



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

# In Search of Justice: Women and the Irish Legal System

## Report on Research under Workstream 2 & Workstream 3

Ireland  
SAFE Ireland



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### Note:

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# Chapter 1

## Executive Summary

### Summary of Findings – Workstream 2 and 3

The stories the victim/survivors (Stream 2) related suggest that domestic violence (DV) is rarely a one-off event, instead tending to be a pattern of ongoing events, lasting in some instances for many years. The violence does not necessarily begin at a low level and then gradually escalate; half of the participants reported that at least one of the indicators of serious threat to the victim's life were present in the very first violent incident. There is no guarantee that the violence will cease if the woman leaves and in some cases in this study the violence actually escalated. These findings demonstrate the importance of an early complaint to the Gardaí, and for the Gardaí to take that complaint seriously.

There is a certain tension with the criminal justice system whose primary *raison d'être* is the investigation and punishment of those who commit criminal offences and the motivations of intimate partner violence (IPV) victims who generally want the violence to stop rather than punish the abuser. Our findings suggest that the Garda reaction can be a bit of a lottery. Many participants offered high levels of praise for individual officers, at least as far as attitude was concerned. Many others, however, reported that some officers seemed to trivialise the issue of domestic violence. Gardaí were reluctant to gather available evidence, investigate cases and to prosecute a case without a domestic violence order (DVO). The domestic violence agencies interviewed as part of Workstream 3 made similar observations. Further, it seems from this study, that the Gardaí often fail to implement their own stated policy e.g. arresting suspects, timely gathering of evidence, referral of victims, enforcement of orders.

Domestic Violence does not usually form the basis for a criminal prosecution. Highly experienced legal professionals, interviewed under Stream 3, had very little experience of IPV cases in the criminal courts, including for breaches of orders. Instead civil courts most frequently deal with these matters under the Domestic Violence Act 1996. Most of the professional interviewees attributed the relative paucity of criminal prosecutions to reluctance on the part of victims to maintain a formal complaint. Various reasons were suggested for this reluctance: intimidation of the victim, family issues, an unwillingness to get their partners into trouble with the law. Many of the women interviewed where cases went forward for prosecution were unclear about the outcomes at court and so no findings on these matters were included.

There was little commentary by professionals on the impact of the defendant's behaviour on their practice and the trajectory of cases. Much of DV is dealt with on a case by case basis, with no inquiry into prior history of violence. Levels of intimidation were identified by all professionals as high in IPV cases, yet there is no formal risk assessment in use except for probation services. Repeat victimisation was rarely addressed despite victims' reports. There was little evidence of special measures being applied, other than interpreter services, which were criticised as inadequate. There is no requirement on judges to make a connection between Family court and Criminal court hearings.

Most of the professionals identified the need for training to sensitise professionals to the issues involved. There was recognition across the board of the importance of accompaniment for victims. All interviewees highlighted as imperative, keeping victims informed of the criminal process and showed concern that victims would have their support and protection needs met, either inside or outside of the criminal justice system. The need for improvements in deciding whether cases should be prosecuted summarily or on indictment was raised. Also, addressing repeat offending through imposing consecutive sentences where a suspended sentence for a previous breach has been violated. Use of victim impact statements was suggested in order to take into account the context of the crime and the particular injury to victims of being abused by one's partner. Overall there is an appetite to formalise some of the processes related to responding to IPV victims' needs.

It is recommended that Gardaí consistently and fully implement their policy on Domestic Violence. All agencies have a role, relevant to their stage of involvement in the justice process, to ensure special supportive measures are in place for IPV victims, including risk and needs assessments, access to information for victims throughout engagement with the justice system and anonymity in court. Training of professionals related to their contact role with IPV is essential.

## Chapter 2

### Introduction

The role of the criminal justice system is of the utmost importance and relevance regarding the protection needs and rights of victims of Domestic Violence (DV) and more specifically of victims of intimate partner violence (IPV).

The project *INASC – Improving needs assessment and victim’s support in domestic violence related criminal proceedings*, co-financed by the Criminal Justice Programme of the European Commission, aims to improve existing understanding of victim’s experiences of trajectories of intimate partner violence cases in the course of criminal proceedings and to explore how these experiences relate to individual assessment mechanisms and outcomes. The project involves five countries – Austria, Germany, Ireland, Portugal and the Netherlands – and is being jointly developed by six organisations<sup>1</sup>. The project has a total duration of 24 months (from February 2014 to February 2016).

INASC’s specific goal is the development of practice-oriented research aiming at identifying crucial aspects of supporting mechanisms available to IPV victims within the criminal justice system and of elements that influence the way victims are being supported and protected at three different levels: i) at the entrance door (law enforcement agents receiving the complaints and follow up procedures to the public prosecution offices); ii) at the enquiry stage (public prosecutors initiatives and decisions taken); iii) in court (courts procedures and final decisions by judges). Overall, the project expects its results to contribute to the national implementation of Directive 2012/29/EU on victims’ rights, namely as regards IPV victims’ needs of support and protection.

Women’s direct experiences and perceptions will be one of the major components for improving the existing knowledge on those support and protection mechanisms and the way criminal justice is responding to the victims’ protection needs. The project has also paid special attention to the practices developed by criminal justice key stakeholders and support organisations and their perceptions regarding the system’s response to the needs and rights of women experiencing IPV.

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<sup>1</sup> CESIS (coordination, PT), Dhpol (DE), IKF (AT), Safe Ireland (IE), Verwey-Jonker Institute (NL) and ZOOM (DE).

The present report will present the main findings of the national analysis performed on the content of the interviews and focus groups held with different national actors (women, justice professionals, law enforcement agents, support workers).

## Chapter 3

### The Policy Context

Domestic violence has existed for as long as there has been a domestic context, and its manifestation shows a high degree of consistency across the centuries.<sup>2</sup> The common law traditionally has not been kind to victims of crimes committed by spouses: the common law apparently permitted wife-beating for corrective purposes until the Queen’s Bench decisively rejected such a rule in 1891,<sup>3</sup> and it was only in 1990 that Irish law even recognised the concept of rape within marriage.<sup>4</sup> Today, however, there are no such anachronistic limitations on the law.

Domestic violence is not a crime as such under Irish law. Rather, the phrase “domestic violence” is applied to a particular context in which offences are committed. The Task Force on Domestic Violence defined domestic violence as “the use of physical or emotional force or threat of physical force, including sexual violence, in close adult relationships. This includes violence perpetrated by spouse, partner, son, daughter or any other person who is a close blood relation to the victim”.<sup>5</sup> This definition was too broad for the purposes of this study. The definition offered by Watson and Parsons, being confined to intimate partner violence, came closer to our needs: “a pattern of physical, emotional or sexual behaviour between partners in an intimate relationship that causes, or risks causing,

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<sup>2</sup> Foyster notes examples of women in the seventeenth and nineteenth centuries who suffered the kind of domestic abuse that remains unhappily familiar to many women today: physical striking, threats, forced confinement, separation from children and deprivation of money. Foyster, *Marital Violence: An English Family History, 1660-1857*, Cambridge University Press, 2005, at 1-2. Further, the historiography of domestic violence has demonstrated that the causes of this violence in previous centuries are identical to those that exist today: jealousy, frustration or insecurity, economic difficulties and the management of economic resources, and excessive drinking. *Id.*, at 3 (especially the sources cited at n.5).

<sup>3</sup> Blackstone, for example, noted that a “husband (by the old law) might give his wife moderate correction.” 1 Blackstone, *Commentaries on the Laws of England*, 1768, at 444. This attitude culminated in the expression of the so-called “rule of thumb”, usually attributed to Justice Buller of the King’s Bench: a husband was entitled to discipline his wife using a stick no thicker than his thumb. There is no evidence, in fact, that Justice Buller ever made such a ruling: Kelly, “*Rule of Thumb and the Folklaw of the Husband’s Stick*” (1994) 44 *J. Legal Educ.* 341; Doggett, *Marriage, Wife-Beating and the Law in Victorian England*, South Carolina University Press, 1993. Nevertheless, the law was administered on the basis that wife-beating was permitted until the Queen’s Bench rejected this view in *R v. Jackson* [1891] 1 QB 671. There, Lord Halsbury, LC, dismissed earlier precedents as “quaint and absurd dicta” that were not “now capable of being cited as authorities in a court of justice in this or any civilized country.” This was a culmination of increasing hostility by the common law courts towards assertions of physical violence by husbands towards their wives. Evidence suggests that nineteenth-century magistrates became increasingly willing to grant wives the security of the peace almost for the asking. See Doggett, *op.cit.* Further, after 1857, a wife could seek a divorce decree on the basis of cruelty if coupled with adultery. See, Divorce and Matrimonial Causes Act 1857, section 27.

<sup>4</sup> Hale, *History of the Pleas of the Crown*, 1736 (“But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto the husband which she cannot retract.”). In Ireland, section 5 of the Criminal Law (Rape) (Amendment) Act 1990 overturned this rule. In England, the House of Lords abrogated Hale’s statement in *R v. R* [1991] 3 WLR 767.

<sup>5</sup> Task Force on Domestic Violence, *Report*, Office on An Tanaiste, 1997, at 27.

significant negative consequences for the person affected.”<sup>6</sup> Most forms of domestic violence that fall within this definition can be prosecuted in the criminal courts: depending upon the circumstances, such prosecutions might be for homicide, sexual crime or for a variety of non-fatal offences.<sup>7</sup> Other forms of domestic violence covered by this definition, such as verbal abuse or economic control, do not constitute offences under Irish law.

The Irish government has established a body, *Cosc* - The National Office for the Prevention of Domestic, Sexual and Gender-based Violence since June 2007 to coordinate all governmental efforts at prevention of domestic, sexual and gender-based violence, and to work closely with non-governmental organisations in these areas. *Cosc* has now published its second national strategy to replace its first strategy which expired in 2014.<sup>8</sup> Primary responsibility for the implementation of the law and policy on domestic violence has been assigned to the Irish national police, An Garda Síochána. The Garda Síochána has set out a Domestic Violence Policy since 1996. This Policy defines domestic violence as including “physical, sexual, emotional or mental abuse of one partner by the other partner in a relationship which may or may not be one of marriage or cohabitation and includes abuse by any family member against who a [domestic violence order] may be obtained by another family member.”<sup>9</sup> The Policy goes on to impose upon Gardaí an explicit duty to fully investigate all incidents of domestic violence, and specifically recognises that such cases require “special care and attention because of the vulnerable circumstances which usually surround the injured party”.<sup>10</sup> Reports must be dealt with promptly because of the risk to life and property entailed in such cases.<sup>11</sup> Once the victim’s evidence has disclosed the commission of an offence or breach of a DV Order, the offender should be arrested and *this should be done without asking the victim for his or her*

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<sup>6</sup> Watson and Parsons, *Domestic Abuse of Women and Men in Ireland: Report on the National Study of Domestic Abuse*, National Crime Council, 2005, at 38.

<sup>7</sup> The majority of domestic violence prosecutions are brought under the Non-Fatal Offences Against the Person Act 1997: assault offences (sections 2, 3 or 4), threats to kill (section 5), coercion (section 9), harassment (section 10), false imprisonment (section 15), or child abduction by a parent or guardian (section 16).

<sup>8</sup> See the *Cosc* website for more details: [www.cosc.ie](http://www.cosc.ie).

<sup>9</sup> Garda Síochána Domestic Violence Policy, at p.1, available at [www.Garda.ie](http://www.Garda.ie).

<sup>10</sup> *Id.*, at para. 1.2.

<sup>11</sup> *Id.*, at para.2.1. Later, at para. 2.6, the policy requires the investigating Gardaí to take full details of the allegation, including a detailed description of the incident, the physical and emotional condition of the victim and any children present, and the existence or otherwise of an order granted under the terms of the Domestic Violence Act 1996, as amended. This Act allows the courts to issue Barring, Interim Barring, Safety and Protection Orders to protect victims of domestic violence (hereinafter referred to as DV Orders). These orders are described in more detail in Chapter 4, Section III.

views.<sup>12</sup> This mandate, of course, is subject to Garda powers of arrest, which, while extensive, are not unlimited.<sup>13</sup>

Several provisions of the Policy place on investigating Gardaí a duty to provide victims with information on redress that might be available through the civil courts,<sup>14</sup> on DV Orders and the procedure for applying for them,<sup>15</sup> and the services – statutory and voluntary – that are available in the victim’s area.<sup>16</sup> The Policy specifically notes the following:

Investigating members should be aware that research has shown that victims are less likely to withdraw their allegation or complaint and continue with a prosecution when:

- They have been supported by a victims’ group;
- There is a substantial investigative effort (statement of complaint taken immediately).

Therefore it is valuable both for the victim and the Court system that cases are dealt with professionally and victims are advised of the relevant services available.<sup>17</sup>

The Policy does not specifically mandate that a risk assessment be carried out, but Gardaí are required to object to the granting of bail if the victim has reason to fear harassment or retaliation, and officers must be in a position to offer evidence of such reason.<sup>18</sup> An assessment of the sort mandated by Article 22 of the Victims’ Directive is implicit in this provision: how is an officer to know whether a victim faces a risk of harassment or retaliation in the absence of a risk assessment? The Policy then goes on to state:

The reality is that domestic violence crimes are repeated, systematic and dangerous crimes, often against the same victim. In cases of domestic violence crimes, even where an alleged offender has been charged and brought before the Courts by the Garda Síochána, the abuse tends to continue, with

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<sup>12</sup> *Id.*, at para.3.1 (emphasis added).

<sup>13</sup> An arrest may be made on foot of a court-issued arrest warrant. Alternatively, an officer may arrest a person on reasonable suspicion that the person has committed an arrestable offence (section 4, Criminal Law Act 1997). An arrestable offence is one for which a person with no prior convictions might receive a sentence of imprisonment of five years or more (Criminal Law Act 1997, section 2(1)). Further, individual statutes may grant specific powers of arrest; for example, the Criminal Justice (Public Order) Act 1994, as amended, allows Gardaí to arrest without warrant anyone committing most of the public order offences set out in that statute.

<sup>14</sup> See para.10.2

<sup>15</sup> See para.10.3

<sup>16</sup> See paras. 10.4 and 10.6

<sup>17</sup> *Id.*, at para. 10.5.

<sup>18</sup> *Id.*, at para.5.1.

victims at elevated risk where the defendant has been remanded on bail. To this end it is important that the injured party is put in contact with appropriate services bearing in mind that their safety is paramount.<sup>19</sup>

Again, an assessment of risk and protection needs is implicit in this statement of policy.

Thus, arising from the Garda Síochána's own stated policy one would expect the following steps to be taken on receiving a report of domestic violence:

- A prompt response to the report;
- The immediate arrest of the perpetrator when there is evidence of a crime (providing a power of arrest exists for that crime) or a breach of a domestic violence order;
- An investigation into the history of the violence;
- An assessment of the likelihood of retaliation and intimidation, and
- The provision to the victim of information on civil remedies, domestic violence orders and other services available in her locality.

At a policy level, then, it seemed that many of the requirements set out by the Victims' Directive had already been put in place. The publication in 2014 by the Garda Inspectorate, however, of a major report on crime investigation demonstrated the gulf between policy and reality.<sup>20</sup> The Report found inconsistent approaches to complaints of domestic violence, and many examples of disinterest among Gardaí in such complaints. Thus, the Garda Policy on Domestic Violence is not necessarily a reliable guide to the manner in which domestic violence has been addressed by the Gardaí.

