



**A response to**

**The Lord Chief Justice's Programme of  
Action on Sentencing**

**12 October 2015**

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**Women's Aid Federation Northern Ireland**

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**24 Hour Domestic & Sexual Violence Helpline**

**Call: 0808 802 1414**

Email Support: [24hrsupport@dvhelpline.org](mailto:24hrsupport@dvhelpline.org)

**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

## 1. Women's Aid Information & Statistics

### 1.0 Introduction

Women's Aid is the lead voluntary organisation in Northern Ireland addressing domestic and sexual violence and providing services for women and children. We recognise domestic and sexual violence as forms of violence against women. Women's Aid seeks to challenge attitudes and beliefs that perpetuate domestic and sexual 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 & Sexual Violence Helpline.
- ) To provide a range of support services to enable women who are affected by domestic and/or sexual violence 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 or sexual 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 and sexual violence.
- ) To advise and support all relevant agencies in the development of domestic and sexual violence policies, protocols and service delivery.
- ) To work in partnership with all relevant agencies to ensure a joined up response to domestic and sexual 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 (2013-14)**

- ) 999 women and 747 children sought refuge.
- ) 59 women in refuge were supported during their pregnancies and 15 babies were born to women in refuge.
- ) 1,084 one to one support sessions were held with children and young people in refuge.
- ) 3,558 women with 4,869 children accessed the Floating Support service, and a further 1,662 women accessed other Women's Aid outreach services, enabling women to access support whilst remaining in their own homes and communities.
- ) 1,554 women participated in a range of group work and personal development programme including *Journey to Freedom* and *You and Me, Mum*.
- ) 375 women accessed support from a Women's Aid Women's Safety Worker while their partners or ex partners were undertaking the IDAP perpetrators programme provided by Probation Board Northern Ireland. An additional 128 children were referred to the Women's Safety Worker in 2013-14.
- ) The 24 Hour Domestic & Sexual Violence Helpline, open to all women and men affected by domestic & sexual violence, managed 55,029 calls.
- ) 150 teachers were trained to deliver the Helping Hands programme in primary schools.

### **4.0 Additional Women's Aid statistical data**

- ) Since 1999, Women's Aid across Northern Ireland gave refuge to 17,424 women and 16,235 children and young people.
- ) Between 1995 – 2014, 429,435 calls were managed by the 24 Hour Domestic & Sexual 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.

- J Where the gender of the victim was known, 72% of adult victims of domestic crimes recorded by the PSNI in 2012/13 were female.<sup>1</sup>
- J Over 30% of all domestic violence starts during pregnancy.<sup>2</sup>

## **6.0 Domestic & Sexual Violence: Crime statistics (Source: PSNI Statistics 2013/14)**

- J Domestic Violence is a crime. PSNI statistics for 2013/14 indicate that there were more recorded crimes with a domestic motivation (12,720) than the combined total of all the following crimes (12,079) – possession of drugs (3764), shoplifting (6,372) and theft of a motor vehicle (1,943).
- J PSNI Statistics for 13/14 indicate that they responded to a domestic incident every 19 minutes of every day of the year.
- J The total of 12,720 crimes with a domestic motivation in 13/14 represents an average of approximately 1 domestic crime every 41 minutes in Northern Ireland.
- J The number of all recorded offences of murder in Northern Ireland in 13/14 total 17. Those classed as having a domestic motivation total 7. Therefore, 41% of all murders in Northern Ireland in 13/14 had a domestic motivation.
- J There were 550 rapes (including attempted Rapes) in Northern Ireland in the period 2013/14.

(Source: PSNI Statistics 2013/14)

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

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<sup>1</sup>Findings 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

<sup>2</sup>Women's Aid Federation Northern Ireland

## 2. Consultation response

Women's Aid Federation Northern Ireland welcomes the opportunity to comment on the *Lord Chief Justice's Programme of Action on Sentencing* on behalf of our local Women's Aid groups.

Women's Aid Federation Northern Ireland strongly urges that domestic and sexual violence remain on the Lord Chief Justice's Programme of Action on Sentencing. While we understand that some guidance exists already on sentencing in cases with domestic violence elements, we are of the view that more must be done to improve sentencing in cases where domestic violence is a component.

