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Victim hierarchies in the Domestic Violence Disclosure Scheme

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Abstract

Since its national implementation in March 2014, the UK Domestic Violence Disclosure Scheme (also known as 'Clare's Law') has enabled thousands of people in England and Wales to seek information from the police about whether their partner has a history of domestically abusive behaviours. Politicians have hailed the policy on the basis that it empowers people to make informed choices about their safety, thus represents a vital part of wider domestic violence reduction strategies. This, of course, is all dependent upon people knowing the policy exists; being able to apply to it; meeting the relevant criteria; there being information to disclose; and this being relayed to the applicant accordingly. Drawing on empirical research into the policy's operation in one policing area, this paper highlights several discrepancies with respect to how the scheme is functioning. The analysis suggests that the hierarchical, two-tier approach to implementation is impacting on displaced responsibility and potential risk enhancement, while the symbolic mobilisation of domestic violence victims for contemporary political gain is also explored. The paper

¹ I would like to thank the anonymous reviewers for their feedback and suggestions on earlier drafts of this work. All errors are mine alone.

concludes with suggestions for reform to boost the ability of the policy to prevent domestic violence and abuse.

Keywords

Domestic violence, victim hierarchies, violence prevention, risk

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Introduction

On 8 March 2014 – International Women’s Day – the then home secretary Theresa May MP implemented the national roll-out of the *Domestic Violence Disclosure Scheme* (DVDS) across England and Wales. The DVDS gives members of the public the ‘right to ask’ the police about a person’s history of domestic abuse or intimate partner violence. The applicant will either be person ‘A’, who is in a relationship with person ‘B’ (the subject of the application), or person ‘C’, who is someone acting on behalf of person ‘A’ in making the application (a parent, for example). There are criteria² to be met before such information can be requested or imparted, but importantly the policy allows access to information previously only available to statutory agents. As such, this ‘right to ask’ element of the DVDS supplements the existing ‘right to know’ route already available to those working in the statutory sector; this allows them to initiate disclosures of otherwise confidential information on a safeguarding or public protection basis as a result of the potential risk to a person’s safety being identified. This may be either through the subject having committed a

² These are that the local decision making forum have the power to disclose the information; that there is a pressing need for a disclosure; and that the disclosure is proportionate to the risks identified. There are also criteria about who can apply, either the person in the relationship ‘person A’ or someone with a vested interest in another’s safety ‘person C’.

crime, or relevant information about the subject having been shared at a safeguarding meeting where some risk to a victim has been identified.³

Several key differences exist between the 'right to ask' and 'right to know' routes. These (respectively) include: who initiates the request (a member of the public, versus a professional from the statutory sector); how long it takes to process (up to six weeks, versus much more immediately); the level of detail included in the disclosure (scant, versus detailed); and the level of post-disclosure statutory engagement with the victim (little to none, versus ongoing). In terms of timeframe, the Home Office (2016) policy guidance stipulates the following:

For requests via the 'right to ask' route:

1. Initial contact checks should be completed within 24 hours of the initial contact being made by the applicant.
2. A face-to-face meeting should take place within 10 working days of step 1.
3. A full risk assessment should be completed within five working days of step 2.
4. Cases should then be referred to the local decision making forum within 20 working days of step 3.

For information departed via the 'right to know' route:

1. Minimum checks should be made within 5 working days of receipt of the information.

³ Statutory agents are permitted to proactively disclose this otherwise confidential information with the person deemed to be at risk without the fear of prosecution as a result of an exemption under the Rehabilitation of Offenders Act 1974.

2. A full risk assessment should be completed within 5 working days of the minimum checks being completed.
3. Cases should then be referred to the local decision making forum.

Ordinarily, this discrepancy relates to the victim's assessed level of risk. However, if there is a concern of *imminent* harm to the person deemed to be at risk from the subject, then immediate action must be taken to safeguard them regardless of route (Home Office, 2016: 17). Making previously restricted information available to members of the public as part of efforts to reduce victimisation may initially seem positive and empowering. However, the specific targeting of this policy towards people experiencing *domestic* violence and abuse – as opposed to any other type of victimisation – raises several concerns which in turn may render its implementation problematic.

Domestic violence and abuse includes a wide range of behaviours resulting in physical, emotional, psychological or sexual harm, and may also involve control over a person's social and economic affairs. An estimated one in four women will experience domestic violence and abuse during their lifetime; in the UK alone, an average of two women a week are killed by a current or former partner annually (Office for National Statistics, 2015). While the majority of domestic violence and abuse cases involve intimate partners, victimisation can also be committed by and towards family members. This is often overlooked in popular and political discourse, even though such experiences may have links to the intimate partner violence perpetrated or experienced later on in life (Holt et al., 2008). The DVDS is a policy which aims to equip a person with new information which will allow them to take steps to ensure their safety. However, it was designed with intimate partners in mind, particularly those who were not necessarily familiar with one another

before meeting and entering into a relationship, so is therefore less appropriate to the types of victimisation which occur among family members.

Theresa May's decision to criminalise 'coercive control' in 2015 was further evidence of her attempts to address the myriad ways in which a person may experience domestic violence and abuse (Bowcott, 2015). While seemingly progressive, research has demonstrated the complicated nature of this type of victimisation which often renders prevention, intervention and redress difficult (Hoyle and Sanders, 2000). The repeat and often hidden nature of domestic violence and abuse has recently led researchers to question the apparent 'crime drop' as such reductions are not reflected in the significant numbers of domestic violence cases recorded by the Crime Survey of England and Wales (Walby et al., 2016). The inherent dynamic of the intimate relationship between the parties involved means victims may not be aware that the behaviours they are experiencing are abusive; suggestions of a separation or avoidance of contact may be difficult or even undesirable; and there may be feelings of fear, hope or resignation impeding a victim to leave the abusive party (Dobash and Dobash, 1984; Kelly, 1988). In some cases, victims of domestic abuse want the violence to stop but not necessarily their relationship with the violent person (Zink et al, 2003; Fitzgibbon and Walklate, 2016). All of these factors result in only a small proportion of cases coming to the attention of the police, or indeed anyone outside of the abusive relationship, while further demonstrating the nuanced differences of *domestic violence* specifically (Hoyle, 1998; Hoyle and Sanders, 2000). Therefore, proactive prevention initiatives are both necessary and to be encouraged so long as they are ultimately positive and do not feed in to traditional victim blaming stereotypes where culpability is affiliated to the victimised person.

