



Federation Northern Ireland

RESPONSE TO

The Public Prosecution Service

Policy for Prosecuting Cases of Rape

October 2009

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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 2008/09 indicate that there were more recorded crimes with a domestic motivation (9,211) than the combined total of all the following crimes (9,155). These include all recorded sexual offences (1,943), robbery (650), armed robbery (508), hijacking (125), theft or unauthorised taking of a motor vehicle (2,954), arson (2,002) dangerous driving (746), handling stolen goods (220) and offences under anti-terrorism legislation (7).
- PSNI Statistics for 08/09 indicate that they responded to a domestic incident every 22 minutes of every day of the year.
- The number of all recorded offences of murder in Northern Ireland in 08/09 total 24. Those classed as having a domestic motivation total 7. Therefore, 29.2% of all murders in Northern Ireland in 08/09 had a domestic motivation.
- There were 381 rapes and 23 attempted rapes in Northern Ireland in the period 2008/09.

(Source: PSNI Statistics 2008/09)

- 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)

Introduction:

Women’s Aid Federation NI welcomes the publication of this Public Prosecution Service consultation on the Policy for Prosecuting Cases of Rape and the opportunity to comment upon it on behalf of our members. We are very pleased by the degree of expertise and rigor demonstrated in the document and many of the proposals outlined which, if fully implemented, would greatly improve the experience of the criminal justice system for all victims of sexual violence.

Domestic Violence and Sexual Violence:

Acts of sexual violence and abuse are often characteristic of women’s experience of domestic violence. The British Crime Survey 2007/08 reported that 53% of all serious sexual assaults are committed by a partner or ex-partner.¹ Kelly, Lovett and Regan (2005) found that, “Most women who are raped by their partners do not report the attacks to the Police despite the fact that they can be frequent and very violent. A qualitative study revealed that rapes within marriage are often brutal with one third being described as “sadistic.” (Pg.53) Women’s Aid remains deeply concerned by the extent to which incidents of rape are generally under-reported and feel that it is essential that the criminal justice system urgently address the barriers both real and perceived, which act as

¹ Kelly, L; Lovett, L; & Regan, J, (2005) “A Gap or a Chasm? Attrition in Reported Rape Cases.” Home Office Research Study 293

deterrents to women pursuing cases and remaining within the process throughout.

Comments:

Chapter 2: What is the Definition of Rape?

2.3: In respect of the offence of rape as defined in point 2.3, we had assumed that the definition now included rape with objects other than penis. We would therefore request clarification in this respect. This being the case, we feel this should be specifically mentioned in the context of this policy.

2.6: Women's Aid welcomes the clarification of the term "consent" as contained in points 2.6 and 2.7. Of particular importance are the stipulations that the individual must have the freedom and capacity to make the choice to consent and that the law does not require the victim to have resisted physically (Pg.5)

2.7: We strongly support the recognition that the meaning of consent can be of particular relevance in rapes where there has been, or is, a pre-existing relationship between the defendant and the victim, or where domestic violence has existed prior to the rape. We feel that clarity of instruction to the jury in this respect is a very positive development.

We would however seek greater detail in respect of the definition of domestic violence utilised in this context and similarly the evidential basis for establishing whether domestic violence had taken place, either prior to, or in the context of the sexual assault/rape. Domestic violence can take many forms, including but not limited to, physical and sexual violence and emotional and psychological abuse. Therefore we feel it is important to establish whether the victim will require PSNI and/or General Practitioner/Hospital Reports/Support or whether evidence of Women's Aid Support will be considered acceptable to the Court.

Similarly, in the context of Women's Aid support, we would welcome guidance as to the specific information and detail likely to be required.

2.8: We feel that the stipulations contained in point 2.8 (Pg.6) represent a very positive development for women who have been subjected to rape and sexual assault in the context of domestic violence. In particular, that in certain circumstances including where the victim was subjected to threats

or fear of serious harm, it is presumed that the victim did not consent to sexual activity and the defendant did not reasonably believe that the victim consented, unless he can show otherwise.

It is essential that there is recognition, that in cases involving domestic violence any threats and sense fear may be ongoing and implied and may not necessarily be contemporaneous to the specific incident of rape or sexual assault.

Chapter Three: Prosecution Decisions

The Test for Prosecution:

- 3.1:** With regard to the test for prosecution, point 3.1 links well with existing recommended practice under MARAC. Women's Aid would strongly advocate however, that the practice of asking the victims of domestic violence directly if there have been incidents of sexual abuse should be standardised.
- 3.8:** Women's Aid welcomes the statement contained in point 3.8 (Pg.8) that the PPS will also try to make sure that cases progress through the court without necessary delay. We feel that expediting cases as swiftly as possible is one component in ensuring that the victim remains within the process.
- 3.9:** In respect of the prosecutor's duty to assess the credibility and reliability of the victim's evidence, we would strongly recommend that all prosecutors should receive specialist domestic violence awareness training. This training should form an essential component of their continuing professional development.
- 3.15:** In noting the recognition by the PPS that some victims will find it very difficult to give evidence and may need practical and emotional support, we would seek additional detail as to how these victims will be directly signposted to appropriate support services.
- 3.23:** The consultation document urges that victims should not assume that a defendant has been acquitted because their evidence has not been believed (Pg.10), it is essential that this is conveyed directly to the victim.

