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Survivors' Guide to Civil Litigation in Sexual Assault Cases in Ireland.



colemanlegalpartners.ie

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Introduction.



It is the saddest of circumstances that sees the need to read and avail of a victim/survivor of sexual assault Guide, such as this. It is with the background that we respectfully set out information that we hope you find helpful on your journey to vindication through the Civil Courts.

Should you be considering taking a civil action for sexual assault, all steps in a case are important. This guide is designed to help you understand and navigate a difficult journey at a time when you are vulnerable and hurt. It is written as simply as possible in plain English.

There are two avenues that you may follow to bring the perpetrator of a sexual assault to justice.

1. The Criminal Courts.

The act of non-consensual sex with an adult or a minor (a person under the age of 18 years) is a criminal offence. The survivor/victim of that act has the right to complain to the Gardaí about such and the Gardaí have an obligation to investigate the matter.

The Gardaí will do this by taking a statement from you and interviewing related parties. They conduct their investigations in a supportive and professional manner. There are specialists units within the An Garda Síochána who are trained to meet with and interview people who complain of sexual assault. They know how difficult the journey is and meet people with professionalism and empathy.

When their work is completed the file on the matter is sent to the Director of Public Prosecutions (DPP) for a decision of the DPP to be made as to whether or not to prosecute the alleged perpetrator before the Criminal Courts.

In Criminal cases there is a presumption of innocence and it is often the case that the DPP forms the view that a Criminal Prosecution for sexual assault in a particular case cannot proceed due to their view based on all the information before them that a prosecution may not succeed.

If the case does proceed through the Criminal Courts the survivor/victim is a witness only to the State's prosecution of the alleged perpetrator.

Should the DPP decide not to prosecute the alleged perpetrator, it is often a very disappointing and saddening time for survivors/victims. There is a mechanism to ask the DPP to review their decision. At this time it is important to have the support of loved ones, counsellors or one of the many voluntary organisations who dedicate their time to helping people in their time of need.

2. The Civil Courts.

There is a parallel road to vindication for Sexual Assault open to survivor/victims. That is to pursue the perpetrator by means of a legal action through the Civil Courts. This is a legal and Constitutional right that all survivors/victims have.

When considering the taking of a Civil Action in the High Court for sexual assault there are certain steps that need to be taken;

(A). Steps That You Can Take Yourself Prior to Commencing a Legal Action and See It Through to Completion. These Are;

1. Talk to your Medical Adviser, a counsellor, and/or loved ones whom you trust. Explain the circumstances of the assault to them, or as much of it as you can.

2. Talk to Voluntary Organisations. There are many dedicated and caring organisations with a deep experience of your trauma. They will listen and help in the strictest of confidence. There is a list of helpful organisations at the end of this guide.
3. Research the type of Legal Representative that you need. In so far as you can examine the Legal Firm that you are considering. Principally, this can be done by examining their website;
 - (A). Have they a dedicated Team(s) of experienced Solicitors specialising in this area?
 - (B). Can they provide you with the advice you need?
 - (C). Can they explain their service, including the court process and likely costs in an empathetic manner?
4. It may be beneficial to speak with experienced Counsellors /or other professionals who will be familiar with the Legal Firms who specialises in this area of law.

(B). Steps to Be Taken by Those Around You.

From any point of view it is daunting to embark on the Civil Litigation journey. Please remember that you are not the first person to have sought to vindicate their rights. Many people have bravely taken their cases to Court and succeeded.

It is important to have a close circle of people around you whom you trust and whose support is meaningful. This circle can consist of those in whom you have confided, such as friends, family and Voluntary support.

Any person in whom you confide will wish to be there for you physically or emotionally, as your case draws near to completion.

(C). Know What It Is That You Want to Achieve.

There are many feelings and emotions that inform people of their best course of action in their own circumstances. As we know, all circumstances of sexual assault are unique, not least because the effects of it are felt by unique individuals. Added to this are the unique circumstances of the assault. The feelings of anger and hurt must always be balanced by clarity and objectivity.

Your Case.

Please know that you are not alone on your journey with help and understanding to be found around you in those whom are trusted by you and those who are well versed in the law of sexual assault.

