

CHAPTER 7

CONCLUSION AND RECOMMENDATIONS

This report shows that fatalities and assaults causing serious injuries in the context of domestic violence are as much a reality in Northern Ireland as anywhere else. Despite how much we would like to believe in democratic and non-violent marriages, the data provided here serve as a reminder that for many women and children the home can be a very dangerous place. The fact that much of the violence is by male partners on women with whom they have currently, or previously had, a relationship can be a difficult thing to accept. This can be as hard for the victims to come to terms with as it is for those working in the criminal justice system. If this behaviour is to be made unacceptable then we must start by recognising that violence in the context of interpersonal relationships is criminal to the same extent as violence in any other context. The material provided here, however, questions whether it is always seen to be so.

In this concluding section, we draw together the main findings and provide the contextual material for a series of recommendations which immediately follow. To date, there has been surprisingly little research on the criminal justice system and domestic violence anywhere in the UK. This may be due to the fact that the statistical evidence for such studies is still relatively poor. For example, in this study it was not possible to assess the level of domestic violence subsumed under common assaults because such cases are not separately recorded or documented. From the jurisdiction of the five magistrates courts included in this study, we found that approximately 14 percent of all Offences Against the Person cases

related to domestic violence but a trawl of figures from a wide geographical area may be necessary to discern more accurately the true proportion of reported domestic violence cases in Northern Ireland courts. Since many cases had to be eliminated due to the difficulty in distinguishing domestic violence offences, we believe that there is a higher proportion of all violent offences and male-female violence which is domestic violence related than these preliminary figures suggest. If a framework for collecting crime statistics at both the magistrate and crown court levels was put in place, both legislators and policy makers would be in a better position to assess the extent to which court time and resources are devoted to domestic violence. It should also provide the necessary information on Breach of the Peace and criminal damage cases related to domestic violence as well as the number of breaches of personal protection and exclusion orders. With this data, we should be better able to monitor the situation in the future. In the absence of this framework, it will remain difficult to document the costs of domestic violence within the criminal justice system.

With improved data sets, it should also be possible to undertake research throughout the United Kingdom on the magnitude of heightened homicide risk and sublethal violence incurred by women who have left relationships. Police statisticians, coroners, and officials working in the court information system could utilise this data to improve practice amongst those tasked with providing protection and safety for separated or divorced people who continue to report persistent abuse from their previous partners. Support services are crucial whilst the relationship is on-going but may become even more so when a women who has been abused threatens to leave. The estrangement itself, and the months immediately following the split up, can lead to an escalation in the life-threatening nature of the assaults which means that this is a particularly dangerous time for abused women and children. Many who seek help at this time do so within this frame of knowledge. Women who report having

their lives threatened need to be taken seriously and attended to urgently. Where fatalities can be prevented then the onus is on service providers to put in place the appropriate training and resources to do so.

Recognising that women incur risk of severe violence at separation necessitates action to guarantee their safety. The coercive use of such violence and threats implies more. Men threaten and use violence to constrain women's options and continued failure to acknowledge this constitutes a denial of women's entitlement to autonomy. The effects of violence on women's lives will not be fully understood until the question of the extent to which coercive violence serves the interests of its perpetrators is addressed.

Given the lack of familiarity with the prosecution system, victims of domestic violence deserve to be kept informed about their cases, especially when charges have been reduced. If victim confidence is to be enhanced in the criminal justice system then procedures need to be introduced which enable prosecutors to explain the various steps taken to ensure a successful prosecution. Those who have been directly effected by repetitive, serious and life threatening assaults need to be better briefed about the preliminary enquiry in relation to their cases; particularly if they wish to have an input into this process. When this does not happen, and when charges are reduced or cases dismissed, then victims can become extremely disillusioned or perceive their efforts to achieve justice to have been wasted. Similarly, those working within the prosecution system should receive specialist training in the area of domestic violence in order to understand the fears and aspirations of victims and to appreciate better the context in which much of this violence takes place.