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<sup>19</sup> *Id.*, at para.10.7.

<sup>20</sup> Garda Inspectorate, *Report on Crime Investigation* (2014), available at [www.gsinsp.ie](http://www.gsinsp.ie).

## Chapter 4

### Empirical Approach – Information on Data Collection and Analysis

Workstreams 2 and 3 of the INASC project involved are presented together in this report as they present two views of the operation of the criminal justice system in Ireland as regards domestic violence. The methodologies employed in the two workstreams, however, were fundamentally different. These methodologies are explained separately.

#### I. Workstream 2

The partners in each jurisdiction contacted the prosecutorial and/or police authorities to request access to their files on cases of domestic violence. The German partners produced a standardised instrument for use by research teams in all jurisdictions that would allow for direct comparisons. In Ireland, the research team initially sought access to prosecutorial files held by the Director of Public Prosecutions (DPP). It was thought that such files would provide the best overview of the response of the criminal justice system to complaints of domestic violence. The D.P.P., however, indicated that as the overwhelming majority of domestic violence cases in Ireland are dealt with summarily by the Gardaí, her office held only a very few domestic violence files, most of which are especially serious.<sup>21</sup> Accordingly, an analysis based on those files would skew the results dramatically. The Garda Síochána's files would be a better source of information. On foot of this information, the research team requested from the Garda Commissioner permission to access to a representative sample of recent domestic violence files held by the Garda Síochána. Following considerable correspondence, the Commissioner indicated that the Garda Síochána would be unable to participate in the project, citing both data protection concerns<sup>22</sup> and changes in policy and practice being implemented in the light of the Garda Inspectorate's Report.<sup>23</sup>

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<sup>21</sup> Communication by email, dated 16 September 2014.

<sup>22</sup> Letter from Office of the Commissioner.

<sup>23</sup> Letter from Office of the Commissioner.

In light of this setback, and in order both to continue to contribute to the wider INASC project as well as to fulfil our obligations to the European funders, the research team focused instead on securing information directly from victims of domestic violence. Using an adapted research instrument that employed both quantitative and semi-structured qualitative questions, the team was confident that this methodology would result in information on the following matters:

- Characteristics of the first, reported and the most violent reported incidents;  
The reasons for and timing of reporting to the Gardaí;
- Victim expectations of the criminal justice system;
- Garda response and investigation of complaints of domestic violence;
- Whether the participants had been involved in any assessment of their needs or the risks they faced.

While not identical to the information being collected from official files by the partners around Europe, it was considered that this information would still allow the team to contribute to the wider European project.

### *Selection of Participants*

The primary difficulty facing the research team was how to locate participants. While there is plenty of evidence that domestic violence is a widespread problem,<sup>24</sup> there exists no reliable total-population figures and victims tend not to advertise their locations. Given the time and financial constraints of the project, it was decided to seek the assistance of domestic violence service providers in identifying forty women who met the following criteria:

- Had experienced domestic violence at the hands of an intimate male partner;
- Had reported at least one incident of domestic violence to the Gardaí between 2010 and 2013; Was aged 18 at the time of that report; and,
- Had sufficient understanding of the English language to be able to answer the survey questions.

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<sup>24</sup> Such evidence can be drawn from a variety of sources. A recent pan-European study found that fifteen percent of Irish female respondents reported having suffered violence at the hands of a current or previous partner since the age of 15. See European Union Fundamental Rights Agency, *Violence Against Women: AN EU-Wide Survey*, 2014, available at [http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf). The most recent figures from the Courts Service show that in 2014 the District Court dealt with 13,275 applications for DV Orders. Courts Service, *Annual Report for 2014*, Dublin, 2015.

Participants were sought from around the country in proportions that roughly replicated the spread of the national population:

<b>Geographical Location</b>	<b>Number of Participants</b>
Dublin	9
Rest of Leinster	9
Cork	4
Limerick	4
Rest of Munster	9
Galway	4
Rest of Connacht	1
TOTAL	40

All participants were fully informed of the purposes of the study and assured of as much confidentiality as permitted by law.<sup>25</sup> Given the nature of the material being sought, a level of distress among participants was anticipated and a special Protocol was drawn up to deal with such cases. A member of the research team interviewed each participant personally. The quantitative results were input into a specially designed matrix that generated detailed descriptive statistics. The qualitative material was subjected to a thematic analysis to support the quantitative analysis.

The forty participants ranged in age from 20 to 62, with half of them being in their twenties. Their average age was just over 40. The vast majority (95%) had children. Nearly nine out of ten (35) were citizens of Ireland or of the European Union, while a further 3 were legally entitled to be in the country. As expected, a considerable majority were native English speakers, and all but one reported the ability to read and write in English. Seven participants self-described as members of an ethnic or racial minority group, while another three claimed membership of a religious or political minority

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<sup>25</sup> To further protect their confidentiality, all participants were assigned a random name, and these assigned names have been used throughout this report.

group. Perhaps surprisingly, given the nature of their relationship with their abusers, two participants identified as lesbian or bisexual.

Over half of the participants (22 out of 40) held third-level qualifications, and a further third (14 out of 40) had completed secondary education. These figures are broadly in line with the Irish population in general, and with the educational level of adult women generally in Ireland. The OECD reported in 2014 that 52% of women had graduated from a third-level institution, and that 95% of women in Ireland had completed the Leaving Certificate.<sup>26</sup>

Notwithstanding their educational achievements, the following table indicates that the majority of the participants were not employed outside the home at the time of interview<sup>27</sup>:

<b>Work Status</b>	<b>%</b>
In Education	8
Employed Full Time	5
Employed Part Time	33
Self Employed	3
Working in the Home	53
Unemployed	3

For those that were in paid employment, the majority worked at part-time jobs with three others engaged in educational courses. Not surprisingly, therefore, the majority of participants (two-thirds) reported social welfare payments as their principal source of income:

<b>Source of Income</b>	<b>%</b>
Social Welfare Payments	68

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<sup>26</sup> OECD, *Education at a Glance 2014: Country Note Ireland* (2014), (available at [www.oecd.org](http://www.oecd.org)). The same study found that 75% of Irish adults had achieved upper secondary education (i.e., had completed the Leaving Certificate). See *id.*, Table A1.2a.

<sup>27</sup> In this and all subsequent tables, the figures have been rounded up.

Own Employment	20
Perpetrators' Income	5
Student Grant	3
Other	5

Only one-fifth of participants reported independence of income, with two participants reporting being still dependent upon the perpetrator's income. In terms of living arrangements, a large majority of participants reported living in their own homes:

<b>Residence</b>	<b>%</b>
Own Home	73
Friends/Family (Temporary)	3
DV Shelter	8
Homeless Shelter	3
Homeless	0
Direct Provision	0
Other	15

A significant proportion (one out of eight), therefore, was living in temporary accommodation – either with friends or family, or in a shelter of some description.

The nature of our participants' relationships with their abusers disclosed few surprises. The

proportions of participants who were married to, and those who were cohabiting with, their former abusers were identical:

<b>Relationship Type</b>	<b>Percentage</b>
Spouse, Living Together	43

Spouse, Divorced, Separated, Not Living Together	3
Intimate Partners, Cohabiting	43
Intimate Partners, Not Cohabiting	13
Former Intimate Cohabitants	0
Former Spouse/Intimate Partners, Still Living Together	0
Other	3
Unclear	0

One in eight participants, while involved intimately with the perpetrator, did not live with him.

## II. Workstream 3

Workstream 3 involved a series of focus groups and professional interviews. Three focus groups were formed, as follows:

Two focus groups involving representatives of twelve non-governmental domestic violence services from around Ireland, totalling thirteen persons.

One focus group involving professionals involved in the criminal justice system: two senior members of An Garda Síochána, a Probation Officer, a barrister with experience in criminal law and two domestic violence support workers employed by non-governmental organisations.

In addition, researchers conducted in-depth interviews with fourteen legal professionals, as follows:

Two officers from the Office of the Director of Public Prosecutions;

Three recently retired District Court judges, with between five and fifteen years' experience in urban and rural areas;

Three personnel from the Courts Service, including two District Court Clerks and one Senior Courts Service Manager;

Two State Solicitors, with at least twenty years experience each;

Two barristers with ten and thirty years' experience, respectively, in criminal law;

Two Probation Officers, with almost fifty years' experience between them in family and criminal courts in urban and rural areas.

These professionals were recruited either as volunteers, through nomination by the relevant offices or through a direct request from research team members.

For both aspects of Workstream 3, sessions lasted for about one and a half hours. The discussions revolved around a version of the questions set out in INASC Workstream 3 Guidelines (adapted for use in Ireland, and aimed at the particular participants involved). Researchers took contemporaneous notes of the sessions which were later typed up. Sessions were recorded if the participant gave their consent, and these tapes were used as a backup if the contemporaneous notes were unclear. The materials were then subjected to a thematic analysis to discern themes, using the INASC Workstream 3 Guidelines as a guide.

### **III. Limitations of the Study**

All studies have limitations, and this one is no different. The limitations for each element of the project are discussed below.

#### *Workstream 2*

One limitation arises from the reliance on victim interviews. The research team did not have any opportunity to seek corroboration of any facts asserted by the participants, although the research team has no reason to believe that any participant deliberately attempted to deceive them. Indeed, most of our results are in line with prior Irish research, which offers a form of independent validation of participants' responses. The limitation arises primarily from the confusion apparent among many participants when it came to the outcomes of the judicial processes in which they had been involved (Part V of the survey instrument). This is not a criticism of the participants; the participants had been subjected to a campaign of abuse over long periods of time involving multiple court visits for a variety of purposes. It would be difficult for anyone to keep straight the details of these court cases. Further, the criminal justice and judicial systems are extremely complex environments, and none of the participants have any expertise in dealing with them. Nevertheless, however understandable this

confusion might be, the answers collected in Part V were too unreliable to be presented. For future research on judicial process outcomes, the involvement of official agencies and access to their files will be essential.

A second major limitation concerns the sample of forty participants, and arises in two respects. With such a small sample, advanced analyses such as regressions are pointless, and the study is therefore limited to largely descriptive statistics. More fundamentally, the sample is unlikely to be representative of the total population of female victims of interpersonal violence. In particular, limiting the participants to women who have sought assistance from non-governmental domestic violence agencies excluded the majority of victims.<sup>28</sup> Consequently, this study does not purport to offer definitive conclusions. Rather, we offer a series of empirically based hypotheses indicating several characteristics of domestic violence in Ireland, and the response of the criminal justice system thereto. It is our hope that these hypotheses can be tested more definitively in a larger and more representative study.

### Workstream 3

The primary limitation in respect of this workstream was the relative absence of direct personal experience among the participants with the prosecution of offences arising in a domestic violence context. The focus-group and interview participants were highly experienced in the criminal justice system as a whole, and their lack of experience of domestic violence cases indicates the relative paucity of prosecutions in this area. Further, the individuals selected for participation in this workstream do not constitute a representative sample of criminal justice professionals, and the views that they expressed were personal and do not necessarily reflect the views of any particular criminal justice agency.

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<sup>28</sup> A recent pan-European study found that seventy nine percent of Irish female respondents who had experienced serious physical or sexual violence from a partner in the previous 12 months had not reported the violence to any agency. See European Union Fundamental Rights Agency, *Violence Against Women: AN EU-Wide Survey*, 2014, available at [http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf)

## Chapter 5

### Workstream 2 Results I – The Violence Context

Existing research into domestic violence demonstrates the fact that violent relationships have no stereotype. Domestic violence can affect women of all ages, from all walks of life, and the nature of the relationship seemingly has little bearing on how violent a relationship is. Similarly, there is no stereotypical point in a relationship at which violence might commence. Once it commences, however, the violence can be severe, frequent and long-lasting. The principal focus of this study was on the first incident of domestic violence reported to the Gardaí between 2010 and 2013. This focus gave us a central point of comparison, and one that was relatively recent. Nevertheless, as Watson and Parsons' definition highlights, domestic violence tends to be a pattern of conduct, and accordingly we also sought information on the following points of violence:

- the first violent incident;
- the first violent incident that was reported to the Gardaí; and,
- the most violent incident reported to the Gardaí.

This information allows us to consider the overall level of violence to which participants have been subjected.

#### **I. THE START OF THE VIOLENCE**

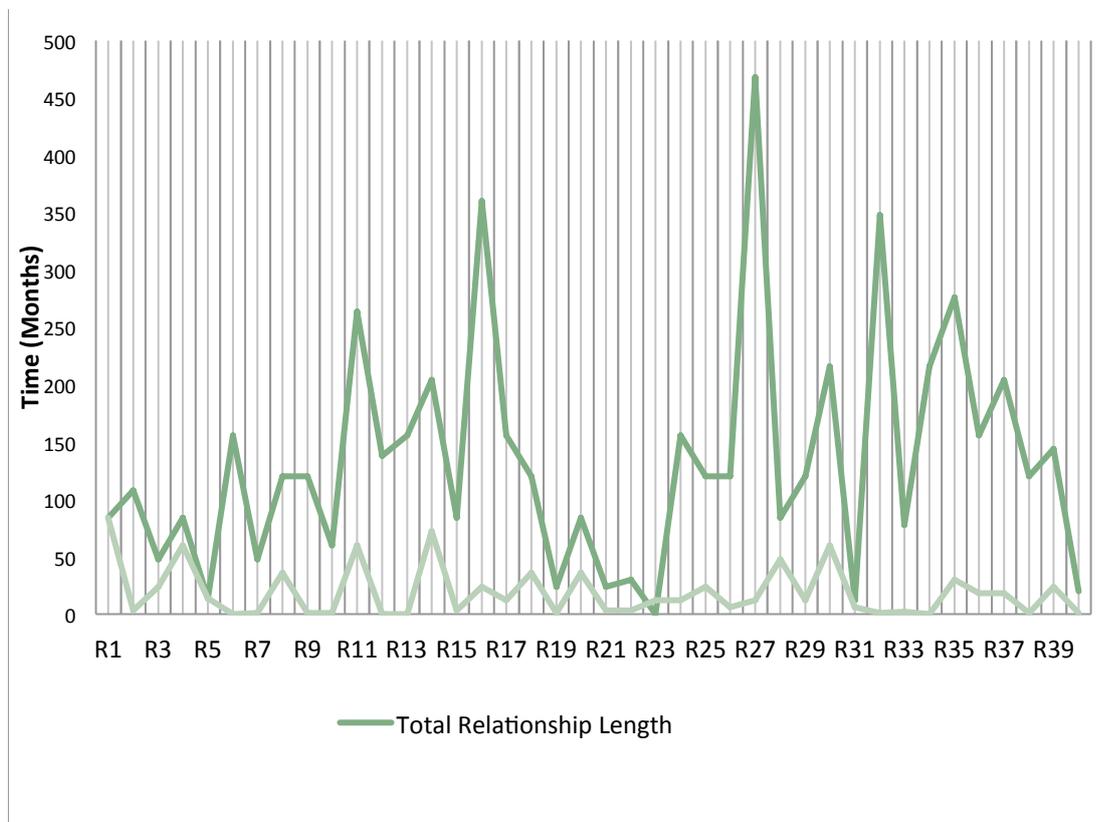
The relationship between the participants and their abusive partner lasted for an average of just over 11 years, ranging between 12 months to 39 years. Not surprisingly, the violence began at different points. Some relationships were violent almost from the start: in one relationship the violence began within a month. At the other extreme, it took seven years for the violence to begin. The average point at which the violence began was some twenty-one months.<sup>29</sup> The participants were aged between 17 and 46 when the violence started, with an average age at that point of just over 28. Five participants were in their teens when the violence started, sixteen were in their twenties, a similar number were in

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<sup>29</sup> Note that this calculation is based on thirty-six responses. The data in respect of the other respondents were missing.

their thirties, and two were in their forties.<sup>30</sup> By contrast, the perpetrators' ages ranged between 18 and 58, with the average age being 32. Over half of the perpetrators (22) were aged at least 30 at the time the violence started; 17 were in their twenties and one was a teenager.

