

## **SAFE Ireland**

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*“SAFE Ireland believes that one day, Ireland can be proud to be the safest country in the world for women and children.”*

### **Oral Submission to The Joint Committee on Justice, Defence and Equality on the issue of Domestic Violence**

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February 19<sup>th</sup> 2014

I would like to start by thanking the Chairperson and the committee for the invitation to make a submission in relation to Domestic Violence and for your subsequent invitation to present at today's hearing.

In the interests of time my opening statement will be to supplement our original submission (June 2013) with the key findings and recommendations that are emerging from our current research into the Irish legal system's response to women and children who are exposed to domestic violence and seeking protection and support.

I will present a brief overview of the information detailed in this statement and SAFE Ireland will be happy to supply the committee with any other supplementary information should it be requested.

There are many other areas that SAFE Ireland would like to present to the committee and we are delighted that some of our members and other colleagues here today will be addressing some of these areas, namely homelessness/housing, impacts on children, the impact of the Habitual Residency particularly on migrant women, additional barriers for migrant women, ethnic minority women and women with disabilities.

SAFE Ireland would also like to highlight our belief that in order to tackle the issue of domestic violence that there needs to be significant investment in primary prevention strategies and awareness campaigns designed to change attitudes and behaviours so that one day we can be proud to be one of the safest countries in the world for women and children.

## Extent of the problem

Domestic violence is an enormous and horrific societal problem both globally and in Ireland. The most recent World Health Organisation report has found that 1 in every 4 ‘ever partnered women in Europe reported lifetime intimate partner violence experience’. We know from a forthcoming EU prevalence study that approximately 11% of women who experienced a serious incident of physical or sexual violence from an intimate partner had sought support from a victim support service or refuge.

In 2012 SAFE Ireland recorded that 8,449 women and 3,606 children received direct one-to-one services from specialist domestic violence support services in Ireland. In addition, in this same year DV services answered 50,077 helpline calls across the country. SAFE Ireland looks forward to co-hosting a seminar in Dublin on March 5th which will disseminate the findings of the largest ever prevalence study on violence against women which has been conducted by the EU Fundamental Rights Agency. The seminar will include an initial analysis of the Irish specific data. We will be happy to submit the Irish analysis of this study to the committee if it is deemed useful.

In advance of the research publication the FRA Director Morten Kjaerum has said that “...*the survey has uncovered shocking levels of violence against women across the EU...*”<sup>2</sup>

It is widely accepted in UN and EU policy that domestic violence is a gendered issue.

Our research programmes to date have highlighted the horrific impact of domestic violence on women and children and in our respective communities, and work places.

It is no longer acceptable that our systems are continuing to fail women who seek protection for themselves and their children. We of course acknowledge the pockets of great inter-agency practice that our members are engaged with in some areas in Ireland, however we must not rest on this, our minimum standard for Ireland must be that if someone has found a way to reach out for protection and support that we do everything we can to respond to her and her children’s needs **and** that we challenge any attempts to blame her or put the responsibility on her to stop her partners violent behaviour.

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<sup>1</sup> Presentation by EU FRA at EIGE conference Nov 2013 – Plenary. See [http://eige.europa.eu/sites/default/files/02\\_Plenary1\\_A%20VAW\\_survey.pdf](http://eige.europa.eu/sites/default/files/02_Plenary1_A%20VAW_survey.pdf)

<sup>2</sup> Taken from <http://fra.europa.eu/en> 13th February 2014

The issue of domestic violence needs to be held at the highest political and decision making level in Ireland until such time that we have sufficient infrastructure, investment and innovation in place to support victims and reduce prevalence.

The focus of our submission today is on the changes required to achieve a more effective legal system response for women and their children.

The perception that it is impossible to solve the issue of domestic violence itself blocks any meaningful progress on the issue.

The State's policing of crime and protection of victims within personal relationships is maybe complex, but it is not impossible.

