

RIGHTS OF WOMEN RESPONSE TO THE HOME OFFICE CONSULTATION PAPER *SAFETY AND JUSTICE*

Rights of Women welcomes the publication of the Home Office consultation paper on domestic violence, *Safety and Justice* (Cm 5847).

Rights of Women is an industrial and provident society, which was founded in 1975 to promote the interests of women in relation to the law. We run a free, national confidential telephone legal advice help line for women. We specialise in advising in family law, especially domestic violence and Children Act matters. Rights of Women works to attain justice and equality by informing, educating and empowering women on their legal rights. We are a membership organisation and our activities include producing publications, organising conferences and training courses, and doing policy and research work.

We intend to respond in greatest detail to Part 3, Protection and Justice, but will also raise points regarding other sections as appropriate. We have not confined ourselves to answering the questions posed but comment on other points too.

As an overarching point, we believe that a much stronger and more inclusive definition of domestic violence should be used to frame the strategy, and we would endorse that used by the United Nations Special Rapporteur on Violence Against Women, who cites that in the United Nations Declaration on the Elimination of Violence Against Women which in article 2 defines violence as encompassing but not being limited to 'physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation'. The Special Rapporteur has further adopted an expansive definition of violence in the family to include 'violence perpetrated in the domestic sphere which targets women because of their role within that sphere or as violence which is intended to impact, directly and negatively, on women within the domestic sphere. Such violence may be carried out by both private and public actors and agents. This conceptual framework departs from traditional definitions of domestic violence, which address violence perpetrated by intimates against intimates, or equates domestic violence with woman-battering'¹.

We would also argue that it is vital that every element of draft legislation produced as a result of this paper be equality proofed – that it be tested to ensure it does not discriminate on the basis of gender, race, disability, sexuality, age, religion or traveller status. We have found the equality proofing in the paper to be insufficiently thorough and would urge the

¹ E/CN.4/1996/53, para. 28.

Government to take this opportunity to produce an effective and non-discriminatory piece of domestic violence legislation.

In line with the terminology used in the White Paper, we use the word ‘victim’ throughout our response. We do recognise that women may prefer to use the term ‘survivor’, and as a general policy we believe that women should be able to define themselves and have that definition respected by the professionals they come into contact with in that context.

Part 1: Introduction

We believe that the gendered nature of domestic violence should be made clearer by the consultation paper. While in paragraph 10 it is stated that “figures show that it is predominantly violence by men against women” this does not adequately represent the fact that the overwhelming majority of victims of domestic violence are female – the British Crime Survey of 2001/02 found that 81% of victims of domestic violence in the relevant period were women, and 19% men². The UK Government has obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the CEDAW Committee’s General Recommendation No. 19 on Violence Against Women, to provide adequate protection for women experiencing domestic violence. The provision made must recognise the gendered nature of the phenomenon and ensure that services appropriate to women are provided for those who need them.

How should the Government best measure the incidence of domestic violence and the success of its strategy to reduce it?

While we agree that the full extent of domestic violence may not become apparent until all victims feel safe in reporting it (paragraph 16), we would like clarification of how the success of the legislation and the various measures and projects adopted are to be measured. We want this legislation to provide an effective and sustainable framework to maximise women’s safety, and would want to see monitoring procedures in place to ensure that this opportunity is fully taken up. We would therefore welcome the further consultation proposed to create a set of performance indicators as proposed in paragraph 18, and would recommend that women’s organisations and survivors of domestic violence be involved, as well as representatives of disabled women, lesbian bisexual and transgender (LBT) women, and women from Black or Minority Ethnic communities (BME). Rights of Women would be keen to be involved in this process.

We would encourage the Government to give new domestic violence legislation top priority in its legislative agenda, introducing a draft Bill in the next Parliamentary session.

² Home Office, 2002.

Part 2: Prevention

We look forward to seeing the evaluations of the Crime Reduction Programme, and hope that the results will influence the formulation of draft legislation (paragraph 2).

We find the use of the phrase ‘those lacking mental capacity’ in the question posed in paragraph 9 to be inappropriate terminology, and suggest that ‘people with learning difficulties’ might be more appropriate.

