



Home Office
DOMESTIC VIOLENCE DISCLOSURE SCHEME - A CONSULTATION

January 2012

About Eaves

Eaves is a London-based charity established in 1977, that provides high quality housing and support to vulnerable women. We also carry out research, advocacy and campaigning to prevent all forms of violence against women.

At Eaves, we put the needs of women first. We are determined to give a voice to the most excluded women in society and provide direct, innovative services to support and empower women to help themselves. There are different projects run by Eaves.

The Lilith Project

Lilith Research & Development have a wide remit ranging from research into various aspects of violence against women, to training and education for the women's sector, to lobbying for legislative change and to working directly with women who have experienced sexual violence.

Sexual Violence Action and Awareness Network (SVAAN) – Under the Lilith Project we co-ordinate the SVAAN Network – a network of 68 organisations working with women and girls who have experienced sexual violence. The network began in 2003 as a support network for the voluntary sector.

The Scarlet Centre

The Scarlet Centre is an Eaves service providing advice and drop-in support to women who are affected by violence – including homelessness, rape or sexual abuse, prostitution or domestic violence – and the consequences of violence – including mental health and/or substance misuse problems.

The Poppy Project

The Poppy Project provides support, accommodation and advocacy for women trafficked into domestic slavery and sexual exploitation in the UK. We have 54 bed spaces throughout England and Wales. We also run an outreach service which works with women who cannot be housed in Poppy accommodation, either because there is no room for her or she does not meet the criteria for support set by Poppy's funder, the Office for Criminal Justice Reform (reporting to the Ministry of Justice)

The Serafina Project

Formerly Eaves Women's Aid, The Serafina Project provides support and accommodation for women (and their children) fleeing domestic violence. We provide bed spaces in Westminster in comfortable and safe environments where a full range of support provided, including help accessing benefits and legal advice.

The Sojourner Project

The Sojourner Project is a pilot scheme run by Eaves and funded by the Home Office. It is for women with no recourse to public funds, who entered the UK on a spousal or partner visa and are eligible to apply for Indefinite Leave to Remain (ILR) under the Domestic Violence Rule.

To find out more about our work please visit our website on www.eaves4women.co.uk

General - Domestic Violence

- **One in four women** will be a victim of domestic violence in their lifetime – many of these on a number of occasions.
- Even though only minority of incidents of domestic violence are actually reported to the police; **every minute** police get a report of one incident of domestic violence. This could be estimated to mean that 1,300 calls are made each day or over 570,000 each year. Of these, 89% were calls by women being assaulted by men.
- On average, **2 women a week** are killed by a current or former male partner. This constitutes nearly 40% of all female homicide victims
- 44% of victims of domestic violence are victimised in more than one incident. No other type of crime has a rate of repeat victimisation as high as domestic violence. On average, **35 assaults** happen before the police are called.
- Based on the research done by Wiltshire Police, there are an estimate of 25,000 individuals who are serial perpetrators of domestic violence (violence against multiple unconnected victims) in England, Wales and Northern Ireland.

P.S. The vast majority of the victims of domestic violence are women and women are also considerably more likely to experience repeated and severe forms of violence. Therefore, we will repeatedly refer to women throughout this consultation response when discussing the issue.

Domestic Violence Disclosure Scheme

1. The Current Situation

Under the current system the police have a common law power to disclose information in accordance with the [Crime and Disorder Act](#).

The police have a common law duty to ***prevent and detect crime and a corresponding power to disclose information where necessary for the prevention or detection of crime***. In exercising this power they must act fairly, having regard to the circumstances of the case and bearing in mind that such disclosure is an exception to the general principle of confidentiality; they should also bear in mind that both the public and the Government expect them to use their powers and their knowledge to prevent crime and to reduce crime and disorder.

