

DOMESTIC VIOLENCE DISCLOSURE SCHEME – A CONSULTATION SUMMARY OF RESPONSES



Home Office

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1. Introduction

Approximately two people are killed by their current or former partner each week in England and Wales. The case of Clare Wood, who was murdered by her former partner in Greater Manchester in 2009, brought to national attention the issue of disclosing information about an individual's history of domestic violence to a new partner. Noting that her former partner had three previous convictions under the Protection from Harassment Act 1997, the Coroner's report into the murder published in July 2011 contained the following recommendation:

subject to appropriate risk assessment and safeguard, I recommend that consideration should be given to the disclosure of such convictions and their circumstances to potential victims in order that they can make informed choices about matters affecting their safety and that of their children.

The tragic case of Clare Wood follows a report commissioned by the Home Office and published in 2009 by Chief Constable Brian Moore of Wiltshire Police on behalf of the Association of Chief Police Officers (ACPO) - Tackling Perpetrators of Violence against Women and Girls. Chief Constable Moore set out a series of ten recommendations which included a "right to know" where he concluded that "whilst routine disclosure should not be common practice, following risk assessment it may be proportionate and necessary to enable a potential victim to make choices about her safety and that of her children."

On 25th October 2011, the Government launched a consultation inviting views from the public on whether the protection of victims of domestic violence could be enhanced by the establishment of a national Domestic Violence Disclosure Scheme. The document invited views on the following three options:

- Option 1: continue current arrangements under existing law where the police already have common law powers to disclose information relating to previous convictions or charges to A where there is a pressing need for disclosure of the information concerning B's history in order to prevent further crime.
- Option 2: a "right to ask" national disclosure scheme which enables A to ask the police about B's previous history of domestic violence or violent acts where the police would undertake full checks to inform a risk assessment and disclosure. A precedent upon which suitable adaptations could be made exists with the Child Sex Offender Disclosure Scheme;
- Option 3: a "right to know" national disclosure scheme where the police would proactively disclose information in prescribed circumstances to A relating to B's previous history of domestic violence or violent acts.

The consultation also sought views on the scope of any disclosure, plus the impact on different groups in relation to race, disability, gender, gender identity, religion, sexual orientation and age. The consultation closed on 13th January 2012, and this document provides a summary of the responses and findings and outlines the Government's next steps.

2. Overview of responses

We received 259 responses, of which 165 were from the on-line questionnaire posted on the Home Office website and 94 were received via a dedicated email Inbox.

The 259 figure excludes two separate petitions received by the Home Office, as follows:

- a petition organised by Key 103 FM consisting of 164 signatories.
- a petition on the Direct Gov E-petition's website consisting of 129 signatories.

The profile of respondents to the on-line questionnaire or who sent responses to the dedicated email Inbox was as follows:

Profile	Number
Community Safety Partnerships	35
Members of the public	59
Representative bodies	11
Statutory agencies (local authorities, police, probation, NHS)	56
Third sector	71
Victims (as self-identified on on-line questionnaire)	27

A clear majority of these respondents wished to see some form of process for disclosing information introduced - either a “right to ask” (n=35), a “right to know” (n=50) or both (n=135) - total: 220.

A common theme articulated, however, was that a “right to ask” or “right to know” mechanism should not be regarded as a “silver bullet” that solves domestic violence problems. Many respondents flagged other key issues and risks that the Government should consider further, which are summarised as follows:

1. that there are consistent police procedures across the country for:
 - a. investigating domestic violence incidents;
 - b. safety planning and supporting victims after a domestic violence incident has occurred;
2. that there is sufficient capacity amongst Independent Domestic Violence Advisers (IDVAs) to accommodate the increased demand following the introduction of “right to ask” or “right to know”;
3. that the mechanism is based on a multi-agency picture of risk. Some respondents argued that relying on police information alone about an alleged perpetrator (P) is insufficient as P may not be known to the police but to other agencies;
4. the safety of the potential victim after disclosure has been made;

5. the privacy concerns particularly over the “right to know” option (to prevent “spying”; stigmatisation of alleged perpetrators);
6. the bureaucratic burden on police and agencies;
7. that if a “right to know” option is pursued, whether the local Multi-Agency Risk Assessment Conference (MARAC) is the appropriate organisation to manage the disclosure;
8. the jurisdiction and enforceability of the scheme across the United Kingdom.

3. Option 1: continue current arrangements under existing law

This is the option where the police already have common law powers to disclose information relating to previous convictions or charges to A where there is a pressing need for disclosure of the information concerning B's history in order to prevent further crime.

CONSULTATION QUESTIONS ASKED

- Q) To what extent do you believe that the current arrangements are effective in preventing domestic violence?
- Q) How could the current arrangements be improved?

SUMMARY OF RESPONSES

There were 24 out of the 259 respondents who preferred this option. Among them were key stakeholders such as Women's Aid, Refuge, Liberty and the Local Government Association.