Drawing on empirical research with key stakeholders, this paper demonstrates how perceived successes relating to one particular domestic violence prevention policy, the DVDS, must be qualified by the different experiences, risk levels and methods of engagement relating to those seeking information via the scheme. Difficulties in interpreting available data (relating to applications, applicants and outcomes) include reporting processes which fail to differentiate between the 'right to ask' and 'right to know' routes. The analysis evaluates how the 'right to ask' element of the DVDS situates responsibility with potential domestic violence victims to take actions which may put them at greater risk of harm of incurring such victimisation. This links to existing debates about the symbolic mobilisation of victims for political gain, therefore the discussion invokes a critical victimological framework of analysis to assess the co-opting of domestic violence victims through the 'right to ask' route and the potential implications this has for meaningful violence prevention initiatives.

Background to the study

Since becoming Prime Minister, Theresa May has continued to pledge support in tackling domestic violence. Most recently, this has involved putting forth the Domestic Violence and Abuse Bill which seeks to consolidate existing legislation and introduce new measures to help victims navigate the criminal justice system better. At present, there is no specific 'crime' of domestic violence in England and Wales; instead, several civil and criminal measures have been implemented to address this form of victimisation in addition to legislation covering offences such as verbal, physical and sexual assault. The Family Law Act 1996, as amended by the Domestic Violence Crime and Victims Act 2004, enables applicants to obtain injunctions through the courts. These include Non-Molestation Orders and Occupation Orders, which place certain requirements on an abuser to either desist in

particular actions (such as contacting the applicant) or compels them to act in a certain way (such as to seek alternative accommodation) (Home Office, 2013a). Failure to comply with Non-Molestation Orders became subject to criminal penalty, however the often prohibitive victim requirements and caveats underpinning Non-Molestation and Occupation Orders, such as costs involved and having to attend court, means they are becoming increasingly less accessible to those in most need.

Similar concerns have been raised about the impact of criminal sanctions, which are taken up by the Crown Prosecution Service on behalf of the victim irrespective of how willing they are to pursue this course of action. Recent expansions of criminal sanctions include the introduction of the Domestic Violence Protection Notice and Domestic Violence Protection Order (Burton, 2015). These are similar to the civil remedies cited above, but are granted by the police and magistrates. A Domestic Violence Protection Notice is used when no further action is to be taken by the police, or when the perpetrator agrees to a caution or is bailed without conditions (Home Office, 2011). The Notice prevents the perpetrator from molesting the person protected by the Notice for up to 48 hours while a hearing in a magistrates' or specialist domestic violence court is sought by the police for a Domestic Violence Protection Order (a requirement upon issuing the Notice). Under the Notice, the perpetrator may also be ousted from the family home (either leave or not enter the premises, or does not come within a certain distance of the premises) for up to 48 hours. They may also be prohibited from evicting or excluding a protected person from the premises (Crime and Security Act 2010, section 25). While responsive in the immediate sense, such measures are not designed to be long-term solutions to domestic violence; rather, they offer 'breathing space' to the abused person to decide what, if any, action to take next.

The options available to a person experiencing, or at risk of experiencing, domestic violence are usually dependent on their level of risk. Therefore, tools to more effectively assess risk in cases of actual or potential domestic violence have been created. These include the Domestic Abuse, Stalking, Harassment and Honour Based Violence (DASH) test; this is undertaken by the police and partner agencies (such as domestic abuse service providers) as part of a rapid response to domestic abuse (Richards, 2009; SafeLives, 2014). It involves asking a series of questions, the answers to which indicate the nature, level and immediacy of harm faced by the victim which in turn determines their risk level as 'standard', 'medium' or 'high'. If serious concerns are raised about a person's risk, they will usually be referred to a Multi-agency Risk Assessment Conference (MARAC) where relevant information will be shared between the local police as well as (where relevant) representatives from probation, health, child protection, housing, and domestic violence specialists. These representatives will discuss options for increasing the victim's safety, establishing a co-ordinated safeguarding action plan which is then implemented among the relevant agencies.

The Domestic Violence Disclosure Scheme is aimed at early intervention; it emerged following a highly-publicised campaign which focused heavily on the murder of domestic violence victim Clare Wood, who was killed by her ex-partner George Appleton in 2009 (The Telegraph 2012). They had met online in 2007 and dated for about 18 months, during which time George had been abusive towards Clare on several occasions. She ended the relationship on account of his serial unfaithfulness whereupon – as is common in domestic violence murders – his violence towards her escalated. Despite contacting Greater Manchester Police at least five times alleging criminal damage, harassment, threats to kill and sexual assault (IPCC, 2010), the potential danger to Clare, evidenced by his previous

convictions under the Protection from Harassment Act 1997 and a custodial sentence for one particularly brutal assault on a former partner, was not adequately addressed. Two weeks after her last contact with the police in January 2009, George strangled Clare, setting her body alight before taking his own life soon afterwards.

