time of sentencing, with, for example, the imposition of a part-suspended sentence with the condition of attendance for treatment on release. Judges need to be educated and informed about the benefits of treatment participation.

As well as treatment, high risk sexual offenders need to be managed in the community. While all convicted sexual offenders are obliged to register with the Gardai on release, the imposition of a Post-Release Supervision Order is at the discretion of the sentencing judge. With due recognition of the constitutional constraints, pre-sanction risk assessments by the Probation Service should be mandatory. Post-Release Supervision Orders for medium and high risk offenders should always form part of sentencing.

One in Four supports the proposed changes in the conditions for application for a Sex Offender Order.

One in Four supports the establishment of Local Risk Management Committees. However we are of the view that membership of the Committees should be extended beyond the criminal justice agencies. Membership should include HSE Child Protection social workers, local authority housing officers and representatives of relevant NGOs.

⁷ One in Four Annual Report 2007

The Local Risk Management Committees need to be able to share information if they are to develop appropriate management and treatment plans for each offender. This has to include so called “soft information”, which would incorporate such data as non-proven allegations against a person. The Interim Report of the Joint Oireachtas Committee on the Constitutional Amendment on Children⁸ recommended the introduction of statutory regulation to allow for the exchange of records of criminal prosecutions and convictions and “soft” information among statutory agencies. One in Four urges that this legislation be introduced as a matter of urgency, and that it be extended to include relevant non-governmental agencies.

Experience in other jurisdictions suggests that the affirmative re-integration of sex offenders into the community has a positive impact on recidivism rates. In this regard the issues of housing, training, employment and the establishment of a social network are important.

- State agencies such as local authorities, FAS, and the VECs need to be engaged in a national strategy regarding housing, training and employment for sex offenders
- To prioritise the safety of children, the recommendations of the Joint Oireachtas Committee on the Constitutional Amendment on Children in relation to mandatory vetting of employees in occupations with access to children should be immediately implemented
- The establishment of a network of Circles of Support and Accountability should be considered, based on the model currently employed by many Catholic religious congregations. Typically the Circle is composed of authority figures, members of the local community and family or friends of the offender. Training and support are necessary for successful functioning.

Families

The families of convicted sex offenders are very vulnerable to stigmatisation and often bear the brunt of community anger at the activities of the offender. Intimidation and harassment are not unusual.

- Support groups for partners and children must be provided in conjunction with offender treatment.
- Where appropriate, family therapy and mediation should be provided.

⁸ September 2008

5. Non-Convicted Sex Offenders

As discussed above, it is likely that more than 90% of sex offenders never come to the attention of the criminal justice system. These men and women are living freely in the community and must pose a significant risk to the safety of children and vulnerable adults. Whilst the Discussion Document focuses on high-risk convicted offenders, One in Four believes that national policy must also take into account non-convicted sex offenders.

Child protection is a key issue. While research is not available, our experience in working with both victims and offenders suggests that Health Service Executive (HSE) Child Protection Services routinely possess information regarding suspicions or validated concerns about people who pose a sexual risk to children but who will never face a criminal prosecution. This occurs either because the evidence is insufficient for a criminal trial or the victim is reluctant or unable to make a complaint.

At any given time an average 33% of sex offenders in the One in Four Treatment Programme are referred by the HSE for a risk assessment and treatment. The offenders concerned are usually medium or low risk. One incentive to attend treatment can be that it forms a condition of agreed access to children in incidents of intra-familial abuse.

Well resourced community treatment programmes are needed to provide back-up to HSE Child Protection Services which often struggle to find treatment places for offenders who come to their attention. From a child protection perspective, the HSE also suggests that “where there is a therapeutic assessment and treatment services available for the perpetrator, it is easier to engage families in a partnership approach, in which the primary consideration is the best interest of the child”⁹.

A further 33% of participants in the One in Four Treatment Programme are self referred.

The offenders, usually medium or low risk, chose to attend treatment because:

- They are concerned about their thoughts or behaviours and wish to address this
- They have attended the One in Four psychotherapy programme as victims of sexual violence and sexual offending behaviour emerges in the course of therapy. They are then encouraged to transfer to the offender treatment programme
- They are encouraged to attend by family members

One in Four suggests that self-referral to treatment is an extremely positive trend that must be supported. The HSE¹⁰ acknowledges this and recommends that “public

⁹ “Treatment Services for Persons who Exhibit Sexually Harmful Behaviour” HSE 2007

¹⁰ Ibid

education campaigns ... should be embarked upon. However, a prerequisite to such a campaign should be the availability of locally accessible services”

In the same Report the HSE also emphasised the danger of disparate services developing and proposed that the HSE should become the national co-ordinating body where offender treatment services are integrated into general mental health and addiction services. Research by NOTA supports this view, finding that “the type and range of Irish services is geographically inconsistent. Areas of excellent practice exist alongside areas of non-standardised and non-evidence-based practice...Co-ordination and integration between services is similarly inconsistent”¹¹.

There is a danger that a dual system will develop, with services for convicted offenders becoming the responsibility of the criminal justice agencies and those for non-convicted offenders being delivered by the HSE and NGOs in the field. Co-ordination between these two service delivery systems is essential.

¹¹ “Closing the Gaps: Services in the Republic of Ireland for Those with Harmful Sexual Behaviour”
NOTA 2008

6. Conclusion

One in Four wishes to respond positively to “The Management of Sex Offenders: A Discussion Document. In our submission, we have included an array of recommendations which we believe will strengthen the proposed changes in the current system.

We particularly wish to highlight the very low reporting rate of sexual crimes in Ireland and propose several procedural changes which we believe would encourage more victims to come forward.

We also draw attention to the majority of sex offenders who remain outside the criminal justice system, and suggest that measures must be considered to encourage those offenders to seek out treatment.

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