



Improving Needs Assessment and Victims Support  
in Domestic Violence Related Criminal Proceedings

# The protection of IPV victims:

## Legal framework and criminal procedures in Ireland

Ireland

SAFE Ireland 2015



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## Introduction

SAFE Ireland is a partner in the INASC project<sup>1</sup>, which is co-funded by the Directorate General Justice of the European Commission. The INASC project aims to improve the existing understanding of female victims' experiences of trajectories of domestic violence (dv) cases in the course of criminal proceedings and how these experiences relate to individual assessment mechanisms and outcomes. The transnational partners have committed to producing national reports on the criminal justice response in each respective country.

The report provides details of the mechanisms, procedures and best practices in implementation currently documented in Ireland within the judicial system to protect victims of domestic violence and to ensure that their rights are fully realised.

The central components of the Irish legal system are An Garda Síochána, our police force; the Director of Public Prosecutions (DPP); the Probation Service and our Courts Service. Neither the DPP nor the Courts Service has issued a policy on domestic violence. The Garda Síochána and the Probation Service have both developed policy on domestic violence and they will be referred to in this report.

This report will first describe the current policy context and legal framework, which is in place in Ireland on domestic violence. The civil and criminal legislative pieces, which comprise our domestic violence legal framework, will be detailed. The investigation mechanisms that our police force employs in domestic violence cases will be described although there are few specialised mechanisms used by the Gardaí in cases of domestic violence; general investigative procedures are followed in all cases. Again there are few explicit risk assessment tools in use across judicial agencies, however the risk assessment approaches of the DPP, the HSE and the Gardaí are discussed. Further to this the risk assessment tools that are in use by these agencies in relation to DV cases are presented.

The report moves on to discuss the protection mechanisms in place in Ireland for domestic violence victims; the practices which are in place to protect the victim during the judicial trajectory; and any referral procedures in place between the criminal justice system and victim support services.

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<sup>1</sup> INASC is a transnational project which stands for 'Improving Needs Assessment and Victims Support in Domestic Violence Cases'



However, as it will be clear on further reading these agencies appear to be operating on an ad hoc basis.

Finally, the report details the published research that has been carried out thus far on the needs of female victims of domestic violence in this country.

The research for this the report involved consultation with a number of sources. Online databases were used to search for existing literature; law journals and articles were explored; phone/email contact with other agencies was established for information; and advice was sought from a legal expert to ensure that all relevant information was included and correct. The format of the report is based on an agreed template with the INASC Partners.

## Law and regulations in Ireland

### *Policy context*

COSC, the National Office for the Prevention of Domestic, Sexual and Gender Based Violence, was set up under the recommendation from the Task Force on Violence Against Women, developed the National Strategy on Domestic, Sexual and Gender Based Violence. This first whole of government strategy spanned from 2010 -2014, a review process of this strategy took place in summer 2014 and is currently feeding into the development of the second strategy.

The overall strategic objective of the 2010 -2014 national strategy was “developing a strong framework for sustainable intervention to prevent and effectively respond to domestic, sexual and gender based violence” (Cosc, 2010). From this overall strategy objective, key objectives were developed:

1. To increase understanding, recognition and practical information on domestic, sexual and gender- based violence throughout society in Ireland
2. To increase understanding and recognition of domestic, sexual and gender based violence in State- sector organisations
3. To raise awareness among young people of domestic, sexual and gender based abuse.
4. To increase confidence in service provision for those affected by DV and SV
5. To promote high standards in service provision
6. To strengthen intra- and inter-organisational co-ordination to improve service effectiveness and consistency
7. To improve protection and support for victims
8. To address offending behaviour by perpetrators of domestic and sexual violence
9. To improve the effectiveness of policy planning through improved data capture and data co-ordination
10. To ensure that policy development and service provision planning are evidence-based and take account of the experience of victims
11. To ensure greater coordination between relevant organisations
12. To provide a solid foundation for future actions on domestic and sexual violence



13. To ensure that all actions within this strategy are monitored and progressed in a timely and comprehensive manner
14. To ensure that due account is taken from the lessons learned of the implementation from this strategy (COSC, 2010).

From the key objectives stem a number of actions to achieve such objectives. Quite a number of actions centre on the issue of training, risk assessment, and protection of victims and warrant mention.

Action 2 of the strategy intended to promote and develop understanding and recognition of domestic, sexual and gender based violence across the state sector. One activity coming from this action is to first analyse the training needs of all relevant justice sector organisations, and to then develop and implement training programmes.

Action 14 of the strategy proposed to strengthen measures to manage the risks posed by sexual and domestic violence perpetrators by providing for pre-sentencing risk assessments for the courts in relation to sexual violence perpetrators; further developing risk management arrangements for convicted sexual violence perpetrators; exploring the feasibility of multi-agency risk management arrangements for un-convicted sexual violence perpetrators; and developing and implementing risk management arrangements for high-risk domestic violence perpetrators.

The strategy was greatly welcomed in 2010, and validated the calls for reform by naming and recognising the areas which need to be addressed. Work is currently being carried out to review the achievements and challenges of implementing this whole of government national strategy with a view to informing the direction of the second strategy.

On January 1<sup>st</sup> 2014 responsibility for domestic, sexual and child abuse services was transferred from the HSE to the newly established Child and Family Agency (Tusla). The Agency became an independent legal entity, comprising the HSE Children & Family Services, the Family Support Agency and the National Educational Welfare Board as well as incorporating some psychological services and a range of services responding to domestic, sexual and gender based violence. The Child and Family Agency is now the dedicated State agency responsible for improving wellbeing and outcomes for children.



The Agency operates under the [Child and Family Agency Act 2013](#), and included within its remit is a statutory duty to:

“Without prejudice to the generality of subsection (1), in supporting and encouraging the effective functioning of families pursuant to subsection (1)(c), the Agency shall provide—

- (a) preventative family support services aimed at promoting the welfare of children,
- (b) care and protection for victims of domestic, sexual or gender-based violence, whether in the context of the family or otherwise, and
- (c) services relating to the psychological welfare of children and their families.”

(Taken from *Child and Family Agency Act 2013*, Section 8)

The Agency is responsible for the majority of funding to specialist domestic violence services, as well as rape crisis centres and other family support services.

Other recent developments include Ireland opting into the DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. The directive must be transposed into national law by November 2015, which is placing an onus on the Irish Government to put in place measures to satisfy the Directive.

The Irish Government has also announced that work is being carried out to change legislation to enable Ireland to sign and ratify the Istanbul Convention, which would strengthen the rights of victims of domestic violence in this country, and would also necessitate commitment to change policy and practice responses from the Irish Government.

### *The legal framework on DV/IPV*

The Irish legal framework on domestic violence is mostly contained in the Domestic Violence Act 1996. The 1996 Act as amended provides for a civil remedy to protect victims from domestic violence. Criminal law pertaining to domestic violence and the protection of victims can be found in a number of pieces of legislation. The main pieces of legislation used to prosecute certain aspects of



domestic violence are: Non-Fatal Offences Against the Person Act 1997, Criminal Law (Rape) Act 1981, and Criminal Law (Rape) (Amendment) Act 1990. In addition, as noted below, breaches of Domestic Violence Act orders are prosecuted as **criminal** offences.

### *Civil law (meaning in this context, non-criminal law)*

#### **Domestic Violence Acts**

The Domestic Violence Acts 1996-2002 as amended, grant relief for spousal and partner misconduct and domestic violence (Nestor, 2011). The Act provides civil remedies to protect individuals from domestic violence. *The Domestic Violence Act 1996* was introduced to perform three functions:

- 1) To protect spouses, children and other dependent persons and persons in other domestic relationships where the threat to their safety or welfare is at risk because of the conduct of the other person in the domestic relationship;
- 2) To increase the powers of An Garda Síochána to arrest without warrant; and
- 3) To provide for the hearing at the same time of applications to court for other orders regarding custody and access, maintenance, conduct leading to the loss of the family home, restriction on the disposal of household chattels, and child care orders (Glynn, 2011).

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The 1996 Act for the first time made provision for cohabitees in a relationship outside of marriage and their children. The Act provides for a number of remedies to assist victims of domestic violence. These include: Barring Order; Interim Barring Order; Protection Order; Safety Order.

#### **Barring order**

Under the 1996 Act a barring order is defined as “an order directing the respondent, if residing at a place where the applicant or the dependent person resides, to leave such place, and prohibiting that respondent from entering such place until further order of the court, or until some other time as the court specifies”.

The District Court may grant interlocutory relief pending the determination of barring proceedings in the form of interim barring orders. The Act increases the period for which a barring order may be made to three years with the power to renew for a further three years.

One of the most radical changes incorporated into the Act is the power conferred on the HSE to apply under section 6 for a safety or barring order on behalf of an aggrieved person who may be too





traumatised or frightened to apply on their own behalf. It should be noted that a HSE application can be made without the person involved granting authorisation, however, the person's wishes must be taken into account when the application comes before the court, (either district or circuit).