The Independent Police Complaints Commission (IPCC) investigation into how Greater Manchester Police had dealt with Clare's case found that although there had been significant failings, her death was not directly attributable to any of these (IPCC, 2016). Noting the facts of the case, Coroner Jennifer Leeming suggested in her report that a disclosure process ought to be established so that people could find out whether or not a person they were in a relationship with had a history of violence towards previous partners. Her recommendation was subsequently cited in the DVDS policy document produced by the Home Office (2013: 2):

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.

In the same year Clare was murdered, Chief Constable Brian Moore of Wiltshire Police, on behalf of the Association of Chief Police Officers, published his report 'Tackling Perpetrators of Violence against Women and Girls' which suggested that partners should have greater access to information about violent offenders as part of enhanced safeguarding measures:

A national review of serial perpetrators of domestic abuse estimated that around 25,000 offenders of domestic violence had abused two or more different victims with violence or threats of violence in a three year period. Of those 2,500 had

abused three or more victims and one force had an offender who had committed violence against eight different victims. (ACPO, 2009)

A 10-week consultation process took place between October 2011 and January 2012 where members of the public were invited to provide their views on the proposed Domestic Violence Disclosure Scheme. Among the 259 responses received were those from *Refuge* and *Women's Aid*, two leading UK domestic abuse organisations who opposed the policy on the grounds of perceived inefficiency and the absence of significant resources which would be needed to meet the enhanced demands placed on both the police and domestic abuse organisations (Home Office, 2012).

Regardless of these concerns, the DVDS was launched as a fourteen-month pilot project in four police force areas – Greater Manchester, Gwent, Wiltshire, and Nottinghamshire during 2012-13. In considering the potential impact of this pilot, the Home Office had indicated that the estimated police officer and Independent Domestic Violence Adviser (IDVA)⁴ time required to deal with 500 cases per year under the public-initiated 'right to ask' route would cost £0.39m per year (Home Office, 2011). The expected annual reduction of domestic violence by 0.2% as a result of this practice would in turn save £260m per year. Similarly, under the statutory-initiated 'right to know' route the £1.57m estimated costs of dealing with 1,000 cases per year was set against a £650m saving through reducing domestic abuse by 0.5% annually. Given the 2009 report by Silvia Walby that the annual cost of domestic violence to the criminal justice system specifically was estimated to be around £1.3billion annually, there appeared to be clear economic benefits to implementing the

⁴ IDVAs are professionally trained, specialist domestic violence support workers who offer intensive, short-term support to victims identified as being in need of safeguarding.

policy. However, when it came to assessing the actual costs and impact of the policy following the pilot, it was discovered that these estimates had been far too low; the revised combined number of 4,302 cases dealt with through the policy annually would instead cost around £27.4million to implement owing to a greater-than-envisaged uptake of the scheme (Home Office, 2013).

Following its national implementation, the Home Office published another report detailing their assessment of DVDS's first year (Home Office, 2016). This was compiled using information provided by all 43 police forces and from workshops undertaken with 29 practitioners (25 police officers and 4 domestic violence workers) involved with implementing the DVDS. The study was careful to indicate that it was 'not designed to consider any impact DVDS may have had on domestic violence and abuse victims or estimate the "value for money"', but rather to assess how it was operating and how it might be further developed (2016: 3). The report indicated that 4,724 applications were received and 1,938 disclosures were made for the period from 8 March to 31 December 2014 inclusive (2016: 4). The thematic findings arising from the practitioner workshops indicated elements of 'good practice emerging' such as markers being placed on the Police National Computer (PNC) following a disclosure in order to 'alert other officers to an individual potentially at high risk of domestic violence or abuse' (2016: 4). Enhancing frontline officers' knowledge and understanding of the DVDS was identified as a good way of promoting it to the public in a way that may increase their access to it (2016: 4). This somewhat superficial evaluation was light on detail and generally overlooked how the policy was operating for victims specifically. It remains the case that knowledge and insight into whether or not the policy is working to reduce domestic violence and abuse is largely absent, thus was a founding rationale for the research presented in this paper.

The study

The study sought to find out how the DVDS was operating, first as an overview at a national level then more specifically at a local level. A qualitative, mixed methodology approach was employed, with the data collection period taking place between 2015 and 2016. All of the research instruments underwent ethical review from the researcher's home institution (University of Kent) before the data collection commenced. First, Freedom of Information (FOI) requests were sent to all 43 police forces in England and Wales in April 2015, one year after the national implementation of the DVDS. The FOIs asked each police force for the following information: *How many applications had been made under the DVDS since its national implementation in March 2014; How many applications had been granted (and the reasons for this); How many had been denied (and the reasons for this); How many disclosures were made on a 'right to know' basis (and the reasons for this); and, What demographic information had been obtained from applicants (adhering to anonymity)*. The requests outlined that in addition to the quantitative information available, information was being sought about the reasons and rationales given both for granting and denying such applications to give a fuller picture about how the DVDS was being operationalised across the nation. Thirty-nine police forces complied with the FOI request; the four which refused to do so exempted themselves citing prohibitive costs to the force through hours that would be spent obtaining the information.⁵ Of those who responded, there was a variance in the level of detail provided, to the point where in some cases additional email and telephone communication took place between the researcher and police officers to clarify the nature of the request, the information being provided, or to provide supplementary information related to the request. The FOI data was thematically analysed to gain an insight into how

⁵ At the time of undertaking this study, the researcher was unaware that challenges to such refusals were likely to eventually result in successful outcomes, therefore did not follow up on these.

the policy was operating in each area, what the national picture looked like, and what discrepancies were evident at this early point. The data was considered an incomplete snapshot, thus no comparisons between forces were made but rather the information used to inform the subsequent interviews.

