

**CRIMINAL JUSTICE SYSTEM AND
DOMESTIC VIOLENCE IN NORTHERN IRELAND**

A Report to the Northern Ireland Office

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EXECUTIVE SUMMARY

This report sets out the findings of the civil law and criminal justice system's response to domestic violence in Northern Ireland. It involves the police, lawyers, court officials, members of the judiciary and those working within the court and probation services. It is of particular relevance to all who are tasked with the responsibility of providing protection and safety for victims. It addresses questions about what should happen to those who persist in perpetrating domestic violence and outlines responses to offenders from both within Northern Ireland and elsewhere.

An extensive literature in the United Kingdom, the USA and elsewhere is reviewed. The review pays particular attention to the way in which domestic violence is responded to by the police and how these incidents are subsequently processed. Particular problems in relation to prosecution and sentencing are highlighted. We note the extent and nature of domestic violence, as it presents to the police and courts, but emphasise that this is an exploratory project rather than a representative study. Having said that the material does provide a useful insight into the various ways in which domestic violence is dealt with by the civil and criminal justice system; it highlights the problems in the current system and points to the need to take this issue seriously. We outline below a list of points which demonstrate this.

STATISTICS RECORDED BY POLICE AND COURTS

- * Between 1990-1994, 21 women were killed by their partners in Northern Ireland. This represents 48 per cent of all women murdered during this five year period. In contrast, 8 per cent of all male homicides (seven out of 83) were domestic violence related.

- * In 1991 there were six women killed by their partners in Northern Ireland. In the same year, there were 120 female domestic violence homicides in England and Wales. Proportionate to the size of the population, the Northern Ireland figure is relatively high.
- * At least 23 per cent of all homicides in Northern Ireland occur in the context of an intimate personal relationship between two adults. If others killed at the same time as the partner, in the domestic violence incident, are added to this figure it would mean that more than one in four homicides are due to domestic violence in Northern Ireland.
- * There were 29 domestic violence killings in Northern Ireland compared to ten in the Republic of Ireland in the five year period 1990-1994.
- * The spousal homicide rate for Northern Ireland is 1.9. This is the number of partners killed per hundred thousand married or cohabiting couples in the country. The Northern Ireland figure is higher than that reported for countries such as Canada and the Republic of Ireland.
- * More women than men are killed. The Northern Ireland sex ratio of domestic violence homicides is 3:1. Where women kill, there is generally a previous history of domestic violence by the man on his female partner.
- * An important feature to note in domestic violence cases in which women have been killed is that a significant proportion of the deceased have left the relationship or are

in the process of separation. Data recording mechanisms need to record residency status in homicide cases so that the extent to which this phenomenon occurs in the United Kingdom can be better analysed.

TAKING FIGURES FOR ONE YEAR

- * In 1994, there were 360 serious assaults on women by their partners, and five attempted murders. These figures relate only to reported assaults and hence under-estimate the extent of these attacks.
- * According to official police statistics, on average, one woman is seriously assaulted (with AOABH, GBH or attempted murder) by her male partner every day in Northern Ireland.

POLICING OF DOMESTIC VIOLENCE INCIDENTS IN NORTHERN IRELAND

- * The arrest rate for reported domestic violence incidents is between 12 per cent and 16 per cent in Northern Ireland.
- * Only 11 per cent of police cases in domestic violence proceed to prosecution.
- * Police officers attend just under 3,000 incidents of domestic violence in Northern Ireland annually.

PROSECUTION

- * Two-thirds of all male-female violence recorded by the courts is domestic violence.

- * Fourteen percent of all Offences Against the Person cases in five magistrates courts were domestic violence related. If figures could be obtained for criminal damage and Breach of the Peace cases which occur in the context of domestic violence together with breaches of personal protection and exclusion orders, then the extent of domestic violence in Magistrate's Courts could be more accurately assessed.
- * Approximately one-third of all cases are withdrawn from prosecution at the Magistrates Court. Various reasons are put forward to explain this high withdrawal rate but this clearly is a subject for further investigation.
- * At the Crown Court in six of the ten cases in which the police charged men with murder, the charge was either reduced or the offender was found guilty of the lesser charge of manslaughter. Issues about what constitutes diminished responsibility and provocation in the context of domestic violence are highlighted here.
- * The decision to review charges, which can lead to a reduced charge and a lighter sentence, also arises in the prosecution of domestic violence cases in which men were initially charged with attempted murder. Only one out of the nine cases returned a verdict of attempted murder in the court proceedings recorded here. The issue of proving intent in domestic violence cases is discussed.