Though this is a vital means in supporting a potential victim of domestic violence to get information about her partner's violence history, it **puts the onus on the woman** or a third party. Having regard to the realities of domestic violence; that women, even in violent relationships, don't involve the police immediately¹ due to fear or other factors, it will be less likely that a woman who has just started a relationship with someone will actively approach the police to inquire about the person's violent history. Therefore it is doubtful how much this system could be effective as regards actually helping women to make informed decisions and preventing victimisation.

The current system is also built just around the police and their power to disclose. Given the fact that domestic violence is a delicate subject involving in most cases vulnerable women and children it's important that other agencies are also involved and be part of the decision making into how the information is disclosed, what the risks, how the risks could be averted and what support is needed.

It also gives the sole discretionary power to the police on whether they believe a crime could be committed if they don't disclose the information. This could lead to arbitrary use of the power depending on decision of individuals rather than having a coherent and uniform practice across the police forces in the country.

- ¹ On average, 35 assaults happen before the police are called.

Besides, **the current system is just a power to disclose not a duty to disclose.**

2. The 'Right to Ask'

This scheme is envisaged to mirror the Child Sex Offender Disclosure Scheme in that:

- The new partner (A) is enabled to ask the police about the person with history of violence (B);
- Police undertake an initial check on the Police National Database to identify whether any information is held on B;
- A is met face-to-face to confirm identity and relationship between (A) and (B), and complete a formal application for disclosure;
- The police conduct full checks on police database systems
- The police refer information about (B) to an appropriate multi-agency setting who would then make a decision on whether to disclose the information to (A).
- If disclosure is approved it would be made by the police with an IDVA present to provide support to (A) if needed

This is similar to the system in place under the common law powers of the police in that the individual or a third party applies for the disclosure and the police will see if there is a need to disclose.

However, this scheme goes further by creating a statutory right to ask. This would create uniformity in application and detailed guidelines as to what and how disclosure should be made.

According to an independent evaluation into the pilot Child Sex Offender Disclosure Scheme, the police perceived that having such a scheme is important in terms of formalising what they thought was a good practice.

Therefore this scheme could be helpful in terms of having clear understanding of what the risks to the women are, what's expected of the police and other agencies who have a duty to support the women.

It also envisages the involvement of the MARAC and an IDVA to support the potential victim.

Although this could be considered a better scheme it stills leaves the burden of seeking information on the women and does not create a duty on the police to interactively engage with vulnerable individuals. It all will still heavily rely on an application for disclosure made by a woman.

This is also a lengthy process were the woman is required to see the police repeatedly before she gets the information, which could create potential risk to her safety.

3. The 'Right to Know'

This is a national disclosure scheme based on [ACPO Review – Tackling Perpetrators of Violence Against Women and Girls](#).

Key points from the ACPO review:

- It is important for the safety and wellbeing of individual members of the public who are in a relationship with a dangerous person that the potential victim has the **'right to know'** about relevant information so that informed choices about personal safety can be made.
- Routine disclosure should not be common practice, however, following risk assessment it may be **proportionate and necessary to make a disclosure to enable a potential victim to make choices** about her safety and that of her children.
- Ensuring that the **impact of a disclosure**, which could be emotionally profound for the victim and could raise the risk to her from the perpetrator, is **properly managed and mitigated through the provision of effective, expert support**. An estimated **25,000 individuals are serial perpetrators** of domestic violence
- **Article 8 of ECHR places 'positive obligations' on the State to intervene to protect individuals' right to bodily integrity, including elements of emotional well-being**. This suggests there are legal obligations on the State to protect victims of violence even where this might negatively impact on a perpetrator's rights to privacy.
- **Decision to disclose should be made on a multi-agency basis** and single agency decision making to disclose information on offenders is strongly advised against, except for exceptional cases where there is a need to avert imminent risk. In such cases **senior personnel** should be the decision makers.
- There should be an appropriate **balance between the 'right to know' with other rights such as the right to privacy**. Right to know is not an absolute entitlement.