Once the violence started, it almost always continued throughout the relationship. Thus, the violence can last for a very long time. The following graph illustrates this point. The light green line shows the start of the violence, while the dark green line shows the relationship length. The space between these lines, therefore, is a graphic representation of the persistence of domestic violence in a relationship.



In many cases, the violence outlasted the relationship. Nora's abuser threatened to kill her after she left him,<sup>31</sup> while Grace continued to suffer harassment. Emily suffered her most violent reported incident after leaving her abuser: he turned up at her new residence demanding to enter and threatening to burn the place down. Similarly, Anna's abuser assaulted her and attempted to rape her some time after she left him.

<sup>30</sup> Note that this calculation is based on thirty-nine responses. The data in respect of the other respondent were missing.

<sup>31</sup> All participants have been assigned a name in order to protect their identity.

Virtually all of the victims were living in their own homes when the violence began, either owned or rented (which is what most participants meant by “other”):

	<b>Victims (%)</b>
<b>Own Home</b>	73
<b>Temporary, with Family/Friends</b>	8
<b>DV Shelter</b>	0
<b>Homeless Shelter</b>	0
<b>Homeless</b>	0
<b>Direct Provision</b>	0
<b>Other</b>	20

Two-thirds of the victims (26) had children when the violence started:

<b>Number of Children</b>	<b>Victims (n)</b>
1	14
2	7
3	3
4	2

Thus, more than half of those victims had only one child at the time the violence started. This equates to one-third of the total number of participants.

The participants were reasonably well educated when the violence started, with over half having obtained third-level qualifications at the time the violence started. This rate is nearly double that of the perpetrators:

	<b>Victims %</b>	<b>Perpetrators<sup>32</sup> %</b>
<b>Primary Level</b>	7.5	8
<b>Secondary Level</b>	40	60
<b>Third Level</b>	52.5	28
<b>Other</b>	0	3

Just less than half of victim participants had some form of employment, as opposed to nearly three-quarters of the perpetrators. A large proportion of victims were working in the home; not surprisingly, none of the perpetrators were in a similar situation.

	<b>Victims<sup>33</sup> %</b>	<b>Perpetrators<sup>34</sup> %</b>
<b>Employed Full Time</b>	30	50
<b>Employed Part Time</b>	13	10
<b>Self-Employed</b>	5	13
<b>Working in the Home</b>	40	---
<b>Still in Education</b>	15	5
<b>Unemployed</b>	0	20

For nearly three-quarters of perpetrators, their employment was the principal source of income; less than half of victims were in a similar position. A quarter of victims were directly dependent upon the perpetrator for their income when the violence started. Perhaps surprisingly, two perpetrators were apparently dependent upon the victims for income.

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<sup>32</sup> Data was missing in respect of one perpetrator.

<sup>33</sup> One victim was working in the home while still in education.

<sup>34</sup> Data was missing in respect of one perpetrator.

	<b>Victims<sup>35</sup></b> %	<b>Perpetrators<sup>36</sup></b> %
<b>Employment</b>	45	72.5
<b>Student Grant</b>	7.5	2.5
<b>Social Welfare Payments</b>	22.5	27.5
<b>Partner's Income</b>	25	5
<b>Other</b>	2.5	2.5
<b>Total</b>	102.5	110

The participants indicated that a small minority of the perpetrators suffered from a physical illness (8%), but that a quarter suffered from mental health problems while three suffered from a learning disability. The extent to which these assessments are backed by medical expertise is unknown. The participants also indicated that a large proportion of the perpetrators had substance abuse problems:

<b>Substance</b>	<b>%</b>
<b>Alcohol</b>	40
<b>Illegal Drugs</b>	28
<b>Legal Drugs</b>	15

Again, these assessments appear to be based solely upon the participants' own observation rather than upon any formal medical assessment.

The vast majority of the perpetrators (83%) were Irish or EU citizens, with a further 10% having a legal right to work in Ireland. Two perpetrators were, at the time the violence commenced, seeking or had previously been seeking asylum. Virtually all perpetrators were either native English speakers or were capable of communicating in English. Seven perpetrators (18%) were members of an ethnic or

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<sup>35</sup> One victim was in receipt of a student grant and social welfare.

<sup>36</sup> Three perpetrators were reported to be in employment while receiving social welfare payments, while a fourth was reported to be in receipt of rental income while receiving a social welfare payment.

racial minority, while five (13%) were members of another minority group. One participant indicated that her former abuser might identify himself as a member of the LGBT community.

## II. THE FREQUENCY OF THE VIOLENCE

Watson and Parsons' definition of domestic violence underscores the fact this kind of violence forms a pattern within a relationship. In most instances, some forms of the violence will occur very frequently.

<b>Frequency</b>	<b>Physical Abuse</b>  %	<b>Emotional/ Psychological Abuse</b>  %
Daily	30	35
Weekly	38	8
Monthly	8	0
Few Times per Year	20	0
Once	5	0

For one third of participants, physical and emotional or psychological abuse were a daily feature of their relationships. Fully two-thirds of the participants reported suffering physical abuse on at least a weekly basis. The variety of forms that domestic abuse can take is evident from the descriptions provided by participants. The following table shows these different forms and the proportions of participants that suffered them at some point during their relationship with the abuser:

<b>Form of Violence</b>	<b>% Suffering</b>
Physical Violence (non-sexual)	90
Sexual Violence	43

False Imprisonment/Confinement	45
Harassment/Stalking	50
Threats to Kill/Seriously Injure	78
Emotional/Psychological Abuse	98
Verbal Abuse	98
Financial/Economic Abuse	75
Use of Children	73
Coercive Control	83

Virtually all participants suffered physical, verbal, and emotional or psychological abuse. Three-quarters of participants received serious threats from their intimate partners, and nearly half suffered sexual violence. Perhaps most distressingly, nearly three-quarters of participants indicated that their partners had made use of their children in their pattern of coercion. Maria, for example, stated that her husband had told her that “he was going to have the children taken away and he would have full custody.”<sup>37</sup> Other perpetrators used their children to facilitate direct violence: Nora told us that her abuser would deliberately wait for the children to be around when he struck her. Further, she “often had a baby in her arms [when] she got a belt, right. And how can you defend yourself when you have a baby in your arms?”

Non-physical forms of abuse were also common: three-quarters of participants were subject to some form of financial control by their partners, and an even higher proportion suffered some form of coercion. Such coercion took many forms. Several participants reported that they were forced to submit to various sexual acts. Others were isolated from family members; Lily, for example, reported that her husband would not allow her to visit her mother, with whom she was close. Similarly, Mary told us that her “aunt died and [she] couldn’t go to the funeral. I felt very bad about that. That really hurts me now still. ... He was controlling, he was isolating, he was the boss, he had the say at the end of the day. When he says I could go, I could go, so that’s all back to the controlling thing.” She went on to say that she “was not allowed to put up one holy statue in the house.... I was not allowed to go to Mass.” Olivia told of an occasion when she ordered a takeaway and then discovered that her boyfriend had locked her into the apartment. She had to “go out onto the balcony and reach over and

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<sup>37</sup> All participants are identified only by a code in order to preserve their anonymity.

get the food and pay the man that way, and I just said ‘Oh the child’s after losing the keys’ to fob it off, the embarrassment that I would’ve been locked in.”

Research into domestic violence has shown that certain forms of physical abuse are especially important as indicators of a serious risk to the victim’s life.<sup>38</sup> A large proportion of participants suffered these forms of violence, some more than once:

<b>Incident</b>	<b>% Suffering</b>	<b>Reported to Gardaí</b>	<b>Reported to Gardaí More than Once</b>
Attempted Strangulation	25	18	3
Physical Abuse while Pregnant	45	13	5
Threats to Kill Victim or Children	30	30	18
Possessive Behaviour over Victim	58	15	18
Reported Use of Weapons (designed as such)	8	5	5

Fully half of the participants indicated that at least one of these indicators took place as part of the very first incident of violence. This indicates that domestic violence does not always follow an upward trajectory of seriousness; sometimes, the violence begins at a very serious level. It is worth noting how seriously the participants took threats to their children: without exception, all the participants suffering this form of abuse reported those threats to the Gardaí, more than half of them doing so more than once.

The fact of making a report to the Gardaí does not prevent the abusers from continuing to perpetrate even overt forms of physical violence. The following table shows the kind of physical violence that participants suffered after they made their first report of domestic abuse to the Gardaí:

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<b>Nature of the Assault</b>	<b>Yes</b>	<b>Reported to the Gardaí Once</b>	<b>Reported More than Once</b>
Pushed/Shoved	53	13	25
Slap (Open Hand)	35	10	15
Punched	43	15	18
Kicked	30	5	15
Objects thrown	48	8	8
Stabbed	3	10	0
Shot/Shot at	0	0	0
Choked	33	20	3
Burned	2.5	0	3
Sex without Consent	50	3	3
Physical Assault, Other	50	3	3
Sexual Assault, Other	18	0	3

All of these violent incidents took place after the victim had made a complaint to the Gardaí about her partner's conduct. It bears reiterating that *all* of these forms of violence constitute crimes in Irish law.<sup>39</sup>

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<sup>39</sup> All of the non-sexual violence can be prosecuted as a form of assault under the Non-Fatal Offences Against the Person Act 1997: assault (section 2), assault causing harm (section 3), or infliction of serious harm (section 4). Depending upon the abuser's intention, a prosecution for common law attempted murder might also be possible. Sex without consent can be prosecuted as rape, again depending upon the abuser's intention. Other sexual violence can be prosecuted as sexual assault under the Criminal Law (Rape) (Amendment) Act 1990.

### III. First Reported Incident

In many cases, the participant went to the Gardaí for the first time when the abuser was especially violent. Jane was raped, while Emily was threatened with having her home burned down. Kate made a report to the Gardaí following an assault that left her with several broken fingers and a swollen face. Olivia suffered a particularly violent assault that began with a backhanded strike across the face while in the bedroom:

“Then I jumped and I went into the sitting room. He followed; he threw me down on the couch and tried to strangle me. Then he [used] his knee as well as his two hands, and I seen white; white came into my eyes 'cause it was very close. When he eventually got up off me I went over to the window ... and I stood and I told him I was going to jump. I said, ‘I’m going to jump down onto those railings; I’m going to end this.’ I said, ‘leave me’ ... then I managed to get the keys and I got out, went to the women’s centre place across the road [and] told them what happened....”

Sometimes, the incident that prompted the first report to the Gardaí was aggressive rather than violent. Mary, for example, finally made a report to the Gardaí when the abuser became aggressive towards her while at a refuge:

“So I came to the door and the next thing he just barged in the door and let rip, roaring and shouting and he was so aggressive and all through this I knew he was in bad form, you know, you kind of watch for the signs? You know the pupil of his eye? His whole eye would go black and that’s when I knew then – you know when his eye would go black – well he let rip. So I went into the room but when I went into the room I went into the corner but I knew I had to get out because I was so afraid and he was so angry, do you know what I mean?”

#### 1. Reasons for Reporting

The primary reason for involving the Gardaí was that the participants had simply had enough. Lily said she was “taking a stand and warn him and won’t tolerate his behaviour I suppose.” For Kate, it was the seriousness of the assault that persuaded her to report to the Gardaí: “I called the Gardaí because he’d beaten me up, my face was swollen and my finger was broken and very swollen.”

In approaching the Gardaí, by far the most common desire on the part of the women was immediate protection through the removal of the abuser. Emily’s abuser, for example, was at her residence and

had threatened to throw a petrol bomb through the door. She wanted the Gardaí “just to come fast and get him away from the house because I was so scared and just to make me feel safe, like, because I was there on my own and the little fellow was there with me.” Julia said that “I wanted to feel safe; I wanted him removed from the family home and it didn’t happen. I had to remove him myself and he was left in the house for a year longer.” Several other participants similarly stated that they wanted the Gardaí simply to come and arrest the perpetrator, or at least to remove him. Caroline, however, wanted a bit more; she wanted the Gardaí to “talk to him [and that] he would come to his senses and realise that this is wrong.... I was hoping it would stop.”

## 2. Reasons for Not Reporting

Nine participants explained why they had been unwilling to involve the Gardaí.<sup>40</sup> Several participants blamed themselves for the violence. Olivia said, “I actually convinced myself that it was probably my fault because there was alcohol involved; maybe I did get into his face a little bit. Maybe I deserved it, I kind of thought.” Similarly, Chloe stated that she thought she had “provoked [the abuser] or done something wrong. And pretty much because I thought it was my fault. I thought things can be fixed and [I] believed he was a nice guy. I thought he just had a few problems with stress and temper.” And Evelyn said that she had been ‘blaming [herself]; did I do something wrong? I was convincing myself that I was wrong.’

Other participants made allowances for their abusers out of love. Nora, for example, reported that, “I think I lived in Cloud Cuckooland for a while; I would think he didn’t mean that, but it’s only now that I’m starting to see the light. ... You know, like, I was so besotted with him, which is silly, like. I think when you think you’re in love with someone, you want to keep them.” She added, however, that “I think he eventually beat it out of me, any feelings I had for him.” Lucy allowed her low self-esteem to get the better of her: “And I was ... who is ... going to bother with me? And when he was, I was absolutely delighted, I thought I won the jackpot....”

Some participants also gave credence to apologies offered by the abusers. Emily said that “[the abuser] had a way of, like, saying sorry and ... reeling me back in, you know what I mean.” Anna, on the other hand, made excuses for the effect of her partner’s drug addiction: “So the first time he

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<sup>40</sup> The participants did not necessarily limit themselves to a single explanation.

attacked me was in the middle of the night when I found him off his tree and he couldn't communicate properly, but he can still – his motor function worked, but his [cognitive functions] don't work, and he just plain attacked me when I put him to bed so he wasn't there as the person I knew; it was almost like a zombie.”

Two participants stated that they had been conditioned to hold a poor view of the Gardaí. Lucy reported that she had been raised to believe that the “Guards were not there to help you.” Maria's conditioning, by contrast, had arisen from her relationship with the perpetrator who was involved in drug taking. Accordingly, she “had the same image of the Gardaí as not being a friendly face.”

Finally, for some, there was an element of self-preservation involved. Evelyn, for example, reported that she “was afraid if I did say something the worse it will get, you know.”

#### **IV. THE MOST VIOLENT INCIDENT**

We sought information from the participants about the reported incident that they considered the worst. In most cases, the worst incident was characterised by extreme violence, at a level that on some occasions was truly terrifying. Some suffered serious sexual violence, while others were threatened with having their homes burned down. Caroline was thrown over a banister while pregnant, while Hannah was thrown through a window. In a minority of cases, however, the key aspect of the worst case was not so much the violence as an act of humiliation. Olivia, for example, suffered a drunken attempted rape after which the abuser urinated on her:

“I was lying there in my son's bed and I didn't want him to know that I was crying so I had my eyes closed .... I was lying there in the bed ... and next I felt hotness all down the side of my face and I opened my eyes and it was [the abuser], and he grabbed himself and looked at me and he walked straight out of the room....”