Paragraph 30 refers to ‘the forthcoming Green Paper on child contact issues’. We regret the delay in publishing this paper as we believe it would have inter-related substantially with the issues raised by *Safety and Justice*. Callers to our advice line frequently face complex child contact issues in a context of domestic violence, and we believe that no truly integrated and successful legislation on domestic violence will be possible without a thorough engagement with issues of child contact. We favour New Zealand’s model which features a rebuttable presumption of non-contact in instances of domestic violence, and our position may be found in greater detail in our publication *Contact between Children and Violent Fathers: in Whose Best Interests?*³.

How can we best provide information quickly, safely and easily to victims of domestic violence? What should this information cover?

We welcome the emphasis given to providing advice and information to victims on how to get access to support services and legal protection (beginning paragraph 38). On the question of how to provide information quickly, safely and easily to victims of domestic violence, we would say that there are many excellent voluntary and women’s organisations providing such help at the moment, but that difficulties in funding can mean that even existing services are under threat. The closure of the London Rape Crisis Centre is a case in point – sexual violence is often a key element of a woman’s experience of domestic violence, and yet one of the main service providers for information, counselling and support for women in our capital city has just closed for lack of funds. Assistance for women experiencing domestic violence has traditionally and most appropriately been provided by women’s groups, and we would like recognition of the important role such groups must play in future strategies. Such recognition and support allows groups to continue the excellent and innovative work they have undertaken.

In designing a successful information strategy we would argue that it is best to ask for women’s advice and to use the knowledge of groups who are already doing it. We have found for example that having a fully accessible website, with downloadable information sheets and information on how to prevent people knowing that you have visited it, has been enormously effective (see www.rightsofwomen.org.uk). Women have been referred to us by relatives or other advisors who have seen our website. We have also found that

³ 1997, Rights of Women

distributing information to local schools, doctors surgeries, hospitals and community centres has been effective as women can pick up leaflets or borrow items such as our *Domestic Violence DIY Injunction Handbook* in confidence. We adopt this strategy as these are often locations where a woman may feel safe enough to ask for help. We would also endorse the TUC's strategies around making unions and employers more supportive of women experiencing domestic violence as outlined in *Domestic Violence: a Guide for the Workplace*⁴.

Part 3: Protection and Justice

We recognise and welcome progress that has been made by some police forces and officers over recent years in responses to domestic violence (paragraph 2). However, we would like to see best practice instituted nationwide, with adequate provision made available to have domestic violence units and co-ordinators available in every force. We also look forward to the report of Her Majesty's Inspectorate of Constabulary and Her Majesty's CPS Inspectorate on the investigation and prosecution of domestic violence cases. Our service users frequently report inadequate, ineffective or wrong police responses to domestic violence cases, and we are concerned that real change must be evident on the ground for the forthcoming legislation and existing initiatives to be successful.

While we also welcome many of the suggestions made in this chapter, we regard it as essential that current delays in the family court system are addressed prior to introduction of new measures. Our service users frequently report delays that are at best frustrating and at worst potentially life-threatening. We would also highlight the serious need for more and better funded contact centres, as current provision falls seriously short of demand. This again often puts women who have experienced domestic violence from an ex-partner in an extremely vulnerable position, where facilities are not available for supervised contact.

The proposal to make common assault an arrestable offence we find to be potentially problematic (paragraph 7). We believe that there should be a pro-arrest policy in cases of domestic violence, and that injunctions should have a power of arrest attached wherever appropriate. Such powers of arrest should also be exercised when injunctions are breached, which reports from both practitioners and service users suggest is not always currently the case, particularly when the police are overstretched or have been given higher priorities (such as policing terrorism). In this context we find that giving the police the power to arrest for common assault is at best unnecessary, as they already have powers to arrest where they suspect that actual or grievous bodily harm has occurred. Additional or improved training for officers on "what their powers of arrest are for a common assault that they have not witnessed" (paragraph 6) should assist.

