



Federation Northern Ireland

RESPONSE TO

DHSSPS Consultation on A Legislative Framework for Mental Health and Mental Capacity

March 2009

Women's Aid Federation Northern Ireland
129 University Street
BELFAST BT7 1HP

Tel: 02890 249041

Fax: 02890 239296

General Email: info@womensaidni.org

Website: www.womensaidni.org

24 Hour Domestic Violence Helpline - 0800 917 1414

Core work of Women's Aid: Background information & statistics

1. Introduction

Women's Aid is the lead voluntary organisation in Northern Ireland addressing domestic violence and providing services for women and children. We recognise domestic violence as one form of violence against women. Women's Aid seeks to challenge attitudes and beliefs that perpetuate domestic violence and, through our work, promote healthy and non-abusive relationships.

2. Core Work of Women's Aid

The core work of Women's Aid in Northern Ireland, including Women's Aid Federation Northern Ireland and the 10 local Women's Aid groups is:

- To provide refuge accommodation to women and their children suffering mental, physical or sexual abuse within the home.
- To run the 24 Hour Domestic Violence Helpline.
- To provide a range of support services to enable women who are leaving a violent situation to rebuild their lives and the lives of their children.
- To provide a range of support services to children and young people who have experienced domestic violence.
- To run preventative education programmes in schools and other settings.
- To educate and inform the public, media, police, courts, social services and other agencies of the impact and effects of domestic violence.
- To advise and support all relevant agencies in the development of domestic violence policies, protocols and service delivery.
- To work in partnership with all relevant agencies to ensure a joined up response to domestic violence.

3. Women's Aid Statistics (2007 - 2008)

- 12 refuges with 300 bed spaces, playrooms and facilities.
- 1102 women and 896 children sought refuge.
- 15 resource centres for women seeking information and support; group work and training.
- 24 Hour Domestic Violence Helpline managed 24,153 calls.
- 2,205 women and 1,831 children accessed the Floating Support service supporting women in their own home.
- 2,767 children and young people accessed protection and

- support services.
- Move-on houses for women and children leaving refuges.

4. Statistics: Domestic Violence & Violence Against Women

- Domestic violence is a violation of Article 5 of the UN Universal Declaration of Human Rights – that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”;
- Domestic Violence is a crime. PSNI statistics for 2007/08 indicate that there were more recorded crimes with a domestic motivation (9,283) than the combined total of all the following crimes (9,254). These include all recorded sexual offences (1,822), robbery (607), armed robbery (444), hijacking (92), theft or unauthorised taking of a motor vehicle (3,336), arson (2,244) dangerous driving (513), handling stolen goods (191) and offences under anti-terrorism legislation (5).
- PSNI Statistics for 07/08 indicate that they responded to a domestic incident every 23 minutes of every day of the year.
- The number of all recorded offences of murder in Northern Ireland in 07/08 total 25. Those classed as having a domestic motivation total 11. Therefore, 44% of all murders in Northern Ireland in 07/08 had a domestic motivation.
- There were 382 rapes in Northern Ireland in the period 2007/08, 38 attempted rapes and 317 indecent assaults on a female.

(Source: PSNI Statistics 2007/08)

- Official sources (NISOSMC) estimate that up to 80% of sex crimes are not reported.
- The joint NIO, DHSSPS Strategy “Tackling Violence at Home” estimates that the cost of domestic violence in Northern Ireland, including the potential loss of economic output, could amount to £180 million each year.
- UNICEF research released in 2006, showing per capita incidence, indicates that there are up to 32,000 children and young people living with domestic violence in Northern Ireland.

- Where the gender of the victim was known, 76% of adult victims of domestic crimes recorded by the PSNI in 2007/08 were female.*
- Over 30% of all domestic violence starts during pregnancy.**
- Violence Against Women is not limited to domestic violence, it includes amongst other crimes murder, rape, sexual assault, sexual exploitation, trafficking, sexual stalking and sexual harassment.

(*NIO Statistics & Research Branch Bulletin 16/2008 “Experience of Domestic Violence: Findings from the 2007/08 Northern Ireland Crime Survey, 2008, pg.2. N.B. “Adult” defined as aged 17 and over)

(** Women’s Aid Federation NI)

Women’s Aid Federation Northern Ireland welcomes the publication of this consultation on a Legislative Framework for Mental Capacity and Mental Health legislation and the opportunity to comment upon it.

5. Questionnaire:

I am responding: On behalf of an
organisation

Name: Gillian Clifford
 Job Title: Regional Policy and Information Worker
 Organisation: Women’s Aid Federation Northern Ireland
 Address: 129 University Street, Belfast, BT7 1HP

 Tel: 02890 249041
 Fax: 02890 239296
 Email: gillian.clifford@womensaidni.org

Q1. Do you agree that the Principles, as outlined in this document, should be embedded in both mental capacity and mental health legislation?