Two participants gave very detailed descriptions of the most violent incident, and they are worth quoting at length as they provide an excellent example of just how violent domestic abuse can be.

## 1. Nora

[Nora's partner attacked while armed with a pole. He initially tried to strangle her with the pole. She fought back and bit him on the chest drawing blood.] "[O]nce I did that he just lost the plot altogether. He kept swinging [the pole] at me. And he got my leg there and ... that still pains me all the time now. I'm down for an MRI or whatever it is, 'cause sometimes it just locks up on me altogether. And my back then, there was a print of the pole from my shoulder all the way down there. All the way down and he winded me there when he hit me, I remember I couldn't breathe, 'cause he hit me such a belt and then with the leg, and my legs just went, like my whole body just gave up. And I remember leaning on the counter and I was crying and I said to please stop. He kept hitting and hitting and he smashed my fingers and broke my baby finger I think. And then three fingers were out like balloons. And afterwards in the hospital – I had been to the hospital – and it, like, when I came home from the hospital I didn't even know that I got the belt here, because I had clothes on me but I didn't even notice it, but all my boob was black ... like the bar had hit there and there. They reckon that I broke my finger because I put my hand up to stop him. But that went on for, like, it must have been three or four or five minutes of belts and finally he just stopped, and it was weird, he was so odd because he's gone back to pretending it never happened ...."<sup>41</sup>

## 1. Emma

"We got in the house and I asked the kids to find their toothbrush from the suitcase to go and brush their teeth and when I turned around he was doing something to the dog and the dog had his tail between his legs and looked really, really scared. I just didn't like what I saw and I asked him to leave the dog alone and he punched me straight in the face. Just like that and then it started. He just carried on. We were in a little utility room of the kitchen with the door open and the kids were there and they saw everything. He just let rip. He did everything that I imagine he'd always wanted to do for the last six months. He just let me have it. I'd a suspected fractured eye socket. I had whiplash, bruising. I had to take extra-strength painkillers for really bad whiplash. He tried to get me on the floor, he threatened me, he threw me all over the place, he threw me from wall to wall and all the while threatened to kill me, and when the kids intervened, he screamed and they were absolutely petrified, I could see it in their faces. I managed to get outside, I managed to tell my daughter to ring the Guards. Well no she didn't because he'd smashed the phone against the wall. I managed to get outside, because we have an acre and three-quarters outside and he chased me around the garden for forty

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<sup>41</sup> The abuser later damaged Nora's car and their son's moped. He pleaded guilty to an assault charge, and was fined and ordered to pay compensation in the amount of €1,500. ADLM2 indicated that she accepted this outcome under pressure from the abuser's family.

minutes. Threatened to kill me. He threw a breezeblock at me, trampolines, clothes props, he threw everything at me. And the more he couldn't catch me the angrier he got. ... The only thing that saved me was that I hadn't had a drink. We have potato ridges all over the garden and I knew where they were because I hadn't had a drink and he was falling in them and wasn't able to catch me. ... [I'm] in the large garden. Running for my life. Because I'm not exaggerating when I say this but I know that if he gets me I would've been one of them pictures on the front of the newspapers. ... [M]eanwhile I'm trying to get back in the house because that's where I think my children are.<sup>42</sup> He's attempting to smash the big gas tank outside and I'm afraid it's going to cause an explosion because he's throwing blocks at that. Because he can't get near me he's getting angrier and angrier .... I went to the gate and he came chasing me over to the gate but there was someone else there then. He had a big long pole or something and he was threatening the neighbour and the neighbour said, 'go over to my house' and I said no. He said the kids need you. I don't know for what reason I didn't want to go – I just felt like I could calm him down. ... [H]e said, 'no ... just go', and I went and I could hear him shouting and screaming. He was like some dog that had been hit. He was making this really strange noise. So anyway he went back inside the house after his screaming and waving his weapon at the neighbour. He smashed my entire house up. Everything. He damaged and smashed everything. He left me not even ... a couple of cups and a plate. He smashed every single room and my children's rooms as well. You couldn't even walk on the floor."<sup>43</sup>

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<sup>42</sup> At this point, the children had made their way to a neighbour's house to summon help.

<sup>43</sup> The abuser was later convicted of causing criminal damage, and was fined and given 12 month's probation. He was also ordered to pay compensation in the sum of €6,000.

## Chapter 6

### Workstream 2 Results II – The First Reported Incident in 2010–2013

Most of this study relates to the first incident of domestic violence reported by the victim participant between 2010-2013. In all but two cases, the first reported incident involved violence directed at the victim herself. The other two respondents had to be excluded from our calculations because their first reported incident in 2010-2013 did not involve the victims directly but rather one of her family members. Accordingly, all calculations in this section are out of thirty-eight.

At the time of the first reported incident, 92% of participants had children living with them and in their care. The majority of participants had three or less children at the time, but eight participants had between four and six children.

<b>Number of Children</b>	<b>Number of Victims</b>
1	7
2	9
3	10
4	6
5	1 <sup>44</sup>
6	1

Most of those participants (90%) reported having children by the perpetrator who were living with her and in her care. Further, 24% had children by someone other than the perpetrator living with her and in her care.

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<sup>44</sup> The children were not living with the victim at the time of the first report.

## I. The Location of the Incident

The table below shows the locus for the incidents:

Locations	%
Joint Home with Perpetrator	42
Victim's (Separate) Home	32
Public Space	13
Perpetrator's Home	5
Other	8

In slightly less than half the cases, the incident reported took place in the home shared by the victim and the perpetrator. The parties' joint home offers the most opportunity and privacy for a violent assault to take place, but it is clear that a joint home is not a prerequisite for domestic violence. In a third of cases, the incident took place in the victim's separate home, thus negating any suggestion that the violence might stop if the victim simply leaves her abuser. Further, in one case in eight the incident occurred in a public place. These public spaces included a petrol station, a public street and on the way to a child's school.

## II. The Nature of the Incident

For the most part, the incidents were extremely violent; indeed, fifty percent of participants indicated that this incident was the most violent incident that they had suffered. The table below shows the form that the violence took:

Form of Violence	%
Physical Violence	71
Sexual Violence	3
False Imprisonment/Confinement	13

Harassment/Stalking	26
Threats to Kill/Seriously Injure	61
Coercion	21
Other	32

Nearly three-quarters of victims suffered direct physical or sexual violence, and nearly two-thirds of the incidents involved threats to kill or to cause serious injury. The final category included various forms of intimidation and coercion, including burglary, the removal of friends and other support networks, and attempting to force the victim to a foreign country in order to gain custody of their children.

For those that suffered physical violence, the following table sets out the forms that the violence took:

Form of Physical Violence	%
Pushed/Shoved	42
Slapped	13
Punched	29
Kicked	21
Objects thrown	8
Stabbed	5
Shot/Shot at	0
Choked	21
Burned	3
Sex without Consent	0
Physical Assault, Other	42
Sexual Assault, Other	3

Examples of other physical assaults include the victim being dragged by the head or hair; the heavily pregnant victim being forced down on her stomach; the victim having her head banged against various objects and being struck by a wooden pole; and being pushed through a glass door. In one incident, the perpetrator attacked the victim with a large knife/small sword. The sexual assault constituted an attempted rape. In a further five cases, the victim had various items thrown at her, such items including a remote control, kitchen knives, pots and plates, and a phone. One victim was chased by her partner who was throwing breeze-blocks at her (see Emma's story in Chapter 5, Section 5, pages 32-33, above).

Over half the perpetrators (53%) were reportedly under the influence of a substance at the time of the incident, while a quarter of the victims admitted to being similarly affected. The participants reported that over half the incidents were witnessed by others, the most frequent group being the victim's own children. In an eighth of cases the witness was a neighbour and in a similar proportion the witness was a stranger or a passerby.

## Chapter 7

### Workstream 2 Results III – The Garda Response

The central theme of this study concerns the extent to which members of the Gardaí engage in needs and risk assessment of women who report an incident of domestic violence. By its nature and definition, domestic violence consists of a pattern of repeated behaviour. In other words, an incident of domestic violence is unlikely to be a one-off event, and almost certainly will be repeated on a frequent basis unless steps are taken to prevent such occurrences. Further, as already noted, in most cases women have suffered from domestic violence for a long period before they make a report to the authorities. Thus, the pattern of domestic violence extends in both directions from the report: there is both a history and a likely future of such violence. At a policy level, An Garda Síochána has accepted that this is the paradigm of domestic violence:

The reality is that domestic violence crimes are repeated, systematic and dangerous crimes, often against the same victim. In cases of domestic violence crimes, even where an alleged offender has been charged and brought before the Courts by the Garda Síochána, the abuse tends to continue, with victims at elevated risk where the defendant has been remanded at bail.<sup>45</sup>

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We have noted that while this policy does not explicitly mandate an assessment of the victim's circumstances, the policy would be unworkable in the absence of such an assessment. As already noted, an investigation by the Garda Inspectorate found that the response of the Gardaí to reports of domestic violence tended to fall far short of this policy. We were interested in whether the participants in this study were similarly disappointed. Accordingly, we asked participants about the Garda response to their report of domestic violence in the period 2010-2013.

#### **I. NOTIFICATION CIRCUMSTANCES**

In fifteen of the thirty-eight cases (40%) the Gardaí were notified of the incident as it occurred, while in a further eleven cases (29%) they were notified within an hour. In only three cases were the Gardaí notified more than twenty-four hours after the incident. In thirty-one cases (82%), the victim herself made the report to the Gardaí; the most likely person other than the victim to report to the Gardaí was

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<sup>45</sup> *Id.*, at para.10.7.

a neighbour or a passerby. The report was most likely to be made by telephone (nearly three-quarters), although a full half of the cases were reported directly to the local Garda Station rather than through the emergency telephone number system (i.e., 999).

## II. GARDA ACTIONS AND INVESTIGATIONS

We asked participants about the actions taken by the Gardaí in response to the first reported incident in 2010-2013. The following table shows the frequency with which a variety of initial responses occurred in these cases:

<b>Garda Action</b>	<b>Frequency of Occurrence (%)</b>
Questioned Victim	63
Came to Incident Location	53
Entered into the Victim's Home (with Permission of Victim or Perpetrator)	47
Questioned Offender	39
Broke into and Entered Victim's House (without Permission)	37
Separated the Perpetrator from the Victim	29
Asked about Prior Incidents/Patterns of Violence	24
Gave Information Leaflet about the Law	24
Gave Information about Protection Measures Available	24
Took Offender into Custody	18
Gave information about Support Options	16
Cautioned the Offender	13
Accompanied Offender to a Temporary Stay Location (i.e., Friend's House/Hotel)	13
Gave Information about Proceedings	8

Involved Domestic Violence Emergency Services	8
Involved Medical Services (i.e., calling A&E)	5
Involved Child Protective Services	5
Accompanied Victim to a DV Shelter/Refuge	5
Took De-escalating Measures (i.e., Conflict Resolution)	3
Accompanied Victim to the Hospital	0
Took Children into Care	0
Involved Other Support Institutions	0
Other	13

Garda investigations into a reported offence typically involves interviewing the parties involved in the incident and any witnesses, together with the collection of physical evidence. In our sample of thirty-eight cases, the Gardaí collected evidence such as fingerprints and DNA in five cases, but took photographs in only two cases (one of the victim’s injuries and one of the crime scenes).

As part of their initial response to the report, the Gardaí spoke with the victim in twenty-three cases (63%) and with the offender in fourteen cases (39%). In thirteen cases, the Gardaí subsequently interviewed the victim as part of their enquiries, and in one case they interviewed the victim’s child. The term “interview” was not defined in the survey and it appears that the participants took it to include questioning at the victim’s home. In six instances, the interview was completed in one sitting, although in one case, the interview took four sittings to complete.<sup>46</sup> In eight cases, these interviews took place within twenty-four hours of the initial report. Four of the eight victims were interviewed by a female officer; two participants were offered the choice of a female interviewer but, interestingly, neither accepted the offer. Four of the five victims interviewed after the first twenty-four hour period were not offered a choice as to the gender of the interviewing officer.<sup>47</sup> In most cases, the victim was interviewed alone, although in one case she was interviewed while the offender was also present. In two cases, the victim had a friend or relative present and in three cases a domestic violence support service worker was present.

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<sup>46</sup> In three cases, the data was missing.

<sup>47</sup> The data was missing in respect of the fifth victim.

In total, twenty of the participants provided a formal statement to the Gardai, although four subsequently withdrew their statements. In one case, this occurred as a result of familial pressure. One participant stated that she attended a Garda Station to make a statement, but was kept at the public hatch and the Garda refused to take her statement until a violent incident occurred in the station. A third of participants provided further evidence in addition to their statements, primarily consisting of photographic and telephone-based evidence. The following table shows the frequency with which the different forms of evidence arose:

<b>Evidence</b>	<b>Frequency (n)</b>
Photographs (of injuries, crime scene, etc.)	4
Physical Examination of Victim	3
Seizure of Weapons	1
Report from a Shelter/Refuge for Victims of Domestic Violence	1
Report from a Non-Specific Shelter/Refuge	1
Report from a Health Care Service	1
Psychological Assessment of Offender	0
Garda Search of Home	0
Counsellor's Report	0
Social Service Report (i.e., from a Government Department)	0
Report from a Social Support Agency	0
Report from Child Protective Services	0
Other	2

### III. DOMESTIC VIOLENCE ORDERS

The Domestic Violence Act 1996, as amended, permits the issue of several domestic violence orders that aim to protect victims of domestic violence:

*Barring Orders*, under which the respondent may be barred from an indicated place. The issuing court (usually the District Court) may also restrict the respondent's behaviour to prevent the applicant or a dependent person being put in fear. The court may issue the order if it finds reasonable grounds to believe that the safety or welfare of the applicant or a dependent person requires the making of the order. The order lasts for up to three years.

*Interim Barring Orders*, which is an interlocutory form of the Barring Order and may exceptionally be granted on an *ex parte* basis. The basis of the order is the existence of an immediate risk of significant harm to the applicant or to a dependent person, and the insufficiency of a Protection Order.

*Protection Orders*, which prohibit the use by the respondent of violence or threats of violence against the applicant or a dependent person. Protection Orders are interim orders in that they are in effect until the application for a Barring or a Safety Order has been determined. It is to be noted that a Protection Order does not have the effect of removing the respondent from a particular property.

*Safety Orders*, which prohibit the use of various forms of abusive behaviour. Again, the respondent is not removed from the property.

The Barring and Safety Orders are available to spouses and former spouses, civil partners and former civil partners, and to most cohabitants. Breaches of these orders are enforceable by the Gardaí, who can arrest anyone suspected of such breaches.