Under section 3, an application for a barring order may be made by:

- A spouse
- A cohabitee who has lived with the respondent as husband and wife for at least six months in aggregate during the period of nine months immediately prior to the application
- A parent of the respondent where the respondent is of full age and not dependent

In relation to the making of a barring order in favour of an applicant or dependent child, where sufficient grounds exist, the court may make an order:

- To direct the respondent, if residing at a place where the applicant or dependent person resides, to leave such a place; or
- Prohibiting the respondent from entering such a place (where the respondent is either residing in the place or living apart from the family.

### **Interim Barring order**

The Interim Barring Order was introduced by the 1996 Act to deal with the delay between the making of an application and the granting of an order. There must be an immediate risk of significant harm to the applicant or any dependent person so that a protection order would not be adequate. In exceptional cases this application may be made *ex parte* (which means with only the applicant present). Where such an order is made *ex parte*, the amended legislation stipulates that this can last a maximum of eight days before the matter comes back to court for further consideration and meanwhile, the respondent must have been given notice of that second hearing.

### **Protection order**

*Section 5(1) of the 1996 Act* provides for the making of a protection order, which is a provisional order pending the determination of another order (safety order). This orders the respondent not to use violence or threaten to use violence against, molest or put in fear the applicant or any dependent

person. If the parties do not reside together, the respondent should not watch or beset the place where the applicant or dependent person resides, however it does not require a respondent to leave the family home or restrict his right to reside in it. The Act specifically empowers the court to make such order *ex parte*.

In *L v Ireland and Another* (2008) the Court pointed out that a protection order is effectively no more than ‘a warning’ that the court has noted behaviour which, if true is so unacceptable, that threat of criminal conviction, that he must conform with the law.

### Safety order

*Section 2(2)* of the Act provides for the making of a safety order where the court “is of the opinion that there are reasonable grounds for believing that the safety or welfare” of the applicant or any dependent child requires that such an order be made. A safety order directs the person against whom it is made to “not use or threaten to use violence against, molest or put in fear the applicant” or a dependent child on whose behalf the application is made; and if “residing at a place other than the place where the applicant” or the dependent child resides to “not watch or beset” that place.

### Recent amendments to the Domestic Violence Act to widen the range of victims who may apply for its protection:

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The combined effect of recent amendments in Part 9 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 and Section 60 of the Civil Law (Miscellaneous Provisions) Act 2011, now in force, was to amend the Domestic Violence Act 1996 so that the following classes of persons may now apply for protection and safety orders:

- anyone having a child in common with the respondent;
- civil partners or ex-civil partners of the respondent; and
- anyone (other than spouses or civil partners) who lived with the respondent in an “intimate and committed” relationship, before the application (not for any minimum period of time); and also,
- anyone (other than spouses or civil partners) who lived with the respondent in an “intimate and committed” relationship for a period of six months out of the nine months immediately prior to the application, can apply for a barring order.

### Sanctions for contravention



Breach of a domestic violence order constitutes a criminal offence. Anyone who breaches any of the conditions of the orders above or, in respect of a barring order or interim barring order, who refuses to permit the applicant or any dependent person to enter in and remain in the place to which the order relates or does any act to prevent the applicant from so doing, shall if found guilty of an offence under *section 17* of the Act be liable to a fine not exceeding €1,904.61 or imprisonment for up to 12 months. The penalties for breach of the barring order will be clearly stated on the order.<sup>2</sup> In-camera protection may not be extended to hearings on breaches of domestic violence orders.

### **“In Camera” procedures**

The “in camera” rule means that Domestic Violence Act hearings can be, and usually are, heard in private, and the parties and proceedings are only identified in the media to the extent allowed by the judge in each individual case. Media reporters may be permitted to report on proceedings to the extent that the judge allows them to do so, and normally access to reporters in DVA proceedings is granted only subject to strict conditions, and may be refused altogether.

### Powers of Arrest

Section 18(2) of the Act provides for additional powers of arrest for the Gardaí where they have reasonable cause to believe that a person is being assaulted, and that person is someone who could apply for a safety order or a barring order (Horgan, 1998). Under this section the Garda may enter, if need be by force, and search any place where s/he suspects the respondent to be without obtaining a warrant (Nestor, 2011).

### ***Criminal law pertaining to domestic violence***

Because there is no specific offence of ‘domestic violence’ in Irish law, various forms of conduct which characterise domestic violence such as assault, false imprisonment, harassment, coercion, and rape are charged and prosecuted under criminal law. There are a range of offences under Irish law which may be used to prosecute depending on the facts.

While the legislation referenced earlier does provide for criminalization of certain forms of domestic violence such as assault and sexual violence, provision is not made for coercive control nor with certain limited exceptions, are repeated patterns of violence provided for within any legislation. Discussed below are the Non-Fatal Offences Against the Person Act 1997, the Criminal Law (Rape)

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<sup>2</sup> Order 59 Family Law Rule 5-Domestic Violence: Consolidated Circuit Court Rules (Release 13, July 12, 2011).

Act and Criminal Law (Rape) Amendment Act 1990, which are all used to prosecute certain aspects of domestic violence.

### **Non-Fatal Offences Against the Person Act 1997**

There are three separate assault offences in the Act, each one reflecting the degree of force used in the assault. Section 2 of the Non-Fatal Offences against the Person Act 1997 replaced the common law offences of assault and battery with a new offence of assault, which combines, in a single offence, the element of inflicting personal violence in “battery” and the element of causing another to apprehend the immediate infliction of personal violence in “assault”. Section 2(4) provides that the offence is punishable on summary conviction (in lowest level District Court) of a fine not exceeding £1,500 (now €1,904.61) and/or imprisonment for a term not exceeding six months.

Section 3 of the 1997 Act contains the offence of assault causing harm. Section 3(2) makes the offence punishable on summary conviction (District Court) by imprisonment for a term not exceeding 12 months and/or fine not exceeding £1,500 (€1,904.61) or on conviction on indictment (middle level, Circuit Court) by an unlimited fine and/or imprisonment for a term not exceeding five years. Harm is defined in section 1 as “harm to body or mind and includes pain and unconsciousness”.

Section 4 of the 1997 Act creates the offence of “intentionally or recklessly causing serious harm” and makes the offence punishable on indictment by an unlimited fine and/or imprisonment. Serious harm is defined as “injury which creates a substantial risk of death or which causes serious disfigurement or creates substantial loss or impairment of the mobility of the body as a whole or of the function of any particular bodily member or organ” under section 1. This offence may be tried only in the Circuit Court.

Section 5 of the Act creates the offence of threatening to kill or cause serious harm to another. The offence covers threats by “any means” and extends to threats to cause serious harm as well as threats to kill. Section 5(2) makes the offence punishable on summary conviction (District Court) by a fine not exceeding €1,904.61 and/or imprisonment for a term not exceeding 12 months and on indictment (Circuit Court) by an unlimited fine and/or imprisonment for a term not exceeding 10 years.

Section 9(1), or “coercion”, makes it an offence for a person, with a view to compelling another to do an act or refrain from doing an act which the person has a lawful right to do or abstain from doing wrongfully or without lawful authority to:

- (a) Use violence or intimidate another person or his or her family
- (b) Injure or damage the property of another or
- (c) Persistently follow the person or
- (d) Watch or beset any place or the approach to such place, where the person resides, works, or carries on business, or happens to be, or
- (e) Follow the person with one or more others in a disorderly manner in or through a public place.

This offence carries a maximum penalty of a fine of €1,904.61 and/or twelve months imprisonment in the District Court, and a maximum of a fine and/or five years imprisonment in the Circuit Court.

Section 10 is the offence of harassment<sup>3</sup> whereby any person by any means, including the use of the telephone, harasses another by persistently following, watching, pestering or communicating with him or her. Section 10(2) provides that a person harasses another where the acts involved “seriously interferes with the other person’s privacy and peace or causes alarm, distress or harm to the other” and the acts are such that a reasonable person would realise that this would be the effect of the actions. This section is aimed at behaviour which is known as stalking defined as “repeated occasions of visual or physical proximity, non-consensual communication, or verbal, written or implied threats that would cause a reasonable person fear”.<sup>i</sup> Section 10(3) empowers a court to order, for such period as it specifies, a person prosecuted under this section, whether or not found guilty of an offence under s.10 (1), not to communicate with the other person or not to approach within any distance which the court specifies, of any place of residence or employment of the person, and s.10 (4) makes it an offence to fail to comply with the terms of the order. Section 10(6) makes an offence under this section punishable on summary conviction (District Court) by a fine not exceeding €1,500 (€1,904.61) and /or imprisonment for a term not exceeding twelve months. On indictment (Circuit Court) the maximum penalty is an unlimited fine and/or imprisonment for seven years.