Before jumping into the world of Lawyers and Litigation it is important to set out some basic principles that will guide you and your advisers on the road ahead;

Dignity.

All parties to a case should be treated with dignity. Dignity has been defined as calm, serious and makes people respect you.

The ultimate decision in any case will be made by a jury at the Hearing of the case. The presence of dignity on the survivor/victim side will impress a jury who, after all are human and although charged with impartially administering the Law, will not fail to notice the dignified manner and delivery of evidence.

A selected group of twelve people will contain many personalities and perhaps pre-conceived ideas. A dignified response to questions will always be noticed.

Truth.

It may seem an obvious statement. As often been said, 'The truth will set you free'. The Court process may be confrontational, and it is vital importance not to embellish or exaggerate any part of your evidence. There is no need to. All listeners will be able to see and decide for themselves just how true and horrific the events have been

Be Heard.

Of course, the telling of one story is a very difficult thing to do. The quiet certainty and determination of your story will be heard once you articulate it. Do not fear that those looking at you do not hear you. They do... speak your truth.

Fairness.

The Court System is based on fairness. Over the centuries the Courts have evolved to be a place where the ultimate goal is fairness of justice and fairness. In Civil Actions for Sexual Assault fairness is further underlined by the availability of a Jury to decide on the truth of the case. This is a group of 12 ordinary people who will listen carefully to all of the evidence and make a finding not only on the facts but also on their humanity and understanding, which is why they are there. Your legal advisor will tell you about Jury selection procedures.

Equality.

The Court System in Ireland is based on equality before the law. No matter who the perpetrator of the assault, or who the victim/survivor is, they will be treated equally before the Law.

Trust.

Trust in the process. The process is not just the Legal system but all of those who work within it to deliver justice. No matter which side a Solicitor or Barrister may represent they have a duty to the Court and to the truth. Your legal team are there to ensure all of the above principles are met. You can trust an experienced team to deliver your truth and justice prevailing.

What Happens If I Lose?

It is always a concern that if a case is lost there will be negative consequences. These are real concerns. However, like all elements to a case it can be approached logically and clearly.

In Irish Law the rule is that costs follow the event, in other words, the loser pays. When considering this scenario, there are several other matters to consider;

You are speaking your truth. The only reason that you are embarking on this difficult road is to seek justice and redress. These are not abstract terms but founded in the suffering and hurt done to you. If your experienced legal team has taken the case on the basis that they are carrying your legal costs in order to assist you, it is likely that your case is well founded in legal terms.

Should a technical difficulty present itself during the course of your case and it looks as it may be difficult to win your case or to collect Damages at the end of it, your experienced Legal Team ought to be able to negotiate a standstill where all parties agree to meet their own costs, which means no costs payable by you, as you have an agreement with your own legal team.

Funding My Case.

It is generally believed that funding any High Court is extremely expensive and beyond the reach of most ordinary people. This should not be a bar to the pursuit of justice, but sadly often is.

There are specialist Firms of Solicitors who represent victims/survivors in Civil Actions and who carry most of the costs of running the case themselves.

An experienced Solicitor is aware of the high legal costs and expenses which are in effect a barrier to seeking justice and are prepared to overcome that barrier to assist in the pursuit of Justice.

Aside from Solicitors Costs there are Barristers involved in the case through drafting of key documents and any Advocacy in Court. The specialist Solicitors also work with teams of Barristers willing to perform their services at no cost to the Victim/Survivor.

In relation to the payment of Expert Witnesses, the victim/survivor is, where feasible asked to contribute to the costs of the Expert Reports, such as Psychiatric Reports which are important in the case. If a Victim/Survivor is not in a position to pay towards these Reports, some Firms will pay for them and seek recovery from the Abuser/Perpetrator at the end of the case.

It is importantly to understand from the outset of your journey that you are not beholden to your Solicitor for any fees or outlays should your case not proceed. The journey is already a difficult one without any feelings of fear of financial commitment. An experienced Solicitor will set your mind at ease on this point from the start of the journey relationship.

Statute of Limitations Considerations.