The second part of the study comprised of eight semi-structured interviews with selected people working with the DVDS in one specific policing area. This purposive sample of consisted of: two police officers and one police community support officer who were designated domestic violence ‘single point of contact’ officers; three Independent Domestic Violence Advisers (IDVAs); one manager of a central domestic violence charitable organisation; and one retired police officer who facilitates a domestic violence perpetrator prevention programme. In order to protect the privacy of the individuals involved, only their pseudonyms and job roles are provided alongside relevant quotations. All potentially identifying features (such as locality, names of organisations or cases) have also been omitted or anonymised:

Pseudonym	Role	Role Abbreviation
Tanya	Independent Domestic Violence Adviser	IDVA
Eleanor	Independent Domestic Violence Adviser	IDVA
Alice	Independent Domestic Violence Adviser	IDVA
Tony	Police Officer and Domestic Violence Single Point of Contact	PO DV Spoc

Fiona	Police Officer and Domestic Violence Single Point of Contact	PO DV Spoc
Kate	Police Community Support Officer and Domestic Violence Single Point of Contact	PSCO DV Spoc
Amy	Manager of a Domestic Violence Organisation	DVO Manager
Paul	facilitates Domestic Violence Prevention Programmes	DVPP Facilitator

Interviewees were identified and contacted directly by the researcher, who has links with key domestic violence agencies, organisations and practitioners in the selected policing area. Interview questions were tailored according to the role undertaken by the interviewee and focused on the nature of the interviewee’s knowledge and engagement with the DVDS, the perceived strengths and limitations of the policy, how it was seen to be operating in practice and what improvements might be made. Where relevant, interviewees were asked questions linked to the information returned from the FOIs to clarify, explain or expand upon the reasons given for or against disclosure decisions. All interviewees signed consent forms prior to commencing and were provided with the researcher’s contact details at the end. Interviews lasted between 30 minutes to 1.5 hours and were most often undertaken in the interviewee’s place of work where the researcher was also permitted to observe their working environment. During the course of the data collection, the researcher took up invitations to observe decision-making forums where DVDS decisions were taking place, and to attend domestic violence community ‘drop-in’ events where DVDS disclosures were

made. The researcher was not present during these disclosures, but was able to speak to some of the people involved after this information had been shared. Although the people to whom a disclosure had been made were happy to talk informally about this process, they declined to be formally interviewed for the project. Nevertheless, the confidentiality of all those spoken to was maintained throughout. The interviews were professionally transcribed then analysed thematically, first manually then through the Nvivo 11 software programme where coding took place.

The emergence of victim hierarchies

The findings demonstrate that victim hierarchies are evident in the operationalising of the DVDS, with a 'two-tier' implementation process emerging according to whether the person seeking information has come via the 'right to ask' (RtA) or 'right to know' (RtK) route. This was found to have a significant impact throughout the process: from knowing about the scheme through to decisions to apply, decisions to disclose, what information would be imparted and levels of statutory involvement following a disclosure. In all cases, the DVDS was working better for people accessing information through the RtK route with some significant impediments noted for RtA applicants. The different guidelines and resources available to deal with these two routes often underpinned this discrepancy, but concerns were noted among interviewees about the potentially negative impacts on victims and their level of risk. These discrepancies may be masked as a result of RtA and RtK data often being conflated with regards to applications, applicants and related outcomes. In exploring this, the findings presented below demonstrate problematic negotiations of risk and risk status which raises concerns about the efficacy of this policy to protect past, present and potential victims of domestic violence.

Discrepancies in recording practices

The FOI responses indicated some confusion and conflation of data held on the RtA and RtK routes, with this impacting on the application and disclosure information obtained.

Attempts to clarify this confusion through follow-up conversations with several people providing the FOI information indicated varying levels of understanding of the differences between the two routes with some confirming that the data provided about the number of DVDS 'applications' actually included cases relating to both RtA and RtK routes. This was also evident in the Home Office's evaluation of the scheme, where both routes were included in the 4,724 figure for 'applications' (2016: 4). Under the RtK route, no 'application' is made as the disclosure is a proactive measure taken by the police. Therefore, this conflation renders it difficult to discern how effective this policy is specifically in terms of *public* awareness and autonomous engagement with it through the RtA route.

In the first year of its national implementation, much media attention was given to the fact that high numbers of people had supposedly taken it upon themselves to apply to the police for information via the DVDS. The resultant press coverage routinely cited application figures alongside headlines such as: *Clare's Law is 'saving lives' one year on* (Cullen, 2015) and *'Clare's law' saves 1300 women from violent partners in first year* (Grierson, 2015), inferring the success of the policy to reach the wider public and elicit engagement. These media reports do not differentiate between the two routes, nor indicate the need to do so. This erroneously suggests that the numbers and cases cited are *all* RtA applications which have been instigated by members of the public, when this is not necessarily the case. Not only is this misleading about the potential uptake of the policy, it also has a significant impact on the ability to evaluate the efficacy of the RtA route if this information is not being correctly captured and represented.

The DVDS guidance (Home Office, 2016) also requires that demographic data is captured in relation to the applicant and the subject. Several returning forces provided demographical data for their RtA applicants in the FOI responses. However, not every force appeared to be doing this as some could not provide all or part of this information. This incomplete picture makes it difficult to assess in terms of who is (and is not) engaging with the policy. This in turn makes it difficult to know where to target DVDS awareness campaigns with regards to people from sexual, ethnic, religious or other minority backgrounds. Furthermore, the DVDS guidance indicates that it is the *applicant's* demographical characteristics which should be recorded, therefore this is what was returned in the FOI information. As the applicant may not necessarily be the person at risk (i.e. if they are person 'C', applying on behalf of person 'A' who is at risk), interpretations of this demographical information need to be treated with caution. Media reports which indicate a given number of 'male victims' who are engaging with the policy often fail to indicate that male applicants to the DVDS may be acting on someone else's behalf. Accurate recording in this respect is perhaps rendered more important as a result of the perceived gendered dynamic of the policy. Representatives from male domestic violence victim charities have critiqued the fact that the DVDS is commonly referred to as 'Clare's Law' in the media as some men may be dissuaded from engaging with it on their own or other males' behalves (Shropshire Star, 2015). During the research, interviewee Fiona also commented on the gendered nature of the terminology and the potentially exclusionary impact this could have on male victims:

Would the men know? Again, 'Clare's Law'; do they automatically think 'female' with Clare's Law? But at the same time, do we just use 'DVDS' all the time? ... it's

easier to say Clare's Law. *What's that? Well that's when you can find out about your partner.* (Fiona, PO DV Spoc, original emphasis)

What was of note in the FOI information received, however, is that males were predominantly the *subject* of the applications; none of the results received from the 39 police areas explicitly identified cases where background checks on female subjects were sought. The apparent absence of DVDS applications about a female subject suggests that the policy is not being used by men or women to find out about their risk from female partners.

A final point on recording practices relates to outcomes. Currently, if an application is successful and a disclosure is made, there is no stipulated requirement for the police to follow up with the RtA applicant afterwards. Therefore, the police will be unaware of what – if any – action was taken following the disclosure unless that person comes to the attention of the police at a later date. This means that media inferences that the DVDS is 'saving lives' are based solely on the assumption that a person who has received a disclosure has gone on to leave their partner and avoided any further interpersonal harm. At present, there is no evidence support (or refute) this claim, but it is speculative at best. If the DVDS is to be lauded by politicians and the media as being a 'success' in 'saving lives' then there needs to be an adequate manner of recording data to support or refute this claim. It would also be useful for those working and researching around domestic violence to know what (if any) action an applicant took following receipt of the disclosure information in order to know what (if any) impact this policy is having on RtA recipients. In addition, the information would assist in determining the policy's potential for further harm as leaving a violent

partner may put a person at greater risk of incurring violence, as was ultimately the case for Clare Wood.

Routes to obtaining a DVDS disclosure

In lieu of speaking to the wider public about their knowledge of this policy, questions were asked of interviewees about their perceptions of societal awareness. Despite being available since 2014, there was agreement among all of the interview participants that the DVDS was not as well known among the general public as it could be:

I still don't think Clare's Law is that widely known, is it, out there in the general public so I think the message hasn't really got out there that there is that scheme there that you can kind of request information. (Kate, PSCO DV Spoc)

People aren't as aware of it as I thought that they would be. Most of my clients when I talk to them – when I'm doing the first call – some of them know what it is but most of them don't, so I do have to spend a lot of time explaining what it is.

(Eleanor, IDVA)

Discussions about access to the DVDS led to a key finding: the positive impact that Independent Domestic Violence Advisers (IDVAs) can have with regards to DVDS awareness, involvement, engagement and advocacy. This constituted a key difference between the RtA and RtK routes as what emerged was something of a grey area between the two dependent on perceptions of risk.

A domestic violence victim whose situation has come to the attention of the police and who been assessed as high risk under the DASH test will be referred to an IDVA to ensure their safety and thus becomes the IDVA's client. As a result of the police referral, the IDVA will be aware of the client's circumstances before meeting them and will act as their

advocate while the criminal justice process (such as an investigation or application for Non-Molestation Order, Domestic Violence Prevention Order etc.) is underway. Similarly, as IDVAs work with so many clients, they may come to know of repeat or serial domestic violence perpetrators. During the client safeguarding process, the IDVA can indicate that the DVDS is available and support an application to it, whether or not the IDVA is aware of any information held on the subject. In this sense, there is a grey area between the RtA and the RtK as the request technically comes from the client (perhaps having been informed of the policy by the IDVA) but the process from there on in follows the (swifter) RtK model as the risk and safeguarding concerns are determined to be high. However, the determination of risk status was not always straightforward and could end up having an adverse impact on the victim's safety, as Tanya outlined:

At the moment the MARAC IDVAs, which is the team that I'm involved with, we just support high risk clients ... Clare was probably standard or medium risk at the time. There's a lot of domestic homicides where they are standard or medium risk, which I hate using 'standard' / 'medium' / 'high risk' because as far as I'm concerned a situation risk is so fluid; one minute they could be standard risk and overnight they could be high risk and it's getting in there in the right time between that transition.

(Tanya, IDVA)

The process works somewhat differently for 'right to ask' applicants, who will have to have known about the DVDS in order to initiate a request. They are ordinarily considered to be standard (low) risk unless they mention something about the subject's behaviour during the application process which indicates otherwise. These applications will be processed via a decision making forum such as the Public Protection Unit. While an IDVA

may form part of this decision-making panel, they are unlikely to have had any contact with the RtA applicant or know much about them apart from the information provided as part of their DVDS request. If a disclosure is to be made, this is done by a police officer, ideally with an IDVA present (not necessarily the same IDVA from the panel) as the DVDS guidance suggests that is 'good practice to consider a joint-agency approach to the disclosure provision' (Home Office 2013: 25). The disclosure meeting will usually be the first time that the applicant (or person in need of safeguarding if the applicant was person 'C') will have been provided with direct access to a domestic violence specialist; in that time any domestic abuse-specific information or advice they required will have to have been self-initiated and sourced elsewhere. If no disclosure is made, then the RtA applicant is unlikely to meet with an IDVA or have any further statutory resources provided to them. Therefore, individuals who come apply under the RtA route will only engage with an IDVA at the *end* of the process during the disclosure (if one is forthcoming) unless their risk level increases in the interim period.