Also of some concern is the extent to which domestic violence cases are withdrawn from prosecution. We found withdrawal rates of 33 per cent, which is a high figure considering the seriousness of the charges. It is disturbing to note, for example, that eight

defendants had charges against them withdrawn at their court appearance, although three of these later faced substitute charges. No information is available as to why the other serious charges, including one of attempted murder, were withdrawn. Possibly some of these cases were tried on lesser charges at a later date outside the six-month period chosen for research. It is also worth noting that during this six month period, the withdrawal rate for domestic violence defendants on the charge of Assault Occasioning Actual Bodily harm (AOABH) was 39 per cent as against only 11 per cent for the male-male group charged with the same offence. Again, it may be that the domestic violence cases collapsed because the victim did not cooperate with the prosecution process by giving evidence. If this is the case, further research is needed to investigate the reasons. It is possible that a reconciliation may have taken place between the time of the initial charge and the time the case eventually comes to court. However, in cases where a reconciliation has not taken place, victims may be reluctant to give evidence because of fear or because they lack confidence in the criminal justice system. We need to determine then how best to support such victims through to successful prosecution. As much as possible should be done to help women who are frightened to go to court and give evidence against their attacker.

It is still the case that some victims of domestic violence receive too little advice on the kinds of support needed to sustain them through the prosecution process whilst others receive too much advice on how to reconcile. Those engaged in the prosecution system, as well as those involved in work with perpetrators, need to fully take on board the importance of delivering an appropriate level of protection for abused women. Where custodial sentences are given, there should be collaboration in sentence planning from the beginning of the sentence and a more informed exchange of information between the Prison Service and Probation Service in order to prepare the victim for the offender's final release into the

community. All organisations will need to work together to develop good practice in dealing with both the victims and the offenders.

Despite the symbolic significance of prosecution, criminal sanctions do not offer a complete solution to domestic violence, or deal adequately with the consequences for those who experience it. Victims need a comprehensive support system which should include independent advice and advocacy services. As Victim Support (1992) comment in their national inter-agency working party report 'Reluctant witnesses may not be very effective witnesses'. If a woman is frightened at the prospect of having her partner convicted and anticipates further violence or intimidation as a result of continuing with the prosecution, then her views about acting as a witness in such cases should be understood in this context. When a woman is left unprotected and unsupported while legal processes take their slow course, it is not surprising that many withdraw in despair from criminal proceedings.

Where the state wishes to retain the support of victims through prosecution, then greater liaison needs to be developed with both statutory and voluntary organisations. If a woman believes herself to be in danger from her assailant in the run-up to a trial, then adequate protection and support must be offered. This might entail the police leaving her in possession of her family home and imposing bail conditions on her alleged assailant such as he could not visit it; or it might entail arranging alternative protected accommodation for her and her children. If magistrates are concerned about removing a woman's means of support when they impose a custodial sentence on her partner, then urgent arrangements should be put in place for alternative income support either through social security or interim financial support from the social services.

Problems such as these have to be faced both in the Crown and Magistrates Courts when the issue of domestic violence arises. Clearly there is a particular vulnerability where

victims of domestic violence are concerned, especially when they are required to go back and live, unprotected, with their assailants. In cases of serious violence, arguments should be put to the court that the man should be remanded in custody because of the likelihood of the offender interfering with the witness. If the prosecution has the right to pursue a case, then the state has the accompanying duty to provide some protection for victims. As Victim Support (1992) note 'every effort should be made such that the crime of domestic violence can be pursued as energetically as any other', and indeed the likelihood of repetition would suggest that domestic violence should be pursued even more rigorously. What is clearly missing from our criminal justice system at present are models for support, consultation and advocacy. Court advocacy for victims of domestic violence is urgently needed and could be based on the good practice models already in existence elsewhere (see Chapter 2). A Domestic Violence Support Programme could be monitored for a period of time to assess its effectiveness in increasing confidence in the judicial process. A domestic violence advocacy scheme could respond to the invitation of a woman who wishes to pursue or assist criminal proceedings but remains concerned about the repercussions of such a course of action. It could support her in her subsequent decisions and might act as a referral point, following community disposals or custodial sentences, to the recently introduced programmes for perpetrators. Such an intervention would help to develop a much more co-ordinated response to victims from police, Women's Aid and other support agencies as well as from those in the legal and judicial system.