Section 15 of the 1997 Act replaces the common law offence of false imprisonment with an extended offence. Section 15(1) provides that a person commits a new offence of false imprisonment if he or

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<sup>3</sup> Note that this offence was considered in detail in the (Irish) Law Reform Commission Report on Aspects of Domestic Violence (LRC 111-2013), following observations from the Legal Issues Sub Committee of the National Steering Committee on Violence against Women that the offence was difficult to prove because of the element of “persistence” in particular. However, LRC did not recommend a change in the existing law in that report. It can be accessed online via this weblink: [http://www.lawreform.ie/\\_fileupload/Reports/r111.pdf](http://www.lawreform.ie/_fileupload/Reports/r111.pdf)



she intentionally or recklessly takes, detains, causes to be taken or detained or otherwise restricts the personal liberty of another without that person's consent. This offence carries a maximum penalty of a fine of €1,904.61 and/or imprisonment for not more than twelve months in the District Court, and a maximum of a fine and/or imprisonment for life, in the Circuit Court.

Most non-sexual minor assaults (Sections 2 and 3 NFOAPA 1997), and less serious offences of threats to kill, harassment, and false imprisonment, will be tried in the District (lowest) Court. If the offence is serious enough it is likely to be tried at the middle Court level (Circuit Court), and murder/attempted murder charges will be tried in the highest level Court (Central Criminal Court). All sexual offences, no matter how minor, must go to the Director of Public Prosecutions for a decision on prosecution, and offences of rape and/or aggravated sexual assault must be tried in the Central Criminal Court. If the assault or other offence is serious enough to be tried in a higher court, the file will be sent to the DPP's office for a decision on whether the prosecution will go ahead. If a non-sexual assault, threat to kill, harassment, or false imprisonment offence is deemed to be less serious on the facts of the case, the Gardai may prosecute it in the District Court. Private prosecutions are possible, but very limited in Ireland.

### **Criminal Law (Rape) Act 1981**

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Section 2 provides for the offence of rape through vaginal penetration by a man's penis without the woman's consent. It carries a maximum penalty of life imprisonment.

### **Criminal Law (Rape) (Amendment) Act, 1990**

The provisions of this act which relate to domestic violence include:

Section 4: Rape: a sexual assault, which includes:

- Penetration (however slight) of the anus or mouth by the penis, or
- Penetration (however slight) of the vagina by an object held or manipulated by another person.

Any person found guilty of either form of this offence may be sentenced to life imprisonment.

Note that these offences are in addition to the offence of rape under Section 2 of the Criminal Law (Rape) Act 1981. They also carry a maximum penalty of life imprisonment.



Section 2: Sexual Assault: A person found guilty of an offence under this section may be sentenced to a period in prison of no more than ten years, unless the victim is a minor, in which case it can be as high as fourteen years.

Section 3: Aggravated Sexual assault: In this Act “*aggravated sexual assault*” means a sexual assault that involves serious violence or the threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature to the person assaulted. A person found guilty of this offence may be sentenced to imprisonment for life under section 3 (2).

Under section 5 of this Act the marital exception to rape was abolished in 1990 therefore a husband cannot rely on the existence of a marital relationship as a defence to the crime of rape.

### *Investigation mechanisms implemented by the police, the public prosecution office and the criminal courts related to DV/IPV:*

#### **(1) Initial Stages of Investigation:**

The Garda Síochána procedure for investigating cases of domestic violence can be found in their policy on domestic violence<sup>4</sup>, however it must be noted that investigative procedures used generally are also applied to domestic violence cases. The following is an account of the recommended practice contained in the policy – note however that implementation of the policy is uneven in reality<sup>5</sup>:

If the attending Garda is alone at the scene, they will conduct an interview with the victim first, it is preferable though if two officers attend the scene.

The victim and assailant shall be separated so as that interviews can be conducted with each, without interference from the other. This will also deter verbal intimidation being used.

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<sup>4</sup> “Domestic Violence Policy”, available online through this weblink: <http://www.garda.ie/Documents/User/Domestic%20Violence%20policy%202023.11.10.pdf>. Note that this Policy is under review at present and a new version is due to appear in the coming months (as at November 2014).

<sup>5</sup> Note that the Garda Inspectorate has just published a Report on Crime Investigation (2014) which found that “the Inspectorate found that “there is very little evidence that the [DV] policy is audited or monitored to ensure that it is implemented at an operational level” (page 39, Part 6). The Report may be accessed online via this weblink – see Part 6, pp 38-44 inclusive. [http://www.gsinsp.ie/index.php?option=com\\_docman&task=cat\\_view&gid=33&Itemid=152](http://www.gsinsp.ie/index.php?option=com_docman&task=cat_view&gid=33&Itemid=152).



The investigating member will collect all evidence that is available at the scene of the assault that may be used during prosecution. Further to this the Garda will record the following:

- The day, date, time and place of the incident;
- Detailed description of the occurrence, including injuries, with indication of corroboration if any;
- Name and address of the victim/ complainant and alleged offender and the relationship between both;
- The existence or otherwise of a Safety/ Barring/ Interim Barring Order/ Protection Order;
- Name and address of any witness;
- Physical and emotional condition of alleged victim and alleged offender;
- Physical and emotional condition of a child present;
- The condition of the premises.

The investigating member will also take a statement of complaint from the victim, and a statement from witnesses (where available) as soon as possible.

As regards entry to a private dwelling, if there is evidence of an attack or calls for help from individuals inside the premises, entry will be made. In all other cases where entry to the premises is denied by the alleged offender, the Garda will ask to see the alleged victim before departing the scene. Justification must be proved that entry to a dwelling without warrant was in defence of “life and limb of a person”.

Article 40.5 of the Irish constitution protects the inviolability of a dwelling and only in exceptional circumstances, such as the life of a victim at risk, can this right be breached, even by the Gardai. The Garda Policy on the Investigation of Sexual Crime, Crimes Against Children, Child Welfare (2010) does explicitly lay out the investigative procedures to be followed in these cases<sup>6</sup>. The policy warns that inadequate action by the Gardaí may confirm the aggressor’s perception of invulnerability. Gardaí are advised to be aware of their body language, remarks etc. when dealing with victims of sexual

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<sup>6</sup> Available online through this weblink: <http://www.garda.ie/Documents/User/WEB%20Investigation%20of%20Sexual%20Crime%20Crimes%20Against%20Children%20Children%20Welfare.pdf>





abuse. The following has been extracted from the policy and details the exact procedure to be undertaken by Gardaí attending to a case of sexual assault or rape.

“To this end, the first member to respond and investigating members will take note of the following:

- Time and date of complaint
- Full particulars of the complaint
- The general state of the victim - signs of mental shock or distress, state of hair, etc.
- Any evidence of injury or marks, intoxication or drugs
- The state of clothing - torn or disarranged; buttons or jewellery missing; stains of mud, earth, blood or semen on clothing
- Detailed description of the scene
- The member dealing with the victim should not have physical contact with any suspect prior to forensic samples, clothing and so on (other items) being taken from the victim or suspect for fear of cross contamination of vital forensic evidence
- Where refreshments have been requested members should be mindful of the fact that evidence could be lost from the mouth or surrounding area
- If there is a delay in getting to the medical examiner, consider using the Early Evidence Kit. District Officers will ensure the availability of such kits in all stations and ensure that they have not passed their expiry date.” (An Garda Síochána, 2010).

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It should be noted in relation to the investigation of both sexual and non-sexual crimes of domestic violence, Garda policy is to take a full formal statement of complaint from the victim as soon as practicable.

## **(2) Later Stages of the Investigation:**

**Arrest: Proactive Approach:** Garda Domestic Violence Policy states that where there are reasonable grounds for arrest and a power of arrest exists, an arrest should be made, and the victim should not be asked whether the perpetrator should be arrested. Arrestable offences generally are those carrying a penalty of five years imprisonment or more. They also include breaches of Domestic



Violence Act orders (barring/safety/protection orders). It will be seen that they include most other offences listed above.<sup>7</sup>

**Bail:** If there are reasonable grounds to fear that the victim may be subjected to harassment and/or intimidation by the perpetrator, Garda policy is to object to the grant of bail by the Court. If conditions of bail are imposed, Gardai should encourage the victim to report any breach of bail conditions by the perpetrator.

**Note:** In Ireland, neither the Director of Public Prosecutions nor the Courts Service has any role in the investigation stages of a case of any kind (not just domestic violence cases).

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<sup>7</sup> Note that the Garda Inspectorate Report on Crime Investigation (2014) discloses very low levels of arrest vis a vis levels of reported incidents of domestic violence (287 arrests from a total of c 11,000 reports). It may be accessed online via this weblink – see Part 6, pp 38-44 inclusive. [http://www.gsinsp.ie/index.php?option=com\\_docman&task=cat\\_view&gid=33&Itemid=152](http://www.gsinsp.ie/index.php?option=com_docman&task=cat_view&gid=33&Itemid=152). This Report also details some failures to record domestic violence incidents appropriately so that some are “no-crimed” inappropriately, to supervise d v investigations, to conduct repeat visits to the victim as required by the Policy, in particular

## Victims' protection mechanisms/practices

This section is subdivided into two broad headings, first of all a comparative analysis of risk assessment procedures and tools available to the various statutory agencies involved in the criminal justice system, and second, a summary of current protection measures afforded to victims at each stage of the criminal justice process by state agencies and NGO's. This second part concludes with a section on referral practices and inter-agency collaboration to assist victims of domestic violence as they progress through the judicial system. Note that the role of the Director of Public Prosecutions in protecting victims of crime is not extensive in Ireland (victim protection throughout the criminal justice process is treated as being the responsibility of the Gardaí, the Courts, and the relevant NGO's primarily).