The analysis also highlighted differences between RtA and RtK routes in relation to the criteria for obtaining the disclosure information. High risk IDVA clients were more likely to receive requested information held on a subject (via the RtK route) as this was considered crucial to their safeguarding and may have been advocated for accordingly by their IDVA at the decision making forum. At the time of receiving this information, these clients were likely to be separated (temporarily or otherwise) from their partner as a result of their being arrested and in police custody, or on remand, or having had sanctions placed on their proximity to the victim to ensure her safety. For these clients, this separated status is not an impediment to receiving the DVDS disclosure and the information may be imparted in a timely fashion as a result of the pressing safeguarding issue. For RtA applicants on the other

hand, the process is significantly different. If they decide to separate from their partner – perhaps due to an escalation in violent behaviour – while their application is being considered, then they forfeit the right to any information that would have been provided to them via a disclosure. This is because the DVDS guidance states that the RtA applicant *must* be in a relationship with the subject at the time of the application *and* at the time of disclosure to ensure that a balance is struck between the subject’s right to privacy and considerations about the applicant’s safety. This stipulation was borne out in the FOI responses received. One police force indicated that out of 166 DVDS applications (during the first year of implementation), 67 had been declined for a reason outlined in the guidance with over half (39) being due to the applicant having separated from the subject. Furthermore, these cases were cited by the responding force as ‘risk removed due to being separated’. While procedurally this may be correct, it could instead be the case that the person’s risk has increased as a result of separation; evidently, the duty of care afforded to the RtK client is not replicated with the RtA applicant.

Assuming the RtA applicant complies with the DVDS criteria, their lesser risk status means they may have to wait up to 30 days for a decision making forum to review their request. By comparison, an IDVA client who makes a DVDS request may have this reviewed at a multi-agency risk assessment conference (MARAC) much quicker as a result of their higher risk status and the subsequent invocation of a RtK disclosure process. This discrepancy in timeframes was commented upon by several of the interviewees:

You can’t help feeling that [the RtA disclosure] could be a lot more immediate.

(Tony, PO DV Spoc)

You need to know and you need to know now. It's no good: *oh yes, you can be told in a week's time when we can all get together and do it.* (Fiona, PO DV Spoc, original emphasis)

As soon as the MARAC has agreed we can give [the client] the disclosure that day if she can make it whereas with the... when you apply to the police [via RtA] it's a slightly lengthier process. (Tanya, IDVA)

Tanya went on to voice her concerns about what could happen in the time a RtA applicant was left with no specialist support or intervention:

I understand about data protection and everything, you know, but at the end of the day we have to weigh up safety and if it will reduce or stop one death then ... you know, the process has got to be cut down in terms of [time] because ... you are going to lose people in six weeks, aren't you? You know, people are going to say, "Oh I can't be bothered to wait six weeks. Oh don't worry about it. Oh he's being nice to me this week, I won't bother." And that's... I think that's the problem. (Tanya, IDVA)

This too was borne out by the FOI information received, with most forces indicating a notable level of applicant withdrawal from the process during the six week period. At present, no information is held as to why RtA applications are withdrawn or whether this has a negative impact on the risk level of the applicant.

Determining the disclosure information

The nature and amount of information which could be disclosed was a key theme which came up for all interviewees, some indicating examples of good practice while others demonstrated the futility of the DVDS in particular cases. A key difference was representation, or lack thereof. IDVAs who attend the MARAC where their client's

application is being processed can advocate on their behalf from the perspective of having built up a relationship with them and therefore knowing what information would prove useful to their client:

We [the MARAC panel] all agree as a conference ... *this is what's going to be said.*

And if there's anything there that I think maybe doesn't reflect what the police have said or they could give a little bit more information I will ask for that at the MARAC so that when we leave we're happy that we've encompassed everything that can be disclosed about him. (Tanya, IDVA, original emphasis)

Clients that I support through the process, I usually speak to them about information that's shared in the meeting that can be given to them if they want it. I find that more helpful for those clients than [the RtA applicants] who have gone through the police directly and not the MARAC process because there's more information that can be shared because we can agree it rather than just the police giving out.

(Eleanor, IDVA)

As the IDVA is working with the client, they will be aware of any issues which may impede their understanding of the disclosure information, or will prove more or less relevant to the victim's own circumstances. Therefore, the IDVA is able to address matters related to their client's disclosure such as the language used, the nature and amount of information imparted, and when the disclosure should be made (especially if their client has a history of substance abuse or mental health impairments). For RtA applicants on the other hand, this level of advocacy and representation is absent unless someone at the meeting is aware of the individual and their needs, or these have been noted during the application process. In such cases, the disclosure information imparted may be a lot less detailed:

I think the amount of information that we give people as well could be more thorough. (Tony, PO DV Spoc)

[The disclosure's] so very basic sometimes. (Fiona, PO DV Spoc)

It's; "He's known for violence to family members." Full stop. (Alice, IDVA)

RtA disclosures which are minimal, vague or uninformative may result in the applicant re-evaluating the seriousness of their concerns and deciding to remain in the relationship where they could be subject to further abuse and victimisation. If there is subsequent police involvement and their risk is reassessed as high, they will likely be referred to an IDVA. Therefore, the policy's preventative potential is questionable for RtA applicants. This was highlighted by interviewees as indicating a significant discrepancy in the two disclosure routes and possibly failing to reduce violence as per the policy's aims:

On the disclosures where we've had people that have applied themselves [via RtA] and then come into us later on into our service [as high risk clients] we've... it's quite clear to see that when they haven't had someone advocating for them or it hasn't been a MARAC then the information's quite rigid ... because they haven't got someone advocating for them and saying, "Well actually we can elaborate on that," that's possibly where [the policy] may fall down. (Tanya, IDVA)

If [RtA applicants] go to the police station and say they want a personal disclosure they usually just get a line of information that's given to them and [the police] have to do that with an IDVA, but there is a definite difference I've noticed from the information they get from MARAC than through [the RtA application route].