SENTENCING

- * Offenders rarely receive custodial sentences in domestic violence cases heard in Magistrates Courts. The more serious assault cases appear to be prosecuted through the use of suspended sentences and fines.

- * Prosecution outcomes such as a fine or 'bind over' suggest that cases involving domestic violence are being treated differently than prosecutions for similar types of assault which involve strangers.

ISSUES RAISED BY RESEARCH

- * Offences which increase in frequency and intensity need to be taken more seriously by those responding to domestic violence. The previous history of the offender's abusive behaviour towards his partner is an important factor and, as such, it needs to be an important part of the discussions pertaining to prosecution and sentencing. Evidence presented here points to cases in which men who have killed their partners have previously been prosecuted for less serious offences. Where fatalities occur, the onus is clearly on the criminal justice system to work towards the development of a more preventative policy on domestic violence.
- * Clearly there is good practice, and examples of this are documented. Suggestions are put forward on a more coordinated approach to victims who report domestic violence but remain concerned about following through with prosecution.
- * There are 19 recommendations in all (see page 136). These highlight the need for an overall policy framework, for training, for improved guidelines for police and prosecutors and for specific crime statistics. Above all, a more integrated criminal justice response to domestic violence is recommended.

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CHAPTER 1

INTRODUCTION

Domestic violence is not something new. As long ago as the fourteenth century, reference was made to a case of a woman seeking refuge from her abusive husband. However, at that time and until relatively recently, domestic violence was untouched by law and protected as part of the private sphere of family life. Over the last twenty years as it has become more visible and has been recognised as a feature of contemporary family life, domestic violence is no longer perceived as a purely 'private' problem. There has been an explosion of legal reform and social service efforts; the development of refuges and helplines; the production of government reports and research studies; extensive coverage of trials and front page headlines in media reports; and public awareness campaigns which have led to a recognition of domestic violence as a 'public harm'. Moreover, a recent report in Great Britain concluded that domestic violence was amongst the most serious of our national social problems, important not only for the suffering it caused but for its effect on the community as a whole (Victim Support 1992).

At the same time, there has also been social resistance to change. Although domestic violence has evolved from a 'private' to a more 'public' issue, it has remained a divisive issue amongst policy-makers and help-providers. Abuse which occurs in the context of people's own homes is deeply threatening. It challenges our most fundamental assumptions about the nature of intimate relations and the safety of family life. By seeing such abuse as 'private' we affirm it as a problem that is individual, that only involves a particular male-female relationship, and for which there is no social responsibility to remedy. However, a concept

of privacy which says that what goes on in a violent relationship should not be the subject of state or community intervention has begun to change.

Background to the study

As a result of concerted mobilisation by both voluntary and statutory agencies in Northern Ireland, important legislative changes have taken place. These include the introduction of injunctions against violent partners, excluding them from the family home and making breaches of injunctions an arrestable offence. Important policy measures have also been developed relating to procedures for the police in investigating incidences of violence in the home. It is against this background that the present research was commissioned by the Northern Ireland Office.

The research responds to the need to provide an analysis of the nature and extent of domestic violence within both civil law and the criminal justice system in Northern Ireland. The proposal that projects like this should be undertaken was first put forward in a research study on domestic violence commissioned by the DHSS in 1992.¹ Since then, a government policy statement 'Tackling Domestic Violence' has identified, amongst other things, the need to improve the information base and to raise awareness amongst the public and professionals of the extent and seriousness of domestic violence. An interdepartmental group, which was formed as a result of the DHSS research to develop policy and principles for those working in the field of domestic violence, recommended that a Domestic Violence Regional Forum be established to take these issues forward. This has now been set up.

¹ This research was published the following year: McWilliams, M. and McKiernan, J. (1993) *Bringing It Out In The Open: Domestic Violence in Northern Ireland*, Belfast: HMSO.