⁴ 2002

We are concerned that such an increase in police powers runs the risk of generating accusations of oppressive use against particular communities, particularly in light of the findings of the Macpherson report⁵. We would prioritise instead more accessible Legal Aid funding for non-molestation orders with powers of arrest attached. This might involve abolishing the means test for survivors of domestic violence, recognising that women may find themselves in real financial difficulty when attempting to deal with a situation of domestic violence. Given the average £2,000 cost of getting a non-molestation order, the lack of Legal Aid currently means that many women in desperate need of an order cannot get one (see also below at page 6). An alternative to such a policy for all orders might be the establishment of drop-in centres nationwide where women could get free assistance in applying for orders.

Rights of Women believe that such measures would be essential to meet the Government's obligations under the United Nations Declaration on the Elimination of Violence against Women, and particularly the right to 'access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered' as provided by Article 4(d). The importance of meaningful access to justice is reiterated by the UN Economic and Social Council resolution 1997/24 on Crime Prevention and Criminal Justice Measures to Eliminate Violence Against Women⁶, which urges States to 'ensure that women subjected to violence receive, through formal and informal procedures, prompt and fair redress for the harm that they have suffered, including the right to seek restitution or compensation from the offenders or the State'.

We welcome the proposal that judges and magistrates be trained on domestic violence (paragraph 16) and would like to see comprehensive domestic violence awareness training for all members of the judiciary. Such training is likely to be most effective if conducted at least in part by groups representing female victims, and where possible including the experiences of victims themselves.

What information, in what circumstances and for what purpose should criminal and civil courts be able to share?

More clarification is needed on the proposal to share information between the civil and criminal courts (paragraph 18) as we are uncertain of the benefits resulting from the current proposal.

Should the Government issue guidelines to courts to discourage them from making bail conditions in domestic violence cases that allow the defendant contact with the child except in accordance with an order from a family court?

⁵ Home Office, *The Stephen Lawrence Inquiry – Report of an Inquiry by Sir William Macpherson of Cluny*, Cm. 4262-1, 1998.

⁶ 21 July 1996.

We agree that the Government should issue guidelines to courts to discourage them from making bail conditions in domestic violence cases that allow the defendant contact with the relevant child except in accordance with an order from a family court. However, we remain concerned that family courts are in some instances either overworked or insufficiently protective of women and children facing domestic violence in contact cases (see for example Smart and Neale, 1997)⁷. As mentioned at page 3 above, we would prefer that the New Zealand rebuttable presumption of non-contact in cases of domestic violence.

What steps should the Government take to ensure that courts quickly list domestic violence cases and on steps to ensure that quick listing is balanced against the need to ensure that charges properly reflect the offending and that the victim is informed if a defendant is dealt with at first appearance?

We agree that courts should quickly list domestic violence cases while balancing this against the need to ensure that charges properly reflect the offending and the need to inform the victim if a defendant is dealt with at first instance. This should be part of a comprehensive strategy to ensure that victims are kept informed of proceedings all along the line. Further, Rights of Women believe that it will sometimes be necessary to commence separate proceedings for an injunction where the alleged respondent is in custody or on bail. Police routinely fail to tell victims what if any bail conditions are, or their duration. They frequently do not provide victims with a copy of the alleged respondent's bail conditions. Moreover, even where an alleged respondent is in custody, as there are three opportunities for him to apply for bail, it remains unclear when he might be released. For all these reasons, it should be possible to get assistance to apply for an injunction in these circumstances, and Legal Aid should be extended to make this more accessible (as at page 5 above).

How should professional agencies be involved in supporting victims and supporting the police, CPS and courts?

We would like clarification of how 'professional agencies' are defined within the context of supporting victims and assisting the police, CPS and courts, as this is currently unclear.

What measures should be taken to build on the existing specialist domestic violence courts?

Regarding building on domestic violence courts (paragraph 20) we prefer a model where family court and domestic violence matters may be dealt with jointly. This could follow a one-stop-shop approach like that used by the Principal Registry of the Family Division, which would be more accessible to disadvantaged women as it tends to require fewer return visits with their associated costs, inconvenience and stress.

⁷ *Arguments Against Virtue – Must Contact be Enforced?* MAY [1997] Fam Law 332.