Chapter Four: The Views and Interests of the Victim

Points 4.4 - 4.10:

Women's Aid acknowledges that the ability of the PPS to pursue a prosecution in cases where the victim has withdrawn their support could potentially be beneficial to victims of all forms of sexual violence, including intimate partner rape. We would however ask the PPS to note that victims may feel unable to pursue the case for a variety of very legitimate reasons, including but not limited to a fear for their personal safety and/or that of their children. In the case of intimate partner rape, there may be additional complex issues involved.

We are concerned that the safety and wellbeing of the victim should always be a paramount concern. To this end, we welcome the statement in point 4.10 (Pg.11) that this will be a prime consideration in reaching a decision on whether or not to proceed with a prosecution in the absence of the victim's support. Women's Aid would however seek clarification on how the safety concerns of the victim will be balanced with the public interest test.

We would also urge that in cases where women feel unable to continue to support the prosecution, they are treated with sensitivity and we would welcome some guidance as to the procedures and sanctions likely to be imposed should a woman fail to attend court or withdraw her original complaint based on a fear of further endangering herself or her family.

Chapter Five: Consultation

- 5.2:** In the context of the proposed consultations between the Public Prosecutor and the victim prior to taking a decision as to prosecution, we feel that this process would be greatly strengthened by the provision of specialist training for prosecutors in domestic violence and rape. This would serve to enhance both sensitivity and understanding of the issues.
- 5.8:** In welcoming the statement that in the case of a female victim, where Consultation requires discussing matters of a personal nature, the public prosecutor will consider whether it is appropriate to have another female present, if the victim would otherwise be the only female present, we would contend that in these eventualities this option should be offered to the victim as a matter of course. In addition, we are of the opinion that this procedure would be enhanced by the victim having the support of a specialist agency, such as Women's Aid.
- 5.10:** Similarly, we feel that specialist agencies such as Women's Aid should be permitted to provide support to the victim or witness, should they be requested to do so. Many of our staff have received Court Support training and are therefore aware of the strict procedures in this respect.

Chapter Six: Request for Reasons

Points 6.1 – 6.3

We are concerned that in giving reasons for the decision not to prosecute the PPS should consider the likely degree of legal understanding of the lay person. We recognise that in some cases greater detail may for example, be a breach of human rights legislation or may raise issues of confidentiality however the provision of reasons only in the most general terms does not serve the best interests of the victim and may lead them to misunderstand and conclude that they have not been believed.

- 6.4:** Women's Aid is of the opinion that the PPS' undertaking to consider carefully a request to meet with the victim to explain the reason(s) for a decision should be a firmer commitment to meet with the victim.

Chapter Seven: Review of Decisions

Points 7.1 – 7.4

We feel that there should be a requirement to inform a victim in writing of their right to request a review of a decision not to prosecute.

Chapter Eight: Keeping Victims Informed

- 8.1:** In respect of specialist Community Liaison Teams, we would suggest that they are regularly evaluated and that staff should receive specialist training in domestic violence and rape.

Chapter Nine: Avoiding Unnecessary Delay

Points 9.1 – 9.5

It is our view that this is an essential component in keeping the victim within the process. As such it is vital that information is conveyed in a timely and appropriate manner and that the victim is made fully aware of progress of the case as well as the causes of any delays, changes of venue, dates and times etc.

Chapter Ten: Bail Issues

Points 10.1 – 10.7

It is the opinion of Women's Aid that Bail in cases of rape should be to approved accommodation. We would also urge that the responsibility for victim notification in this context should be the responsibility of specific Court instruction. This would provide much greater clarity.

Chapter Eleven: Dealing with the Case in Court

11.7: Women's Aid agrees with the myths as stipulated however we are disappointed that domestic violence and intimate partner rape are not specified in the examples of myths and stereotypes surrounding the offence, as listed on page 20. In particular that "Rape cannot occur between married or co-habiting couples" or that "Women who remain in abusive relationships are responsible for the abuse that follows."

General Comments:

We note that the consultation document is silent in respect of young people who are perpetrators. The differences in the criminal justice system in this respect must be clearly explained to the victim and careful consideration given to the needs of the victim in these cases.

Women's Aid would also seek assurance that the policy and procedures outlined in the consultation will be regularly evaluated.

For further information about this response contact:

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