In spite of efforts made to date, we do not believe that sentencing in Northern Irish courts has reached the point where it reflects the seriousness of domestic violence and abuse or delivers justice to all victims. Notwithstanding the rules and tariffs within which judges must confine their sentencing decisions, there remain a number of issues that continue to arise regarding sentencing of domestic violence perpetrators. We have outlined these below, along with recent anecdotal evidence from Women's Aid support staff across Northern Ireland<sup>3</sup>.

## 3. Judicial understanding of the nature and impact of domestic violence

Women's Aid is concerned that there remains a lack of understanding of domestic violence among judges, and that this negatively affects sentencing decisions.

In HHJ Burgess's presentation (alluded to in Annex A of the consultation document), he comments on a judge's need to take into account all circumstances surrounding each case when deliberating and applying sentence within the constructs of the tariff available<sup>4</sup>. This highlights the absolute necessity for all of the judiciary to understand the manipulative and controlling nature of perpetrators, the pattern and cycle of abuse, the zero-sum relationship between perpetrator and victim, as well as being aware of and rejecting the many myths surrounding domestic violence. Only with this expert knowledge can a judge take into account all circumstances surrounding a case and deliver a sentence appropriate to the circumstances. Unfortunately, in our experience there have been many instances in which judges have demonstrated a lack of understanding of the nature of domestic violence, including during sentencing. Indeed, there appears to be inconsistency across the Northern Irish judiciary in levels of understanding of the nature of domestic violence.

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<sup>3</sup> All case studies and anecdotes are from the past 2 years.

<sup>4</sup> <http://www.jsbni.com/Publications/sentencingguidelines/Documents/Judge%20Burgess%20Paper.pdf>

Women's Aid urges that all members of the judiciary undergo training from experts in the field of domestic violence to ensure that all judges have an adequate understanding of the nature of domestic violence. Such training should reflect best practice and the most up-to-date knowledge and expertise on domestic violence, and should be delivered on an ongoing basis throughout a judge's career. We also recommend the introduction of specialist domestic violence courts in Northern Ireland.

Case Study 1: Victim Blaming: At sentencing stage of an appeal against a conviction of a breach of a non-molestation order, a judge stated that both perpetrator and victim should think about the impact that their **joint** behaviour was having on their child. Whilst the woman was vindicated in winning her appeal she was left feeling re-victimised and made to feel partly responsible for the situation.

Case study 2: Lack of understanding of nature of abuse and harassment: A young woman with cerebral palsy and a newborn baby had her case of NMO breach rejected as the behaviour in question (sending flowers via taxi, hand-delivering a love letter through her door, and leaving items at her front door) were deemed to be "nice gestures", even though the woman felt that she was being harassed. The woman in question had also had another breach not upheld due to lack of evidence and a case of rape not prosecuted, and felt extremely let down and unprotected by the justice system.

#### 4. Criminal breach of court orders / bail conditions

Women's Aid is concerned at the lack of consequences for those perpetrators who breach court orders or bail conditions. We would also query whether history of disobedience to court orders is sufficiently taken into account as an aggravating factor in sentencing all cases.

Breaches of court orders (such as *ex parte* orders and non-molestation orders) cause significant harm and anxiety to victims. Breach of an order is a form of abuse, and when there are no consequences for perpetrators when they breach court orders the protective value of the Orders and of the justice system is nullified. Our support staff have reported numerous cases where breach upon breach of Orders occur, or bail conditions are broken, yet there are no consequences for the perpetrator. They report that the most common sentencing outcome is that more conditions will be added, and that these would most likely also be breached. Such ineffectual sentencing sends a message to victims that the courts don't take the abuse being perpetrated seriously, and sends a message to the perpetrator that he may act without fear of impunity or consequence.

Case study 1: A woman was assaulted by her ex-partner, who was out on licence at the time. At the time of sentencing he was given probation and his licence was not revoked.

Case study 2: One of our support workers is currently supporting a woman who has so far had to report six individual breaches of bail conditions. Only on one occasion was the perpetrator remanded in custody for a period of one week. This repercussion was only in force due to a bail address not being able to be given at the time; it was not done with the aim of holding the perpetrator accountable or protecting the woman from further breaches. Every other breach resulted in either the same or additional bail conditions being added. At this moment in time he is continuing to breach the bail conditions on a weekly basis.