Yes

Women's Aid is broadly supportive of the principles of autonomy, justice, benefit and least harm, as outlined in the consultation document (3.0 - 3.2) and in the Bamford Principles detailed in Annex 1 (Pg.19). We acknowledge the importance of autonomy in the context of capacity and the provision of care. Similarly we recognise the benefits to individuals and healthcare professionals, of advance decision making. However, we have a number of concerns in this regard, which will be outlined in the context of questions 2 and 3. We therefore welcome proposals for legal and statutory safeguards to be put in place in support of these provisions (4.1, Pg.8).

In respect of "Justice", we support Bamford's Principles in ensuring that the law is applied fairly and equally. In particular we would wish to highlight our support for the principles of equality and respect for diversity and the provision to protect the rights of children, including the right to education. We also welcome the provisions in respect of non-discrimination, reciprocity, partnership working and fairness and transparency in this context.

Q2. The document outlines the policy intentions underpinning the significant Powers proposed for both the Mental Capacity Bill and the Mental Health Bill. Is there any other major power which you would wish the Department to give consideration to?

Yes

If yes, please explain?

We note that the proposed Mental Capacity Bill “will contain a definition of impaired decision making, how this is to be assessed and by whom. It will also provide detail on what “substitute decision makers” will need to take into account of when acting on behalf of an individual with impaired capacity” (4.3, Pgs. 8-9) we welcome and anticipate both the proposed definition and the detail.

We support the proposal to introduce a new Office of Public Guardian and their remit to “ensure that both court appointed deputies and those appointed as lasting powers of attorney act in the best interest of the incapacitated person.” (5.1, Pg.10) We also welcome the proposal (5.2. Pg.10) to put in place enhanced advocacy services for those who lack capacity but who have no one to speak on their behalf and the Department’s stated intention to create a new offence of ill-treatment or neglect of those who lack capacity. (5.4, Pg.10)

Women’s Aid is concerned however, that both Advance Decision Making and a Lasting Power of Attorney, (5.1, Pg. 10) whilst potentially beneficial for many individuals, may be open to exploitation by perpetrators of Domestic Violence, Elder Abuse and/or Sexual Abuse. We would therefore welcome greater detail and clarification on the precise powers available to the new Office of Public Guardian and the potential for a High Court Appointed Deputy to be put in place where Domestic Violence and/or Elder Abuse and/or Sexual Abuse, is suspected or has been found to have taken place. Similarly in the context of statutory recognition of the views of carers (5.1, Pg.10) whilst once again, it is a proposal of potential benefit to the wider community, Women’s Aid has anecdotal evidence from colleagues, that Domestic Violence perpetrators have claimed to be the primary carer for their abused partner. Domestic Violence is a crime based on power and control. As such, any statutory recognition of the views of carers should incorporate safeguards to prevent this type of exploitation and abuse.

In respect of the European Court of Human Rights judgement outlined in 5.4 (Pg.10) in respect of deprivation of liberty, Women’s Aid would wish to seek clarification on whether additional safeguards should also be put in place in respect of individuals receiving care in the community.

Q3. In the context of policy proposals for both the Mental Capacity Bill and the Mental Health Bill, are there any other Protections which the Department needs to consider to further protect service users, carers, staff or members of society?

Yes

If yes, please explain?

Women's Aid would welcome specific detail in respect of point 8.4, stipulating "that set criteria authorising intervention and additional safeguards will be put in place to protect service users." (Pg.14)

In respect of the additional safeguards outlined in point 9 (Pg.15) Women's Aid supports the proposal to extend the role of the Mental Health Tribunal to ensure the appropriateness of care and that these proposals will embrace care in the community.

Once again we urge that the role of nominated persons and the statutory recognition of advance decisions, (9.1) should allow for scrutiny and possible rescinding of these decisions should they be found to be contrary to the interests and well being of those persons receiving care.

Q4. Do you agree with the Department's view that the central thrust of embedding these principles within mental capacity and mental health legislation is to safeguard dignity and improve protection of human rights and equality of opportunity and consequently a full Equality Impact Assessment is not needed?

Yes/No

If no, please explain?

In accepting that the central thrust of embedding these principles is to safeguard dignity and improve protection of human rights and equality of opportunity, it is disappointing that a full equality impact assessment is not being undertaken, as such work would serve to highlight specific groups of individuals likely to be adversely or disproportionately affected by the proposals and could enhance the principles of justice outlined in the document whilst affording an opportunity to address and mitigate any identified areas of concern.

Q5. Do you have any further comments on the Department's proposals set out in this document?

Women's Aid believes that it is essential that this legislation should work effectively across jurisdictions and in a coherent, consistent and integrated manner. We therefore welcome the stipulation in point 10.1 (Pg.16) that every effort will be made to harmonise the content of the two bills to ensure that the impact of the legislation is fully addressed, particularly in light of the new Public Protection Arrangements for Northern Ireland.

We are also of the opinion that the legislation should offer clarity on the role and scope of the new Office of Public Guardian as this presents a vital opportunity to provide additional support to individuals who are subjected to violence, abuse, intimidation and threat often from those closest to them and who may in turn come under pressure to formally appoint these individuals to vital decision making roles. It is also important to note that sustaining such abuse, can itself lead to an impaired decision making capacity which may not constitute, or be recognised by, a formal mental health diagnosis.

For further information about this response contact:

Gillian Clifford
Regional Policy & Information Worker
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