We believe it is time to stop seeing the solution to this as personal to the woman ingrained in her choice to stay or to leave an abusive violent relationship. Ireland must start to be more consistent in holding perpetrators of violence to account. Irish society and the systems that represent us must recognise the part we all play in maintaining the status quo – *that this is a personal or family problem, which is impossible to solve.*

Domestic violence happens every day within the family and in personal relationships and it offends the individual and society as a whole.

As the national organisation working closely with 40 frontline domestic violence services we bear witness on a daily basis to the widespread gross failures of our state's legal and social systems to protect these women and their children. Based on what we have seen and heard we have no doubt that the State is currently failing in its constitutionally mandated purpose, to vindicate the personal rights of the citizen. Women, and our member services, consistently tell SAFE Ireland that the Irish legal system fails to protect women and their children and that it fails to hold the perpetrators of these crimes to account.

SAFE Ireland believes that it is now timely that there is a root and branch review of the Irish legal system in order to address what appears to be systemic failures.

Our current review of the legal system through the lens of women's experiences has identified 8 consistent and overarching themes which form the basis of recommendations which we have included here for consideration.

1. The right to be heard; Collection, preservation and presentation of evidence
2. The consequences of the court not hearing the evidence. High risk factors: the case of cruelty to animals;
3. Consistency and continuity in the application of the law;
4. The victim and perpetrator stereotypes;
5. The importance of good advocacy, expertise and policing;
6. The need for a legal definition of domestic violence;
7. Why she doesn't just leave; and
8. The dangers of a fragmented system.

Many women have told us that there had never been any criminal prosecution for the litany of crimes committed against them. This is disturbing when you hear that the crimes committed include: - repeated rapes; child abuse; murder of the unborn child; attempted murder; threats to kill, assault causing harm; harassment; mental torture; bullying; stalking; and false imprisonment.

It appears that much of the legal system response to date has been to focus on civil remedies, which while important in addressing immediate safety issues; they are not designed to address the crimes committed against the victims.

## **Emerging Themes and Recommendations**

### **THE RIGHT TO BE HEARD - Collection, preservation and presentation of evidence.**

One of the most fundamental rights in Irish law is the right for both sides of a dispute to be heard. In fact one of the paradigm changing cases in recent years, in domestic violence law, focused on the right of the man alleged to be using violence to be heard by the court. It also looked at the right to fair procedures in the granting of an interim barring order against him. The right to be heard is one of natural justice and is also enshrined in Irish constitutional law.

To a large extent the research found that in practice the same right was not afforded to the women who were interviewed and feedback from 24 domestic violence support services concluded that this

phenomenon was broadly reflected across the country with women who they supported. The research illustrates the difficulties for some women of having their experience heard from the moment of contact with a Garda to when their case is before the court. The research also found that this was applicable to children who were denied the opportunity to voice their experiences even when they had crossed the child to adult threshold.

## **THE CONSEQUENCES OF THE COURT NOT HEARING THE EVIDENCE. HIGH RISK FACTORS**

There is an extensive body of research that has identified factors which are indicators of high risk for women and children who are subjected to violence by an intimate partner/parent.

The most serious of all of the outcomes of the Gardaí and/or the court not hearing the evidence is the missed opportunity for spotting high-risk behaviour and doing something about it before it is too late.

The research found that there was consistent lack of understanding of risk factors which should have triggered a serious response from the professionals involved. Early intervention when any of these risk factors presents is critical to reducing exposure to further violence and ultimately protecting women and children who are at risk.

## **CONSISTENCY AND CONTINUITY IN THE APPLICATION OF THE LAW**

The research highlighted many of the difficulties of one judge hearing the domestic violence application, making the order and then not also hearing the access and maintenance applications, or making the orders for separation and divorce. It also found that even when the judge who made the domestic violence order made the other family law orders at a later date they did so without taking the violence into account.

The research considers the benefits of a ‘One Judge, One Family’ model or a specialist domestic violence court model. These models would limit the ability for the man who uses violence to forum shop, or to deny the violent behaviour in an access application that had been found in a previous barring order application.

However, caution is required here. We also heard accounts of judges in certain district court areas with a track record of not making domestic violence orders. We heard an account of a judge retaining seisin<sup>1</sup> of a case as well as her unchangeable view of the case and then refusing to hear expert evidence that went against her view. For those families, being restricted to one judge was disastrous.