Another problematic area is the designation of charges and the apparent leniency of sentencing for domestic violence offenders. It is clear that some serious charges are withdrawn and brought back to court on a lesser charge, thereby securing a prosecution but also a lighter sentence. It is also possible that some charges of common assault might be more

appropriately tried as AOABH. In addition to this it is not known how many domestic violence cases might be subsumed under Breach of the Peace charges.

Of the 77 defendants in the five Magistrates Courts under study, of those whose cases were not adjourned or sent for trial to a higher court, none received a more severe penalty than a suspended prison sentence (maximum nine months) or fines ranging generally from £10-£100 (one fine of £250 was exceptional). No defendant was given an immediate prison sentence. The AOABH comparison group of male-male offenders were treated more severely, especially in regard to level of fines and immediate custody, than were the domestic violence group.

While we appreciate that the sentencing of domestic violence offences is a sensitive and complex area, posing dilemmas for magistrates who may fear that the victim as well as the offender is penalised by heavy fines and custodial sentences, it is also important that the judicial process takes account of the chronic and potentially lethal nature of domestic violence, by reference to the offender's previous record. Magistrates need to be alert to a previous history of domestic violence and to prioritise the safety of the victim. What must be taken much more seriously is that when domestic violence occurs it is rarely a one-off incident. More than any other crime, it is likely to be repetitive and to increase in intensity and frequency as it repeats itself.

In this study, we came across incidents in which defendants had been charged and sentenced, then re-offended and brought back to court on a more serious charge but the penalties of re-offending did not seem to be reflected in the sentencing. Of some cause for concern are the cases of two offenders who had previously been sentenced for serious assaults on their partners and who were eventually prosecuted for murder. These cases should alert those involved with criminal justice that assaults on female partners may be part of an

escalating pattern of potentially lethal violence and that this needs to be taken into account when passing sentence.

The number of cases before the courts in Northern Ireland are the proverbial tip of the iceberg. The police deal with many more incidents than are formally prosecuted. Regarding the police, there is a need to constantly consider their powers of arrest and detention in domestic violence cases both because of the experience from other countries of its possible deterrent effect and because of its importance as a means of showing the woman that she is entitled to, and will receive, society's protection and support. Domestic violence units have also been seen to be effective elsewhere and despite the fact that specially designated officers have now been assigned to domestic violence duties in each sub-division, Northern Ireland still does not have any such dedicated units. If Domestic Violence Units were to be established then they should adopt best practice from elsewhere. These tend to be units which operate under an investigative model, by enabling women to make retrospective statements after the incident and to follow up the high proportion of cases where the perpetrator has either temporarily or permanently left the scene.

One further intervention which should be considered in this context is the procedure of formal cautioning. Monitoring procedures should be set up both to assess its effectiveness and to check if this particular innovation assists the welfare of the victims. What we need is more research and innovation to devise ways of increasing the processing by the criminal justice system of offences of domestic violence. In the short-term, an action-research project could be designed which would appraise the effectiveness of different interventions in different places. For example this could evaluate the impact of arrest and detention procedures in one area, formal cautioning in a second area and court advocacy and victim support in a third. On the other hand, a combination of innovations could be assessed through follow-up

interviews with victims in an area where these are being piloted.