### (a) Risk Assessment Procedures available within the judicial system in Ireland

Risk assessment has been established as a vital step in the protection of individuals from continued and repetitive domestic abuse. It is now acknowledged that serious or fatal assaults may be predicted if the established risk factors are identified in a domestic abuse situation. Many argue for the absolute necessity of conducting risk assessments on any perpetrator of domestic violence, especially in the criminal justice system in order to protect victims and deter further violence. A number of risk assessment tools have been empirically tested and are in use by professionals in the justice systems, domestic violence services, social work service, health services and probation services of other jurisdictions. Despite the general consensus that risk assessment can be extremely useful in the protection of domestic violence victims, a prescribed risk assessment tool for domestic violence is in operation in only one justice system agency in Ireland, the Probation Service. Both the Gardaí and HSE Social workers are advised to be vigilant of risk factors; however they are not systematically trained in the use of any specific risk assessment tool for domestic violence. However, the Gardaí and the Probation Service have been trained together in and are using the Risk Matrix – 2000 and the Stable and Acute 2007 (Harris) Risk Assessment Tool, to assess the risk posed by convicted sex offenders. Neither the Courts Service nor the Office of the Director of Public Prosecutions use risk assessment tools in the case of domestic violence.

In a review of risk assessment procedures, Murphy and McDonnell (2008) recommend that systematic risk assessment procedures be developed and conducted by all relevant services with all



clients. This should include the development of protocols to manage the risk detected. Consideration should be given to introducing legislation to ensure compliance by all service providers with such risk-assessment procedures.

### *Existence of common/different tools used by different judicial system professionals*

Victims of domestic violence present with a vast array of needs to a vast number of agencies in the medical and social service system. While domestic violence is a multi-sectoral and multi-dimensional problem, there are core factors in any effective response – information on services available, informed services, high standards in service delivery and interagency coordination and cooperation (COSC, 2010). The Irish National Strategy on Domestic, Sexual and Gender Based Violence 2010 - 2014, emphasised the value of a multi-agency response to domestic violence and stressed that a key to this approach was information sharing between agencies, setting up mechanisms for monitoring and evaluating programs and policies. However, an ongoing review of the Strategy has shown that interagency work and programs for use have not been developed to their maximum potential.

#### **Probation Service**

Where a person has been convicted in the criminal courts of a crime involving domestic violence and awaiting sentencing, the probation service is tasked with analysing the risk of the offender to reoffend and report back to the court. The Probation Service policy on domestic violence says that Probation Officers must have knowledge of the risk factors associated with domestic violence when discussing a case with an offender.

If an officer has received training, they must carry out the Spousal Assault Risk Assessment (SARA). The probation officer must focus on all risk factors but in particular the offender's attitude to the victim, the level of awareness of the impact of the crime upon the victim, the degree of remorse and the victim's perception of risk (if available). Upon detection of risk factors the officer must share his findings with the victim in a sensitive and supportive manner. The presence of risk factors and the need to manage such risks will also be shared with the offender.



The assessment will indicate the level of risk present and the intervention required. The findings of the risk assessment must be included in the proposal/ conclusion of the report to the court. An outline of a risk management plan will be included in the proposal of the report.

If an offender is at a medium to high risk of reoffending and is in denial of this risk the recommendation from the probation service is that this individual would be unsuitable for supervision in the community.

Offenders who have been identified as at high risk of reoffending, and acknowledge their offending with a proven commitment to rehabilitation, the policy advises that there should be consideration of a referral to a perpetrator programme. The referral will assess the suitability of the offender to the programme.

Where there has been a low to medium risk of domestic violence reoffending and there is not a perpetrator programme available, that individual will be recommended to engage with probationary supervision using one to one interventions (The Probation Service, 2009).

#### An Garda Síochána

The Garda policy on domestic violence currently does not contain any specific process for carrying out risk assessment, despite noting that the victim may be at risk of further harm if the offender is allowed bail. This absence of risk assessment procedures in the Domestic Violence Policy was identified in the Garda Inspectorate Report on Crime Investigation<sup>8</sup>, and was a key action identified under their general recommendation for change<sup>9</sup>, which reads as follows: ***“Recommendation 6.18: The Inspectorate recommends that the Garda Síochána, working with Cosc and key strategic partners, implements victim-centered policy and good investigative practices in Domestic Violence (DV)... To achieve the above recommendation, the following key actions need to be taken: [among others] Implement a risk assessment process that is completed at all DV incidents [...].”***

The National Domestic Violence Intervention Agency<sup>10</sup> (NDVIA) in collaboration with the Gardaí, Probation Service and the Courts developed and piloted an intervention model which contained risk

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<sup>8</sup> cited above (2014), Part 6, pp 38-44

<sup>9</sup> at paragraph 6.18, p 44

<sup>10</sup> The National Domestic Violence Intervention Agency was established by the Irish Government in 2003 under the aegis of the Department of Justice, Equality and Law Reform. The agency was established on a pilot basis with a remit to coordinate the work of the Gardaí, criminal justice system, health services and support groups so as to ensure the safety of victims and the progression of perpetrators through appropriate rehabilitation programmes. However, the agency closed in 2007 due to a lack of funding (Kearns et al., 2008).

assessment tools, Garda incident checklists and in-depth referrals mechanisms. This work was however discontinued and the model never rolled out when the NDVIA closed due to funding shortfalls (NDVIA, 2007).

Garda policy on investigation of sexual crime, crimes against children and child welfare (2010) states that Gardaí must be trained in the use of the Risk Matrix 2000, and some also in Stable & Acute 2007. The RM 2000 is a statistically derived risk classification process intended for use with male offenders over the age of 18, who have been convicted of a sex offence. The policy states that there must be an adequate number of Gardaí trained in this risk assessment in each division, and that Gardaí who are not trained should not participate in the use of this risk assessment tool. After the risk assessment form has been completed the Divisional Inspector has the responsibility of monitoring the offender in their division and devising a plan aimed at managing the risk posed by the offender.

#### Health Service Executive

The Health Service Executive (HSE) is the national health agency, who up until January 2014 was responsible for domestic violence, sexual violence, and child protection support services.

The *HSE Practice Guide on Domestic, Sexual and Gender Based Violence* directs staff to perform a risk assessment on any family where there may be domestic violence detected. However the guide does not provide any indication as to what risk assessment tool is recommended, but it does provide a list of danger indicators. If they are present, the family should be referred to a Children and Families Social Work Service. There a child can be assessed for the impact that the domestic violence has had on them.

It is unclear from the guide whether this risk assessment is to be carried out in regard to the child or the mother or both their levels of risk. The guide does not provide a process for referral for the mother if she has been deemed at high risk.

### *Protection measures/procedures available within the judicial system*

Protection mechanisms available to victims who report intimate partner sexual violence to the Gardaí include: at the point of first intervention in a domestic violence incident, every effort should be made to include a female Garda in the investigation. The assistance of the Ethnic Liaison Gardaí

should be considered when cultural issues arise. In practice, sometimes a female officer or Ethnic Liaison Garda is not available as a first attender at a domestic violence incident.

Under the Garda Domestic Violence Policy, Gardai must provide a domestic violence victim with information about the nearest available support services (e.g. refuge, DV support service, rape crisis centre, etc). They must also provide the victim with information about any Domestic Violence Act orders which may be available to them. As indicated under the heading on Investigation, Gardai must use powers of arrest proactively to protect victims of domestic violence and also ensure that where there is a real risk of intimidation and/or harassment, they do object to bail being given to the perpetrator pending trial.

Specialist Victim Interviewers for victims of a sexual or other violent crime and designated interview suites are available if such victims are under 14 or have an intellectual disability or mental illness. Both specialist Gardaí and interview suites may be and often are, used for victims of sexual crime over the age of 14 and without any special intellectual disability or mental illness. Interviews with victims under the age of 14 and/or with victims with an ID are routinely video-recorded, and these recordings may be used as evidence at trial. However, domestic violence victims are not always afforded this kind of protective measure, although the legislation does allow for it where there is an allegation of physical violence.

NGO support for victims of crime, including domestic violence and sexual violence crimes, is available by way of accompaniment at the Garda interview stage from specially trained volunteers. This is a Government funded programme which is administered by victim support organisations around the country. The same programme also funds specialist domestic violence professionals, to accompany domestic violence victims to Court in relation to the Domestic Violence Act and where necessary, other family law applications and criminal court appearances as witnesses. Victims of sexual violence also have the same supports available to them (also funded by the State).