In most cases involving sexual assault, a civil claim must normally be initiated **within six years of the date of the assault**. Thankfully, the law recognises that survivors often need time to process trauma before making the decision to take action. For that reason, **important legal protections exist** to ensure many claims can still proceed outside of the usual 6 year time limit.

If an **employer** is being sued, that time limit is **two years**.

Key Protections for Survivors

Assaults That Occurred During Childhood

- The six-year time limit **does not begin until the survivor turns 18**.
- This means a claim can generally be brought **up to the survivor's 24th birthday**.

Psychological Impact of the Assault

- Under Section **48A of the Statute of Limitations Act 1957 (As amended)**, the time limit may be extended where a survivor was assaulted as a child and suffered a significant psychological injury that affected their ability to bring a claim earlier.

- In these cases, **the six-year period begins when that impairment has resolved.**

Existing Mental Disability

- Under **Section 49 of the same act**, where a recognised mental disability existed at the time of the assault, the **time limit does not begin until the disability has ceased.**

Every survivor's experience and circumstances are unique. If you are considering taking legal action, speaking with an **experienced solicitor** can help you understand your options in a supportive and confidential environment. A solicitor can guide you through the process, explain how these protections may apply to your situation, and help you decide the best path forward when you feel ready.

While there are important legal protections available, it is still advisable to seek legal advice **as early as possible**, so that your solicitor can ensure that your claim is protected and brought before any relevant time limits expire. You do not have to navigate these decisions alone.

The High Court.



Most cases of sexual assault are taken before the High Court. In these cases, the Court may sit with a Judge alone or with a Judge and Jury. In the case of a Judge and Jury, the Judge's role is to oversee the hearing of the trial and advise the Jury on matters that need clarifying. This is at the choice of you the moving party. In many ways the Judges's role guides the Jury in the cases to ensure fairness such as compliance with the rules of evidence, and many other legal issues likely not known to the Jury.

The Plaintiff.

In any Civil Actions for sexual assault, you the survivor/victim are called the Plaintiff. That person is seeking relief from the Courts for the acts complained of.

The Defendant.

This is the person of whom the complaint is made. In a Sexual Assault case they are the alleged abuser/perpetrator.

Your Own Legal Team.



Bringing a Civil Action for Damages for sexual assault is at the same time a brave and a difficult decision. There are many truly great supports that will assist you on the journey. One of the greatest supports on the road to vindication is that of your Legal Team. The members of your Legal Team are usually;

Your Solicitor.

An experienced and empathetic Solicitor is essential. For most victims/survivors the journey to vindication is new, fraught and difficult. The experience and calm of a Solicitor can help ease the worry and fear of the unknown that often accompanies the decision to seek vindication through the Courts.

To be able to rely on the experience of your Solicitor to advise and guide you through the Court system is important. Careful consideration should be given as to who should guide and advise you along the journey.

The Secretary/Legal Executive.

This person will monitor the day to day progress of the case and the necessary communication with you. An experienced Secretary/Legal Executive will help you through the steps that you need to take, such as the provision of statements and attendance at appointments etc.. Professionalism and understanding are bywords for the care and understanding that you should expect to receive during your case.

Junior Counsel.

All of the legal documents in your case will be drafted by Junior Counsel. This person is a Barrister by profession and normally your Solicitor will choose a Barrister of great experience in this area of the law. This will allow for in-depth advices to be given at an early stage in the case. There is usually a strong working bond with the Solicitor and Junior Counsel which will greatly assist you in the day to day running of your case.

Senior Counsel.

As with Junior Counsel, your Solicitor will choose an experienced and respected Senior Counsel. The role of the Senior Counsel is generally to advise on the final presentation of the case to ensure that it is ready for trial, should a Trial be necessary. As said later, most cases settle before going to trial but being prepared for trial is a vital part of the case. If there are any discussions with the perpetrators to settle (see SETTLEMENT) the case prior to trial, these will be led by your Senior Counsel on an off the record basis.

Who Pays the Team.

An experienced legal team will be more than aware that the average person cannot afford to pay the fees of an experienced legal team.. The legal team normally agree to take on cases on the basis that they will NOT look to you, the client to pay their bills up front. Rather they will seek to recover their fees at the end of the case, if successful. Thus there is no need to worry about paying fees up front and an experienced Solicitor will guide you through this process, leaving you one less thing to worry about

Redress/Relief.