How could a specialist court handle criminal and civil domestic violence issues and deal with some of the problems that have been identified, such as the different rules of evidence in place for civil and criminal proceedings?

We are very concerned at the prospect of a potentially inappropriate mixing of civil and criminal law. Criminalising the breach of a civil order is an inappropriate mixing of two standards of proof. In practice we are also unconvinced that it would assist as the similar provisions in the Protection from Harassment Act 1997 have proved difficult to enforce and of limited use. Further, judges with criminal expertise may be unwilling to convict in this way, being convinced that it potentially violates the right to a fair trial under Article 6 of the European Convention on Human Rights. We would be unwilling to support a system which put victims at risk by possibly leaving the results of proceedings subject to successful appeal by perpetrators on human rights grounds.

Is the best way to ensure that courts treat domestic violence as seriously as other offences to refer the issue to the Sentencing Advisory Panel for them to issue guidelines to courts dealing with domestic violence cases?

We agree that a separate offence of domestic violence would not necessarily be of use. We note that there are all the charging options mentioned are available. Nevertheless we also wish to emphasise that many women do not wish their partners to face criminal sanction, and that the proportion of domestic violence incidents that reach the charging stage is very small. For these reasons we suggest that providing alternatives to criminalisation may help – for example in following the New Zealand model by making compulsory attendance on perpetrator courses an integral part of Protection Orders, failure to attend which results in breach of the Order with sanctions resulting⁸. Some victims may wish to have their voices heard by the court prior to judgment, which is potentially an empowering experience for women.

However we believe that the definition of domestic violence endorsed by the United Nations Special Rapporteur on Violence Against Women should be recognised as the central plank of any overarching legal and policy strategy, as cited in the introduction to this response at page 1.

This proposed legislation deals primarily with cases of physical violence but it is important that there is recognition that all the behaviours mentioned above constitute domestic violence, and are both serious and reprehensible.

We support the proposal that domestic violence issues be referred to the Sentencing Advisory Panel for them to issue guidelines. We believe such guidelines should be widely consulted upon and that the review should be

⁸ Pouwhare, T., *The Domestic Violence Act 1995 – Aotearoa/New Zealand's Primary Domestic Violence Legislation*, unpublished paper given at Rights of Women's conference *Violence Against Women: Challenges within the Law*, 9 July 2003.

connected with that forthcoming on the defence of provocation (in the context of battered women who kill). However we are aware that guidelines are of little use if not applied in practice and we would recommend a system of monitoring to ensure such guidance is utilised. Women's and survivors groups should be consulted as part of this review process.

Would allowing victims to apply for reporting restrictions encourage a greater reporting of domestic violence, or are further measures needed, for example granting reporting restrictions automatically on application?

Rights of Women are concerned that the use of reporting restrictions in domestic violence cases, either on application or automatically, is of uncertain use – we do not know of any research suggesting that this would improve reporting or safety of women. It is unclear what would happen if different members of the same family made conflicting requests. We also believe that it may risk stigmatising victims and their children. We would welcome more information on this issue.

Does allowing victims of and witnesses to domestic violence to apply for the status of vulnerable or intimidated witnesses (by continuing to implement the special measures provisions of the Youth Justice and Criminal Evidence Act 1999) provide the right level of support?

We believe that domestic violence victims should automatically have intimidated witness status (paragraph 36) and that all relevant protections under the Youth Justice and Criminal Evidence Act 1999 should apply. The cost of such measures would be offset by the increase in successful prosecutions, as victims are more likely to co-operate in cases where they have been fully informed, supported and protected.

Should the Government amend the 'associated person' criteria of the Family Law Act 1996 to provide same level of protection as cohabiting heterosexual couples? AND Should the Government amend the 'associated person' criteria of the Family Law Act 1996 to include relationships where the parties have never lived together?

Rights of Women strongly welcome the proposals to amend the 'associated person' criteria of the Family Law Act 1996 to include same-sex cohabiting couples with the same level of protection as heterosexual couples (paragraph 45). We would urge the Government to go further and extend this criteria to include relationships where the parties have never lived together. This would ensure that the greatest degree of protection is available without discrimination.