### **Role of the Director of Public Prosecutions in protecting victims of domestic violence pending criminal trial**

Under the Victims Charter and the Guidelines for Prosecutors, the DPP will consider the victim's views in deciding whether to prosecute in an appropriate case, and will also review a decision not to prosecute on request by the victim. A meeting with the prosecutor and Garda in the case can be



arranged pre-trial for the victim, but under the Irish system, none of the evidence may be discussed with the victim. Also, the DPP will consider carefully any request from the victim to consider appealing any sentence which she considers to be unduly lenient. These commitments apply to all victims, not just victims of domestic and/or sexual crime.

## **The Courts**

### **Civil orders**

The protective orders set out above under the Legal Framework heading, were introduced through the Domestic Violence Act 1996 to provide individuals experiencing domestic violence with a civil remedy to protect themselves from further abuse by the perpetrator. More details can be found above under that heading<sup>11</sup>.

### **Other Supports at Court:**

The Court Services of Ireland maintain that the following facilities are available to victims throughout the judicial process, with the aim of improving their experience and protecting victims from further traumatisation.

- waiting rooms are available in almost all refurbished courthouses and also in a number of other courthouses;
- A dedicated victim suite of four rooms and reception area is available within the Criminal Courts of Justice in Dublin;
- Where possible, rooms will be specially set aside for victims in all future refurbishment projects;
- In trials of sexual crimes, evidence may be given by victims under 17 OR with an intellectual disability, at court by way of a video-link as a matter of routine, and in any other case, where the judge gives permission;

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<sup>11</sup> Note: The recently published Garda Inspectorate Report on Crime Investigation (2014) referred to above, found that “there was a clear difference in the service provided to victims where a court order was in place to protect the person and where no such court order existed. In cases with an order, a Garda was more likely to arrest for breach of the order. In cases where a DV crime had clearly occurred, but where there was no court order, there was limited evidence of positive action and in most cases, victims were given advice about how to obtain civil court protection orders. Even when a criminal offence was committed, often no arrest is recorded. In many cases, Gardaí reported that victims are often unwilling to make a statement of complaint and this clearly impacts on Garda action” (page 41, Part 6 GSI CI Report 2014, see previous footnotes for weblink)



- Video link facilities are available in a number of courtrooms – subject to order of the Court; these may be used by vulnerable witnesses when they are giving evidence.
- reserved seating is available for the family of the deceased in murder and manslaughter cases at Central and Circuit Criminal Court hearings, by prior arrangement;
- Liaison officers are within each of the courts offices – these officers are the first point of contact for inquiries by victims. Liaison officers can arrange access to victim rooms, where available, reserve family seating in murder and manslaughter cases, and organise advance visits to courthouses. They can also provide contact details of voluntary organisations that offer support to crime victims; and
- Separate family law sittings take place at all major court venues – urgent cases, such as an application for a protection order, can still be heard at other times as well.
- The Courts Service has also committed to providing an interpretation service in the court room.
- The Commission for the Support of Victims of Crime, a voluntary panel appointed by Government, dispenses money each year to fund specialist domestic violence professionals, to accompany domestic violence victims to Court on Domestic Violence Act and where necessary, other Family Law applications and criminal court proceedings.
- The same organisation also funds NGOs to administer an accompaniment scheme whereby specially trained volunteers can accompany victims to court in sexual violence and other trials.

### *Existing formal referral procedures involving the criminal justice system and victim support services*

#### **Garda Síochána**

According to An Garda Síochána Domestic Violence Policy it is imperative that victims are made aware by the attending officer of any relevant voluntary or statutory service where the victim may receive further support. The policy notes the importance of liaison between An Garda Síochána and external agencies to further develop Garda understanding of domestic violence.

Because of Data Protection legislation concerns, statutory agencies are usually unable to provide information on victims of domestic violence directly to victim support services, thus no automatic



direct referral procedure from statutory agencies to local support organisations is in place. However, such referrals may be made with the consent of the victim.

Accordingly, there are few formal referral procedures involving the criminal justice system and victim support services in widespread use in Ireland currently. Referrals up to this point have been made on a case-by-case basis; by the Gardaí or court staff to domestic violence support services and these processes usually vary from district to district. The Garda Policy on the Investigation of Sexual Crime, Crimes Against Children, Child Welfare (2010) does lay down referral protocols to rape crisis centres<sup>12</sup>, provided the victim consents. Gardaí are advised to liaise with other services as long as the consent of the victim is obtained.

A report by Cosc (2011) which mapped the provision of domestic and sexual violence services across state and non-state providers found that there were low levels of co-ordination between state and non-state services and at an inter-state level. However, the research also found that there were high levels of co-ordination between non-state service providers.

The core pillars of specialist domestic violence service provision include refuge/transitional housing, children's services, information support and advocacy, accompaniment, referrals, helplines, group support, counselling and training. A key aspect of all frontline work in relation to domestic violence is support and advocacy. Domestic violence support services have been working alongside the court services around the country, building relationships and developing referral procedures between themselves.

During a consultation with SAFE Ireland member services, participants were asked to complete a survey where they were provided with a list of the key agencies working on domestic violence issues and asked to identify which ones they were already engaging with and were either receiving or making referrals to. The majority of services around the country are fully engaged with the Gardaí, GP, Social Work, and Community organisations. The level of engagement decreases slightly with services such as Housing Services, Disability Services, A&E services, Counselling Services, Rape Crisis Centres and Drug/Alcohol Services. Feedback from the survey revealed that the majority of organisations and domestic violence services rely on informal protocols and personal relationships

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<sup>12</sup> See para. 10.9.4

when making/receiving referrals. The informal mechanism can often be preferred because it avoids too much red tape and delay which is crucial when dealing with high risk cases of potential violence and abuse.

In an evaluation of a pilot of one such model developed in Dolphin House demonstrates the value of cooperation between the NGO specialist dv service providers<sup>13</sup> and the Court services. The pilot of the *Dolphin House Support and Referral Service* ran in 2011, is a partnership between three domestic violence services in the Dublin area and the courts service. The support and referral service is located in the courthouse, and provides women with a drop-in service, where they can receive information, advice and referral to a domestic violence support service, or other relevant service. In other parts of Ireland, strong working relationships between the local domestic violence service and the courts services have resulted in accurate information been given to the victims and appropriate and timely referrals being made to the specialist support service. These practices are not however established consistently across the country and are reliant on the personnel in each of the respective organisations, rather than on explicit court service policies.

The scope of inter-agency co-operation was varied across the country. There are a lot of agencies and potential organisations that could work together to improve co-ordination and collaboration at a local level. Perhaps exploring the initiatives developed by domestic violence service providers, and the formalisation of such initiatives could result in more consistent multi-agency responses to the problem.

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<sup>13</sup> Includes Women's Aid in Dublin, Dublin 12 Domestic Violence Service and Inchicore Outreach Violence Against Women Centre.



## State of the art regarding victims' needs and victims' rights in Ireland:

### *Existing research on victims' needs*

Recent years have seen an increase in research on domestic violence in Ireland. The nature of domestic violence; the needs and experiences of its victims, women and children; and the legislative and policy context have been explored both by statutory agencies and non-governmental organisations.

#### ***The needs of domestic violence victims in the legal system***

Kelleher and O'Connor (1999) examined the effectiveness of the civil and criminal justice systems' response to domestic violence in Ireland explored whether or not the remedies available to victims were sufficient in protecting them. The study highlighted at the time that the pro arrest policy was working well but as a large no of women did not proceed with criminal prosecutions. They highlighted how *"women need to feel safe and need to be supported when they decide to take action in relation to domestic violence from male partners"*<sup>14</sup>

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In order to support victims needs Kelleher and O'Connor (1999) recommended that

- Domestic violence legislation be amended – eligibility criteria should be extended
- Improve the recording practice in civil applications
- A support service for women within the courts should be put in place
- Gardaí should carry out an interview with a woman when attending a scene of domestic violence; carry out a risk assessment; and more information should be recorded on the DVSA (1) Form that Gardaí complete when attending a call out
- All Gardaí should receive training on domestic violence, sexual assault and rape

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<sup>14</sup> Kelleher, P and O'Connor, M. (1999) p 168 *Safety and Sanctions: Domestic Violence and the Enforcement of the Law in Ireland*. Dublin: Women's Aid.



- Special court hearings should be allowed where bail is requested but Gardaí believe that there is a risk of further harm to the victim, where a judge would call for a more detailed risk assessment to be carried out
- Judges need full information on the history of violence of the respondent, past orders applied against the respondent, breaches of such orders and the extent to which the safety of the woman is at risk. The Probation and Welfare Service should provide this information to the court, in full consultation with the applicant
- Judges should be informed on domestic violence research and prevalence
- Court staff and legal practitioners must be trained on domestic violence
- Inter-agency co-ordination is essential between the Gardaí, the Probation and Welfare Service, the Judiciary, the court service, medical and health personnel and the support services provided to women
- Reform of the family law courts to include: the establishment of regional family courts; providing adequate facilities to ensure privacy and safety; the appointment of judges who specialise in family law; permitting women who so wish to give evidence by video, immediate access to legal advice and legal aid for all applicants and respondents
- An integrated domestic violence intervention project be piloted

Research published by SAFE Ireland (2014), aimed to establish what women identified themselves as gaps in the Irish legal system. As a result, an insight into the needs of victims throughout the legal trajectory is gained. The voices of the women are expressed clearly in the research and for some participating in the research, it was the first time they had really been listened to. The research found significant gaps throughout the system, which result in a failure to fulfil victims of domestic violence needs when they come forward for help. The research found consistent failings in the implementation of existing laws, understanding of risk factors across justice professionals, poor collection of evidence, poor investigation methods and a significant lack of risk assessment and coordination across Justice agency responses. Based on the research findings recommendations have been formed to improve the situation and protect the rights of the victims of domestic violence.

