



A response to

**Consultation on Northern Ireland Law
Commission Report on Bail in Criminal
Proceedings**

Department of Justice

14th November 2013

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Text support to 07797 805 839

Freephone from all landlines and mobiles. Translation service available.

Open to *all women and men* affected by domestic & sexual violence

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1.0 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.

2.0 Core work of Women's Aid

The core work of Women's Aid in Northern Ireland, including Women's Aid Federation Northern Ireland and 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.

Throughout this consultation response, the term "Women's Aid" is used to reflect the overall Women's Aid movement in Northern Ireland, which is made up of our local Women's Aid groups and Women's Aid Federation. All local Women's Aid groups are members of Women's Aid Federation Northern Ireland. Each Women's Aid group offers a range of specialist services to women, children and young people who have experienced domestic violence.

3.0 Women's Aid statistics (2011-2012)

- 12 refuges with 300 bed spaces, playrooms and facilities.
- 831 women and 586 children sought refuge.
- 15 resource centres for women seeking information and support; group work and training.
- 3,663 women and 4,152 children accessed the Floating Support service, and a further 1,909 women accessed other Women's Aid outreach services, enabling women to access support whilst remaining in their own homes and communities.
- Move-on houses for women and children leaving refuges.
- The 24 Hour Domestic Violence Helpline, open to all women and men affected by domestic violence, managed 43,949 calls.

4.0 Additional Women's Aid statistical data

- Since 1999, Women's Aid across Northern Ireland gave refuge to 15,545 women and 14,942 children and young people.
- During the last 17 years Women's Aid Federation Northern Ireland managed 326,809 calls to the 24 Hour Domestic Violence Helpline.

5.0 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”.
- The joint DOJ, 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, 72% of adult victims of domestic crimes recorded by the PSNI in 2012/13 were female.¹
- Over 30% of all domestic violence starts during pregnancy.²

¹Findings from the PSNI Trends in Domestic Abuse Incidents and Crimes Recorded by the Police in Northern Ireland 2004/05 to 2012/13 N.B. “Adult” defined as aged 18 and over

6.0 Domestic violence: Crime statistics (Source: PSNI Statistics 2012/13)

- Domestic Violence is a crime. PSNI statistics for 2012/13 indicate that there were more recorded crimes with a domestic motivation (11,160) than the combined total of all the following crimes (9,976) – all recorded sexual offences (1,948), shoplifting (5,890) and theft of a motor vehicle (2,138).
- PSNI Statistics for 12/13 indicate that they responded to a domestic incident every 19 minutes of every day of the year.
- The total of 11,160 crimes with a domestic motivation in 12/13 represents an average of approximately 1 domestic crime every 47 minutes in Northern Ireland.
- The number of all recorded offences of murder in Northern Ireland in 12/13 total 17. Those classed as having a domestic motivation total 5. Therefore, 29% of all murders in Northern Ireland in 12/13 had a domestic motivation.
- There were 533 rapes (including attempted Rapes) in Northern Ireland in the period 2012/13.

(Source: PSNI Statistics 2012/13)

- Official sources (NISOSMC) estimate that up to 80% of sex crimes are not reported.

7.0 Consultation response

- Women's Aid Federation Northern Ireland welcomes the publication of the *Consultation on Northern Ireland Law Commission Report on Bail in Criminal Proceedings*, and the opportunity to comment on it on behalf of our local groups. Please note that we have only addressed selected questions in our response, based on our expertise as providers of support to victims of domestic and sexual violence and their children.

8.0 Summary

- Crimes with a domestic violence element are very different from other crimes, due to the presence of manipulation, control, fear and intimidation within abusive relationships. For this reason, bail decisions in cases where domestic violence is present must be considered and evaluated differently, and must consider the safety of the victim as paramount.
- Crimes that may be considered 'minor', such as assaults not occasioning in serious injury, must be reflected upon differently where domestic violence is present. While such an assault may be considered minor if isolated, in the context of domestic violence such an attack is carried out against a backdrop of intimidation, manipulation, and abuse. Therefore when considering bail for perpetrators of domestic violence, it is essential to consider the case in a holistic fashion, and consider all elements of the abuse, the frequency or repetition of attacks, the psychological, sexual or financial abuse that may be present in the relationship, to accurately assess the threat to the safety of a victim or the likelihood of a perpetrator using bail to obstruct justice or abuse the victim further.
- The cumulative effect of no offence of breach of bail, an established right to bail, and failure to differentiate between different types of offence will have a devastating impact on victims of domestic violence. These provisions do not account for the intimate relationship that exists between perpetrator and victim in such cases, the likelihood that they may live in the same house, and the existence of a power/control dynamic within that relationship. Having bail weighted entirely in favour of a perpetrator in such cases will create a culture of impunity and will not only discourage victims from reporting crimes to the police but may put them in danger if they do so.