These more wide-ranging and innovative practices for dealing with domestic violence offenders should now be explored. The expansion within the Probation Service of challenging programmes to which perpetrators can be referred by the courts should also form part of a more comprehensive response to the problem. These programmes are not to be seen as a diversion from prosecution. They should only be used where a custodial sentence appears unlikely or where the offender has been released on parole. Probation Orders could be used more extensively in these cases to mandatorily direct the perpetrator to the programme. His actions could be monitored for a successive number of months to determine any changes in his behaviour and his partner consulted for her views so as to make a comprehensive assessment of the effectiveness of the programme. All such programmes should have systems for monitoring men's behaviour and the programmes should be independently evaluated.

Despite our focus on the criminal justice system, it is worth noting that those experiencing domestic violence are more likely to seek protection through the civil courts. The official court statistics relate to the number of personal protection and exclusion orders granted annually, which is approximately 3,000 at present. This research indicates, however, that a somewhat smaller number of individuals may be involved since some applicants obtain repeat interim orders in any one year. We do not know the number which are refused so this figure may underestimate the number of initial applicants. The number of interim orders also exceeds the number of full orders granted and one implication may be that women are using the legislation effectively to deter further violence. A less sympathetic reading may be that they are discouraged from going any further by the trauma of being cross-examined at a court hearing, particularly when confronted by partners contesting full orders. Alternatively, any lack of enforcement of civil orders may lead them to 'drop out' of the system at this stage.

Only further research, based on a wide sample of women who have used the civil courts, will unravel the complexity of issues pertaining to civil protection orders and their effectiveness. In the short-term, however, separate waiting facilities for victims would appear to be a prerequisite for resolving at least one of these issues.

The issue of extending the duration of exclusion orders has also been debated for some time by family law solicitors and by the magistrates in the domestic proceedings courts. Both are aware of the problems which can arise when, after six months, if the exclusion orders are not renewed they become ineffective. Victim support agencies have also recommended that the Office for Law Reform should reconsider this restrictive time period. Some magistrates believe that it should be left to their discretion to decide an appropriate time scale for exclusion orders. The way in which some men continue to use violence, or to stalk their partners, long after the relationship is ended should alert legislators to the need to extend protection for a much longer period of time. Legislation in this field has recently been reviewed by the Office for Law Reform in Northern Ireland. However the proposals to amend the current legislation also fail to address this issue.

Legislation also needs to address the problem that victims of domestic violence are required to provide evidential proof that an assault has taken place before they can use the protection of the civil courts. This remains a major issue not just for those seeking their first exclusion order but also for those who are seeking renewal of their orders. To wait for such an assault to take place is to tempt fate since it could be too late for the order to be of any use. Women who cannot afford for this to happen, may be forced to leave their homes in order to protect themselves. If civil protection is to mean what it says then this issue has to be taken seriously and extensions to an exclusion order should be granted more generously than is currently the case. Either the Office for Law Reform should take the opportunity to

introduce this now or should direct magistrates to use their discretion to extend these orders.

One study, undertaken in the United States, notes that since the introduction of these orders women are less likely to resort to killing their abusive partners (Browne and Williams 1993). The same does not hold for men who kill their wives or girlfriends. In other words the number of female homicide victims has not decreased but the number of male victims has since civil legislation was introduced. We do not know the extent to which this may hold for other countries, particularly since the data on domestic violence homicides have only recently begun to be analysed. From the information which is available, the homicide figures tend to vary from year to year in Northern Ireland, as is also the case elsewhere.

We can make some tentative judgements about the circumstances in which women kill their partners in Northern Ireland from the court proceedings of these cases. Due to their previous history of domestic violence in these murder cases, the women defendants have been found guilty of the lesser charge of manslaughter. In two cases out of seven, the women were acquitted. Elsewhere, cases in which women have received mandatory life sentences for killing abusive husbands have subsequently led to public campaigns and demands to have these convictions and sentences reviewed. A register of the various outcomes of court cases both in Northern Ireland and elsewhere may assist such a review.

