



Women's Aid Federation Northern Ireland

Brief on disclosure scheme proposals (Clare's Law)

Women's Aid welcomes the proposals to introduce a domestic violence disclosure scheme along the lines of Clare's Law to Northern Ireland.

While a disclosure scheme will not put an end to domestic violence alone, it would nonetheless be one of a number of useful tools for police to keep people safe, and for people to be empowered to make informed choices about keeping themselves safe. Women's Aid favours the option of introducing a scheme with both Right to Ask and Right to Know elements. However we would have further questions as to how the scheme would operate in practice to ensure that it is fit for purpose and beneficial to those affected by domestic violence.

The key to the success of any disclosure scheme will be the detail of how it operates. This crucial detail could be the difference between a scheme that enables people to take steps to make themselves safe, and one that may in fact put people at risk. The scheme must provide potential victims with the tools to enhance their safety, facilitate exit from a relationship with a perpetrator, and link effectively with support provision for victims of domestic violence.

A disclosure scheme can only work effectively in an environment where there is adequate support provision for those affected by domestic violence, and adequate training of front-line professionals such as police to understand and be able to identify domestic violence. It must operate in conjunction with proactive policing to pursue perpetrators and partnership work between statutory agencies and expert voluntary service providers.

Why do we need a Disclosure Scheme like Clare's Law?

- Earlier intervention = a safer community. Domestic violence is a crime of escalation. It may begin with criticisms of a partner's appearance, excessive jealousy or isolating a partner from friends and family. But abuse inevitably escalates as part of a pattern of controlling, coercive and manipulative behaviour, often culminating in complete control and isolation of a victim and physical violence. Earliest possible intervention of abuse is key to preventing the abuse from escalating, thereby reducing the risk of serious injury and violence and making it easier for victims to leave the relationship. If people have the power to ask police about their partner's past, that information may cut that relationship short and avoid escalation of abuse.
- Part of emotional abuse is convincing a victim that they are at fault or that they are imagining the abuse. A disclosure scheme may provide victims with the proof that abuse is happening to them and empower them to leave.
- Many perpetrators of domestic violence in Northern Ireland are serial perpetrators, moving from one victim to the next with impunity. A disclosure scheme would be one way to protect unsuspecting victims from motivated serial perpetrators.

- While such a scheme may not work for all those in relationships with abusers, it could be a valuable, possibly life-saving, tool for those who do use it. In the first year of Clare's Law rolling out nationally across England & Wales, at least 3,760 applications and 1335 disclosures were made. Some survivors of domestic violence have openly stated that if a disclosure scheme had existed when their abuse began they would have used it and avoided the violence they suffered.¹

Right to ask / Right to know?

Women's Aid Federation NI supports the introduction of both Right to Ask and Right to Know elements of a disclosure scheme. While there is already provision in Common Law for police to approach individuals and warn them about the past of a known person, we have no evidence of this having been used in cases of domestic violence perpetrators. Our colleagues in England and Wales had a similar experience, and had no knowledge of police ever using their common law powers to proactively inform someone of their partner's violent past.

We believe that clear guidance within a scheme like this will give police greater awareness of their power to inform people of a perpetrator's past, and will give them the confidence to use that power. We would urge that the introduction of a Right to Know scheme in Northern Ireland is accompanied by clear guidance and training for police, so that police are fully aware of the extent of this power and are not discouraged from exercising this duty on account of data protection concerns.

We would also counter argument that the scheme would be too administratively onerous by pointing out that it is less onerous than investigating and pursuing convictions for murder, rape etc. We would however be in favour of a scheme that works as quickly as possible to come to a decision about disclosure, while still thoroughly investigating the person in question's background for anything of concern.

What should be disclosed?

For a disclosure scheme to be effective, it must be possible for police to disclose more than just convictions for crimes with a domestic motivation. The majority of domestic violence perpetrators do not have any convictions, despite being prolific and serious abusers. There are many reasons for this:

- Some elements of domestic violence, such as coercive control, are not currently criminal offences;
- Individual instances of abuse may be considered too 'minor' for conviction and our criminal justice system does not punish offenders for the cumulative effect of domestic violence;
- Abusers take extreme measures to avoid detection and conviction;
- It is widely acknowledged in research and practice that victims of domestic violence tend to significantly downplay the severity of their abuse, which works against them in a criminal justice setting
- The relationship between perpetrator and victim makes it difficult for victims to partake in criminal proceedings, either because of fear and intimidation or love and loyalty felt towards their partner.