SAFE Ireland heard that women learn that society and the system as a whole treats the abuse as separate to the other interconnected areas of their lives and that they should be interconnected under the protection of the family law system – issues such as financial orders on separation or divorce, child access and custody and so on. Domestic violence is a multifaceted problem and thus

warrants a multifaceted and multiagency response. Women explained the multiple barriers they faced when leaving the relationship, not only involving the legal system but other state agencies who should have been able to support women.

Procedural rules should be developed to ensure that the voice of the woman is heard and that agency remains with the victim. Participants in the research cited numerous occasions where their voice was silenced, removing any opportunity to express their needs. Women placed the most value with the court accompaniment. Women reported that it is simply having someone with them who believes in what they are saying that can reduce the overwhelming feelings of stress and anxiety. Having a support worker accompany a woman to court may increase her confidence, decrease her unease of seeing the perpetrator and reduce the overall nerve-racking experience. Kelleher and O'Connor (1999) similarly found that women often do not proceed with an application to the court if they lack personal support. SAFE Ireland recommends the formalisation of the role of specialist DV advocates to ensure that victims have access to an advocate throughout their process of seeking protection and justice

Training on risk factors and risk assessment should be implemented across all sectors dealing with domestic violence. The research revealed multiple instances where obvious risk factors were missed or ignored by actors in the legal system and left women and their children at further risk of harm. The capacity to assess for risk is vital to improving help seeking and safety outcomes for victims.

SAFE Ireland also recommends that in order to satisfy the needs of victims of domestic violence, all relevant information must be made available to them at their first point of contact with the system; consistent and 24 hr access to state and non-state supports should be made available to all women and children; the mechanisms for granting out of hours emergency barring order should be put in place and an urgent review of the Legal Aid fees must be conducted as research revealed the difficulties women faced in paying these.

### ***Victims' practical needs to access immediate safety – Social welfare and Housing supports***

In 2013, SAFE Ireland completed a *Report on the impact of the Habitual Residence Condition on women seeking protection and safety for themselves and their children from a domestic violence perpetrator*. This research consultation was commissioned in order to collate and document the

range of issues that were emerging from SAFE Ireland members experiences relating to the Habitual Residence Condition (HRC). The term “habitual resident” generally conveys a degree of permanence – meaning that a person has been here for some time, from a date in the past, and is intending to stay for a period into the foreseeable future. A person must satisfy certain criteria to be seen as a habitual resident, in order to make an application for the following: Blind Pension, Carer’s Allowance, Child Benefit, Disability Allowance, Domiciliary Care Allowance, Guardian’s Payment (Non Contributory), Jobseeker’s Allowance, One Parent Family Payment, State Pension (Non Contributory), Supplementary Welfare Allowance, and Widow(er)’s Non Contributory Pension.

Overall the research found that the HRC places unacceptable barriers for women seeking protection and safety from an abusive and violent perpetrator with whom they have an intimate relationship. Women often require welfare payments and housing supports as part of a range of responses to meet their needs as victims of domestic violence. Women may not meet the right to reside criteria through no fault of their own. Her partner may have refused to re-apply for her visa, may withhold information from her or may seize and hold her travel and visa documents. A woman may not meet the HRC requirements and therefore be excluded from accessing Child Benefit, One Parent Family Payment etc. This can lead to a situation where she is unable to apply for Rent Allowance. Situations where the HRC is being manipulated by abusers to retain control in a relationship emerged in this research consultation. A lack of English comprehension, family and support networks and familiarity with immigration and social welfare systems in Ireland, is also being leveraged by abusers to further marginalise their victims.

The change to housing legislation, Housing (Miscellaneous Provisions) Act 2009, was also found to have adverse effects on women facing homelessness because of DV. As a result of the changes Rent Allowance payments have been reduced, deposits are harder to get from Community Welfare Officers, and overall payments from the Department of Social Protection have decreased. Because of this some women are simply unable to afford rent. Women may not be able to get a reference from a previous landlord, leaving them stuck in refuge. In some counties the requirement to be resident or renting in the county for six months prior to receiving rent allowance is very problematic for the services and has found to be significantly affecting women who need to be able to relocate to another county for safety.

There are inconsistencies in the procedures across Ireland, which are causing serious problems for women and children seeking safety and refuge from violence. Some counties require that a woman is



actively pursuing a legal separation before she is entitled to receive rent allowance. This is problematic for a number of reasons, firstly it may force her down a route she is not prepared to take yet, and also waiting lists for legal aid may delay the entire process. A woman presenting to a refuge from outside the county where the refuge is located is exceptionally problematic as they may not be able to establish a centre of interest in the new county and apply for rent allowance.

There are a number of extremely worrying trends emerging within and in conjunction with this research consultation concerning the effects of the HRC and housing legislation changes;

- Women are being forced to return to live in abusive relationships.
- Women and their children are being forced to remain in abusive relationships.
- Women are staying longer in refuges.
- As a result of longer stays, refuges are experiencing challenges in maintaining spaces to accommodate women presenting to them. Therefore, more women are being turned away from refuges due to a lack of bed spaces

From the findings SI have issued recommendations to improve the situation to support women moving on from violence:

- Acknowledge and resolve the hardship that the intersection of meeting the HRC, social housing application criteria and in some situations verifying residency status, is causing for some women and children experiencing domestic violence.
- Allow for exemptions to the HRC where domestic violence has been identified. Reports from bona fide services including domestic violence support services should satisfy evidence of the domestic violence.
- Allow for exceptions to the current requirements for accessing social housing, or amend legislation, to enable uniform, suitable and timely responses to housing needs for victims of domestic violence where the obligation rests with the local authority to provide a range of appropriate and safe accommodation options.
- Respond to the undersupply of refuge provision in Ireland.
- Domestic violence service referrals are accepted as legitimate, genuine and reliable for statutory services including social welfare payments and housing needs assessments.

### ***Ethnic minority women's needs***



The Women's Health Council (2009) highlight the incredible difficulty that some ethnic minority women face because of the intertwined relationship between gender and race. The report sheds light on the difficulties these women face when attempting to access services, there may be a language barrier, they may not have the resources e.g. money, transport etc. to access these services, they may be so socially isolated that they do not know about the services available, they may fear police or authorities, or there may be issues with their visa papers that prevents them from availing from support. Women from ethnic minorities also face the risk of being victimised again when accessing services, through racism from other service users, or potentially providers.

The research carried out did find that those women who accessed the services were happy with the support they received and spoke highly of the service (WHC, 2009 p.23). Evidently the most important aspects of service for ethnic minority women were being listened to in a non-judgemental way, court accompaniment proved to be invaluable especially to those women who cannot speak English, there was also high value placed on the information and advice received and the help received with childcare. However, changes that were needed were identified by the women, such as education of service providers surrounding issues of cultural diversity and also the need for translators that have knowledge of gender based violence to be available for these women. Service providers need to be inter-culturally competent and understanding of the certain contexts that women are living in, in order to deal with the complexity of their situation and to be able to grasp the extra difficulties that these women face in accessing services.

Allen (2011) revealed similarities between the experience of migrant women and the experience of Irish Traveller women when accessing domestic violence services; the social isolation, discrimination, fear of police or social workers, little access to resources are some of the issues that are common between all ethnic minority women, however Irish Traveller women are also faced with unique risk factors that can be attributed to the specific culture. The Catholic religion is an integral part of their culture; this is reflected in their views on marriage. Marriage within the Irish Traveller community is seen as indissoluble, making it extremely difficult for a woman to leave an abusive relationship; this may be because of her own views on marriage, her family's view or the wider community (Allen, 2011). The community in which Travellers live is extremely close knit and often the women will live in close proximity to the husband's family, which also makes it enormously tough to report abuse or leave the relationship (Allen, 2011).

Another issue that prevents Traveller women from contacting services is fear. There has been a huge amount of stigmatization of the Traveller community by the wider public, which leads to women experiencing abuse feeling extremely isolated. Afraid to contact authorities results in difficulties attaining a barring order, leaving women in immediate danger (Allen, 2011, p. 873). The *All Ireland Traveller Health Study* also raises the issue that violence against women is not a Traveller issue but a gender one; they also highlight the difficulties women face in accessing support (UCD, 2010).