(Eleanor, IDVA)

The ramifications of this distinction became clear later on when discussing elevations in risk levels among domestic violence victims:

I've had clients that have got a Clare's Law and then they've become high risk after they've had the Clare's Law so then when we say about a DVDS they say, "Oh well I've already had a Clare's Law." And I sort of explore what they've been told and ... instead of like *so-and-so's been convicted of violence with weapons against another female* it would be *he's been convicted of violence* and that's where it stops. (Tanya, IDVA)

Interviewees' comments about what is allowed to be imparted during the disclosure indicated a level of frustration with regards to the perceived limitations of the policy. Referring to the cyclical nature of domestic abuse victimisation and repeat perpetrators, several cited their knowledge of a perpetrator's offending history as being more substantive than they were allowed to share:

You could have *oh yes, they've been convicted of a violent offence in 2010* [but what about] the fact that they've been nicked 30 times in-between for assaulting females but he never went anywhere because a female didn't support [prosecution] or there wasn't enough evidence [to prosecute]. (Alice, IDVA)

The DVDS guidance states the range of information which can be relayed to applicants/clients through a disclosure. Although this is not limited to convictions, in order to not fall foul of the threshold set by the Data Protection Act 1998, many interviewees suspected that statutory agents were likely to err on the side of caution and limit the amount of information they provided about the subject beyond convictions. However, as so few domestic violence incidents come to the attention of the police, let alone result in a

conviction, this supplementary information relating to histories of violence was seen by some to be just as useful to potential victims:

What we try and include in our DVDS's now is how many times [the subject's] been at MARAC as well with different clients because that's really useful because it may be that a client who went to MARAC, just because it's high risk it doesn't mean police are going to have [secured a prosecution]... if they know that their perpetrator's been there three times before, that to them is quite useful. (Tanya, IDVA)

Protocol following the disclosure

In cases where there is no information held on the subject by the police, then this is communicated to the RtA applicant accordingly with the caveat that no information being held does not necessarily mean that the applicant's fears are unfounded, and therefore they are to be vigilant (if person 'A') or continue observing for any change in the situation (if person 'C'). If relevant information on the subject is held, and a disclosure is to be given, then under both the RtA and the RtK routes the person to whom the disclosure is made must first sign an undertaking that they understand the information to be confidential and they will not share it with anyone else, even the subject. This is underpinned by a warning that legal proceedings could result if this confidentiality is breached, effectively binding the person under the Data Protection Act 1998. Although legally necessary, this process raises several areas for concern among interviewees around the potential for further trauma or isolation through a person not being able to discuss their options with a trusted confidante:

I can see that it might put that person off because they're going to want to be able to tell someone; their mum or just anyone that they can share that information with.

When they're being told by a police officer, "You cannot share this information because you could be in serious trouble," and, yeah, I think it... I mean it hasn't ever stopped anyone from saying, "Yeah, I don't want to have this disclosure," but it's definitely a barrier ... It's more isolating for them because they know they can't share it, you know, so it is difficult. (Amy, DVO Manager)

Having that clause on you would, I imagine, really burden the person because now [their fears have] been confirmed ... and they would want to share it so it just seems a little bit... I don't know, it's almost a... I won't say punishment stick, but... (Paul, DVPP Facilitator)

I can imagine it would be quite stressful for the victim not to be able to discuss things because obviously that is people's way of coping with issues. (Tony, PO DV Spoc)

However, some interviewees recognised the inherent difficulty in policing or detecting non-compliance with such a regulation:

At the end of the day you can't make them not tell anybody else, can you? (Alice, IDVA)

Once you've given that information, as much as you say it's not to be passed on, how can you ultimately control that? Or how will you ever know? (Kate, PSCO DV Spoc)

While the wider sharing of information was something that was recognised as likely beyond the police's control, more troubling for some was that ramifications of the disclosure information on the recipient. Speaking specifically about the RtA applicants, Tanya indicated

that the types of behaviours being experienced would not necessarily desist upon the culmination of the relationship:

You could have somebody, say, for example me going to the police asking for a disclosure on a new partner ... what do I do with that information? ... Well I try and finish the relationship but actually he's been done for stalking as well so how do I finish that relationship? How is it safe? Because people that have never experienced domestic abuse before or even people that have, it's really hard to know what to do when someone's stalking you. (Tanya, IDVA)

As per the DVDS guidance, RtA applicants are given the contact details of local domestic violence organisations and advised of a safety plan by the disclosing police officer and accompanying IDVA, but as indicated above they are not permitted to discuss what they have been told with *anyone else* unless they have the express permission from the police to do so. The inability to speak about the situation could present problems when accessing further advice and support, especially from external domestic violence specialists. Amy, who works in a third sector domestic violence organisation, raised this issue when indicating how she and her colleagues would go about engaging with someone who has come to them to seek help, but who are bound by the DPA 1998 to not share what they have been told:

We'd find a way round it, we'd find somebody for them to talk to. There's enough people here [at their organisation] who are trained. (Amy, DVO Manager)

Disclosures made to IDVA clients via the RtK route, on the other hand, involve victims who are already assigned to specialists so are free to discuss this information with them as this may prove necessary for any safeguarding and ongoing specialist support plans being drafted.