Objectives of this study

The main focus of this study is to provide research-based analyses and information on the impact and effectiveness of legal and criminal justice agencies' responses to domestic violence. The objectives are:

1. to provide a critical commentary on existing research literature on domestic violence, relating to police practice and the component elements of the criminal justice process;
2. to examine the extent and range of domestic violence records retained by the Department of Public Prosecutions, police, courts and other available resources;
3. to explore the incidence, levels and trends of crime related to domestic violence;
4. to appraise the support for any recommendations that arise from the research, particularly in relation to civil remedies, cautioning, arrest procedures and sentencing.

Definitions of Domestic Violence

For the purposes of this study, domestic violence is defined as the intentional physical, mental or sexual abuse or the threat of injury or harm by a current or former partner. The issue of what constitutes mental harm in this context remains problematic particularly since legal instruments have been drawn up in different ways. What most researchers are agreed on is that domestic violence is most frequently perpetrated by men; that it is intentional and that it involves force and coercion. The extent to which women use violence against their partners, however, is also discussed in this study. Also included are couples who are not legally

married as well as those who have been living apart. The determining feature is that there has, at some time, been an intimate sexual relationship with the person who has carried out the abuse.

The definition, as used here, does not include acts of violence which take place between other family members. For various reasons the use of the term 'domestic' can sometimes be misleading. However, it is the term most frequently used in policy-making and is chosen here in preference to terms such as family violence, spouse abuse, wife abuse or battered women.

Rationale for this study

One of the basic questions which concerns those dealing with domestic violence is: "why does it occur?" Why do so many serious assaults take place between people who are bound to each through love and marriage? Given that we are reporting on the criminal justice response, it is particularly important to offer some rationale as to why such behaviour becomes unacceptable and constitutes a criminal offence. We can only briefly touch on this here since this report is targeted at the response to domestic violence and not necessarily to its causes. However, what one believes to be the cause of a problem can determine how one tries to resolve the problem. Consequently, we briefly outline some of the reasons put forward to explain why domestic violence occurs.

Dobash and Dobash (1992) argue that there are four main sources of conflict which lead to violent attacks by men on women with whom they are in intimate relationships. These are:

- * possessiveness and jealousy;
- * men's expectations concerning women's domestic work;

- * men's sense of right to punish 'their' women for perceived wrongdoing;
- * the importance to men of maintaining or exercising their positions of authority.

Mooney (1994) in a recent study of domestic violence in Islington, London, presented 500 men with a number of stereotypical situations based on the sources of conflict outlined above. She found that 19 per cent of men stated that they had acted violently at least once within the range of incidents presented to them and concluded that where women fail to perform what are perceived as their duties in the area of domestic and sexual services, they can be severely at risk of physical abuse.

Given the context of this study, and the fact that we have not undertaken any fieldwork with the victims, we do not attempt to confirm the extent to which the above factors occurred in the various incidents referred to in this report. Instead, we show the variable responses that are currently taking place within the civil, legal and criminal justice system and put forward arguments which point to the need to take domestic violence much more seriously than at present. We show, for instance, how women who have left relationships require greater protection and safety, particularly since the threat of leaving the relationship can in itself cause an escalation in the level of life threatening assaults. What we attempt to do throughout the report is to highlight the problems which victims, police officers and prosecutors face in responding effectively to domestic violence. At the same time, we hope to show that it is possible to find alternatives to what on occasions may seem difficult and dangerous issues. The report highlights the strengths and weaknesses of the current legal system and points to examples of what might constitute elements of good practice amongst the various practitioners.

Our attempt to see how the law and justice system respond to domestic violence in the specific context of Northern Ireland is presented in the subsequent chapters of the report. First, we provide data from 1990 to 1994 on the number of homicides, recorded under the Offences Against the Person Act, which have been the result of domestic violence. Data is also provided for a few other areas so that an attempt can be made at gauging the extent of fatalities in Northern Ireland compared to elsewhere. Chapter 3 also shows the outcomes of the prosecutions for murder, manslaughter and attempted murder cases as well as the serious charges for assaults relating to domestic violence over a three year period.

Chapter 4 then reports on observations, interviews, and analysis of records in five Magistrates courts. This chapter deals with the incidence of domestic violence cases in these courts and of the range of sentencing for this type of offence. Chapter 5 concentrates on personal protection and exclusion orders which are dealt with under civil legislation. It provides data on the prosecutions related to the breaches of these orders at Magistrates courts. The RUC's policy on domestic violence and the way in which police officers have been responding to incidents of domestic violence are dealt with in Chapter 6. Finally, the conclusions and recommendations are presented.

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