Many more women than men are victims of domestic violence homicides. It would appear that where women have been killed as a consequence of domestic violence then a range of mitigating circumstances have been allowed to reduce the charge from murder to manslaughter. When there is strong evidence of persistent domestic violence, then one might question how such circumstances are allowed to mitigate his behaviour. In cases in which mitigation and provocation reflect more the gendered nature of the relationship, then the legal system needs to consider the extent to which it is condoning, rather than condemning, this

violence. In particular, the outcomes and sentences involved in the attempted murder cases reported here may cause some concern to those attempting to provide protection and safety to the victims. The judicial system needs to take the issue of domestic violence much more seriously and it needs to put the story of the assailant and the victim together in a much more coherent way than is the case at present. To do this, it needs to seek advice and expertise from those who work with abused women. They may be able to produce pre-trial reports on the serious, long term effects of domestic violence and to provide a more holistic picture about the kinds of abusive and coercive behaviour leading up to such events. Rather than providing access to prosecution lawyers on the day of the trial, the Department of Public Prosecutions should attempt to involve victims much more at the pre-trial stage, particularly since they are to be their main witnesses. Where women have survived attempts on their lives, this is the least they should expect. In London, Ontario, for example victims have the right to meet the prosecutor within two weeks of a charge being laid (Kelly, 1994) Unpublished report on study visit to London, Ontario, North London University, Child Abuse Studies Unit).

The expertise of agencies such as Women's Aid should be better utilised by the criminal justice system at all of these stages. Clearly, any co-ordinated response to protection and safety needs to draw on their ability to provide emergency support for abused women and children as well as their knowledge of the kinds of services that are needed to protect women. Women's Aid should be involved in the delivery of training to officials within the judicial system in addition to the training which has been initiated with police officers on the ground. For this to take place effectively, financial resources need to be set aside by these agencies since Women's Aid cannot be expected to deliver these services from within their current budget.

Domestic violence is an 'everyday' crime in Northern Ireland. It can also be extremely dangerous and have very serious consequences for its victims. Too often, women are left in situations where they will be assaulted again, or indeed killed. Such homicides have been highlighted here and point to the need for prosecutors to be alert to the repetitive nature of this crime. Domestic violence is clearly a major social problem and one that needs our urgent attention. Violence in the home must be prevented if we wish to reduce violence in society. Individuals at the policy level have to seek ways to reduce the high levels of serious assaults which take place in the context of domestic violence. Interventions should be found to enable victims, and those working with them, to pursue the kinds of justice which fit the crime and police officers, prosecutors, policy makers and lawyers have a duty to respond accordingly. As the public awareness campaign states 'when home is where the hurt is,' we need to act now.

RECOMMENDATIONS

1. Recording of Domestic Violence Offences

- 1.1 In order to obtain a more accurate picture of the extent of domestic violence in Northern Ireland, a framework for collecting crime statistics at both the Magistrates and Crown Court levels should be put in place. A coding system for domestic violence cases could be introduced with the on-going computerisation of court records and should cover all charges including Offences Against the Person, criminal damage and breach of the peace which has occurred in the context of domestic violence. Breaches of personal protection and exclusion orders should also be included.
- 1.2 The RUC, when recording common assaults, should categorise sex, marital status and relationship of the offender and victim.
- 1.3 Residency status in homicide cases should also be included to determine whether the victim was co-habiting or separated at the time of the incident.
- 1.4 A register of the various outcomes of domestic violence related murder, manslaughter and attempted murder court cases in Northern Ireland and in Great Britain should be established.

2. The Police

- 2.1 The RUC should more robustly implement at operational level the pro-arrest policy for domestic violence offences set out in the 1991 Force Order.
- 2.2 When a perpetrator is arrested and detained, conditions should be set for police bail which would seek to protect the victim.
- 2.3 The RUC should continue to develop training on domestic violence issues at divisional

and branch level and set aside financial resources for such training.

2.4 The RUC should consider the establishment of dedicated Domestic Violence Units and the use in every division of plain-clothes Domestic Violence Officers, under the command of the Domestic Violence Liaison Inspectors, to work at operational level with victims, using good practice models currently being developed.