SAFE Ireland's outcome evaluations *Safety and Change* (2009) and *Lifelines to Safety* (2011) also explored the needs of Traveller women as they accessed refuge and other specialist support services. Findings from the evaluations conducted reveal the unique needs these women may have when presenting at a service. *Safety and Change* (2009) showed that on entering refuge significantly more settled Irish women needed support with housing/ accommodation; healing emotionally; making decisions about their future; and emotional support for their children. Slightly higher percentages of Traveller women than settled Irish women identified support needs in relation to staying safe and gaining protection from a partner/ ex- partner. On leaving refuge there was very little difference between settled Irish and Traveller women in the degree to which they felt their support needs were met. Slightly more Traveller women said that they got all the help they need than Irish settled women in relation to a small number of safety and child related needs.

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97.4% of participants in *Lifelines to Safety* (2011) reported that they felt that support workers respected them a lot in terms of their ethnic culture, 2.1% felt some respect, while 0.5% felt none. The research also found that women wanted increased language and translation services to be made available to them.

### ***Women's needs when accessing domestic violence specialist support services***

SAFE Ireland has produced a number of research projects in recent years on the needs of women experiencing domestic violence in Ireland. Two major outcome evaluation reports on domestic violence services in Ireland have been carried out.

The first study, *Safety and Change: a national study of support needs and outcomes for women accessing refuge provision in Ireland* (2009), focused solely on the women who were accessing refuges. Women were asked to fill in a questionnaire upon entering the refuge identifying their needs and then again upon exiting, providing information on the supports they had received and the outcomes due to that support. The study was particularly designed to maximise anonymity and



access to the evaluation for women who were staying in the refuges. This was to ensure that all women had an opportunity to participate and the conditions were created to remove any fear that negative feedback would affect their relationship with the refuge. The study revealed that upon entering refuge, women's top priority needs were: staying safe (72.9%), information and support with housing (63.3%), making decisions about her life (63.8%), healing emotionally (62.8%) and understanding the impacts of domestic violence (59.9%). Out of these women 100% of the women had been kept safe, 84.7% of women seeking information and support with housing received that support, 88.8% of women needing support with emotionally healing received services for that, 91.8% of women looking for help understanding the impact of domestic violence had received that help and 85.1% of the women support with making her own decisions about her life received support. These are just an example of the supports that are offered to women in refuges around the country, the changes observed in the women's lives as a direct result of receiving these supports were also identified. "Overall women felt that accessing the refuge, had significant positive impacts in relation to their safety" (SAFE Ireland, 2009, p. 38).

In SAFE Ireland's second study *Lifelines to Safety, A National Study of Support Needs and Outcomes for Women Accessing Domestic Violence Services in Ireland* (2011), SAFE Ireland identified women's needs when accessing a range of domestic violence services, the degree to which they received support and the changes or outcomes evident in their lives as a direct result of receiving the services. Twenty nine domestic violence organisations who provide non-accommodation support services took part in the study which included support and advocacy, information, support groups, transitional housing court accompaniment and children's services. Similarly to the previous study carried out by SAFE Ireland, the majority of needs women identified were catered for and women received the support they were seeking. The outcomes for the women receiving services were also very positive, with a large majority of women again, experiencing significant positive changes in their lives.

In 2011 the Mid-Western Regional Advisory Committee on Violence Against Women commissioned research to be carried out by Dr. Patricia Kelleher to enable women survivors of domestic and sexual violence to deliver commentary to the Mid West Regional Advisory Committee by way of a service users group, as to their experiences of Violence Against Women Services. The study was small scale and focused on the firsthand accounts of women survivors. Both the nature of the abuse women experienced was explored as well as the women's thoughts on the services they accessed. Services accessed included non-governmental and statutory agencies.



Similar to SAFE Ireland's outcome evaluation findings the study revealed that there is a high level of satisfaction among women with specialist Violence Against Women (VAW) services. Women value highly the combination of practical assistance, effective referral, an assurance that the violence is not their fault, and the fact that staff members understand and prioritise the safety of women and children. This empowering approach of staff helps women to regain self-esteem and confidence. However participants did note that access to support groups can be problematic for women living in rural areas.

The capacity of medical personnel to recognise domestic abuse when their patients present varies and impacts on their ability to respond appropriately and provide women with relevant information on specialist services was repeatedly noted. Women felt that Gardaí need to listen to them, as they are often best placed to assess their own safety. Evidence from women suggests that in some instances they could have been protected from further harm if the Gardaí responded to the call-out more promptly, arrested the accused and removed the accused from the residence. However women were unsure of the precise powers of the Gardaí to arrest and prosecute.

In regard to the Court system women generally reported that court facilities were inadequate. Women also reported that the discretion of the judges leads to significant variation in the way in which judges interpret the domestic violence legislation. Also some felt that judges do not understand the complexity of a domestic violence relationship.

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Accommodation was also found to be an issue of concern for women. Participants described the difficulty of securing accommodation when leaving an abusive relationship. Women who may have joint ownership of a house or whose spouse may own a house may not put their name on a list for local authority housing<sup>15</sup>. There are also significant delays applying for rent allowance for the private sector as Garda clearance is now necessary and this may take up to 16 weeks.

The report then goes on to make recommendations to respond to the needs of victims of dv identified in the research. All relevant agencies and actors must be informed and have a consistent understanding of violence against women, as well as the unique barriers each woman faces, to sufficiently respond to their needs. The research also recommends that effective referral procedures to rape crisis centres, specialist domestic abuse support services and other appropriate services

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<sup>15</sup> Note however that since September 2014, it is now legally possible for local authorities to provide housing assistance to women who are joint owners of the matrimonial home provided they fulfil the other criteria for that assistance



should be in place, as well as information sharing with the victim at their first point of contact with the legal system.

The recommendations again highlight the important role victim support services play in serving the needs of victims and insist that these services be proactively supported in carrying out their work. Conditions in family law courts should be addressed to ensure privacy and safety for the victims. Issues with housing and welfare payments were highlighted in the research. It is recommended that clear policy must be put in place to give women who are leaving abusive relationships an entitlement to be listed on local authority housing lists and to be eligible for rent allowance in the private rented sector. Applications from women escaping violence for exceptional needs payment and supplementary welfare payment should be prioritised.

The unique needs of women with disabilities should be understood and the complexity of their situation acknowledged. It is important that there be ongoing consultation about disability equality. Similarly there is a call for acknowledgement of the specific needs ethnic minority women may present with. Current policy on immigration needs to be reviewed, which would allow women with dependent immigration status to be given independent status in the context of an abusive relationship and domestic violence be considered in any welfare payment decisions. A consultation process with Traveller women should be commenced to identify ways in which their unique needs can be provided for.

Most recently the Mid-West Regional Advisory Committee on Violence Against carried out a report on service users' experience of the 'Speak Up Cafe'; three consultative forums which allowed service users to tell organisations how their services could be improved (Sullivan, 2014). The services included the Gardaí, the Court Services, Legal Aid Board, Legal Services, Hospital Social Work Department, Child Protection Services, Housing Services, Mental Health Services, Citizens Information Services, as well as a number of NGOs operating in local communities. The organisation represented at each of the three Speak-Up Cafés received direct feedback from service users who had attended the events.

Key themes were identified throughout the service users' feedback.

- Services should be more attuned to the needs and fears of service users; and display sensitivity.

- Service users claimed that there is a general lack of information, and that information must be made more readily available.
- All services must provide training on domestic violence to their employees.
- Service users reported significant fragmentation across agencies and found that offenders were facilitating in playing the system as a result. Respondents called for better interagency work
- Agencies should ensure that there is continuity in the services they provide.
- Service users cited the importance of easy access to services, and also note that key services should operate free phone services offering support, information and advice.
- Service facilities were highlighted as an area which needed attention.
- Services which provided accompaniment to court were seen as especially helpful.
- It was also claimed that all services should have a complaint procedure.
- Many service users had a positive experience accessing DSGV support services and very much value being listened to and having their stories validated.

Again, this report concludes with a list of recommendations based on the service users' feedback to the services who took part.

The Commission for the Support of Victims of Crime was established in 2005 to fund the victim support services and to work to provide cohesive and collaborative services to victims of crime. In 2010 the commission conducted a study into the self-defined needs of victims of crime in Ireland. The study sample consisted of a postal survey of approximately 1,050 victims of crime who had availed of a support service, in-depth interviews with 20 of these victims, a survey of 50 members of the public to determine awareness of support services for victims of crime and a telephone survey of 23 key community-based professionals and employees of community organisations (CSVC, 2010). The study did not focus specifically on victims of domestic violence but in more general terms. However, this study did see an over-representation of victims of domestic violence in their sample; thus the



findings may be quite representative of the needs identified by victims of domestic violence. 54.6% of respondents to the postal survey were victims of domestic violence.

The study focused on victims' experiences in four areas: the Gardaí; the Crime Victim's Helpline; Support Organisations; and, Court Procedures and Compensation. In conclusion to their report the commission issued recommendations, which were guided by the self-identified victim's needs extracted from the research. Victims were given the opportunity throughout the questionnaire to identify areas in which they felt could be improved on; areas which they felt worked well and mechanisms which were non-existent, which victims view as vital (CVSC, 2010).