While the fragmentation of the family law system is more often than not a bad thing, without specialist DV education of practitioners and judges and a working accessible right of appeal, a jump to such restrictions should be taken with caution.

Furthermore, specialised domestic violence courts systems are also criticised, for example, for ghettoising family law and gender-based violence within the legal system. Further examination of the diverse variation between the models in operation is warranted in order to develop an approach which prioritises women and children's safety, their choice and voice and which is effective.

### **THE VICTIM AND PERPETRATOR STEREOTYPES**

The domestic violence victim and perpetrator stereotypes affect whether a woman who lives with violence gets a barring order and whether a man who is violent is punished for its breach.

There are stereotypes based on gender, ethnicity, perceived class or level of education, whether someone is a criminal and on the type of abuse and violence and whether it is defended. These stereotypes can pull our focus away from the situation, assessing the act of abuse or violence and on to who the people are and by which groups they are represented.

### **THE IMPORTANCE OF GOOD ADVOCACY, EXPERTISE AND POLICING**

Even in legal systems with sophisticated specialised domestic violence courts the experience of the women and children who seek support in escaping violence say that the difference between a good and a bad experience comes down to the quality of the individuals acting on their behalf.

Often the ability of a domestic violence support worker to attend court and explain procedures and outcomes to a woman applying for a protective order is what she cites as making that difference. Education and on-going training of those who meet and work with these women can go a long way to ensuring that this good experience is less by chance and more by design.

The SI research has found that the support that court accompaniment workers provide to women is of upmost value to women as they navigate through the legal system. Women often report that it is simply having someone with them who believes in what they are saying that can reduce the overwhelming feelings of stress and anxiety. Having a support worker accompany a woman to court may increase her confidence, decrease her unease of seeing the perpetrator and reduce the overall nerve-racking experience.

Women cannot always negotiate the legal system on their own, particularly when they are affected by the trauma caused by violence. They need the know-how and expertise to interpret the legal language into everyday language e.g. not knowing to get orders printed for example, not knowing what an undertaking is, and when statements have been taken and when they haven't. All of these failures of the system to provide safety – through knowledge of what that system is, mean that more than ever, for this reason alone, good advocacy and expertise is key.

### **THE NEED FOR A LEGAL DEFINITION OF DOMESTIC VIOLENCE**

There is no provision for the crime of domestic violence in Irish criminal law. There is a range of offences under Irish law, which may be used to prosecute offences of domestic violence. These include Non-Fatal Offences Against the Person Act 1997, Criminal Law (Rape) Amendment Act 1990, Criminal Legal Public Order Act 1994, Child Trafficking and Pornography Act 1998, Sex Offenders Act 2001, Criminal Law (Sexual Offences) Act 2006, Criminal Law (Human Trafficking) Act 2008 and Criminal Law (Defence and the Dwelling) Act 2011.

While this list of legislation provides for the criminalisation of forms of domestic violence such as assault and sexual violence, provision is not made for coercive control nor are repeated patterns of violence legislated for. We also know that prosecutions under these criminal statutes are rare.

A common reaction to domestic violence can be summarised by the phrase often used in police forces around the world: "They're having a domestic." This phenomenon makes society and those in our institutions blind to behaviour that would be punished if it happened in public, or between two people not in an intimate relationship. In other words, it effects how we see the crime.

The SI research has identified the need to change the effect that this minimising has on those who represent our society - on legal professionals, medical professionals, on judges, and on An Garda Síochána.

The UN has recommended that domestic violence legislation include physical and sexual violence, and coercive control.

Coercive control includes psychological and economic violence but describes it as working in a patterned continuum. It ranges from being told how to dress or act, being isolated and cut off from the outside world to being denied basic necessities<sup>ii</sup>. Being controlled or isolated undermines a woman's

capability of independent decision-making, impedes on her help seeking capacity and depletes her quality of life.

Without the inclusion of coercive control in the definition of domestic violence it may be viewed as a singular event, with women living with domestic violence unsure what constitutes domestic abuse and violence.