Disclosure information should include convictions, spent convictions relating to domestic violence, non-molestation orders and other protective orders against them at present or in the past, plus any intelligence

¹ Terri-Louise Logue, who was supported by Women's Aid, told the Belfast Telegraph "I'm not saying every woman would walk away from the relationship if they were made aware their partner had a violent past, but I know that I would not have become involved with Craig. I would never have ended up almost beaten to death and with emotional and psychological scars that I might never fully recover from" <http://www.belfasttelegraph.co.uk/news/northern-ireland/clares-law-is-needed-in-northern-ireland-so-we-know-abusive-partners-30806018.html>

held by police on the individual such as previous call-outs for domestic incidents with different partners, any instances they have been identified as a perpetrator at MARAC (particularly if they have been flagged as perpetrators more than once). Given the link between domestic violence and child protection issues, Women's Aid believes that disclosure information should also include any child protection investigations involving the potential abuser. Police should also disclose if they have general concerns or have noted worrying behaviour that they believe might put the applicant at risk. For example, there is a well-established link between abuse of humans and abuse of animals, so a significant history of animal cruelty may be a red flag. If police have information relating to a perpetrator of domestic violence, and they are asked by that person's new partner whether they have any concerns about that perpetrator, it is most likely in the interest of the applicant's safety that disclosure is made. Police should also make checks in other jurisdictions if the potential perpetrator has lived outside Northern Ireland in the recent past. We would also advocate that the Northern Irish scheme follows the Scottish example of consulting Social Services departments and voluntary sector support organisations, to both gather intelligence of concerning behaviour and gain an understanding of whether there is a risk of harm to the current partner.

How should disclosures be handled?

The mechanics of how disclosures are dealt with by police will be crucial to whether a disclosure scheme enhances or jeopardises the safety of potential victims. It is vital that the scheme incorporates mechanisms for dealing with safety issues and appropriate signposting to support agencies for those making applications, including if applicants are concerned third parties. Risk assessment and safety planning should be integrated into the process, and specialist support organisations should be embedded in the process to ensure that once an applicant is given a disclosure there is a pathway of support and manageable next steps for that applicant. **Leaving an abusive relationship can be the most dangerous time for women, and a perpetrator does not have to have been physically violent in the past to commit serious acts of violence once a victim tries to leave.** If an applicant decides to leave their relationship on the basis of a disclosure, support must be there to help them do this safely.

The manner of disclosure is also important. Like the English and Welsh system, police should carefully identify a safe course of action to contact the person receiving the disclosure without putting them at risk of harm.

We would also suggest that alternative venues for meeting with applicants to discuss a disclosure could be considered, if those applicants are put off or daunted by a police station setting. Existing partnerships with organisations like Women's Aid could be utilised, and meeting rooms in resource centres could be used as a neutral, non-threatening alternative venue if the applicant prefers.

Messaging: Helping people understand that no disclosure does not mean that there is no abuse in their relationship

It is necessary that police convey information in a manner that does not put that person at risk of harm. For this reason, it should be made clear to those receiving information that if no disclosure is made, this does not necessarily mean that their partner is not a domestic violence perpetrator. It is very possible for someone to be an abuser and not be yet known to police. For this reason, Women's Aid also strongly advocates for signposting of applicants to support services even if there is no disclosure, so that they can talk over their concerns and the reason they made the application for disclosure in the first place with trained experts. In our experience, if a woman has reached the stage where she is considering contacting

the police about her concerns, it is likely that there is an unhealthy and possibly abusive element in that relationship. By offering routes to specialised support regardless of the outcome of the police assessment, the disclosure scheme has the potential to be a preventative and early intervention tool even in cases where no disclosures are made.