The main form of relief sought before Court is known as damages, which are expressed in monetary terms. There are four different types of damages and your legal advisers will explain these to you, depending on the type of case that you have and the behaviour of the parties to the litigation. A monetary sum is normally awarded for injury and loss caused to you as a result of the alleged sexual abuse, should you win your case.

Another form of relief sought is the making of an Order of the Court from a person to keep away from another person. This type of relief is very dependant on your individual circumstances and will be explained to you by your Legal Adviser.

Settlement.

It is a FACT that most civil cases seeking damages before the Court settle prior to trial. It is often a source of comfort to a victim/survivor of sexual assault that there is a high probability that the case will settle. The benefits of a settlement include;

Privacy.

If the case does go to trial you will have to tell your story by way of evidence before the Court. This telling in effect, is a type of re-living of the experience which is traumatising in itself. Should the case be settled, this re-living of the case is avoided. A settlement also avoids the risk of publicity.

Cost.

The additional legal costs incurred when a case goes to trial are avoided. These costs can often be very large. Once again an experienced Solicitor will help and guide you through this issue.

Certainty.

As with all things when the outcome is not known, there is comfort in certainty. After the settlement of a case, the victim/survivor can take solace that the perpetrator has been made amenable for their actions. The risk of Appeal to a higher Court has also been removed.

Time.

The settlement of a case can greatly shorten the length of the Court process and thus enable such closure as can be achieved to happen earlier in the process.

How Do I Prove My Case?

Sometimes, after the DPP has declined to bring a Prosecution for reasons given by them, a survivor/victim may believe that they cannot win a case against the alleged perpetrator. This belief is often misplaced.

In the Criminal process the survivor/victim is a witness in the case. In this Civil process the survivor/victim is the moving party. The difference is that your legal Advisers can assist you by directing what proofs they believe are required for you to win your case.

Another important difference is that there is a different level of proof required to win a case as between Criminal and Civil Law. The level of proof is the standard of proof that is required in the different Courts in order for you to win your case.

The Criminal Courts require a standard proof that is beyond all reasonable doubt for you to win your case. This is a very high level of proof and is often cited as the reason that the DPP does not bring more cases before the Criminal Courts. This means that the Jury in a Criminal Trial have to be satisfied beyond all reasonable doubt that the act(s) complained of did occur as was alleged by the victim/survivor.

The Civil Courts, where you will be bringing your case require a much different **LEVEL OF PROOF**. In the Civil Courts the standard of proof is that the act(s) complained of happened **ON THE BALANCE OF PROBABILITIES**. This is a far lower standard and far more easily met from a survivor/victim's point of view. In other words a Jury would have to believe that the act(s) complained of occurred more likely than not.

Witnesses.



Although your abuse may have happened a long time ago, you will not be alone in showing that these events did occur and that you are speaking your truth.

Often people close to you, although they may not have witnessed anything particular, can observe behavioural or remember a confidence shared.

There are many Professionals, such as Counsellors, Psychiatrists, General Practitioners and others who can give evidence of their professional view of the effects upon you of the sexual assault. They can speak objectively and professionally of the hurt and pain inflicted upon you in the past, present and likely future pathway for you as time passes.

In many ways your General Practitioner, if you have confided in them can be a powerful and persuasive witness to the effects of the abuse upon you over the years. If you have not confided in your GP it is advisable that you do so as soon as you can. They are very professional people and discuss all matters in the strictest of confidence.

A Psychiatrist is a Medical Doctor who can assess the effects of the Sexual Abuse upon you. There are many Psychiatrists who specialise in this area and are greatly respected by the Courts to whom they give evidence. Normally your GP will refer you to a suitable Psychiatrist.

A Report from your Psychiatrist will be obtained by your Solicitor. This Report will outline the events, the effects of the sexual abuse upon you and your likely future recovery.

If the effects of the sexual abuse are such that your life, including your career path has not reached the optimum that you hoped for, it may be appropriate to instruct a VOCATIONAL ASSESSOR to give their professional opinion on this matter.