The Gardaí advised half of the participants who reported to them in 2010-2013 to ensure that they had a domestic violence order in place. The Gardaí tended to give this advice on the basis that they could offer little assistance without such an order. Kate, for example, reported that the "Guards said I can't take [the abuser] out [of the house] because you have no Protection Order. You have to go to court and get a Protection Order." Several participants indicated that the Gardaí did not inform them as to the procedure involved in seeking these orders. Ultimately, however, 55% of participants obtained an order, although several of these participants indicated that they did so with information supplied by domestic violence agencies rather than the Gardaí. Others sought an Order on their own initiative. Mary, for example, explained why:

“I just went in and I got a Safety Order and the reason why I actually got the Safety Order was because ... I had enough, like; I was not able to deal with this, like. I had enough and I just said I don’t want this shit going on anymore in my life. I felt I deserved more because that’s the way I felt and I know I deserve better.”

Of the thirty-eight participants who reported suffering domestic violence during 2010-2013, ten already had a domestic violence order in place when making their report to the Gardaí. The Garda Policy indicates that evidence of a breach of such an order should result in an immediate arrest of the offender regardless of the victim’s wishes. In nine out of the ten cases in which an order was in place, the facts disclosed a clear breach of that order. Yet, despite the Garda policy the perpetrator was arrested immediately in only two cases. The Gardaí questioned the offender in two cases and the victim in three cases. In four cases, the offender was ultimately charged.

Some participants felt that having a domestic violence order was worthwhile. Jane, for example, said that having a Protection Order gave her some relief because it meant that she was no longer under the abuser’s control. Emma, who was in all other respects very critical of the Gardaí and the judicial process, felt that the order made the abuser “realise that it was serious. He actually didn’t attempt to come by the house. I think it made him realise that he’d be in trouble if he didn’t adhere to it.”

Other participants, however, were rather scathing about the utility of domestic violence orders, especially when not properly enforced. Mary reported that the Gardaí did not enforce the order and that as a result, “for a long time I felt that a Safety Order wasn’t worth nothing.” Similarly, Lauren complained that nothing was done about breaches of her order: “I mean I can’t understand that at all. Why [do] they just do nothing? I mean, what’s the point in having a Barring Order if they won’t bring them to court over it?” Hannah felt that poor enforcement undermined the value of the orders:

“Well I couldn’t understand ... why he was never charged for breaking the Safety Order because I thought that that piece of paper, to be honest with you, is shite because I feel it’s doing me no justice. ... I don’t even know what that piece of paper actually means because he broke a Safety Order and he was never arrested.”

Indeed, Clara wondered whether the Gardaí understood these orders: “I gave the order to the female police and they did nothing. They just looked at it and gave it back to me and said, ‘Well, tomorrow is Monday. Go back to the court and tell them what happened’. ... But the police, I think that they don’t understand. I think there should be someone telling the police about those orders that the judge gives out in the family court. That this is what you do when you come across a Safety Order, Protection Order.”

#### **IV. RISK ASSESSMENT**

We have already noted that most of the participants in this study had long histories of violence at the hands of their partners. Not surprisingly, over half of participants (57%) were receiving support either from a domestic violence agency or from another non-specific support service. Given such histories, the vulnerability of victims is obvious, and the Garda Domestic Violence Policy specifically notes this vulnerability. Some victims, however, suffered from conditions that exacerbate that vulnerability, and these conditions will often have been brought about by the violence they have suffered. Thus, a large proportion of the participants indicated that when they reported the incident to the Gardaí they were suffering from a physical illness or disability (24%). Further, 29% of participants reported suffering from mental health problems, principally depression. A minority also suffered from substance abuse problems (8% with alcohol, 3% with legal drugs). The presence of such conditions among such a large proportion of even a small sample underlines the importance of the Gardaí fully assessing the victims’ circumstances. Regrettably, in nearly half the cases (45%) the participants reported that the Gardaí did not ask about the history of domestic violence they had suffered. Only one-third of participants (34%) reported being asked about such history; the remainder were unsure whether they had been asked.

Seven participants indicated that they had some special needs with which they needed Garda help, and in some cases, the Gardaí provided the assistance required. For instance, a participant was provided with translation services,<sup>48</sup> although another sought similar assistance which was not provided. One participant received assistance in getting her clothing from the house as she left. Another participant, however, indicated that she had poor vision but did not receive assistance.

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<sup>48</sup> Another participant was also provided with translation assistance despite not seeking it or believing that she needed it.

Making a report of domestic violence does not end the threat of violence to the victim. A majority of participants (21) suffered harassment during the investigative phase, and all reported this harassment to the Gardaí. Twenty participants suffered further incidents of domestic abuse alone, while the children of eight of these participants also suffered abuse at the same time. The table below sets out the form that the violence took:

<b>Form of Violence</b>	<b>% Suffered</b>
Physical Violence	35
Sexual Violence	10
Threats to Kill/Severely Injure	75
False Imprisonment/Confinement	25
Harassment/Stalking	65
Coercion	35
Other	25

Thus, the most frequent form of abuse consisted of threats, although a third of the victims (adult or children) suffered physical violence.<sup>49</sup> Nearly two-thirds of participants who suffered this further abuse (60%) reported the fact to the Gardaí.

Participants were also asked about indicators of risk arising from the offender's criminal history. These are circumstances that experience has shown should raise particular concerns for the ongoing safety of the victim. The table below sets out the frequency with which these circumstances arose in our sample:

<b>Perpetrator Criminal History</b>	<b>Frequency (%)</b>
In trouble with Gardaí for violence (not including violence against participant)	50

<sup>49</sup> We were unable to distinguish specifically between the forms of abuse suffered by the adult and child victims.



In trouble with Gardaí due to violence against victim	34
Prior convictions for violent offences (against anyone but the participant)	32
Prior convictions for violent offences against participant	13
History of breaching domestic violence orders to attend domestic violence or drug abuse programmes	24

These figures indicate that in a large proportion of cases in our sample there existed substantial reason to fear for the victim's ongoing safety. This in turn underlines the need for the kind of risk assessments that will be mandated by the Victims' Directive. As already noted, the existing Garda Domestic Violence Policy implicitly accepts the need for such assessments. In our sample, however, participants reported that some form of a risk assessment was carried out in only three cases. In one case, this assessment involved a review of Garda data on the victim's relationship with the offender. In the other two cases, the victim was involved in the assessment, and the assessment was carried out early in the domestic violence history. Of the remaining thirty-five cases, twenty-nine participants reported that no form of risk assessment had ever been carried out by the Gardaí.

## V. PARTICIPANT ASSESSMENT OF GARDA RESPONSE

The Garda Síochána Act 2005 provides that, in addition to the detection and investigation of crime, the Gardaí have responsibility for the vindication of human rights and the protection of individuals and their property.<sup>50</sup> Given that domestic violence, by its nature, is a continuing situation, victims of that violence are especially in need of Garda protection and vindication. Accordingly, we were particularly interested in our participants' assessment of the Garda response to reports of domestic violence.

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<sup>50</sup> Section 7.

### *Praise for the Gardaí*

The assessments were mixed, with many participants giving high praise to at least some of the Gardaí that they encountered. Lucy stated that she met “great Guards ... who went over and above.” Grace said that the Gardaí were “very good, very helpful”, and that “when I need[ed] their help ... they help me fully”. Jane described the Gardaí she dealt with as “very good, nice, friendly, comprehending”, while Lily felt that she could not “say a word against [the Gardaí].” Anna summed up her experience with the Gardaí as follows:

“I have to say they were quite on the ball, really. They took me seriously and stuff. They were helpful and stuff, whatever. ... [Most], I would say, were spot on, they were very good. I even had a Community Garda call to me one time out of the blue to see if I was okay.”

Other participants singled out individual Gardaí for particular praise. Nora, for example, pointed to the contribution of one Garda with whom she had clashed when she had withdrawn an earlier statement. She said that “he was so nice to me, I couldn’t believe it. ... That was brilliant. That was unbelievable. I think it was more so that one particular Guard, because I felt he didn’t want to talk to me before that, because of what had happened, and he treated me so nice.” Victoria praised the Gardaí generally (“they were perfect; I don’t know how often you hear that”), but reserved particular praise for a female Garda Sergeant who had been specially trained in domestic violence matters. This officer closed off a section of the Garda Station to ensure privacy and stayed in contact in case Victoria needed anything. Similarly, Mary praised a specially trained male officer:

“I have to tell you the truth and I’m going to tell you this Guard, I’d say he got fairly strong training in domestic violence. He was the nicest – he was so sympathetic – I wasn’t expecting this at all. ... [H]e was the nicest Guard and he was the nicest man! The man is after giving me faith.”

Maria reported receiving a “very nice response [from] a very, very nice Guard. ... He was very, very gentle. ... He was almost fatherly in in his concern....”

Experiences such as these tended to lead the participants to feel more secure. Jane said that, “It always makes me feel more secure and I feel like that I’m not alone here in this country and there is someone to protect us and someone to tell – someone to protect us from this abuser or anything, like, that happens to me.” Similarly, Lily stated that she “felt [she] could ring them, I felt I wasn’t on my own and I did feel I was being believed – that was really important. ... [W]ithout a doubt they took everything I said very seriously.”

Perhaps more importantly, prompt Garda action sometimes had an impact on the abuser. Jane noted that the Gardaí caused the abuser to “realise that he did something wrong” and he apologized for his actions. Similarly, Lily suggested that having the local Gardaí come to the house in the middle of the night was the first indication that the perpetrator did not have all the control. Grace reported that her husband met with her and was crying and promised to change his behaviour. Finally, Victoria stated that the “only thing that’s stopping [the abuser], really, is knowing that he would be followed up on, if anything happened to me.” Clara made the same point, but rather more bitterly:

“[T]he way I feel is that if [the abuser] was arrested even once at my place, he wouldn’t have returned again. Because when I look at what happened in the family court when he was so disrespectful to the judge and the judge put him into jail for some time for contempt of court; since then when we go to the family court and he stands up and the judge tells him to sit down, he sits down! Because he remembers. It’s just very simple when people know what’s coming next they behave.”

These comments underscore the importance of prompt and effective reactions from the Gardaí.

### *Negative Experiences*

Other participants were more critical of the Gardaí.<sup>51</sup> The most trenchant criticism came from Emma. The investigating officers asked irrelevant questions about the abuser’s family background, and spoke Irish to the neighbour in whose house the participant was sheltering – being a non-national, she did not know what was happening. The abuser was arrested but was dropped back to the family home the next day, without any warning to the participant:

“They dropped him off at the house, never spoke to me, never tried to contact me, never gave me a courtesy phone call. I could’ve been in that house and they would have dropped him over there. They dropped him at the gate and drove off. They even gave him a blanket because he had no top. Not one person told me. I could’ve been in that house and they would’ve never known.”

Emma also found the Gardaí wanting in their commitment to prosecuting the abuser. She had to ring the investigating officer three times before he would come out to take her statement, and even then he seemed reluctant to proceed:

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<sup>51</sup> One participant (Kate) reported being told by Garda officers that she should kill her abusive husband. She is not a native speaker, but she denied any possibility that she had simply misheard or misunderstood the officers. Kate’s comment is rather startling, to say the least, and if true, would open those officers to serious criminal charges. It seems unlikely that the officers would have intended the comment to be taken seriously, although Kate did take it that way. Serious or not, such a comment clearly represents a serious breach of Garda discipline.

“[H]e said, ‘Are you sure that this is what you want me to do?’ It sounded like he only could be bothered coming if I was sure that I wanted to prosecute because, in his words, ‘Ah women do this all the time and then drop the charges.’ He could not be arsed to write out the statement if I was going to drop the charges. I said he needs to come to my cousin’s house and he needs to take a statement from me because I’m prosecuting that bastard. And he came and he asked me, ‘Are you sure that this is what you want to do?’ And then he asked me what I’d done to upset him. ‘What had you done to make him do that?’ he said. ‘Did you upset him?’ ”

The participants’ main criticism was that officers seemed to trivialise their experiences. Emily pointed out that the Gardaí took a long time to respond – over half an hour despite being located only a few minutes away. She said that this “kind of lowered my faith in the Guards ‘cause I was thinking they kind of strolled in. ... [T]here was no bit of, like, fire in them; I don’t know how to put it but [there was] no panic on them like.” She went on:

“I suppose they are so laid back, I just don’t feel like they are really professional about their job sometimes. It’s like you’re taking them away from their dinner or something. ... Casual, laid back attitude. Especially when somebody is in such a panic and so afraid and they’re just kind of la-di-da.”

Similarly, Sarah called the Gardaí but they never came out. She commented that, “I felt they’re not really taking me seriously...” Emma reported that the Gardaí’s attitude made her feel that she was getting in the way:

“I felt like a pain in the arse is what I felt like. I felt like I’d upset his evening and I’d made him take a pen out of his pocket and write down a statement that he thought or he’d told me I was going to be going back on anyway. I felt like I’d completely wasted his time, that I was a proper pain in the arse and that I’d interrupted his tea and doughnuts. I didn’t feel like anyone was on my side, no one told me what was going on. I didn’t feel any safer after the Garda arrived than before and that’s the truth. It was horrendous from start to finish.”

Sometimes this attitude was evident even in relation to a breach of a domestic violence order. Nicola, for example, reported that the Gardaí failed to take action against the abuser for breaching a Safety Order “because sometimes they said, ‘okay so this is not very serious because [the abuser] doesn’t do any trouble’”. Nicola pointed out that a person might still be forced to live in fear even if the abuser does not engage in overt violence.

On calling the Gardaí, Claire was told that all officers were supervising a parade and that accordingly there was no one to assist her. She “felt just really unprotected, and after a few incidents like this, I

didn't want to call the Garda at all, because I didn't have any help." Emily commented that being asked "what are we supposed to do?" by a female officer "made [her] very nervous about ever going in there again, which means I would've put up with it more like." Mary complained that the investigating officer explicitly sympathised with the abuser and suggested to her that she should come to some kind of compromise with him. As a result, she said that she felt that she would "never ring a Guard again." Poignantly, she went on: "I tell you something: I forgive [the abuser] for everything he done to me, but I will never forgive that Guard until the day I die."

The overall effect of these experiences is that very often the Garda response to domestic violence has the appearance of a lottery. Hannah summarised this view:

"You know what it is? You get them on a bad day, I think it all depends on the one you get. You get them on a bad day and they won't want to know; they look at you like you have four horns on top of your head."

## Chapter 8

### Workstream 3 – Results

#### *I. Stance of Professionals Towards IPV Criminal Cases: Expectations*

##### Contact with IPV Cases

All interviewees reported that in Ireland there are comparatively few cases of domestic violence entering the criminal justice system. Both Gardaí estimated that over ninety percent of their calls related to domestic violence. Two Probation Officers interviewed indicated that, in their current caseloads, they had just two cases in which clients were on probation having breached domestic violence orders. However, both stated that domestic violence played a significant role in many of their clients' family backgrounds. Further, a significant number of women in the prison system disclose backgrounds involving domestic violence.

The domestic violence service providers work exclusively with women and children affected by domestic violence. Most of their work in supporting women in court relates to family court matters such as domestic violence orders, maintenance payments, access and custody. They reported very few cases in which criminal proceedings follow reports of domestic violence to the Gardaí, and few cases in which charges followed breaches of orders. For example, while the domestic violence support workers focus groups were aware of forty current reported breaches in their collective caseloads there were only nine cases in which charges followed, including a charge against a woman for breach of an order.