2.5 When abused women are frightened and/or wish to withdraw charges and where police officers believe the charge cannot be sustained in court in her absence, the RUC should consider the use of formal cautioning, on the Streatham model (see Chapters 2 and 6), so that if re-offending occurs, the evidence of having received a deferred caution can be taken into account in any future court sentencing. However, it is important that if introduced, formal cautioning should not become the preferred police method of dealing with domestic violence cases, rather than court prosecution.

3. Prosecution and Sentencing

3.1 Attention should be focused on the high rate of withdrawal of domestic violence charges from prosecution. Greater use should be made of Article 23 of the Criminal Justice (Evidence) (Northern Ireland) Order (1988), whereby police statements and, where appropriate, medical and photographic evidence, could be accepted in court so that the victim need not necessarily have to appear in person. Written evidence in cases of intimidation of witnesses should also be considered.

3.2 Decisions to prosecute and sentencing decisions in domestic violence cases should bear in mind the unusually chronic nature of this particular crime.

3.3 More wide-ranging and innovative practices for dealing with domestic violence offenders in Northern Ireland should be explored. An example would be an expansion

of the existing Probation Service programme for perpetrators. Probation orders could be used by the courts to direct offenders mandatorily to such a programme, but only where a custodial sentence is not indicated. Where the offender breaches the condition of this order through his failure to attend or participate in the programme, the case can be returned to court for sentencing. Such sanctions should be monitored to check for their effectiveness.

3.4 The RUC should involve victims more in the preparation of the preliminary enquiry file and keep victims better informed at every stage of the prosecution process. The DPP should offer a rationale to victims or to a deceased victim's family where they have reviewed a charge, leading to a reduced charge, or where they have agreed to accept a plea to a lesser charge.

3.5 The Judicial Studies Board should include the issue of domestic violence in their training programme for magistrates and judges.

3.6 In the longer term, consideration should be given to the introduction of separate legislation on domestic violence. A separate system for the prosecution of domestic violence related offences should also be considered.

4. Support, Consultation and Advocacy

4.1 Models for support, consultation and advocacy should be developed. Court advocacy with victims of domestic violence is urgently needed and could be based on the good practice model of the Duluth Intervention Project (see Chapter 2). This would facilitate a much more co-ordinated response to victims from the police, voluntary support agencies and the legal and judicial system.

- 4.2 With regard to their safety, victims should be notified by probation officers of the imminent release of an offender from custody.
- 4.3 Professionals should be particularly alert to the increased level of support and protection needed by women in the dangerous period after leaving an abusive relationship.
- 4.4 The criminal justice system should better utilise the expertise of agencies such as Women's Aid, particularly with regard to pre-trial reports and in the training of prosecutors and court personnel. Expert witnesses should be more involved in court hearings, particularly given the specialist expertise which has now been developed on domestic violence issues.
- 4.5 For those victims seeking protection through the civil courts, consideration should be given to extending the duration of exclusion orders, or to giving magistrates the discretion to decide an appropriate time scale for these orders.
- 4.6 Urgent attention should be given to the provision of separate court waiting rooms for victim/witnesses.
- 4.7 Where victims volunteer to give evidence, or are compelled to do so, the introduction of victim-support schemes should be considered to enable this to take place in a much more empathic way. Some thought should be given to the provision of a Victim Witness Support Programme, linked to the prosecution system.

5. Research

- 5.1 Detailed research is required to assess victim satisfaction with the various parts of the criminal justice system in cases of domestic violence. In the absence of this research, various assumptions are made as to why victims withdraw from the prosecution

process.

- 5.2 Further research should be undertaken in a range of civil and criminal courts on the extent and nature of domestic violence offences together with the type of compensation awarded for criminal injuries incurred in the context of domestic violence. An appraisal of the economic costs of domestic violence in these various settings might also be considered.
- 5.3 Independent evaluations should be undertaken to monitor the effectiveness of any new strategies introduced by those working within the criminal justice system.