Sometimes the benchmark for a failure to reach potential can be the success of other family members. All cases are unique and an experienced Solicitor will advise you in this regard.

A supportive Vocational Report may show substantial loss of opportunity and a resultant loss of expected income. This may lead to an Actuary being consulted to assess the loss of opportunity in terms of lost income. This is set out by way of Actuarial Report.

Of course this is not required in every case, as each case is unique. An experienced Solicitor will guide you through the witness requirements in your individual case.

Prior to Trial.



Pre-Trial Meeting.

Before your case is heard, your Solicitor will request you to attend a full meeting with your Legal Team. This is an important event for two reasons;

1. It is important for you to meet your full team and be confident in their work on your behalf. The actual process of the Hearing of your case will be explained to you in detail. The meeting should give you confidence in the process that you are engaged in and any questions that you have will be answered in a professional and sensitive way.
2. It is also important for your legal team to meet with you and understand your views on the case. This is a very safe space for you to express your feelings on the case and the process that all are engaged in

See the Courts.

Prior to any trial, your Solicitor should show you a typical Court Room and explain where the parties sit etc.. This simple exercise will contribute to easing your concerns about any Hearing that may happen.

Evidence.

Should a case proceed to trial the Court will hear all of the evidence from both sides in the case.

The types of evidence heard will be evidence of fact, where each side tells their story under oath. There is also supportive evidence, such as that from any witnesses as to fact, attending Gardaí, First Responders, Medical Personnel, Psychiatrists etc.

Cross Examination.

This happens when the Defence Counsel get to question you on your truth as explained by you to the Court. There is no need to fear this questioning as the truth is the only answer.

Anonymity/Privacy.

Generally speaking the Courts in Ireland, with some exceptions are held in public. However, in certain sensitive cases a Judge may order anonymity of the parties if sufficient cause is shown. Your Legal Team will advise you on your own particular circumstances. Another method, in certain cases, can be the use of an Irish name on the Court documents, which tends to anonymise the survivor/victim. Once again, your Legal adviser can assist you with this matter.

The Jury



As a Survivor/Victim of Sexual Assault you are entitled to have your case heard by a Jury. A Jury consists of 12 people and is picked in public for each particular case. An experienced Solicitor will be able to assist in the picking of a Jury and will advise you about this process near the date of the hearing of your case.

Once picked the Jury elect a Foreman and they will sit silently during your case and carefully listen to all of the evidence. If there is any legal argument the Jury is sent out to the Jury Room by the Judge so as the Jury do not hear anything that may be deemed to be a bias in their deliberations.

If the Jury have any questions during the course of the Hearing the Jury Foreman will pass a note of the questions to the Judge's Registrar and the Judge will consider same. Normally the questions are answered in public and the case will move on once the question is answered.

At the closing of the case the Jury will hear closing arguments which are in effect a summation from both sides Legal Teams of the evidence presented and each side will seek a decision in their favour.

After Closing Arguments the Judge hearing your case will address the Jury on the questions that need to be answered for the proper conclusion of the case. The Judge will make these questions as clearly and as simply as possible in order to dispel any confusion on the matters to be decided.

Once the Judge has addressed the Jury they return to the Jury Room and deliberate on the merits of the case and if they decide in your favour, they will agree a sum of compensation to be paid to you by the Defendant/Perpetrator.

When they have decided matters the Jury will return to the Court room and the Judge will ask the Foreman of the Jury if the Jury have reached a Decision. If the answer is 'Yes' the Questions that the Jury were asked to decide will be read out to them and the Jury Foreman will respond to say the answers and if there are compensatory damages to be paid, the amount of same will be stated by the Foreman, thus concluding the Jury's role in the case.

Contact with the Alleged Perpetrator/Assailant.

Only in the rarest cases does the alleged perpetrator/assailant seek to engage with the victim/survivor after the Legal Process has commenced. In the Unlikely event of this happening, there are two options open to you.

(A). If you believe that you or your loved ones are in physical danger, call **999** or **112** immediately.

(B). Contact your Solicitor immediately and they will take the necessary steps to shut this contact down.