The comparative rarity of domestic violence cases in the criminal court system was confirmed by the two state solicitors interviewed; one, with over thirty years' experience, remarked that in all of the previous year he had encountered only two such cases. Similarly, the barristers reported that domestic violence prosecutions in the Circuit or Central Criminal Courts were rare, and then only when rape or serious assaults were involved. One very experienced judge commented that there had been an explosion of domestic violence cases in his last five years as a judge, but in the family court rather than in the criminal court. In over fifteen years, he saw only one or two cases of domestic violence

which went forward to the Circuit Court. By contrast, about a third of the cases on the family law lists were applications under the Domestic Violence Acts (i.e. for barring, safety and protection orders). A second judge concurred, saying breach of domestic violence order proceedings were very rare. A third judge remarked that it remains rare to see domestic violence cases outside of the District Court. The court services personnel indicated that in their experience, between one and three cases per week was the norm.

#### Perspectives on Issues which impact attrition rates

Most of the professionals interviewed explained the low levels of prosecutions in domestic violence cases by reference to victim reluctance to pursue cases. Only the domestic violence services pointed to external factors as primary barriers to women pursuing cases.

#### At Report/Garda Call Out Phase

The Gardaí stated that victims expect them to stop the violence at the scene. However, they pointed out that officers can make immediate arrests only for arrestable offences such as section 3 and 4 assaults<sup>52</sup> or for breaches of domestic violence orders (even though treated as summary offences). Often evidence of an arrestable offence was missing, which prevents an immediate arrest. Whether the victim has suffered an injury is a major factor in the decision to mount a criminal prosecution as such an injury improves the prospect of a conviction. Withdrawal by women of their statements makes prosecution very difficult. The Gardaí recognised that victims often are intimidated both at home, and also by the court process, and may have family concerns that interfere with them maintaining their complaints. Interestingly, the domestic violence services complained that they receive few referrals from the Gardaí.

#### Victim Reluctance to Pursue Complaints

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<sup>52</sup> Sections 3 and 4 of the Non Fatal Offences Against the Persons Act 1997.

The justice professionals suggested that women will generally withdraw their complaints and statements due to commitments to their partner, fear and intimidation, and to avoid the ordeal of court and exposure of private family matters. One lawyer indicated that the Gardaí today treat domestic violence as a crime, and that low levels of prosecution are down to reluctance on the part of the victim. Thus, for this interviewee, more cases would be prosecuted if victims followed through with their complaints and statements. For their part, domestic violence services acknowledge that some women do drop their cases for a variety of reasons. They report that women want the situation stopped but do not want the ordeal of court. However, women are more likely to stay the course if they contact domestic violence services.

### System Failures

The domestic violence services suggest that Gardaí at the incident scene often advise victims to seek a domestic violence order, while ignoring evidence of an assault, criminal damage and the availability of witnesses. Thus, criminal behaviour is ignored, which has a discouraging effect for victims while simultaneously offering little incentive to the abusers to restrain their violence.

The support services chart operational failures of the Gardaí and courts systems, and suggest that victims view the criminal justice process as an ordeal which further traumatises them. Specific victims may have mental health or addiction issues which render them too fragile for the robust court processes. Victims might also prioritise family and community leaders' wishes, or may not want the partner to get in trouble with the law.

Most of the factors named by legal professionals in respect of women's reluctance to pursue cases focus on psychological and family issues rather than system failures, access to resources and supports, and social attitudes to domestic violence. Presenting a domestic violence order as a prerequisite for criminal prosecution in cases where there is clear evidence of assault is misleading to victims. While victims may be reluctant to initiate or to maintain a complaint, failures to highlight criminal behaviour, arrest offenders, gather available evidence and take statements from witnesses reduce the possibility of bringing a successful prosecution. Further, Garda expectations of victims' lack of steadfastness in pursuing complaints may influence their own reluctance to build a prosecution case, which in turn makes victims less motivated to pursue a case. Thus, both the Gardaí and the victims become involved in a form of self-fulfilling prophecy that undermines the effectiveness of the criminal justice system.

## At Inquiry Phase

The state solicitors interviewed were confident that Gardaí would prosecute if there was sufficient evidence to support a case. Both solicitors stated that the overall evidence, the availability or absence of witnesses, the withdrawal of complainant statements, and the need to be fair to the accused were factors that would impact a prosecution. Sometimes there appears to be an overreliance on the victim's evidence (acknowledged by the Gardaí); a DPP officer referred to a case in which eyewitness testimony led to a conviction despite the victim testifying for the defence. Other interviewees – domestic violence support services, two of the judges and one of the prosecuting barristers – were more critical of Garda evidence gathering. The domestic violence support services indicated that they are often asked by the Gardaí to collect evidence (such as photographs of injuries), and that doctors and victims also submit uncollected evidence to the Gardaí. The interviewees acknowledged the pressures on the Gardaí, and also noted that some victims might prefer domestic violence workers being involved in evidence gathering. However, from a chain of evidence point of view, such involvement is undesirable; the best evidence is that collected in a timely fashion and preserved by An Garda Síochána. Further, reliance upon domestic violence agencies might send the wrong message to victims about levels of Garda support.

In indictable cases, the Director of Public Prosecutions (DPP) would usually point out any evidential gaps to the Gardaí. The DPP, however, has little involvement in domestic violence cases which are overwhelmingly prosecuted summarily by the Gardaí in the District Court. Further, until recently domestic violence cases referred to the DPP were not flagged as such by the Gardaí.<sup>53</sup> This policy has recently been changed for a variety of reasons: the Istanbul Convention, the Garda Inspectorate Report of 2015, the Victims' Directive, and links with Cosc and the Northern Irish authorities.

## Communication

The domestic violence agencies indicated that the absence of information, or the provision of inaccurate information, regarding crucial aspects of the criminal justice system is not uncommon in

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<sup>53</sup> Domestic violence is not recognized as a distinct offence in Irish law. Rather, domestic violence refers to a context in which other offences are committed.

domestic violence cases. Further, inconsistent Garda messages and a failure to follow up a call out can be discouraging to victims. There can also be failures of communication within the criminal justice system, and information regarding orders granted or renewed may not always be passed on to victims. Some victims are encouraged to agree to an undertaking by the alleged perpetrator to desist from being violent but do not always understand that these are not orders, and there is no power of arrest or access to court.

## Risk Assessment

There was little commentary in the interviews regarding the behaviour of perpetrators, although one of the Probation Officers noted they are “charming, persuasive, resourceful, very convincing manipulators”. Some victims’ groups reported that some abusers seemed to operate with a degree of impunity. While levels of intimidation and high risk of repeat victimisation are identified by all interviewees as impacting victims’ experiences in the criminal justice system, there are few formal risk or need assessments taking place. Probation officers do use the Spousal Assault Risk Assessment (SARA)<sup>54</sup> tool to assess the risk of DV perpetrators re-offending. In managing risk, they also take heed of the attitude to the victim and level of remorse of the offender, the impact of the violence on the victim and her assessment of risk (if available). While the Gardaí say they assess the risk at the scene, such actions seem to be conducted informally. The domestic violence agencies referred to ongoing post-report harassment, even when domestic violence orders are in place. Such harassment may take the form of threats, including by text and other digital media.

## Support

The right to access and receive support from victim support services is enshrined in Articles 8 and 9 of the Victims’ Directive, but the domestic violence support services said that they received few referrals from Gardaí. Some of the legal professionals looked very much to the Gardaí to support victims. The Gardaí themselves made a distinction between their role in informing victims about the criminal justice process, gathering evidence and compiling the case, while the social and emotional support was provided by the support services to victims.

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<sup>54</sup>The probation Service Policy and Practice Guidelines 2009.  
[http://www.probation.ie/pws/websitepublishingdec09.nsf/AttachmentsByTitle/Domestic+Violence+Guidelines+Probation+Service+Practice+and+Policy/\\$FILE/domestic+violence+guidelines.pdf](http://www.probation.ie/pws/websitepublishingdec09.nsf/AttachmentsByTitle/Domestic+Violence+Guidelines+Probation+Service+Practice+and+Policy/$FILE/domestic+violence+guidelines.pdf)

## At Court Phase

The low number of domestic violence cases being prosecuted was confirmed by all interviewees, as noted above. All of the professionals interviewed spoke of how intimidating the criminal justice court process was for victims of DV. Interestingly, while noting that intimidation could result in the victim withdrawing her statement, one judge spoke of the unwillingness of some judges to allow court accompaniment. One of the barristers commented that the judges were key figures in the provision of court protection and support services, but indicated that judicial attitudes vary considerably.<sup>55</sup> One judge commented that specialist judges and Gardaí are required.

Two judges suggested that the low level of prosecutions was due to Gardaí being reluctant to pursue investigations, preferring instead to refer victims to the family courts for orders under the Domestic Violence Act 1996. The domestic violence services suggested that domestic violence is not treated seriously across the system. They gave the example of a man receiving only a warning having burned the couple's apartment. In some cases, breaches of Barring Orders appear to have been ignored in order to prioritise 'real crimes'.

## Training

Lack of training of criminal justice personnel impacts the responses and also leads to differing views as to what constitutes domestic violence. For example, a son's violence against his mother was not regarded as a DV issue in court according to one DV Support Service worker.

## Anonymity

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<sup>55</sup> Several women interviewed as part of Workstream 2 gave the judges high praise. Lily, for example, noted how seriously the District judge and the court staff took the issue of domestic violence. Lucy expressed her delight at the judge commenting on her "strength, heart and courage". Jane was generally happy with her court experience, although she complained of a lengthy delay in the process.

Lack of anonymity in the criminal courts was raised by a number of professionals as a deterring factor for victims of domestic violence, especially in smaller communities. The Probation Officers remarked that coming to court is very difficult for victims. Similarly, one court clerk with fifteen years experience in the District Court commented that coming to court was the 'hardest part' for victims. District courts in particular are very intimidating, partly because of the class of crimes addressed there, partly because of the stigma of domestic violence, and partly because of the absence of anonymity. So, the judge will call out family cases using initials but the persons involved have to stand in open court to acknowledge their presence.<sup>56</sup>

## Delays

Most of the professionals remarked on the delays in processing criminal as well as family law cases. Delays occur in the context of awareness of the likelihood of intimidation and on-going contact between the complainant and the accused. The domestic violence support services maintained that many delays have been instigated by the accused and facilitated by the courts.

## The Impact of Domestic Violence on Victims

A court clerk indicated that most complaints were only withdrawn at the court stage, while one judge maintained that ninety-five percent of cases were withdrawn in court. Most of those involved in Workstream 3, especially those who have direct contact with victims, recognise the level of courage it takes for victims to overcome the impact of the abuse, fear and intimidation they experience. The Probation Officers were especially aware of the psychological effects of domestic violence on victims.

One barrister with prosecutorial experience stated that domestic violence cases are relatively easy to prosecute at indictable level if the victim gives evidence. Indeed, he indicated that in ten years he never had to fight such a case as the abuser invariably pleaded guilty. He added that the judge will often adjourn sentencing in these cases, and if he has a good record and there is no repetition of the behaviour, there is good chance that the abuser will be able to avoid a prison sentence.

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<sup>56</sup> One of the women interviewed as part of Workstream 2, Emma, noted that while her case was being dealt with in a rural courtroom, several of her cousins were sitting in the same courtroom on unrelated matters. She also noted that her abuser was seated directly behind her.

## Improvements Required

Importantly, the DPP and prosecuting counsel believed that improvements could be made in deciding whether cases should be prosecuted summarily or on indictment. The data from all participants is that there are few prosecutions for domestic violence and even fewer prison sentences. Most cases are dealt with in the District Court, and utilise family law. Many criminal cases relate to breaches of domestic violence orders, in which the statement of victims is central to making a good case.

To address the typical repeat offending involved in DV, one judge suggested the use of consecutive sentences in cases in which a suspended sentence for a previous breach has been violated. Also victim impact statements should be used in order to take into account the context of the crime and the particular injury to victims of being abused by one's partner. Overall there was an appetite among interviewees to formalise some of the processes relating to domestic violence. The DPP's officers and a barrister advocated the development of protocols to assess and manage risk.

## Special Measures

The ordeal of court victims was recognised across the board. Taking the stand and giving evidence in open court against a family member/abuser intimidates victims. It can also be a traumatising experience. Repeat victimisation was acknowledged by all professionals as likely in domestic violence cases, and reprisals and threats constitute a significant deterrence factor for victims in the experience of support services. These agencies also pointed to the specific vulnerability caused by the abuse, and the additional needs of women with addictions and mental health issues. Supportive measures such as organising the list to ease waiting times, access to private waiting rooms and clearing open courts were specifically mentioned. State solicitors stressed that they had to keep the needs of victims at 'arms length' to avoid damaging the cases and only became aware of these needs at the court stage.

There is little evidence in the data of special measures in place for victims of domestic violence with special needs beyond interpretation and translation services. Some professionals were critical of the quality of interpretation, suggesting that some non-national women may not be fully understood or

understand what is happening in court. Clearly such services need to be evaluated, by the victims in particular, and appropriate personnel recruited.

There was recognition across the board of the importance of court accompaniment for victims of domestic violence. It is important that accompaniment of victims is accepted as necessary in criminal court. All interviewees indicated that keeping victims informed of the criminal process is imperative, and showed concern that victims would have their support and protection needs met, either inside or outside of the criminal justice system. However, the interviewees' comments indicate a degree of disconnect between the different agencies, as well as difficulties in assigning and dividing up these responsibilities.

## *II. Stance of Professionals Towards Domestic Violence Criminal Cases: Needs*

All the criminal law professionals commented on the reliance on women to give evidence in DV largely due to its occurrence in private without witnesses. Given that Gardaí and all the other justice professionals acknowledge that they need women to give evidence, the question arises as to what victims need to reassure and motivate them to seek justice/protection.

### The Gardaí

The senior Garda perspective is that overall getting the case through and having support from victim services are the critical needs of victims of IPV. Victims need to understand the process and have it explained on-goingly. Effective referrals are critical for support on other issues affecting the victim's wellbeing and protection. Breaking the contact with the abuser is important in meeting support and protection needs. An arrest can help give the victim space and support the gathering of evidence. Accompaniment is a very helpful support, '*A supported victim makes a good witness*'. There is recognition of changing needs of the victim through the process, from thorough risk assessment and evidence gathering, to getting the case to court and identifying special measures to maintain support right up to the court hearing. A mutually reliant relationship between victim support services and the Gardaí is inferred as they see themselves as focused on the evidential side, the support agencies on the

support side. They also speak of empowerment of victims assisted through asking the victim what they want and not assuming. Unfortunately commentary from other professionals suggests Garda practice on the ground falls short of the standards described above.

## The DPP

The DPP personnel asserted that the single biggest need of victims is information. Under the Victims Directive<sup>57</sup>, victims will be entitled to an explanation of the reasons for a decision not to prosecute and, in serious cases, to seek a review of the reason. Victims need to know how and why the system responds as it does. This represents accountability to victims, an experience which may empower and encourage victims. Interference with witnesses is taken very seriously by the DPP. Attending to the needs of victims from ethnic minorities is important and the information booklet on going to court as a witness is in fifteen different languages and interpreter services are available. While pre-trial meetings are said by the DPP to happen in serious cases it must be recognised that DV is a pattern of violence and what might appear as a minor assault might have occurred in the context of serious previous violence. While previous offences cannot be taken into account, in terms of understanding victims, an inquiry into prior history of violence is necessary.