## 5. Unduly lenient sentencing / suspended sentences

Women's Aid believes that many instances of sentencing do not reflect the severity of abuse committed against victims, nor do they reflect a society that has zero tolerance to domestic violence.

There is a pattern of domestic violence perpetrators being issued suspended sentences in spite of the significant abuse they have inflicted on their victims. One Justice Support Worker reflected that *"Since taking up post, the majority of sentences that have been handed out to perpetrators have been 'suspended' or a 'conditional discharge'."* Women's Aid sees many cases where suspended sentences are handed down, and perpetrators go on to re-offend, either continuing to abuse their current victim or moving on to another partner/victim.

This trend is very concerning, particularly as perpetrators of domestic violence who end up in court on criminal charges are unlikely to be first-time offenders. It is widely acknowledged that victims will be abused an average of 35 times before reporting their abuse to anyone. It should also be pointed out that domestic violence is by definition a pattern of abusive and controlling behaviours, and that the incident which leads to a criminal case is likely to be only one aspect of that abuse.

Furthermore, an examination of cases in the MARAC system reveals a large number of dangerous and violent perpetrators of domestic violence in Northern Ireland who have not been convicted of any crime. Indeed a vast number of perpetrators will never go through the criminal justice system. Therefore when a victim has the courage to engage with the criminal justice system in spite of the abuse she has experienced, and there is sufficient

evidence to proceed with a case, it is extremely traumatic when courts issue sentences that do not reflect the severity of abuse suffered.

A number of Women's Aid staff have also noted that there are clearly occasions when suspended sentences are not upheld or invoked if a perpetrator does commit another offence whilst on licence.

Case study 1: A woman was subject to a serious assault in her home on Christmas night in front of their three children. The perpetrator was her ex-partner, who had a number of previous convictions. The resulting sentence was deferred for a year.

Case study 2: One of our support staff worked with a woman who was involved with a High Risk Category 3 Domestic Violent Offender, whose offending history included 91 previous convictions. His violent behaviour against the victim included the use of knives resulting in charges of AOABH and possession of an offensive weapon. He had 8 convictions for breaching court orders (NMO's) evidencing non-compliance with the court system and prohibitive orders. Following a conviction, after which he was released from prison due to time served, he was served a restraining order as part of his sentencing. For obvious reasons, the victim was extremely concerned about his release. She had moved to a new area in an unknown location to the defendant. Given the significant violent offending history and the very real potential for further incidents, he was subject to PPANI and once released, a hostel address outside of the city was approved for him to reside. Upon further investigation with the Offender Management Team and Public Protection Team it became clear that the offender was not actually required to reside at this address on an ongoing basis if he didn't want to. Furthermore, there was not much mandated upon him in terms of what he must do whilst subject to PPANI, more so he was simply advised to co-operate. If he chose not to co-operate, he may have been subject to closer surveillance or his information may have been made available to other agencies. Given the extensive nature of offending, the charges for which he was sentenced and the categorisation of him as Cat 3 offender suggesting that he was highly likely to cause further serious harm, the support worker was concerned that the sentence did not reflect the severity of his crime or sufficiently protect the victim. He was released into the community and subsequently breached his restraining order.

## 6. Plea bargaining

Women's Aid is concerned about the plea bargaining process and the implications on convictions and subsequent sentencing. Plea bargaining discussions often take place before consultation with the victim by legal representatives, with the aim of getting matters

resolved (in their opinion). This process can be extremely disempowering for victims, as they are excluded from the process until after the fact, then may be put under pressure to accept what is offered to them.

Women's Aid staff have also reported cases where women were not given adequate time to comprehend what bargain is being put to them and to consider what this would mean in terms of sentencing. It is vitally important that victims feel like they are fully involved in the court process, which means having a full understanding of what is being put to them and the consequences of their decisions. Under the current system, Women's Aid is of the view that this aspect of the criminal justice process is not victim-centred, and is resulting in victims feeling let down by the sentence ultimately delivered, and let down by the criminal justice system as a whole.