The ACPO recommendation that persons at risk of violence must have **'the right to know'** bases its argument on how important it is that the potential victim should have the relevant information so that she could make an informed decision about her safety.

What makes this unique from the above two forms of disclosures is that it **puts a positive duty on the police to proactively engage** with potential victims to disclose information of violent history of a new partner.

- This **shifts the burden from the woman to the police**

- It puts the duty on a **statutory footing**
- It makes the **police accountable for failure to disclose**

As mentioned above the police could find it helpful that the system is properly formalised in contrast to just leaving it as a good practice common in some police forces.

It will put in place a **clear understanding** of what the risks are, what is expected of the police and agencies working with women while disclosing the information.

The disclosure should always be made following a **thorough risk assessment** and after authorities are convinced that it is important and necessary to disclose such information to safeguard a potential victim's safety.

The woman should be fully supported and signposted to appropriate agencies that could support her and her children if any.

The fact that the duty to inform falls on the police and not on the women might also shift risk from the women since it would not be the woman who actively went to seek the information.

Scope

As the ACPO report recommends, the scheme should not be about a mere routine.

However, since domestic violence is not specified as a single criminal offence in our laws and may comprise of number of different behaviours and consequences, such as, harassment, assault, criminal damage, attempted murder, rape and false imprisonment; it is important to understand and properly record, flag up and disclose **all relevant violent behaviour**.

Third parties, who have interest, should be able to ask about the violent behaviour of a person but the police should be cautious in disclosing the information to them rather than to the potential victim. In practice we get inquiries from concerned individuals, such as mothers, sisters, friends, etc, however the information should always be disclosed to the appropriate person.

Parties Affected

- When disclosing information the police should also take due regard to privacy laws therefore the information disclosed should be accurate, relevant (not excessive) and appropriately disclosed. They must be satisfied that disclosure is necessary in accordance with the eight principles set out in the Data Protection Act 1998

- According to the Home Office guidelines on Statutory Crime and Disorder Partnership² there are certain core issues to be considered:
 - o The purpose (safety) of sharing the particular information
 - o Will it be important to disclose that particular information to achieve the purpose?
 - o How much information is needed to be disclosed to achieve the purpose? Is it relevant to the purpose?
- There should be mechanisms in place to ensure that the information disclosed to the potential victim will not be passed on to others, which might be a breach of person's human rights.
- Having safety mechanisms in place where information will not fall into the wrong hands and end up further endangering the woman who received the information.
- ***In no case should a woman be judged or criticised for her decision (whatever it maybe) after a disclosure is made. It should in no case impair her right to access and receive support from the police or other agencies during the time of disclosure or after.***
- ***Should an enquiry find that there is no record of violence, it is important that in conveying this it is stressed that this cannot exclude the possibility that a person is violent but simply has not come to the attention of the authorities as yet. (It is a concern for some in the women's sector that there is a risk of creating a false sense of security).***

Conclusion

- It is important that a ***formal/statutory system*** be in place to enable a person to get information from the police about previous violent relationships of a new partner.
- There have to be appropriate risk assessment and confidentiality provisions in place in accordance with the law to protect all parties involved.
- Since women are at greatest risk of homicide at the point of separation or after leaving a violent partner, the risk of disclosure should be managed carefully.
- It is vital to always take a victim safety centered approach
- Organisations working with victims of violence against women and girls should be consulted in drawing up the specifics of the scheme.

In short, Eaves welcomes a proposal to institute a formal duty to disclose even if it has only relatively limited preventative effect. It is of course just another of many tools at the authorities' disposal but we believe it could increase the vigilance and accountability of the police and send a strong message as to how seriously VAW is taken. However, we continue to urge constant training,

² Although this deals with information sharing between agencies some of the core principles to be adhered could apply in disclosing information to individuals on domestic violence cases

improved implementation of existing policies and funding to the women's sector and trust these measures would be an addition not a substitution or a distraction.