What Happens If I Win?

Once the Jury has made a finding and awarded damages the Judge will then proceed to hear arguments from both sides in relation to Legal Costs and any other issues that may have arisen during the Hearing of the case. After that, if successful, the Judge will make the required Order against the Defendant/Perpetrator.

That Order will be perfected by the Courts and you Solicitor will take it up from the Courts and begin the process of Enforcement.

Enforcement.

An important caveat for all survivors of sexual assault is that prior to embarking on a Civil Action for damages, the Abuser/Perpetrator has the means to pay the Damages/Legal Costs towards the Courts. For a Victim/Survivor to take a Civil Case without obtaining a tangible form of Justice can have a lasting and detrimental effect.

Your Solicitors can guide you through this part of the process.

Upon receiving an award of Damages there are many routes open to the Victim/Survivor to recover the award;

This is called 'realising assets' and can be done in the following ways;

- Sale of property owned by the Abuser/Perpetrator.
- Attachment of Bank Accounts.
- Attachment of Pension.

Once again, an experienced Solicitor will guide you through this process.

Conclusion.

In making decision to proceed with a Civil Action against the Abuser/Perpetrator you are showing;

- Courage
- Determination
- Patience and
- Belief.

You will require from your Legal team;

- Listening
- Experience
- Objectivity and
- Leadership.

No matter what your circumstances the feeling of vindication is so important, not just for the present and past, but also the future when you look back on more troubled times.

The first steps on the journey are always the most difficult. On taking those steps, the understanding of your Legal team and the application of the correct resources on your behalf will make your journey easier and hopefully, in some small way, right the wrongs of the past..

Support Services.

A – Z

Beyond Surviving

30 Merrion Square North D02VE40

Email: info@beyondsurviving.ie / Visit: <https://beyondsurviving.ie>

Child Sexual Abuse Freephone

Complaints of child abuse can be made over the phone and in a confidential manner to An Garda Síochána 24 hours a day, 7 days a week to **1800 555 222**.

Dublin Rape Crisis Centre

National 24-hour Rape Crisis Helpline. Call: **1800 77 8888**

Phone hours: 24/7 Chat hours: Mon-Fri 10:00-17:00 & Tues-Weds 00:00-03:00, excl. holidays

One in Four

Website: oneinfour.ie

Phone: **01 662 4070**

Address: 35-36 Arran Quay, Dublin 7, D07 E221

SATU – Sexual Assault Treatment Unit

If you need urgent help, you can free call **112** or **999**.

SATU can provide information on all your care options if you have been a victim of rape or sexual assault. There **six** SAT Units across Ireland;

- **DUBLIN** Rotunda Hospital Campus.
Phone: **01 817 1736** weekdays from 8am to 5pm. / **01 817 1700** after 5pm and weekends, **ask for SATU**.

- **CORK** South Infirmary Victoria University Hospital.
Phone: **021 492 6297** weekdays from 8am to 4.30pm. /
021 492 6100 weekends and after 4.30pm, **ask for SATU.**
- **DONEGAL** Justice Walsh Road, Letterkenny.
Phone: **087 06 81 964** at any time. This is a direct line to SATU.
- **GALWAY** SATU, The Willow Centre, Faustina House, IDA Small Business Centre, Tuam Road, Galway
Phone: **091 76 57 51** or **087 63 38 118** weekdays from 8am to 4pm. /
091 75 76 31 or **091 524222** after 4pm and weekends, **ask for SATU.**
- **MULLINGAR** Midland Regional Hospital.
Phone: **044 939 4239** or **086 04 09 952** weekdays from 8am to 5pm. /
044 934 0221 after 5pm and weekends, **ask for SATU.**
- **WATERFORD** University Hospital Waterford.
Phone: **051 842 157** weekdays from 8am to 5pm. / Phone: **051 848 000** after 5pm and weekends, **ask for SATU.**

The Dahlia Project – Dr Leyla Hussein

Free access to therapeutic support for survivors of Female Genital Mutilation (FGM).

Phone: **0207 281 9478**

E-mail **dahlia@manorgardenscentre.org**



Calm. Trusted. Focused on You.

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