9.0 The Legal Framework

Q1. Do you agree that there should be a single unified Bail Act for Northern Ireland?

- Yes, Women's Aid sees considerable merit in the proposal to adopt a single unified Bail Act for Northern Ireland. We believe that information on Bail decisions should be speedy, accurate and verifiable, and we share the Commission's view that current arrangements are complex, inconsistent and lacking in transparency. Consolidating various laws on bail into one piece of legislation may address some of these issues.

Q2. Do you agree that there should be a statutory definition of bail?

- Yes. By placing the law governing bail on a statutory footing, there is the potential to provide much greater clarity and transparency in decision making.

10.0 Enforcement of Bail

Q7. Do you agree with the proposals for a simplified offence of failure to surrender to custody?

- Yes, again we would support this simplification of the law to provide better transparency and effectiveness.

Q8. Do you agree that there should not be an offence of breach of bail conditions?

- No we do not agree. In cases of domestic violence, crimes committed are usually as part of a sustained pattern of abusive and terrorising behaviour. Breach of bail conditions often contribute to this abuse, lead to further contact with and abuse of the victim, and cause extreme anxiety, fear and re-victimisation for the victim of violence. It is essential that there are serious repercussions for breach of bail, particularly in the case of serial offenders and for serial breaches. Creating an offence of breach of bail conditions would go a long way to provide protection for victims of domestic violence who choose to report to police, as well as building victim confidence in the criminal justice system.
- We would also like to add that while we appreciate the reasoning against creating an offence for breach of bail where 'minor' crimes are involved, and potential to affect young and vulnerable people, we do not think this is sufficient reasoning to reject the proposal in its entirety. We also have serious

concerns that the concept of a ‘minor’ crime does not reflect the nature of domestic violence at all where granting bail is concerned. In such cases, although one individual crime or incident may be considered minor (actual bodily harm etc), the crime is usually only one part of a sustained pattern of physical, psychological, sexual and financial abuse. While each individual incident or crime may be minor, the combined and sustained abuse of which the attack is part is not minor. We will address this issue further later in our response.

11.0 Bail in respect of Accused Persons

Q18. Do you agree with the proposal for a general right to bail subject to the power of the police or courts to refuse it?

- Whilst the presumption in favour of Bail has been well established in Northern Ireland since the enactment of the Police and Criminal Evidence (NI) Order 1989 and has been consolidated, particularly by Article 5 of the European Convention on Human Rights, it is the view of Women’s Aid that there is a fundamental requirement to balance the needs of the victim with that of the accused.
- It is our view that not everyone is suitable for bail and it is essential to consider the safety and well-being of the victim, their families and the wider public. It is also important to consider public confidence in the criminal justice system. Therefore we do not agree with the creation of a general right of bail.
- It is of concern that whilst much is said in the consultation document regarding the interests of society, the right to liberty and the presumption of innocence, little is said regarding the rights of the victim. In cases where an accused is likely to return to a shared home with the victim, or will be in a position to continue to abuse them, or enlist others to abuse them (whether or not that abuse includes pressuring or intimidating them to drop charges etc), a right to bail would be to entirely skew the justice process against the victim.

Q19. Do you agree that there should be no presumption against bail for particular offences or circumstances?

- No, we strongly disagree. We believe that for certain offences there should be no presumption of bail. This should include crimes where domestic violence is a factor, as such an exception would recognise the power imbalance between perpetrator and victim that is present in abusive relationships and would prohibit a perpetrator from using their time on bail to further abuse and

intimidate the victim. It would also recognise the unique situation in which perpetrator and victim of the crime in question share a home and / or an intimate or familial relationship. In such cases the potential for intimidation, retribution and further abuse is much more probable than for other types of crime, and the rules governing bail must reflect this to adequately protect victims of violence and abuse.