Confidentiality

Women's Aid supports a scheme that operates confidentially, similar to the scheme in England and Wales. The confidentiality clause for disclosed information would allow police to navigate conflicts between data protection, privacy, and the need to keep people safe. Women's Aid accepts that information disclosed to an applicant should be treated as confidential and only used to protect the potential victim. A similar process in Northern Ireland, where those receiving the information are instructed to only share the information in as far as is necessary to protect the potential victim, would strike a balance between safety and privacy concerns. It is important that police ensure that those receiving disclosure information understand the confidentiality of the information being disclosed, especially given the civil and possibly criminal law implications if they breach that confidentiality.

Confidentiality should never prevent applicants from reasonably using the information to keep themselves safe, keep any children involved safe, or seek support and advice from support service providers.

Who can apply?

Women's Aid supports the system in the rest of the UK whereby third parties can apply for a disclosure, but the disclosure information would only be given to the person in the relationship or the person best placed to protect them. This, combined with the confidentiality of disclosed information, would act to discourage vexatious applications. It would be for police to decide whether the application is based on genuine concern or not, and whether it is appropriate to make a disclosure to someone who was not in fact the applicant. Guidance should be developed for those making decisions on third party applications to ensure that the safety and agency of the potential victim remain at the heart of the process.

Our information from colleagues in Women's Aid Federation England is that vexatious applications have not been an issue with the roll out of Clare's Law nationally.

Keeping victim blaming out of a disclosure scheme

Not all people who are told of their partner's abusive history will leave the relationship, or they may return to their abuser after some time apart. There are many reasons for this, among which are loyalty or love for their partner, belief that they are not in danger, or successful manipulation of disclosed information to convince their partner that no abuse took place. This is sadly part of domestic violence, and it is important that the statutory response to domestic violence does not punish victims because they don't fit into the mould of the 'perfect victim' who leaves a relationship and doesn't go back. The disclosure scheme must make it clear in its messaging that the door is always open to victims of domestic violence, and support is there for them, even if they did not act on disclosure information or return to an abusive partner after leaving.

Similarly, police must make it clear to applicants who don't receive a disclosure that the door to support remains open to them even if no information is shared at the time, in case the person they are concerned about actually is an abuser.

Listening to survivors and expert service providers

A disclosure scheme runs the risk of being ineffective or even harmful if it is not fit for purpose. Therefore it is important to listen to victims and survivors, and expert service providers like Women's Aid who have supported victims and survivors for decades, when shaping the scheme. While different women will have had different experiences, and the scheme will not benefit everyone, it should be rolled out in such a way as to be most beneficial to as many potential victims as possible. This can only be done in consultation with victims and survivors.

A disclosure scheme must be accompanied by an effective pathway for victims to leave a relationship safely should they wish to do so, or to take steps to protect themselves while in the relationship. The scheme should be an open door for future support – there should be no judgment if a disclosure takes place and a woman decides to stay with a partner.

Overcoming the shortcomings of Clare's Law – The English / Welsh experience

Clare's Law has been operating nationally across England and Wales since the beginning of 2014. Service providers like Women's Aid in England and Wales have monitored the implementation of the scheme, and have highlighted a number of ways in which the scheme should be improved. In Northern Ireland, we are in a fortunate position where we can use the learning from England and Wales to implement an improved scheme without those shortcomings.

Suggestions for improvement of Clare's Law in England and Wales include:

- Inclusion of data on spent convictions, especially in light of amendments to the Rehabilitation of Offenders Act made through LASPO which mean that convictions become spent in a shorter time.
- Better guidance on what situations should result in disclosure, to ensure that police are not erring on the side of caution and failing to disclose information that could keep people safe.
- Incorporation of any coercive control offences into disclosure scheme.
- More proactive use of the Right to Know element of the scheme.
- Better training for police in DV so that they are able to exercise their discretion based on expertise and understanding of the issues.
- Wider consultation by police about perpetrators to determine risk. For example, in the Scottish version of the disclosure scheme, police consult with other agencies such as social services to check if there are any concerns about the person in question, and input from advocacy groups such as Assist and Scottish Women's Aid is taken into account when considering whether to make a disclosure.

For more information, please contact:

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