Would changes to the law to allow police to arrest for breach of a non-molestation or occupation order be helpful?

We welcome the proposal that the police are always able to arrest for breach of a non-molestation order or occupation order (paragraph 50). However we

do not agree with the proposal to criminalise the breach of civil orders for the reasons set out at page 7 above.

How can the risk of applicants for orders being put under pressure to accept an undertaking be reduced?

We believe that the risk of applicants being put under pressure to accept an undertaking should be reduced by comprehensive training on domestic violence of all members of the judiciary. Additional training may be necessary for legal practitioners. Overall we would argue that orders should be made in most cases of domestic violence, and that even where an undertaking is accepted a power of arrest should be attached.

Should applications for non-molestation and occupation orders be encouraged to start in magistrates' courts rather than county courts as is currently the case?

We do not believe that it would be more effective to start more applications in the magistrates court rather than the county court. We feel that the levels of delay experienced in such courts would be potentially dangerous for victims of domestic violence. We are also concerned that magistrates lack the specific experience and training to address domestic violence. In *Magistrates' Courts and Public Confidence – a Proposal for Fair and Effective Reform of the Magistracy*, Liberty has found that “the magistracy fundamentally remains socially unrepresentative – disproportionately white, middle-class, professional and wealthy”⁹, and we are concerned that this would impact on treatment of women in domestic violence cases, in particular women from Black and Minority Ethnic Communities.

Could magistrates' courts deal with such applications as quickly and effectively as county courts? Could they sit often enough and handle out of hours applications? AND Are there sufficient numbers of magistrates available, and do they have the expertise and training necessary to undertake hearings?

We doubt that magistrates courts would be able to sit often enough or to handle out of hours applications. As a matter of course, magistrates (and indeed all those likely to come into contact with victims in the criminal justice system and specifically the Crown Prosecution Service should receive effective training). This would consist of general awareness training – as suggested at page 5 above.

We strongly endorse the Government's proposal in paragraph 54 to amend the Protection from Harassment Act so that victims must be informed when an application is made to vary or end a restraining order. This could play a vital role in improving safety for women in such situations. However we would add that use and efficacy of the Protection from Harassment has been at best patchy and at worst poor, and that it will therefore be essential that there is

⁹ Civil Liberties Trust, 2002, p. 6.

meaningful change in implementation. We believe that this could only come about as part of a coherent national strategy.

Should the Government make restraining orders available when courts sentence for any violent offence?

We would like clarification of what exactly is meant by the proposal to 'make restraining orders available when courts sentence for any offence of violence' as this would appear to extend far beyond the limits of domestic violence cases. We are also unclear as to the merits of making restraining orders available to criminal courts where a person is charged pending a trial, as this situation would presumably be covered by bail arrangements. We agree that restraining orders should be available to criminal courts when there is insufficient evidence to convict but the court considers that it is necessary to make a restraining order to protect the victim. However, this should not be used as a reason not to give women access to funds enabling them to apply for non-molestation orders.

Should the Government create a register of civil orders, and if so should the register include both current and expired orders?

Rights of Women does not support the creation of a register of civil orders, whether current or expired (paragraph 59 and 62). Similarly we do not support the creation of a register of domestic violence offenders. Given the limited resources available for tackling domestic violence, we believe that the amount set aside for this measure is too high, particularly as we are uncertain of any real benefits accruing from such a measure. We feel that such a proposal fails to recognise that the vast majority of domestic violence incidents are unreported and never result in civil or criminal proceedings – simply because a man has no history of civil orders against him does not mean that he has no history of domestic violence. We believe it is of much greater importance to change current implementation practices in dealing with victims to maximise a woman's safety.

Should the Government take a statutory power to establish multi-agency reviews following domestic violence homicides?

We give a cautious welcome to the Government's proposal on the establishment of multi-agency reviews following domestic violence homicides (paragraph 75). While the recognition given to the importance of domestic violence homicides is encouraging, we would like to emphasise that the vast majority of domestic violence thankfully never reaches this point but requires thoughtful, positive and strategic responses which we believe could be best delivered by a coherent national domestic violence strategy as set out above. Homicide reviews could form a part of this strategy but would be insufficient on their own. In this context, such reviews should include the police and criminal justice representatives, women's groups and survivors, and should cover not only homicide but suicide resulting from domestic violence.