Findings from the study revealed that those dissatisfied with Garda sensitivity were those who had experienced domestic violence, sexual violence or who were gay. Notably it was those victims of domestic and sexual violence who were least likely to contact the Gardaí for assistance. The need for specialised victim support services was found to be essential especially for domestic violence and sexual violence survivors.

One continuous thread of evidence emerging from the research is the criminal justice system's responsibility to prevent further harm to victims by repeat victimisation. It was found that in the case of domestic violence victims measures such as efficient Garda responses; speedy arrests where appropriate; information on safe places to stay; communication of decisions on bail to victims; secure victim waiting areas in court; the removal of long delays in relation to the prosecution of crime (i.e. court adjournments etc); consideration of the ways in which intimidation in the courtroom can be minimised; the proper enforcement of safety and protection orders; and the provision of information on parole and release dates, were all viewed as ways to prevent further harm (CSVC, 2010, p. 187).

The European Union Agency for Fundamental Rights (FRA) (2014) conducted an EU wide prevalence study on domestic violence which explored the needs of women accessing services, reasons for not accessing services and their satisfaction with the services accessed.

The study looked at the services women contacted for help and responses vary considerably. 21% of women went to the police; 20% went to hospital and 24% of women went to a doctor or other health care professional. Only 8% of women went to a women's shelter.

The survey then asked respondents to cite the reasons that they did not contact the police for assistance following the most serious incident of physical or sexual violence by a partner. 53% of women stated that they dealt with it themselves/ involved a friend/ family member. The percentage of women who cited this as a reason was considerably larger than the EU average of 39%. Ireland had the second highest response rate to this reasoning. The reason for such a response may be connected to the shame and embarrassment which 16% of Irish respondents cited as reason for not reporting. Similarly 22% of Irish women said that they did not want anyone to know and wanted to keep it private as a reason for not reporting compared to the EU average of 14% of women.

When asked about reasons for not contacting services other than the police, responses were similar to reasons for not contacting the police. 70% of women said they dealt with it themselves/ involved a friend/ family member. Shame, embarrassment and wanting to keep it to themselves ranked high among the reasons for not accessing other services. However differing from the previous question 7% of Irish women cited not being able to afford it as a reason compared to the EU average of 2%.

The study also asked women about the types of assistance they would have needed but did not get. 14% of women reported they did not get the information they needed from the police; the EU average for this is 6%. SAFE Ireland's research (2014) would support this as women cite lack of information from the police as problematic repeatedly. Many women are not informed of their options; the type of orders they are entitled to; how to apply for an order; what an order would mean; what a statement is; the other services which they may benefit from attending etc.

A large percentage 62% of Irish women needed moral support/ someone to talk to and they did not receive this. The high number of women who did not receive this may be attributed to the low percentage - 8% of women who access domestic violence services.

24% of women needed practical help, again SAFE Ireland's research would support the FRA study. Women presenting at domestic violence services often have a number of practical needs that they require support with. The high numbers of women who do not receive this support may be attributed to the low levels of attendance to domestic violence support services recorded by the FRA study.



## **Best Practice Standards in Domestic Violence Service provision**

SAFE Ireland in collaboration with all domestic violence has developed a national set of standards for use by domestic violence support services. The standards are based on a set of principles derived from 'The Social and Emotional Wellbeing Framework' which has been developed by Dr. Cris Sullivan<sup>16</sup>, is based on a an extensive international review of evaluations of the needs of women and children who have sought support. (Sullivan, 2012).

### ***Example of how inter-agency best practice can benefit domestic violence victims who have suffered recent sexual violence:***

Sexual Assault Treatment Units (SATU's) were set up to respond to the need for dedicated forensic examination facilities around the country to gather evidence and treat victims with specialist knowledge and understanding of the trauma they had undergone. There are now seven of them around Ireland. They all operate in accordance with an agreed set of National Guidelines, first published in 2006, revised in 2010, and about to be revised again in 2014. The National Guidelines were created and are continually revisited and revised, by a dedicated inter-agency expert committee, which includes representatives from all the principal agencies involved and which has advocated a joint, coherent, clear, victim-centred approach based on best international practice, from the beginning. It includes representatives from the HSE including a consultant medical examiner, forensic nursing representatives, An Garda Síochána, the Office of the Director of Public Prosecutions, independent legal advisers and rape crisis personnel. It meets regularly to discuss issues as they arise and agree solutions and how these should be implemented.

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## ***Best practices regarding the protection of different groups of DV victims***

### ***An Garda Síochána***

The Garda Síochána policy on domestic violence does not direct officers to engage in any specific practices to protect different groups of domestic violence victims. Overall Gardaí are advised to be aware of:

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<sup>16</sup> Michigan State University



- the nature of elder abuse,
- the added vulnerability of victims who are also disabled and
- the barriers which migrants may face in seeking help, such as distrust of the police, language difficulties, religious customs, cultural practices, and certain cultures which discourage speaking openly about domestic violence, immigration issues.

Gardaí also assure that a free translation service will be made available to any individual who may need it to ensure that they receive the same quality of service. Gardaí are advised to be mindful of the complexities of the abuse that these groups of victims may face and to also be conscious that the incident may require interagency interaction.

In relation to migrant victims Gardaí are advised to contact the Garda Racial and Intercultural Office if they require advice about any cultural issues when investigating a domestic violence incident.

### ***Courts Service***

The Courts Service have given an undertaking that a translation and interpretation service in the court room will be available by order of the court, to witnesses who do not speak English so that they can give their evidence, or to make a victim impact statement where the law or the court permits a statement to be made. This commitment is made in the 'Victims Charter and Guide to the Criminal Justice System' (1999).

## Main conclusions

This report has described the needs of victims which have been documented through a number of victim centered research reports. Consistently evident across the research described is the victim's need for information, safety, validation, understanding and effective inter-agency cooperation.

Time and time again emphasis is placed on the importance of training all relevant professionals, multiagency work, and risk assessment. The Irish government has recognised the necessity of such measures; however, this has not been seen coming to fruition in practice. The introduction of the Victim's Directive however in November 2015 may address the practice issues experienced here, as the Directive also highlights these areas as fundamental to the fulfillment of victims' rights.

Emerging from the research also is the critical role specialist domestic violence support workers play in the experience of the domestic violence victim. These roles are absolutely vital, it is clear from the research of how highly women value the support they receive from specialist domestic violence services. These roles must be formalised and recognition afforded to the major way in which they improve the experience of the victim. The recognition of this role is a recommendation made by SAFE Ireland to the Joint Committee on Justice, Defence and Equality on the issue of Domestic Violence, June 2013.

Evident from this report is that one of Ireland's major downfalls is the lack of consistency across state agencies regarding domestic and sexual violence. Most procedures that aim to improve the experience of the victims during the judicial trajectory are applied on an ad hoc basis. There is no formal procedure of referral, no formal policy on protecting domestic violence victims throughout the legal process. Procedures differ between and within agencies. However the Garda policy on investigation procedures for sexual crime is noteworthy, as it recognises the complexity of such a crime and provides Gardaí with practical guidance on investigation of sexual abuse. This example of good policy should be noted and considered.

While civil orders in theory are accessible to many victims of domestic violence to apply for them to increase protection, there is little research in Ireland that has considered their effectiveness in recent years. In addition, further legislative change is required to ensure that all DV victims are eligible to apply.

This report clearly demonstrates that there is no established standard for risk assessment across justice professionals responding to domestic violence perpetrators and victims in Ireland. There is clear need for development of evidence based practice tools which can be used by the different types of justice professionals. In addition to this an implementation plan for training and monitoring the use of these risk assessment tools needs to be developed. The achievement of this will go a long way towards increasing safety and protection for victims of DV/IPV as well as meeting Ireland's obligations under the EU Victims Directive.

Finally, the newly published Garda Inspectorate Report on Crime Investigation<sup>17</sup> underlines the critical importance of implementing structures to monitor practice, and also explain why any new strategy must include the development and use of appropriate DV risk assessment tools. As the authors of the Report put it, *"In Ireland, there is no such [formal] assessment of risk and gardaí are repeatedly dealing with the same victims. If a victim is unwilling to make a statement of complaint, there is no effective police intervention to improve the victim's safety or to provide an alternative way forward. This fails to break the cycle of abuse and results in further calls to gardaí for assistance and generates a view amongst many gardaí, that these calls are problematic. The current policy states that the investigating gardaí will call back to see a victim of DV within one month to provide an update on the investigation or to offer support in cases where there is no investigation. During focus groups, the Inspectorate identified that follow-up visits do not always happen...A revised approach, identifying repeat offences and working with partner agencies to agree practical support would bring a significant improvement in the service provided to victims and reduce the demands on front-line gardaí"* (Garda Inspectorate Report, Part 6, pages 39-40)<sup>18</sup>.

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<sup>17</sup> Available online through this weblink: see Part 6, pages 38-44.  
[http://www.gsinsp.ie/index.php?option=com\\_docman&task=cat\\_view&gid=33&Itemid=152](http://www.gsinsp.ie/index.php?option=com_docman&task=cat_view&gid=33&Itemid=152).

<sup>18</sup> See previous footnote for full weblink reference



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