Case study: A Women's Aid support worker attended a contest hearing in Magistrates court with a young woman she was supporting. The perpetrator and his legal representatives agreed to plead guilty to 4 charges (including criminal damage, common assault and harassment) if two further charges of common assault and intimidation were dropped. This was explained to the young girl in a very hasty manner and she was pressured into making a decision there and then. The young woman felt that she wasn't being believed about the second common assault and intimidation incidents as the court was looking to dismiss them. The support worker attempted to explain the situation; however the victim was extremely upset by what had happened. The case continued with the two latter charges being dismissed. The judge invoked his suspended sentence, however due to time served he was released within days. Fortunately, a restraining order was also served as part of his sentencing and he was subject to PPANI.

## 7. Monetary fines

Women's Aid is extremely concerned about the use of monetary fines in place of custodial sentences for domestic violence-related crime. We believe that monetary fines are an inappropriate response to abuse, as they send a message to victims, perpetrators and society as a whole that domestic violence isn't a serious crime. They are also highly inappropriate if a perpetrator has financially abused a victim.

We are opposed to the use of the 'no prosecutions pilot scheme' in domestic violence cases. The use of this scheme buys into the view of 'excusing' the perpetrator's behaviour and serves to undervalue the true extent and nature of the crime. In the current climate when police, courts, the community at large and the victim are encouraged to take a zero

tolerance approach to domestic abuse, this scheme undermines that message, and diminishes the importance of appropriately dealing with domestic abuse cases through the legal means.

We have particular concerns about domestic violence being labelled “low level” by courts and therefore being considered eligible for alternatives to sentencing – this undermines the trauma experienced by victims and fails to reflect the weeks, months or years of psychological, physical, sexual and financial abuse which they may have endured. As previously stated, victims are likely to have suffered many instances of abuse before reporting the incident that results in a criminal case. There are also many types of abuse that do not constitute crimes, meaning that justice cannot be sought for them in court. Therefore when a perpetrator of domestic violence does go through the criminal justice system and is found guilty, it is imperative that the sentence delivered reflects the seriousness of domestic abuse and sends a strong message that domestic violence is not tolerated in our society.

In the experience of Women’s Aid there is also an issue with payment of fines. Although technically fines must be paid, it is our experience that enforcement of fines is simply not a priority and there is little consequence for non-payment. This adds insult to injury to victims who have endured the trauma of a protracted court case only to get no justice in spite of a conviction.

Case study: A Women’s Aid support worker supported a woman whose husband was a career criminal and a prolific re-offender. At the time he was subject to a suspended sentence. On one occasion he was convicted of assault and breach of an NMO for which he got two £250 fines (not to be paid to the woman). At no point was there any consequence for his suspended sentence. This was a particularly difficult outcome for the victim given that the perpetrator has over and over again demonstrated a complete disrespect and disregard for the law.

## 8. Sentencing procedure failing to protect victims from harm

There are a number of instances in which the criminal justice process may fail to protect victims from further harm. One example is during the time lapse between being found/pleading guilty and the sentencing date. Following a guilty plea, it may be a matter of weeks prior to sentencing whilst the pre-sentencing report is drawn up. This is a period when women are particularly vulnerable as any bail conditions are no longer in force and NMO's are often reviewed and extended only until criminal proceedings are dealt with. This can be compounded by sentencing being adjourned due to the defendant not turning up to court.

There are also instances in which protective measures are not put in place when they are clearly needed. For example, when a custodial sentence has not been given, a restraining order is not always considered. This highlights a further lack of understanding of the nature of domestic violence, the dynamics and ongoing threats, and the danger to victims especially following court cases.

Case study: A Women's Aid worker supported a woman whose ex-partner was convicted of GBH with intent. Following his guilty plea due to the compelling evidence the support worker assisted the woman with requesting a restraining order. The sentencing was adjourned twice and when the support worker followed up on the restraining order she was informed that it hadn't been applied for. The restraining order was then granted at a further stage. The whole process of sentencing took eight weeks and the woman left very vulnerable as the bail conditions ended at the pleading guilty stage and the restraining order did not come into effect until eight weeks later.

## 9. Contact Details

For further information about this response please contact:

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