The Swedish “Kinnofrid” reform package of 1998 introduced the new offence: “gross violation of a woman’s integrity”, under Chapter 4 Section 4(A) to address situations where a man repeatedly commits certain criminal acts against a woman with whom he is or has been married or cohabiting. The offence is punishable by imprisonment of no less than six months and no more than six years<sup>iii</sup>.

“Gross violation of a woman’s integrity means that if a man commits certain criminal acts (assault, unlawful threat or coercion, sexual or other molestation, sexual exploitation, et cetera) against a woman to who he is or has been married or with whom he is or has been co-habiting, he shall be sentenced for gross violation of the woman’s integrity, instead of for each single offence he has committed.”

Swedish Penal Code Chapter 4, Section 4a: “A person who commits criminal acts as defined in chapters 3, 4 or 6 [*certain crimes against life and health, liberty and peace and sexual crimes*] against a closely related person or formerly closely related person shall, if each of the acts form a part of a repeated violation of that person’s self-esteem, be sentenced for gross violation of integrity to imprisonment for at least six months and at most six years.”

The definitions of domestic violence contained in the laws of other countries include a range of acts that result in physical, mental or sexual injury. Some have adopted broad definitions that can be interpreted to take into account any illegal act that results in harm or injury. Others provide specific examples of acts that constitute domestic violence.

The UN notes that it is advisable to have a detailed definition in the law that captures women’s experience of violence in all its manifestations. This reduces the scope for judicial discretion, thereby guarding against the influence of patriarchal biases in judicial decision-making. By and large, most countries have covered all forms of domestic violence including, in particular, psychological, sexual and economic abuse.

## **WHY SHE DOESN'T JUST LEAVE – BARRIERS TO SAFETY AND HELP SEEKING**

The consequences of leaving an abusive relationship are enormous. The trauma resulting from violence is often exacerbated by a system that is itself traumatic for a woman to navigate. Refuges have limited spaces and resources – some were threatened with closure this year. The legal system often will not name what has happened to these women as crimes or even as sufficient enough to get a civil protection order. Women face homelessness and poverty and do not feel supported in leaving.

We heard that women learn that society and the system as a whole treats the abuse as separate to the other interconnected areas of their lives and that they should be interconnected under the protection of the family law system – issues such as financial orders on separation or divorce, child access and custody and so on. Women know, or soon learn, that the legal system itself is authoritarian and prescriptive in nature and that abusers are increasingly educated about using the system to continue the control and abuse, even after a civil or criminal court order is made.

The SI research heard many accounts of violent men citing violence against them in defence of their partner's application for a domestic violence order. Women described situations where courts interpreted that a second domestic violence order 'cancelled out' the first. Gardaí said that they couldn't police a house where both adults had domestic violence orders particularly where there were children, because removing both parents would leave the children unattended. It seems that the system often defaults to a 'no order for anyone' solution to this dilemma.

Similarly, difficulties in getting reports on the welfare of children for the purpose of either the domestic violence orders or for access and custody is cited as a reason not to get a report at all. The child's voice is therefore not heard. The result can be that access orders, whether supervised or not, are then made, forcing children to spend time with a parent who has abused and violated their mother. Women are often left with a choice to leave but to face homelessness as a result. They can leave and live with the knowledge that their children are being forced to be with their violent father under court determined access orders. Or, they can stay in the relationship and manage their and their children's survival for as long as they can.

The SI research also heard numerous reports of justice professionals and in particular, individual Gardaí not having the correct understanding of the Garda Policy on Domestic Violence and particularly on the status and purpose of different protective orders.

The SI research highlights the importance of immediate and timely interventions that prioritise the safety of the victims (including children) but that also collect all evidence so that regardless of the victim's short decision relating to potential prosecution of the crimes committed, such evidence is available in the medium to long term to support any presentation of evidence in civil and/or criminal proceedings.

The importance of all professionals with a duty to protect the victim from future harm has been referred to in an earlier section relating to risk assessment. The capacity to assess for risk is equally important to highlight here in relation to improving help seeking and safety outcomes for victims.

