

## Research Brief

### *Understanding Domestic Violence Disclosure Schemes ('Clare's Law')*

#### Introduction

In February 2009 Clare Wood was killed by her ex-partner in Greater Manchester (England). The Independent Police Complaints Commission (IPCC 2010) review of this case found 'systemic failings' on the part of the police prior to her death and also noted that Clare's perpetrator had previous convictions for harassment and common assault of previous partners (IPCC 2010). In the aftermath of Clare's death there was a public and vociferous campaign to introduce legislation to make it possible for individuals in relationships and/or their family members to have the right to ask and/or right to know about a partner's previous history of violence. This campaign ultimately succeeded with the introduction of a Domestic Violence Disclosure Scheme (DVDS) first piloted in 2011 and rolled out across England and Wales in March 2014. This scheme is now commonly referred to as 'Clare's Law'.

The introduction of the first DVDS scheme in England and Wales was quickly followed by the introduction of similar schemes in Scotland in 2014, in New Zealand in 2015 and in Northern Ireland and some Canadian provinces in 2018. The merits of the scheme have been differentially received across Australian states and territories (Walklate and Fitz-Gibbon 2018). The scheme has been trialled in two sites in New South Wales and is currently being developed in South Australia. In contrast, the Victorian Royal Commission into Family Violence (2016) and the Western Australian Law Reform Commission's (2014) review of family and domestic violence laws did not make any recommendations about the scheme.

#### The 'Right to Ask' and 'Right to Know'

The scheme aims to prevent the perpetration of violence between intimate partners through the sharing of information about prior histories of violence. The scheme has two elements: the 'right to ask' and the 'right to know'. Under the right to ask an application can be made to police by any member of the public who applies information about whether a person has a history of domestic violence. Under the right to know, police can proactively trigger a request to disclose information in order to protect a potential 'high risk' victim from harm from their partner. In both cases police meet with multiple agencies to discuss the request and determine whether a disclosure should be made. The level of information shared varies by jurisdictions. Broadly speaking disclosure details can include details about previous convictions, allegations, arrests, charges and failed prosecutions (Police Foundation, 2014).

#### DVDS: Objectives

The objectives of Clare's Law are threefold:

- to strengthen the ability of the police and other multi-agency partnerships to provide appropriate protection and support to victims at risk of domestic violence;
- to reduce incidents of domestic violence through prevention; and

- to reduce the health and criminal justice related costs of domestic violence.

There is, however, an identifiable tension between these objectives and the actual lived reality of Clare Wood. In the wake of her death politicians, victim advocates, and concerned community members stated that had Wood and her parents known about her assailant's violent history they may have been able to prevent her death. Yet an analysis of the IPCC (2010) findings in the *Wood* case suggests she was acutely aware of her partner's violent tendencies towards herself rather than anyone else and/or a previous partner. She was in contact with the police in the period immediately prior to her death, had made complaints about her (ex)partner's behaviour, and had attempted to end the relationship. Indeed the series of events leading up to her death suggest that a DVDS in itself would not have assisted in addressing her risks or needs.

Research has indicated that women attempting to extricate themselves from high-risk relationships are at the highest risk of fatal violence (Dekeseredy et al 2017) and the need for better risk-assessment and case management at this juncture is imperative. These are issues repeatedly recorded in IPCC reviews (Hopkins and Walklate 2017) and domestic homicide death reviews (Dawson 2017). Clare's Law addresses neither of these bringing into question the efficacy of domestic violence disclosure schemes (Fitz-Gibbon and Walklate 2016).

#### DVDS: Effectiveness

One issue for the effectiveness of Clare's Law is the hidden nature of domestic violence itself. The right to ask and the right to know assume an accurate database carrying details of convictions, bail conditions, intervention order histories, custodial history, pending prosecutions, cautions, driving records, reprimands, formal warnings and so on (Home Office 2014). Yet research has consistently found that domestic violence is significantly underreported and that where reporting does occur the attrition at each stage of the justice process is remarkable (See, inter alia, Douglas 2008). It is entirely possible that persons who make a request under the 'Right to Ask' scheme could be placed in a false sense of security where they are told their partner does not have a recorded history of violence (see also Refuge 2012). Equally, persons who may have been serially violent to their partners are likely to never be the subject of a 'right to know' disclosure where they do not have a prior arrest, conviction and/or caution on their record. As stated by Kelly and Farthing (2012: 11), the scheme: 'risks lulling people into a false sense of security that they can know everything about another person's past actions and their future behaviour'. The scheme may also inadvertently capture inaccurate records of domestic violence histories made as malicious allegations of violence by previous partners or in cases where police have misidentified the primary aggressor (Bessant 2015).

The right to know and the right to privacy need to be carefully balanced (Bessant 2015; Grace 2015) since it brings into conflict the rights to protection afforded to victims, the rights afforded to a perpetrator or suspect, and the need for information sharing to ensure the safety of women and children is prioritised. The balancing of such concerns is important but particularly when such data sharing has the capacity to put the applicant at heightened risk of victimisation.

A final issue in considering the efficacy of Clare's Law is the relationship between victim empowerment, the displacement of responsibility and the risks of victim blaming. Clare's Law has 'been lauded as a means to "empower women" by enabling them to "make informed choices" about whether they continue their relationship' (Bessant 2015: 118). However there are risks with such empowerment. Clare's Law requires a victim to request access to information, and to act on that information once received. Thus it places responsibility for action directly with the applicant. This process of 'responsibilisation' is important. Duggan (2012: 31) notes that by transferring responsibility to the victim themselves, the scheme detracts from the accountability and responsibility of the perpetrator. Moreover, as a result of displacing responsibility from the system or perpetrator onto the victim, Clare's Law raises concerns surrounding the likelihood of victim blaming post-disclosure (see also Duggan 2018). If the scheme is predicated on the assumption that women will be able to, and indeed will want to, leave a partner if they find out they have a violent history, questions arise as to how the justice system will treat women who decide not to leave following disclosure of a violent history. This concern has been raised in emerging research examining the merits of the UK DVDS (Duggan 2012; Grace 2015).

### DVDS: Implementation in England and Wales

To date there has been little empirical work offering a systematic evaluation of the effectiveness or otherwise of this law. That is, with the exception of worked based on Freedom of Information requests to all police forces in England and Wales conducted by the Bureau of Investigative Journalism (2017). That work reports a very erratic and patchy take up of Clare's Law in different policing jurisdictions. Right to ask applications per 100,000 population peaked at 24.2 in Lancashire (with 39% of these resulting in disclosure) with the same applications standing at 1.6 per 100,000 population (with a 24% disclosure rate) in the Metropolitan Police. In addition Duggan's (2018) work on practitioners implementing this scheme illustrates the extent to which such schemes afford the space for victim hierarchies to continue to operate.

### Conclusion

Disclosure schemes, for domestic violence perpetrators

represent a recent policy development in improving responses to, and prevention of, violence against women. What is particularly interesting about these schemes is the extent and rapidity of their travel across the globe (see Fitz-Gibbon and Walklate 2018). Despite the speed with which they are being adopted, in lieu of evidence as to their effectiveness, questions remains as to the extent to which a DVDS improves safety outcomes for women and children experiencing family violence.

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