## State Solicitors

Prosecutors say they become aware of victim needs mainly at the court stage. In prosecuting cases, both solicitors made the point that it was not one's role to address these needs and that one has to keep the needs of victims at 'arm's length'. One state solicitor said he speaks to journalists not to include identifying details where cases are not in camera and generally makes attempts to protect the privacy of victims. There were concerns expressed that being attentive to victim/witness needs through the criminal process was in danger of prejudging the case. The State Solicitor involved sees the incoming Victim's Directive as problematic in this regard as it comes from Europe which has an inquisitorial system whereas in Ireland the burden of proof is on the prosecution. However, in other criminal cases

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<sup>57</sup> The DPP has already established a Communications Victims Liaison Unit for this purpose. Also under the directive Article 25, all DPP staff who meet victims must undergo training and some of this training is by Non Government Organisations (NGO's). DPP barristers are exempt from CPD requirements but the DPP requires they meet these standards.

(rape, sexual abuse, and gangland crimes) witness protection and support needs are highly attended to without concerns that this is prejudging cases. The prosecutorial attitude is that while on occasion they must and do make applications for special measures in court, they must not be personally and directly involved with the victim except in clearly limited and prescribed circumstances so as to avoid damage to the case.

The use of the term victim in discussions with Criminal Justice Personnel is confusing at times as complainants of DV are understood to be witnesses for the prosecution rather than victims. The accused is presumed innocent until proven guilty beyond reasonable doubt, and our adversarial system provides that the place of complainants in a criminal trial is that of prosecution witness. One becomes in the Criminal Justice System a victim once the person accused has been convicted – not before.

#### Prosecuting Counsel

Again the need for an individualised response with accurate information and an approach that facilitates victims to make decisions in their own best interests is highlighted by one prosecuting barrister. This approach recognises the special contextual features of DV related crimes. Prosecuting counsel and state solicitors were of the view that they have no formal role to support victim needs but would be informed of these as the need arose.

In relation to their role, one prosecuting counsel says having access to the court on indictment is a key support offered and is dependent on having evidence gathered, attention to detail and a clear case presented. But often DV is dealt with through civil processes in the district courts. The evidence threshold is less in civil matters, regardless of the level of the court. The standard of proof is lower in the District Court in Domestic Violence Order applications than it is in criminal cases, this too may impact the motivation to collect available hard evidence referred to in earlier commentaries.

#### Court Services

Court services of their nature are involved in relating to different professional groups and are very much concerned with meeting the needs of their service users. The relevance of assessing needs to their work relates to finding out what service people require of them according to a court manager.

This manager spoke of providing relevant and accessible information on orders to victims. One court clerk said IPV victims need to feel secure and safe but assessing their needs is mainly a matter for the Gardaí. However, when they are alerted to needs of victims they try to arrange a private waiting room. Sometimes Domestic Violence Act (DVA) orders [barring/safety orders] will help, sometimes barring orders mean nothing. It also helps if problems related to alcohol and/or drug use are removed – if either of these has been contributing to the DV. The court service manager becomes aware of victims' needs through contact with Gardaí, Victim Support and DV services and holding court users meetings regularly. One court clerk remarked that no particular arrangements were made for victims of IPV in the criminal court as that was the role of the Gardaí. All the court clerks identified victim support and accompaniment as significant supports.

## Judges

Two of the judges saw themselves as having a referral role in relation to the needs of victims. According to one judge, who saw it as part of his role to encourage victims to use DV support services, he might ask to see a medical report if there was a particularly vicious assault. Another judge seemed to be of the same view in respect of referral for support saying he might refer them to the HSE (Health Service Executive), or to a family doctor. A third judge said that the courts were very much biased in favour of protecting women in IPV. The latter two criminal court judges identified the differing vulnerabilities of women depending on characteristics such as age, temperament, nationality, poverty, multiple abusive relationship histories and addiction issues for the offender.

There is recognition that victims' expectations of appropriate justice are not always met when serious cases are tried in the district court. One judge commented in response to how victim's vulnerability and protection needs impact criminal proceedings that serious assaults are tried summarily in the District Courts (did not go to the Circuit Court) for reasons of expediency, the sheer volume of them kept them in the lower or District Court where fines and sentences are lower. He highlighted addressing protection needs through improving sentencing and the need to have a consistent sentencing response, such as consecutive sentences where there is a breach of a suspended sentence. Perhaps also, victims should have legal representation at sentencing stage he suggested. While another judge spoke of how rarely bail conditions as protective measures featured because criminal proceedings including for breaches were rare in his experience. One of the challenges may be convincing some professionals that there is room to improve in attending to the support and protection needs of women affected by DV as they go through the court process. For example, one judge thinks

that there is already a bias to protecting women affected by DV. Such strong opinions can determine if and how victims' needs are taken into account.

### Probation Services

Probation services in the manner in which they operate have an insight into the needs of both the perpetrators and the victims. Probation assesses primarily the needs of the perpetrator and gives a sympathetic response to the victim. Information and support every step of the way are the key to meeting the needs of victims. It is difficult to quantify and document the impacts of DV in terms of levels of fear and intimidation but these are evident when one talks to victims in their experience.

### DV Support Services

Unsurprisingly women's support services view the immediate safety of the victims at the doorstep as the first need, followed by information and support from a system that acts promptly and in a manner which shows it takes DV seriously. However, much of their commentary on victim needs involves shortcomings and failures to uphold rights and protect and support victims of DV. In describing delays, failures in gathering evidence, on-going re-victimisation, women with no voice in court and lack of risk assessment and arrests, reliance on victims to direct actions, they present a picture of a system which in their view minimises the violence and the risks. They cite the need during the Investigation phase for timely evidence gathering and statements. Failures to respond to victims include, in one case taking five months for a statement to be taken from a woman who was seriously assaulted with broken bones in her face. As mentioned before, often support services are the ones who collect evidence and are often asked by the Gardaí to do so.

As men are seeking more orders now too it is confusing for the Gardaí and the court if there is no investigation as to who is initiating the violence. Women with bad reputations, mental health or addiction issues are named as not being taken seriously when they make reports. Unwanted texts and phoning are common and need to be recognised as breaches. Harassment is not taken seriously, instead Gardaí ask about section 5 'has he threatened to kill you?' Anti - harassment conditions should be part of bail conditions DV services say pointing to experiences of on-going intimidation of victims after they report violence and perhaps further explanation of withdrawing or not making statements.

On the positive side courts are getting better at meeting needs in some cases. Women DV victims say they would be lost without accompaniment. Interviewees who mentioned court accompaniment however, said it was either non-existent or rare for DV victims in the criminal courts unless there was a sexual aspect, when the Rape Crisis Centre is likely to provide Court Accompaniment.

Finally DV support services said trends in the Family Courts need to be monitored for their effect on IPV victims support and protection needs. The lack of a coordinated integrated approach and agreed, consistently applied protocols is apparent. In Dublin, when a woman applies for a Safety Order but then does not follow through, she may not be allowed another Protection Order but told she is being a nuisance. Women victims are often in courts waiting all day but alleged perpetrators commonly create delays but allowances are made for them. Bench warrants are issued but not generally executed. Judges use the threat of criminal charges to push family cases to conclusion. Sentencing involves a lot of suspensions. There is still no consideration of risk factors when deciding orders e.g. DV in pregnancy is a common risk factor, but pleas of not guilty require judges not to take previous history of DV into account at trial, unless and until there is a conviction. Previous history may however be relevant to the issue of bail at one or more preliminary hearing(s).

### *III. Experiences with Criminal Proceedings Along the Trajectory: Challenges*

All the prosecutors hold a view that the biggest challenges for victims relate to fear and speaking out in court in particular about a family member. Interestingly the judges thought the challenges largely arose from the justice system and how it is intimidating and pro-defence, not sensitive to the psychological impacts of abuse and where victims may be regarded as a bit of a nuisance at times. The specialised nature of the crime, lack of support and lack of investigation represented challenges for victims according to one particular judge mainly involved with criminal cases. Two of the court clerks commented that, above all, victims feel very vulnerable in open court. The public side of hearings is a real deterrent as their privacy becomes public. If they wish to withdraw, the judge would ask them to explain why and to ensure it was not because of fear, threats. Often the court is very full and busy [while this is going on]. DV Support Services hold the view that the biggest challenge is that IPV is not taken seriously. This, they say, is evidenced in the low rates of arrests, criminal cases and sentences, as well as comparing the responses of the justice system to IPV with responses to other violent crimes.

### *Additional challenges for some victims*

Traveller victims are seen as having additional challenges but these were not specified outside of the likelihood of their withdrawing statements and the high levels of domestic violence and pressures from within their community not to prosecute offenders. Similarly, high levels of violence and the subjugated status of women in non-national cultural and ethnic minorities raised particular challenges for victims from these groups according to judges and the state solicitors and probation. DPP personnel commented that in general there are no additional support needs for these groups, except for the quality of interpreters, especially amateur ones who may not interpret all the evidence or give advice. The remote awareness of the needs of minority groups highlights the need for the justice and court systems to consult closely with representatives of these groups.

### *Factors which determine whether needs for protection and support are addressed in criminal proceedings*

Prosecuting counsel viewed the presiding judge as most influential in determining whether victim support and protection needs are met. Judges prior history with offenders and their view of court accompaniment as well as their relationship with the Gardaí can all influence outcomes. Court services said the manner in which the victim presents her risk level is a strong determinant of a prompt response. Whether the prior history of complaints of IPV are cited also influences responses according to one court clerk. DV services, judges and probation all suggested that the competence and attitude of individual professionals greatly determined whether needs were addressed to or not. One judge answered that the law and legal language should be easily read and understandable to all perhaps inferring that this was influential in determining their capacity to get their needs addressed.

### *IV. Stance of Professionals Towards IPV cases: Decisions Related to Criminal Proceedings*

Access to Gardaí and prosecutor files was not possible in this study. Victims interviewed were generally unclear about decisions related to their cases. Overall, the legal professionals interviewed

had little contact with IPV criminal cases owing to the small volume of these cases reaching the criminal courts.

### *Perspectives on Systematic Risk Assessment*

There was agreement from all that no formal risk assessment procedures existed in any professional settings. Differences as to when actors in the system would need to be involved in risk assessment were raised, for example, at call outs for Gardaí, while the DPP would assess risk in relation to proceeding or not proceeding with a case if it would result in greater harm perhaps loss of life for a victim. Professional experience and judgement was referred to as guiding risk assessment by the DPP. The prosecuting barrister called for ensuring that risk assessments are done in conjunction with victims. Judges said they risk assess at sentencing or through hearing victim impact statements. One of the judges outlined the informal assessment in adjudicating cases he made in DV cases as consideration of provocation or whether drink was involved, was it a one-off, how severe was the violence. One judge said that risk assessment should be carried out independently and should only come to their attention at bail hearings or sentencing.

Probation services have a history of risk assessment with offenders, backed up by inquiring of other sources including victims. One of the Gardaí made the point that risk assessing carries with it a responsibility to risk manage. There is evidence of this happening within probation services as they follow up inquiries with victims of DV with support meetings, referrals for support, and with appropriate referrals back to court. The point was made that risk assessment is skilled work, requiring professional judgement based on competence and experience. There is no risk assessment so protection needs are not adequately evaluated according to women's support services. Without a risk assessment tool there is no picture of DV. A few DV victim support services do use the Danger Assessment tool (which helps to determine the level of danger an abused woman has of being killed by her intimate partner). The results are provided in some cases to Gardaí, to good effect sometimes but there are no interagency protocols to assess and manage risk.

### *Improving Assessment of Victims Needs for Protection and Support*

Appropriate penalties for breaches were raised by Gardaí as they are viewed as too lenient. Improving needs assessments might result in linking up proceedings in family and criminal courts to prevent situations like a Barring Order being granted on the same day the judge grants access to the same defendant in the same house. One of the prosecuting solicitors said in his view victims were well protected when they came forward, there was little intimidation and that bail conditions were effective in affording them protection. There seems to be an understanding by one of the state solicitors interviewed of victim's needs as more a matter for health and psychology than protection when he suggests needs are best addressed and assessed in these settings.

The DPP personnel view is that protocols are required to ensure risk assessments are made, and risk managed through diligent investigations by Gardaí, leading to court hearings and prosecutions. Assessment in deciding whether cases should be summarily prosecuted or on indictment could be improved. DPP personnel also added that the issue of anonymity should be considered, in general. Both prosecuting counsel also supported having clear protocols for handling these cases to improve responses to victims, with one barrister saying he accepted that 'the system needs to become more formalised'. The other counsel emphasised that improvements in Garda responses were primarily required, followed by court services.

Courts service raise the importance of agencies coming together to share awareness of DV and one assumes risk. The Courts Service Manager called for more court accompaniment so victims can have someone with them throughout the court proceedings. Another court clerk called for greater liaison between the Gardaí and DV Support Services.

The judges talked about the criminal justice system and victim support. For one judge, assessments of needs should include compensation payments to punish offenders and support victim recovery e.g. through funding access to specialised trauma counselling. He added that under recognition of the serious and severe impacts of abuse by judges needs to be addressed and separate legal representation for victims at sentencing. Copying the best of other comparable criminal justice systems was offered by a second judge. Independent third parties who have more time and who are more expert, should prepare reports to assist the Court, as the judge does not have time to assess the victims' needs

him/herself. This judge said An Garda Síochána has not been reformed as yet and often doesn't want to get involved in prosecuting IPV violence. However it is fair to say that victims do withdraw a lot of the time. It is important also to be courteous and respectful to victims – ignorance is terrible. From earliest stages, victims should have constant support especially from the Probation Service and social workers, it should not all be left to DV services. Emotional support, advice, and information are all critical. Domestic Violence and Sexual Violence are hugely important issues for training and also, reasonable speed in processing cases is vital. Training for all agencies involved is very important. Workstream 4 documents would also help, but with judges, it is very important not to “tell them what to do” – they have to be seen to be impartial. At the same time one judge believed assessment of risk and victim's needs lay outside the remit of the Criminal Justice System (CJS) echoing the views of a state solicitor as alluded to above.

Probation made the point that more resources were needed for probation home visits and for more DV Victim Support Services and court accompaniment by DV support services in criminal proceedings. Better social policy, planning and services based on collated data on DV from various sources were also suggested. A probation officer suggested a need for skilled specialised DV Gardaí, preferably females. They need to be soft not heavy handed, firm but therapeutic. Their work would integrate therapy, social working and Garda working. They should have foundational training in psychology or social work and there should be two in each major town so they would be a consistent contact for victims, be able to create a rapport and help victims of IPV to gain confidence in the justice system and the law.

*‘Education of the judiciary needed to happen yesterday’* from a probation perspective. Through the process of repetition of petitions for orders and DV offences, judges may lose faith in victims, can doubt them and get frustrated with them. They need on-going refresher trainings with contact with real life situations, real life IPV survivors to talk to them. Court service staff too need specialist training on DV. Overall there needs to be understanding of the ‘revolving door’ of DV offending and petitions. The CJS will never help to get a victim out while they ask *‘what is wrong with her?’*

Probation also proposed a more intensive awareness raising strategy through targeting communities, including geographical and ethnic communities. Areas could be identified using information on deprivation and poverty, social violence, high public order crime, A&E reports of domestic injuries and statistics from Gardaí and DV support services and courts. Then these areas could be targeted with information, support and services to support safe and respectful family and community relations.