### **THE DANGERS OF A FRAGMENTED SYSTEM. – THE CONTINUED CASE FOR MULTI AGENCY COORDINATION**

The SI research found that where there is understanding and the will to do things well, the benefits are huge for women and children. The research identified pockets of good practice around the country where the system is cohesive and works. The courts work with An Garda Síochána and with the local domestic violence service. These are pockets where stereotypes and preconceptions about domestic violence are trumped by solid data-based evidence and where the default position is the physical wellbeing and welfare of the vulnerable until such a time as the issue can be and is resolved. These unexpected pockets of good practice need to become what all women and children in Ireland can expect. The solution is in understanding and the will to make a change.

If the powers already in our statutes were used they could streamline proceedings and overnight make many women's experience of the legal system less traumatic. For example, Section 9 of the Domestic Violence Act 1996 empowers the court to deal contemporaneously with the issues of access, maintenance, restriction on conduct, the disposal of household chattels and orders under the Child Care Act, 1991. There is no need to institute separate proceedings. In the case of maintenance matters, there is a requirement for the mutual exchange of particulars of property and income and some district courts will not deal with maintenance on an impromptu basis without statements of means being exchanged in advance.

However, the SI research, like the 1999 Law Society's Law Reform Committee's survey<sup>iv</sup>, shows a considerable reluctance among judges to deal with these associated matters during domestic violence proceedings. What is even more damaging is where a judge dealing with access will not hear mention

of the domestic violence she heard in the past ‘because it has been dealt with’ or because the violence was against the mother and not against the children.

The 1999 Law Reform Committee’s report says that this variation in practice creates uncertainty as to the practical outcome of domestic violence proceedings and creates difficulty for lawyers in advising their clients. Not possessing any information on why many judges decline to deal with related issues contemporaneously, the Law Reform Committee suggested training for judges along with other measures, which would encourage this ‘fast-track’ approach. Fourteen years on from this report, little has changed. From the daily experience of SAFE Ireland members, either this training has not occurred or has been ineffective.

The SI research also concludes that the use of a multi-agency framework designed to meet the specific needs of domestic violence victims is a moral imperative. This would include such things as: improved support and advocacy for victims; mandatory use of Section 47 and Section 20 reporting to the court on the welfare of the child, looked at from the point of view of the welfare of the child and not from the parent’s access wishes; enhanced information sharing; greater victim participation and satisfaction; reduction in charging alterations; reduction in the use of undertakings and settlements; and a shorter legal process.

## Recommendations

- I. Procedural rules for hearing women/complainant should be developed and implemented to ensure that agency remains with the victim
- II. The voice of the child should be heard in all proceedings relating to their care, custody and access in line with best practice and taking into consideration the needs and age of the child and any other protection and welfare circumstances
- III. Implementation of systematic collection of evidence at point of presentation across a coordinated multi-agency response system (Note: Head 32 of General Scheme of Children and Family Relationship Bill addresses some of this)
- IV. Information is made available to victims at all entry points to the state and non-state system detailing the process for making complaints and statements to Gardaí and other justice professionals – (Implementation of EU Victims Directive<sup>3</sup>)
- V. Rules required for each party to be heard – (Implementation of EU Victims Directive<sup>4</sup>)

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<sup>3</sup> Article 4, 6 and 9. - DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA – Article 4, 6 and 9

<sup>4</sup> Article 10 - DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA – Article 4, 6 and 9.