Respondents who preferred Option 1 did so on the basis of a critical appraisal of options 2 and 3 plus a desire to see current arrangements improved. Criticism of options 2 and 3 was as follows:

- that the safety expectations of potential victims derived from knowing about a previous partner's history of domestic violence are unrealistic;
- that it was not realistic to expect potential victims in the early stages of a romantic relationship to conduct a background check on their partner;
- that options 2 and 3 will not solve a perceived on-going need to strengthen police procedures for dealing with domestic violence;
- that the police should there are consistent police procedures across the country for investigating domestic violence incidents, and for safety planning and supporting victims after a domestic violence incident has occurred.

COMMENTS BY RESPONDENTS


“Liberty does not see how a new statutory disclosure scheme will effectively address the problems [of police dealing with domestic violence incidents] which successive IPCC investigations have identified nor effectively protect individuals from potentially violent partners.”

Source: Liberty




“It is not realistic to expect victims, in the early stages of a romantic relationship, to be interested in carrying out a background check on their partners.”

Source: Safe Newcastle



Instead, respondents preferring option 1 argued that there was scope to improve and advertise existing procedures for tackling and preventing domestic violence.



We believe that the police have adequate powers to disclose information to victims/survivors and that therefore there is no requirement for any legal or regulatory changes to implement a register or other administrative processes to facilitate domestic violence disclosure, and indeed that this would not be an effective use of resources.

Source: Women’s Aid



4. Option 2: a “right to ask” national disclosure scheme

This is the option where person (A) could ask the police about a person’s (B) previous history of domestic violence or violent acts.

CONSULTATION QUESTIONS ASKED

- Q) Should a system be put in place to enable A to ask the police for information about the previous violent behaviour of B?
- Q) Do you agree that the Child Sex Offender Disclosure Scheme, with appropriate modifications, is a suitable model to apply under this option?
- Q) What do you see as the potential risks and benefits of such a scheme? How might any risks be minimised?
- Q) What are your views on placing such a scheme on a statutory footing?

SUMMARY OF RESPONSES

There were 35 respondents who stated that this was their preferred option, with a further 135 respondents favouring either option 2 or option 3.

Respondents who preferred option 2 did so on the basis that a high-profile and widely-advertised scheme that encouraged potential victims to ask for information about the previous violent behaviour of their partners would empower potential victims, raise public awareness of domestic violence and, with appropriate safety planning, reduce abuse. A modified Child Sex Offender Disclosure Scheme was seen as an effective model to follow, and respondents favouring this option also felt that a “right to ask” scheme would help expose the hidden nature of domestic abuse and tackle the problem of under-reporting.

However, respondents were also clear that a “right to ask” would need to be introduced carefully, with the following key issues carefully managed:

- avoiding inappropriate disclosures to unvetted people to avoid “fishing” or “spying”;
- ensuring appropriate safety planning takes place to support potential victims;
- ensuring that, under the Human Rights Act 1998, Article 8 privacy issues are accounted for.

Respondents who preferred option 2 were generally supportive of placing a “right to ask” on a statutory footing, subject to the issues identified above being resolved satisfactorily.

COMMENTS BY RESPONDENTS


“Yes. This would formalise the current position by creating a regularised framework for the disclosure of this type of information by the police”

Source: Committee for the Centre for Child and Family Law Reform



“Making it a statutory duty would ensure clear guidelines and rules available to the police. Risks could be minimised by ensuring appropriate safeguarding methods are put in place. My greatest concern is how we protect the victim from possible abuse once they have found out that their current partner is a perpetrator and they have told them that they know this.”

Source: Safe Durham Partnership



“Refuge has concerns about the underlying premise of the “Right to Ask” scheme – that knowing about a partner’s history of domestic violence will somehow empower a woman to leave him and seek safety. We are concerned that this expectation simplifies the complex reality of domestic violence. Leaving a violent partner is an incredibly difficult step to take. It is also extremely dangerous: women are at greatest risk of homicide at the point of separation or after leaving a violent partner.”

Source: Refuge



5. Option 3: a “right to know” national disclosure scheme

This is the option where the police would proactively disclose information to a person (A) about the previous violent behaviour of another person (B).

CONSULTATION QUESTIONS ASKED

- Q) Should a ‘right to know’ system be put in place to ensure that the police proactively share information to A about the previous violent behaviour of B?
- Q) What do you see as the potential risks and benefits of such a scheme? How might any risks be minimised?
- Q) What are your views on placing such a scheme on a statutory footing?
- Q) What other mechanisms for disclosing information about a subject’s violent behaviour do you consider appropriate?

SUMMARY OF RESPONSES

There were 50 respondents who stated that this was their preferred option with, as discussed under section 4, a further 135 respondents favouring either option 2 or option 3.

Many respondents who preferred option 3 did so on the basis that a “right to know” would put a positive duty on the police to proactively engage with potential victims, thus shifting the burden from the victim to the police. With appropriate safety planning and support, respondents felt that victims who are unaware of (or feel unable to discuss) the risks that they face would feel more empowered and supported to address the abuse they are suffering through sympathetic and sensitive proactive disclosure.

As with option 2, respondents were also clear that a “right to know” would need to be introduced carefully, with the following key issues carefully managed:

- ensuring appropriate safety planning takes place to support potential victims;
- ensuring that, under the Human Rights Act 1998, Article 8 privacy issues are accounted for.
- ensuring that the police, IDVAs and MARACs were adequately resourced to manage the proactive disclosure process.