For DV support services improving assessments would have to lead to taking DV seriously and lead to more prison sentences for assaults and breaches. Also closing off the disconnect between the CJS and the Family Courts Service (FCS). In one case referenced, a woman was charged with impeding access while concerns for her children were being investigated. Section 20 reports are rare, hard to get and take a long time. Sometimes criminal charges may be bartered away in exchange for maintenance or access allowances. There needs to be more information on the on-going status of investigations so when a woman asks if her husband/partner has been arrested, she is not told ‘we’ll let you know’. More referrals by the Gardaí to DV support services would indicate and build on awareness of victims’ needs. Gardaí hold the statement and case file and should therefore ensure preparation of the woman for court for what is expected of her or a reminder of her statement. Services argued that when women see Gardaí as protectors they may follow through more. Assessment needs to sensitise the system and professionals to the unique features of DV, in particular how the relationship between the parties represents an on-going risk to victims and requires that victims are kept informed of developments.

DV Support Workers want their job recognised as a profession. DV staff need specific training on the CJS to inform and support victims and contribute to ensuring the CJS meets the protection and support needs of victims within its remit. Recognition that victim support is vital and does not intrude into the legal process is required. Court accompaniment must be available to all victims including at in-camera hearings. *“Victims can be supported and not be good witnesses”*. Support and protection in DV cases is complex and dependent on the work of all agencies – effective cooperation is key.

### *Interagency Cooperation*

There was agreement that formal interagency cooperation does not exist as such and there is not much informal cooperation and what there is, is focused on the defendants not the victims. Lack of consistent positive cooperation between justice professionals was referred to by one of the judges. One judge thought that all the agencies should see themselves as fellow collaborators with a higher calling to prevent more serious violence but that currently the system is really too rigid for much informal co operation. There was a difference of opinion on the level of cooperation between state agencies and Non Government Oorganisations (NGO’s in protecting victims. One judge thought it was good, another thought the victims were left to the DV services by the Gardaí and the third said

the criminal courts do not liaise with victim support services.

Both State Solicitors see no requirements to cross reference with other criminal justice actors or the actions of the family courts outside of the Gardaí. While both commented that cooperation across professional areas was disjointed, ad hoc, variable in outcomes, one solicitor said informal contacts between An Garda Síochána and the State Solicitor work well generally, and, often contact between Gardaí and State Solicitor is informal, e.g. by phone call. In regard to victims, he said it depends on themselves how well the liaison with An Garda Síochána works. Sometimes he is contacted directly by victims, but he explains that he cannot discuss the case with them and refers them on. As regards liaising with NGOs another solicitor said they don't really see/liaise with victim support services, in the criminal courts and also that contact is limited due to the small volume of criminal cases.

Cooperation, between court staff, An Garda Síochána, judges, victim support services should be in place but elements don't work well together according to a prosecuting counsel. Informal cooperation is more personal than systemic. DV support services and State agencies have very little to do with each other in general. Overall there is a lack of coordination in the system, the higher up you go the better but also vice versa. There are no investigative powers for judges or prosecutors in the Irish system. Formal cooperation, more statistics on sentencing, developing the sentencing database would be positive steps. Another prosecuting counsel says there is informal cooperation between Gardaí and prosecution and identifies the need for systematic support for victims, not involving prosecutors or judges, and the courts service. Victim support services don't really come into court with victims of IPV in their experience.

Court services confirm that there is no formal structure for communication but one manager and a court clerk say exchanges do happen at service users' meetings 2-3 time per year. Informal cooperation is very important, and works well for victims of IPV with a court clerk remarking that they worked informally with DV services on order applications and criminal matters. No opinion was offered on how NGOs (victim support services) and State agencies work together to protect victims.

DV Support Services say the fragility of the inter-agency cooperation contributes to relying on personal relationships/connections with individuals. Important aspects such as confidentiality understandings are often not shared or understood by other agencies e.g. one agency sent a woman's address to the man. People are overworked in all the agencies including DV services and there can be burn out and lack of support to practitioners. The lack of formalised interagency contact means that

policy changes are not always clear with implications for victims e.g. the intercounty bar for housing does not now apply to DV cases in one county.

## *VI. Outcomes of Proceedings: Effects for Women*

### *Impact of supportive measures on outcomes and effects on women*

Gardaí and support services believed that support measures did affect outcomes for victims at different stages. However, few interviewees described how these measures impact at different stages of the criminal justice process. One prosecuting counsel said support helps victims to be less traumatised. The challenge of the court process means that a person who is comfortable speaking in public is likely to do better in court (although it is not clear what ‘do better’ attaches to e.g. outcome, trauma impact). Personnel from the DPP office said supportive measures do affect outcomes in that victims will persist with a case where there is good Garda support and good information. One judge opined that if victims are heard, and heard with empathy, that has to help them and furthermore if perpetrators are dealt with appropriately on sentence, especially if they are [real] thugs, that has to help victims. DVA orders have a positive impact according to another judge. The final judge’s comments were that support measures cannot have an impact on the outcomes. Again he implied the salient issue was for the Gardaí to pursue cases more proactively. *Probation described how* in a recent case the inspector was observed speaking to a woman, informing her and making contact with her in court. Later he was heard saying ‘*I will walk you down the steps of the court (building)*’.... evidence that positive support can effect change. DV Support Workers took the view that supporting victims can be a delicate task and building trust is hugely important while bad experiences have a lasting impact. They raised a reminder of the large numbers of women who do not come forward saying some women have no support and some women’s voices are not heard at all.

## Chapter 9

### Discussion and Conclusions

The limitations of this study, especially the lack of a representative sample, have been outlined earlier and accordingly we do not suggest that our findings offer a definitive guide to domestic violence in Ireland. We offer our findings, however, as a series of hypotheses that can be tested in a later study.

#### *The Victims*

Our findings suggest that there is no such thing as a typical victim of domestic violence. Our participants were of different ages, occupations and educational levels. Many exhibited several indicia of independence: they were significantly better educated than their abusers and many had independent sources of income. Further, the nature of the victim's relationship with the abuser did not seem to matter: the numbers of participants who were married to their abusers equalled those who were not. Opting for the relative freedom of a non-marital relationship consequently offers no guarantee against suffering domestic violence.

#### *The Violence*

Domestic violence is rarely a one-off event, instead tending to be a pattern of ongoing events. The stories our participants related suggest that domestic violence rarely ends through the unforced unilateral decision of the abuser. Rather, in most instances the violence continued throughout the relationship, and lasted in some instances for many years. Further, domestic violence does not necessarily begin at a low level and then gradually escalate; half of the participants reported that at least one of the indicators of serious threat to the victim's life were present in the very first violent incident. These findings demonstrate the importance of an early complaint to the Gardaí, and for the Gardaí to take that complaint seriously.

The stories in our sample also address a persistent question that arises in popular perceptions of domestic violence: "Why didn't she just leave?" Implicit in this question is an assumption that the

violence will cease if the victim simply walked away. Leaving aside the practical issues that might prevent a woman from leaving an abusive home, there is no guarantee that doing so would have any effect. Nora's abuser threatened to kill her after she left him, while Grace continued to suffer harassment. Further, sometimes the act of leaving can be a trigger for an escalation in the violence. So, Emily suffered her most violent reported incident after leaving her abuser: he turned up at her new residence demanding to enter the premises and threatening to burn the place down. Similarly, Anna's abuser assaulted her and attempted to rape her some time after she left him.

### *The Garda Response*

Most of the interviewees in Workstream 3 agreed that domestic violence incidents do not usually form the basis of a criminal prosecution. The interviewees indicated that the civil courts most frequently deal with such incidents in the context of the Domestic Violence Act 1996. Most of the professional interviewees attributed the relative paucity of criminal prosecutions to reluctance on the part of victims to maintain a formal complaint. Various reasons were suggested for this reluctance: intimidation of the victim, family issues, an unwillingness to get their partners into trouble with the law. The participants in Workstream 2, however, indicated that their primary motivation in approaching the Gardaí was to stop the violence rather than to punish the abuser. This creates a certain tension with the criminal justice system whose primary *raison d'être* is the investigation and punishment of those who commit criminal offences. Thus, victims who contact the Gardaí might not intend to make the formal statement required to trigger the criminal process, which in turn may result in members of the Gardaí seeing their efforts as being wasted. Emma, for example, told us that the investigating officer appeared unwilling to take a statement without a formal commitment from her to maintain her formal complaint. Similarly, Nora told us of an officer's unhappiness when she decided to withdraw her complaint against her abuser (although she also singled out this officer for his support when she was forced to contact the Gardaí again). While these officers' reactions might be understandable on a human level, the primary concern for officers responding to complaints of domestic violence must be the safety and wellbeing of the victim rather than the prosecution of the offender.

Our findings suggest that the Garda reaction can be a bit of a lottery. Many participants offered high levels of praise for individual officers, at least as far as attitude was concerned. Many others, however, reported that some officers seemed to trivialize the issue of domestic violence. The domestic violence agencies interviewed as part of Workstream 3 made similar observations. Further, it seems that the Gardaí often fail to implement their own stated policy as far as responding to reports of

domestic violence is concerned. Thus, in our sample, the Gardaí attended the scene in only half the cases reported between 2010 and 2013, and the abuser was arrested in only one-fifth of those cases. To be fair to the Gardaí, victims who contact them about domestic violence do not necessarily want to trigger a full-scale investigation. Jane told us, for example, that when she made her first report she just wanted to inform the Gardaí what was happening and specifically asked them to take no further action. The Gardaí told her that if she ever had any more problems or if she felt in danger to contact them immediately, and Jane reported a high level of satisfaction with the Gardaí. Nevertheless, the Garda Domestic Violence Policy makes it clear that the victims' wishes are not determinative, and a report of an incident that involves serious violence should result in an immediate Garda response notwithstanding the victim's wishes.

It may also be that the incident forming the basis of the complaint may not necessarily constitute an arrestable offence, in which case the responding officers will not have the power to immediately arrest the abuser. The Garda officers interviewed stated that this is often the case: unless an assault comes within the definition of assault causing harm under section 3 of the 1997 Act, an officer has no power to effect an immediate arrest. Clearly, it is essential that officers do not go beyond their powers of arrest. However, in nearly thirty percent of cases, the responding officers were obliged to physically separate the abuser and victim which suggests a substantial degree of violence. It is worth recalling that an officer need only have a reasonable suspicion that the abuser has caused or has attempted to cause harm to the victim to bring the matter within section 3 of the 1997 Act, thus allowing the officer to make an arrest without a warrant. Further, the Domestic Violence Act 1996 empowers the Gardaí to arrest without warrant a person on reasonable suspicion of breaching a domestic violence order. Many of our participants pointed to repeated failures by the Gardaí to enforce their orders, leading some to question the very value of those orders. Thus, our findings suggest that some Garda officers are not making full use of their powers of arrest, to the very clear detriment of victims. Our overriding conclusion, therefore, is that the Garda Síochána needs to take action to implement their own policy on domestic violence.

### *Evidence Gathering*

Many of those interviewed as part of Workstream 3, including two judges, pointed to failures by the Gardaí to properly collect the evidence necessary to convict an abuser of domestic violence. These interviewees suggested that the Gardaí tend to refer victims to the Domestic Violence Act 1996. The domestic violence agencies, in particular, suggested that the Gardaí often rely either on the agencies or

the victims themselves to collect and preserve evidence. Some of the participants in Workstream 2 made similar complaints. There are some benefits in co-opting victims and domestic violence agencies into the evidence-gathering function: the empowerment of the victim, and greater sensitivity towards the victim. Nevertheless, the Gardaí have been specifically trained in evidence gathering, and in the proper preservation of evidence. Further, a perceived unwillingness by the Gardaí to properly investigate a case scarcely meets the promise of the Garda Domestic Violence Policy, and is unlikely to create a sense of confidence among victims. Thus, again, steps need to be taken to ensure that the Gardaí implement their own domestic violence policy.

### *Victim Supports*

Articles 8 and 9 of the Victims' Directive will entitle victims of domestic violence, as victims of crime, to access various support services, and Member States are required to facilitate this right through referrals to appropriate support agencies. Participants in both Workstreams indicated that such referrals are relatively rare, and even more so when dealing with victims with specific needs requirements. Further, the participants in Workstream 3 seemed unable to agree on whose shoulders responsibility for the provision of support services should fall. The state solicitors indicated that they could not perform such a role due to independence requirements; they, along with Courts Service representatives, suggested that the burden should fall on the Gardaí. Practitioners indicated that the judiciary has a key role to play in the provision of support services, a view echoed by two District Court judges. In truth, all the agencies should have a role in the provision of the services required at their stage of the process. It seems certain that this division of labour will require statutory intervention.

### *Risk Assessment*

There is little evidence of any formal needs or risk assessment being conducted. This is apparent from the participants in both Workstreams. Indeed, only two participants in Workstream 2 could recall such an assessment being made of their situation. Such assessments are required under Articles 22 and 23 of the Directive, and victims will be entitled to participate in such assessments. Measures will need to be implemented to ensure that assessments become routine, and are carried out either by the Gardaí or perhaps by a specialist agency. This is especially true in domestic violence cases which are

characterised as ongoing patterns of behaviour. Almost by definition, therefore, a victim of domestic violence is going to require some form of protection from her abuser.

### *Miscellaneous Matters*

Finally, participants in both Workstreams pointed to the need for greater anonymity for victims of domestic violence while their cases are being dealt with in court. In family court matters, names are rarely used, but it seems that the individuals involved must still identify themselves publicly. Further, victims are likely to encounter relatives and friends in courtrooms in rural areas. It is difficult to see what can be done about this in the older and smaller courtrooms that tend to be used by District Courts. Perhaps some consideration could be given to clearing the courtroom when cases involving domestic violence are on the courtlist.

Virtually all participants in Workstream 3 agreed that victims of domestic violence need to be provided with more and more detailed information about the investigative process, the judicial process and the decisions made in these processes. Further, the participants also highlighted the need for greater training in domestic violence issues among all criminal justice agencies. Both of these issues – the provision of information and training – will be required by Articles 6 and 25, respectively, of the Victims’ Directive.

### **Recommendations:**

- An Garda Síochána need to take action to implement their own policy on domestic violence (now subject to an update);
  
- All agencies should have a role in the provision of information and support measures to IPV victims at their specific stage of the justice process. This division of labour will require statutory intervention;
  
- Measures are required to ensure that risk and need assessments in IPV cases become routine, and are carried out primarily by the Gardaí (this is already in train at Garda Head Quarters);

- Special measures, including anonymity and accompaniment, are required to protect IPV victims, and thereby support their participation, in all court settings;
- Where such special measures are available in court settings, they should be used wherever appropriate for the support of DV victims as far as this is possible in the interests of justice in any given case;
- Where it is possible to separate DV criminal cases from other criminal cases, for instance by hearing them in a separate courtroom or at the beginning or end of the day's list of cases, this should be done;
- All criminal justice personnel require Domestic Violence training appropriate to their roles as provided for in the Victims' Directive (Article 25);
- DV Support Services staff require criminal justice training adequate to their role in supporting IPV victims at all stages of the criminal justice process;
- All professions who refer victims of DV to other services or agencies should examine and if necessary, adjust their referral protocols for DV victims to ensure that these are as effective as they can be;
- Both Gardai and DPP staff making decisions on prosecution of those accused of offences with DV background should, insofar as this is compatible with their respective roles and responsibilities, ensure that all charges brought reflect the gravity of the offending behaviour concerned and are tried accordingly.