The commitment to amend the contact and residency application forms to allow for details of domestic violence to be raised early on in an application for contact or residence is encouraging and we would like to see this actioned immediately (paragraph 79).

Do the current child contact arrangements provide the right level of support and safety for all family members and if not what else should be done?

We find that the current arrangements for supervised child contact are inadequate and contribute to endangering women and their children. Sufficient and sustainable funding for child contact centres is essential and is not currently in place. Women report to us that supervised contact has been ordered where there is a history of domestic violence but that they are required to endanger themselves and their children on a weekly or biweekly basis as there is no centre able to meet their needs. The service should be needs led with places available in proportion to supervision orders made by local courts.

Part 4: Support

The United Nations Declaration on the Elimination of Violence against Women emphasises in a number of places the obligations on States to support non-governmental organisations and particularly those concerned with violence against women, for example under Article 4 States should 'by all appropriate means and without delay':

e) consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organisations, particularly those concerned with the issue of violence against women;...

o) recognise the important role of the women's movement and non-governmental organisations worldwide in raising awareness and alleviating the problem of violence against women;

p) facilitate and enhance the work of the women's movement and non-governmental organisations and cooperate with them at local, national and regional levels...

We would encourage the Government within this context to ensure that women's organisations which are providing essential services to victims, including refuges, advice and information, and counselling are resourced on an adequate and sustainable basis. We would also cite Article 4 (h), that States must 'include in government budgets adequate resources for their activities related to the elimination of violence against women'. The UN Economic and Social Council resolution 1997/24 on Crime Prevention and

Criminal Justice Measures to Eliminate Violence Against Women¹⁰, which also urges States to ‘support initiatives of organisations seeking women’s equality and non-governmental organisations to raise public awareness of the issue of violence against women and to contribute to its elimination’ (Article 14 (f)).

In paragraph 6 of *Safety and Justice*, it is stated that there will be a 24 hour helpline for England – we would like to enquire what provision will be available for women in Wales. We welcome the proposal to develop a ‘refuges-online’ database to provide advice and information to women.

In paragraph 12 the question is put regarding unmet needs in support and accommodation services for LGBT and male victims of domestic violence. We note with concern that there is no parallel question for disabled women, and given the severe shortage of refuge provision for disabled women we believe this is an issue requiring urgent and detailed consideration (on this point we support the recommendations made by Greater London Action on Disability).

We are extremely concerned that the Government has no plans to give victims making applications under the immigration domestic violence rules access to social security benefits. This is a fundamental denial of victims access to justice and leaves women in potentially life-threatening situations. We believe this omission is profoundly discriminatory and morally unconscionable. Moreover we remain deeply concerned by key elements of the existing asylum and immigration system which fails to provide adequate recourse for women experiencing violence¹¹, frequently sees mothers effectively imprisoned with children, and often results in women being made destitute and homeless. The implications of the Nationality Immigration and Asylum Act 2002 have been particularly devastating for women as they are often more vulnerable to violence and other social forces than their male counterparts. Women whose immigration status is insecure may also not call the police for fear of arrest, which fear invalidates many of the protections proposed by this paper. We argue that a fair asylum and immigration system with adequate protection for all women should form an integral part of any effective national strategy for domestic violence.

Annex C

We would like clarification regarding what the ‘final race impact assessment’ referred to in paragraph 14 will entail. As we specify in our introduction at page 1, we believe that all aspects of any draft legislation should be thoroughly equality proofed for all strands, not just selected ones.

¹⁰ 21 July 1996.

¹¹ Tuitt, P., *Can Women Escape from Violence?*, Rights of Women Bulletin, Autumn 2002.

Rights of Women, September 2003

Rights of Women
52-54 Featherstone Street
London
EC1Y 8RT

Telephone: 020 7251 6575/6

Fax: 020 7490 5377

Email: info@row.org.uk

Website: www.rightsofwomen.org.uk