Respondents who preferred option 3 were generally supportive of placing a “right to know” on a statutory footing, subject to the issues identified above being resolved satisfactorily.

COMMENTS BY RESPONDENTS

“We do support this idea as long as it is based on a multi-agency picture of risk, and not simply on police information [which may not give a full picture of risk].”

Source: CAADA

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

- **this shifts the burden from the woman to the police**
- **it puts the duty on a statutory footing**
- **it makes the police accountable for failure to disclose”**

Source: Eaves

6. Scope of disclosure

CONSULTATION QUESTIONS ASKED

- Q) Should disclosure cover all violent behaviour by B or only those relating to domestic violence instances?
- Q) Should disclosure of B's violent behaviour be extended beyond convictions to encompass intelligence?
- Q) Do you agree that information should be disclosed to third parties other than A?
- Q) Do you agree with the Government's proposed criterion that any person can make an application about a person with whom they have entered an intimate relationship?
- Q) What in your view are the circumstances where a disclosure should not be made?

SUMMARY OF RESPONSES

Of the 259 responses analysed, there were a mixed range of views on the scope of the disclosure. Most respondents agreed with the Government's proposed criterion that any person can make an application about a person with whom they have entered an intimate relationship. However, respondents flagged that greater clarity was required on the safety planning, privacy, proportionality and data protection issues concerning disclosure before firm decisions on the scope of disclosure could be made. Respondents also highlighted the need for appropriate safeguards to be built into any disclosure process to prevent malicious allegations and stigmatisation from occurring.

Specific issues highlighted were as follows:

- more research was needed to substantiate the link between general violent behaviour and domestic violence. Whilst at face-value there appeared to be a correlation, some respondents flagged that more research was needed to prove a direct link. A compromise might be for all relevant violent behaviour to be disclosed, though this would need defining in guidance;
- on extending disclosure beyond convictions to include intelligence, respondents recognised that many alleged perpetrators would not have convictions, thus strengthening the argument to extend disclosure to include intelligence. However, respondents wished to ensure that such intelligence was robust and reliable to guard against malicious and unfounded allegations that would otherwise stigmatise an innocent person;
- respondents felt that clear guidance was required on disclosing information to third parties. Whilst most respondents agreed that disclosure to third parties should not be automatic, some respondents saw the benefit of an appropriate disclosure to a third party such as an Independent Domestic Violence Adviser (IDVA) who could assist with the safety planning of a victim. However, there was consensus that, where A was under-18 and after an appropriate risk assessment had been conducted, disclosure should be made to A's parents, legal guardian or appropriate adult.

7. Groups affected by this consultation

CONSULTATION QUESTIONS ASKED

- Q) What are your views on the impact of the current arrangements under existing law for different groups?
 - Q) What are your views on the impact of a “right to ask” scheme for different groups?
 - Q) What are your views on the impact of a “right to know” scheme for different groups?
- Summary of responses

Of the 259 responses analysed, the majority of respondents felt that no specific group would be overtly affected by a Domestic Violence Disclosure Scheme in an adverse way. However, the following issues were flagged for further consideration when designing a suitable disclosure scheme:

- where intelligence suggested that A was at risk of honour-based violence, appropriate and sensitive safety planning would be required for A;
- where English was not the first language of A, the authorities responsible for disclosing information would need to ensure that appropriate mechanisms were in place to ensure that A clearly understood the significance of the information disclosed and the follow-up safety planning;
- where certain groups (e.g. BME) perceived they had a poor relationship with the local police, appropriate outreach work would be required to win the confidence of these groups;
- that it was clearly advertised that the disclosure scheme is gender-neutral so that both female and male victims of domestic violence could benefit;
- that the needs of people aged under 18 and adults with disabilities were catered for where, following an appropriate risk assessment, disclosure was made to an appropriate adult or responsible carer.

8. Government response to the consultation

We would like to take this opportunity to thank all respondents who have contributed to this consultation. We will continue to engage with partners as we move forward on the issues raised by this consultation.

The Home Office has carefully considered all of the comments made in response to this consultation and, in light of the views expressed and issues raised, will introduce a one year pilot from the summer of 2012 in four police force areas – Greater Manchester, Gwent, Wiltshire, and Nottinghamshire. The pilot will test a disclosure process within existing police legislative powers to share information and to ensure that appropriate risk assessments and safeguards are in place to accommodate the issues raised by this consultation. The pilot will be evaluated.

The capability of the police to support the pilot will be enhanced by the introduction in 2012 of the Police National Database (PND). The PND is an intelligence system designed to support operational policing using data from police forces' major information systems. Whilst the PND can be used for any policing purpose, its initial focus is in three key areas of policing: safeguarding children and vulnerable adults, countering terrorism and preventing and disrupting serious and organised crime. The Domestic Abuse and Serial Perpetrator (DASP) marker on the PND will be able to identify serial perpetrators of domestic violence meaning that, for example, a person reported for previous domestic violence incidents in Gwent will be known to the police in Greater Manchester.



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