- It is not uncommon for example, for perpetrators of domestic violence to stalk their victims and when conditions are imposed upon their bail in an attempt to prevent this behaviour, to enlist friends and family to engage in these activities on their behalf.
- Given the complex nature of domestic violence and its impact upon victims and their families and the consequences and context of sexual offences, we have considerable concern that the Commission is not persuaded to recommend an “offence specific” or “circumstance specific” approach to the entitlement to bail, whereby different principles and/or statutory provisions apply to certain offences or situations. We are disappointed that the Commission has disregarded the compelling arguments in favour of domestic & sexual violence crimes being treated differently, and that it has demonstrated scant understanding of the gendered issues surrounding domestic violence and the links between violence against women & girls and gender inequality. Failing to distinguish between domestic & sexual violence crimes and other crimes for the purposes of bail will have a disproportionately negative effect on women and girls, as it is mostly women and girls who are victims of domestic and sexual violence, and thus may fall foul of section 75.
- We note that the offence specific approach is common in many jurisdictions and feel that the removal of this latitude represents a serious omission which is likely to have consequences for the safety of extremely vulnerable victims and witnesses.
- There is the perception amongst women who have experienced domestic violence, that the system is currently weighted in favour of the rights of the perpetrator and that there is a lack of emphasis on the rights of those who have been subjected to this form of sustained and systematic violence and abuse. Amending the rules of bail along the lines in this document would do nothing to change that perception, and would in fact further place a victim’s right to safety below a perpetrator’s right to liberty.

Q20. Do you agree with the four statutory grounds for the refusal of bail?

- In enshrining the grounds for refusal of bail, in statute, the legislation must take much greater cognisance of the safety of the individual and the protection of life. The four listed grounds, failure to surrender to custody, interference with witnesses or otherwise obstructing the administration of justice, the commission of offences, and necessity to preserve public order, are reasonable. However, we would argue that where domestic violence is present, this should in itself constitute substantial grounds for believing that any of the above have taken place.
- We recommend that previous breach of bail or bail conditions, and previous convictions for crimes against the victim in questions, to the list of reasons to refuse bail. We would also recommend that if a non-molestation order has been in place against the perpetrator with respect to the victim of a crime, this should also be grounds for refusing bail. We would further wish to see these grounds extended to cover the potential for emotional, psychological and financial injury and harassment and to prevent the accused from the recruitment of others to engage in these types of behaviour.

Q25. Do you agree that there should be statutory guidance for bail decision makers and its contents as proposed by the Commission?

- Yes.

Q27. Do you agree that court bail should be consistent with police bail by having to record appointed time, place to surrender, and conditions, and that a copy should be provided to the accused on request?

- Yes. We would also advocate the introduction of standardised bail conditions in domestic violence cases, in order to secure the protection and wellbeing of the victim, given the nature of the relationship between perpetrator and victim. Such conditions should include no contact with the victim if they are not in the same abode, restricted child contact under the guidance of Social Services, evening curfew, restrictions on consumption of alcohol, regular reportage to police, and surrender of mobile phone to police. We have attached an example of appropriate and effective bail conditions at Appendix A. These are bail conditions that were issued in a Northern Irish court – names and locations have been removed for confidentiality purposes.

12.0 Bail in respect of Children and Young People

- Women's Aid recognises that there are particular issues surrounding bail and children & young people, and that these should be reflected within the legislation. We would urge that the incarceration of children & young people in any circumstance should only be considered as a last resort, as evidence shows the lasting negative impact that incarceration has on children & young people throughout their adult lives.
- We would also strongly urge that other factors are taken into account when dealing with children & young people who have committed crime. Approximately 32,000 children and young people are living with domestic violence in Northern Ireland; many children & young people have experienced sexual abuse, physical abuse or neglect. An overwhelming body of research has shown that these kinds of abuse have a hugely detrimental impact on the lives of children & young people, both for those who have been direct victims of the abuse and those who have witnessed the abuse of another family member. Criminality and other anti-social behaviour can often result from past or on-going abuse. For this reason, Women's Aid strongly urges that in cases where children & young people are arrested for criminal activity, they should be assessed in order to identify any experience of domestic or sexual violence, and that where it is identified they should be referred for appropriate support.
- We would also urge that in such cases, no child or young person should be held in inappropriate accommodation – this should also apply to children & young people on remand.

Q29. Do you agree that the general right to bail, subject to the power of police and courts to refuse it, should apply to children and young persons (as it is proposed to do for adults)?