- VI. Implementation of risk assessment tools for all frontline statutory and non-statutory professionals responding to women and children experiencing domestic violence
- VII. Professional development training which is based on evidence and delivered within a quality assurance framework on a regular basis to all relevant professionals across all statutory and non statutory locations
- VIII. Evaluation and monitoring systems in place to ensure consistent capacity to use risk assessment tools appropriately and effectively across all relevant statutory and non-statutory locations
- IX. Consideration of domestic violence in any child custody/access hearing. At a minimum it should ensure qualified supervised access visits and where there is risk of further violence, no access should be granted until risk is removed – priority to protect the child (Note: SI Welcome of General Scheme of Children and Family Relationships Bill 2014)
- X. A decision to either establish a specialist DV court model which ensures victim autonomy/agency which is operated by professionals trained with understanding of the dynamics of domestic violence and risk minimisation **OR** training of all justice professionals including the Judiciary who are hearing/representing domestic violence cases in both civil and criminal courts **OR BOTH**
- XI. Awareness raising which shifts the stereotypes of victim/perpetrator training for all professionals
- XII. Legal advocacy support and information to victims who want to appeal decisions
- XIII. Formalise the role of specialist DV advocates to ensure that victims have access to an advocate throughout their process of seeking protection and justice. – Implement EU Victims Directive – Articles 3.3, 8, 20 and 25
- XIV. Design and deliver quality training in partnership with NGO specialists to all legal advocates/litigators
- XV. Explore the benefits and unintended consequences of developing a comprehensive legislative definition for domestic violence, which encompasses ‘coercive control’ and explicitly recognises these violations of human rights within Irish criminal law
- XVI. Explore the potential and unintended consequences to developing an offence, which criminalises coercive control. An aggravating factor to be included is that if the offence was committed in an intimate relationship that the breach of the victims trust be considered as an even greater offence
- XVII. Amend the Domestic Violence Act in terms of
  - o The threshold of domestic violence, or risk of same, which should trigger a safety or other order;
  - o The list of factors which must be taken into account when the judge is deciding whether this threshold has been reached
- XVIII. Provide consistent nationwide 24-hour access to state supports, from protection to court access, to all women and their children seeking immediate and long-term protection from a violent perpetrator
- XIX. This 24-hour access should include the provision for the granting of an emergency barring order to remove the perpetrator from the residence of the victim until a full judicial hearing can be conducted/next nearest available sitting. The provision of this order should also include the requirement of the attending Gardaí to also inform the specialist 24-hour domestic violence service of the contact details of the victim. The specialist DV services in turn shall have statutory duty to make contact with the victim to inform her of the supports available. This

provision is in line with the provisions in place in those European countries that operate the emergency 24-hour barring order. However, particular reference will need to be made to current restrictions under Data Protection legislation in order to permit Gardaí to share this specific information with the specialist domestic violence service

- XX. This 24-hour access should also include the adequate provision of refuge accommodation for women who wish to leave their current residence for greater safety and support
- XXI. The state should ensure provision of Section 47 reports for all relevant cases so that no victim has to resource these reports. The legislation to effect this has been passed but not yet commenced
- XXII. All section 47 and section 20 reports should be admissible to court proceedings and the experts who produce the reports should be subject to cross-examination
- XXIII. Urgent review of the legal aid charges for women who have no means to pay them. (Recent increase from €50 to €130). Standard practice in the UK is to exempt DV victims from being subject to these charges
- XXIV. Increase accessibility to protection orders for those victims who are in ‘dating relationships’ and who do not satisfy the eligibility criteria based on cohabitation
- XXV. The establishment and resourcing of locally coordinated multi-agency response teams which prioritises the safety and autonomy and right to privacy of victims
- XXVI. The development of formal protocols between various statutory and non-statutory locations to support the coordinated multi-agency response
- XXVII. The establishment of homicide review legislation and implementation structures which means that multi-agency reviews are conducted, following a domestic homicide, to assist all those involved in the review process, in identifying the lessons that can be learned with a view to preventing or reducing risk of future homicides and violence. (See Section 9 of the UK Domestic Violence Act, 2004)

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*i Legal term that means a judge will retain a certain case, even if another judge is sitting in that court room when the case returns for hearing.*

*ii Stark, Evan. (2007) Coercive Control: How Men Entrap Women in Personal Life. New York: Oxford UP.*

*iii UN Handbook for Legislation on Violence Against Women (2010) Department of Economic and Social Affairs.*

*iv When asked whether the court will deal with these issues contemporaneously, 30 per cent of respondents replied that it will never do so and 35 per cent reported that it will only sometimes do so. Only 33 per cent reported that the court will usually try to deal with these issues together.*