- Yes, subject to qualifications outlined above.

Q31. Do you agree that in addition to the list of factors to be considered in bail decisions in adult cases, additional factors for children and young people should be: age, maturity and understanding of the young person; the best interests of the child should be a primary consideration; and that detention should be as a matter of last resort and for the shortest possible time?

- Yes, see comments above.

Q32. Do you agree that bail law should prohibit the detention of children and young people on the grounds of a lack of suitable accommodation?

- Yes.

Q40. Do you agree that accommodation options and bail support programmes for children and young persons should be expanded?

- Yes.

13.0 Non-Statutory Measures

Paragraphs 8.2 – 8.3: Bail information

- Our organisation would strongly recommend that a duty to provide information to victims should be included in any new bail legislation. This is particularly essential in cases involving domestic and sexual violence. Domestic violence in particular often involves high levels of repeat and re-victimisation. The fundamental lack of communication results in additional unnecessary fear and anxiety. It can also have a direct impact on the ability to keep victims within the process. At present there appears to be an absence of responsibility and accountability for informing victims in respect of bail decisions and conditions. It is essential that an appropriate agency is appointed to take the lead in this process. We strongly urge that this duty is put on a statutory footing to avoid confusion and ensure that the practice of informing victims is embedded within the criminal justice process, especially in cases where such information is necessary to keep a victim safe.
- Women’s Aid would suggest that all Police Stations in Northern Ireland should have a Bail Officer to keep victims and witnesses informed and to guide them in the process of reporting of breaches. Similarly, it is vital that steps are taken to ensure effective and efficient inter-agency communication to ensure that information is shared in an accurate and timely manner and that records are correctly maintained. This is of particular importance in respect of high risk victims and to allow for accurate risk assessment, management and flagging. We recommend that as much information as possible is given to victims, from bail conditions and changes to conditions and bail, to post-conviction information.
- It is the view of our organisation that it is not appropriate to place the onus on victims to seek or request information, or to assume that they will understand the inner workings of the criminal justice system and the decision making

process. External communication must therefore be improved and the use of complex legal terminology, unlikely to be widely understood by the general public should be avoided whenever possible. Women's Aid believes that the safety and well-being of victims and witnesses should be central to the criminal justice system and that proposals in respect of bail must be carefully evaluated in this context.

Paragraphs 8.4 – 8.5: Monitoring and Bail support

- In terms of monitoring, we believe that there should be a statutory obligation to monitor compliance with bail. This is essential to ensuring that bail is effective, that conditions are adhered to and taken seriously, and that victims are adequately protected in cases where there is a risk to safety, which is commonplace in domestic violence cases where the perpetrator is granted bail.

Paragraphs 8.6 – 8.7: Victims of Crime

- While we welcome the work that is on-going to support victims of crime and their families, we remain concerned about the safety of victims in the pre-conviction stage of the justice process. We believe that provision of bail information, and indeed all relevant information to a victim's safety, should be a statutory duty in order to ensure that this information is being consistently provided. We would also argue that risk assessments are an essential part of protecting a victim and that these should be part of the information system, whether such assessments are provided by the courts, police or by expert support organisations like Women's Aid.

14.0 Appendix 1: Sample bail conditions

Bail Conditions

He resides at no. xx _____ Street xxx and at no other address.

He does not attempt to see, speak to or in any other way contact (*victim*) directly or indirectly.

He is not to make an application under Art 8 of the Children's Order in respect of the children pending determination of this case.

Any contact with children is to be strictly approved by social services in the meantime.

He does not enter the village of _____ as defined by its 30 mph limit and not within 500 yards of injured party's address.

He does not enter premises licensed for the sale and consumption of intoxicating liquor on or off the premises and further shall not consume any intoxicating liquor at any time or at any place. He shall not possess any alcohol for himself or for any third person and he shall submit to a breathalyser examination if at any time the police consider it appropriate to require it.

He returns home each evening on or before 10.00 pm and does not leave home in the morning before 7.00 am and must present himself at the door during those hours if required to do so by police.

He reports 3 times per week to PSNI at xxxx police station on Monday Wednesday and Friday at 7.00 pm.

He must surrender his mobile phone to PSNI and must not possess any mobile phone at any time.

15.0 Contact details

For further information about this response please contact:

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129 University Street
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Email: louise.kennedy@womensaidni.org

Website: www.womensaidni.org

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