Discussion

As is often the case with victim-focused policies, a notable cause célèbre has usually been instrumental in establishing the initiative and is used to highlight its remit; from the 1993 murder of Stephen Lawrence informing UK hate crime laws through to the murder of Sarah Payne in 2000 informing the creation of sex offender registers. Much of the subsequent political rhetoric suggests that the tragic events of the affiliated case should be the basis for lessons to be learnt about how to proceed in order to prevent similar outcomes in the future. At first glance, the Domestic Violence Disclosure Scheme follows this pattern in many ways, but upon closer inspection it would appear that this policy may exacerbate tragedy as a result of the victim hierarchies evident within it. In addition, a closer inspection of the DVDS highlights several contradictory elements in relation to victim-focused policy making which warrant examination and are considered in greater detail below.

The DVDS is predicated on preventing future victimisation (the abuse of the new partner) through a reliance on the commission of a previous crime and existing victim, thus in order for future criminality to be prevented it must have been committed (and recorded) for the necessary information to exist. Therefore the themes of responsibility and good citizenship which underpin elements of this policy are largely focused towards the victim. The onus is placed on past, present or potential victims to do something about the situation they believe themselves to be in; from reporting instances of violence through to instigating an application and taking subsequent action. If the outcome is a disclosure, they are put in a position to do *something* with the information, even if this is to do nothing. On the other hand, if no disclosure is forthcoming – either there is no information to disclose, or a decision has been taken not to disclose the information requested – they must still decide what to do about their relationship and the concerns they have about their partner. Given

that the specific nature of *domestic* violence and abuse may involve volatility between partners, periods of separation and potential interdependency, it is important that interventions recognise the myriad factors which may impede effective interaction with those seeking information via the DVDS.

It is presumed that a disclosure would necessarily lead to a person exiting a potentially abusive relationship if made aware of a partner's previously violent history. Yet decisions to discontinue the relationship may be viewed by some as constituting partial responsibility for any resultant abuse deflected onto the subject's future partners. While taking steps to enquire about a person's previous offending will most likely be predicated on some cause for concern having been demonstrated, proof of a partner's abusive background may compound fears but may not do much to enable leaving the relationship if emotional or economic factors, family commitments, having nowhere else to go or being afraid of repercussions also feature. If diminishing resources for third sector organisations means support, advice, alternative accommodation and other necessary services are not available for a victim to exit then they may be left with little choice but to stay with their abuser. Furthermore, it is likely that the DVDS would have proved ineffectual in the specific case with which it is affiliated as Clare was murdered *after* separating from her partner, proving that the demise of the relationship does not necessarily mean a desistance in violence. Therefore, polices such as the DVDS which advocate preventative ideologies must be mindful of the wealth of feminist research which has demonstrated that leaving an abusive relationship may put the victim at greater risk of fatal violence from the perpetrator (Wilson and Daly, 1993; Fleury et al., 2000).

Over the past decade research has indicated that identifying and responding to victims' needs and providing the necessary social support may have more of an impact on domestic violence prevention (Bennett & Goodman, 2004). However, a shift towards victim-centred resources and victim-focused policy and practice would require a complete overhaul to ensure that the criminal justice system truly has the wants and needs of the victim at heart. Instead, policies have been produced which, at best, seek to increase victims' visibility, role and input but stop short of providing necessary rights or true empowerment. Policies dealing with domestic violence have implemented changes which have appear to place victims in a different category altogether: as managers of their own risk reduction.

A more critical stance would suggest that the benefits of this policy lie with the politicians endorsing it rather than the general public at whom it is directed. As Garland (2001) discussed in his evaluation of shifts in penal policy, victims were 'returned' to the system along with the ideologies of Conservative governments at a time when law and order policies were seeking to advance more punitive approaches in the criminal justice system, alongside enhancing individualised responses to crime prevention (Hall et al, 1978). Victims soon became co-opted into this rhetoric in a manner which returned to and entrenched the 'good/bad' dichotomy, with policy-makers capitalising on disproportionate fears of crime to garner support for increased criminalisation and harsher punishments. Kearon and Godfrey (2007: 31) highlight how the combination of the symbolic, pure crime victim emerging during a period of increasingly punitive populism gave greater socio-political salience to politicians and media outlets who sought to prioritise victims' voices, albeit specifically those which emulated the burgeoning rhetoric around fear (of crime). Politically useful victims were those constructed in a manner synonymous with passivity and

disempowerment through their encountering of suffering. Therefore, the attractiveness of a policy such as the DVDS which plays on the fears of the applicant is evident, as is the current governmental focus on documenting the numbers of applications and disclosures but not the *outcomes* of these applications and disclosures.

Concluding thoughts

The DVDS could be seen as a morally and ethically troubling policy in that it implies that *anyone* in an intimate relationship is vulnerable to victimisation. Nonetheless, the rapidly changing nature of interpersonal interaction and growth in online communication in contemporary societies may mean that information-sharing mechanisms such as the DVDS could be considered as modernised ways to seek out knowledge. The empirical research presented in this paper has demonstrated that the DVDS is currently operating very differently according to the status of the person requesting information. It appears to be the case that this is more easily and usefully accessed in cases involving high risk victims who are already assigned to IDVAs. Importantly, this advocacy is crucial to being able to navigate the often complicated criminal justice system. Access to the DVDS appears to be more difficult for those who seek information via the 'right to ask' route, plus they must wait longer, may not receive the information needed, and are less likely to have the necessary support following a disclosure to manage the information imparted.

While it is important that high risk victims are adequately provided for, a gap in provision currently exists for those who apply under the RtA route who may find their risk level elevates as a result of receiving information. As the criminal justice system becomes increasingly bureaucratised, parity in victim advocacy is necessary to offset concerns about low engagement, reduce the impact of deflecting responsibility to seek and manage previously restricted information, and ensure that engagement with the statutory sector

does not result in further trauma (Duggan and Heap, 2014). If the policy is to be promoted to elicit wider engagement, then a greater focus on the needs of 'right to ask' applicants from the point of contact through to aftercare following the outcome of the disclosure is necessary to ensure that risk levels do not elevate as a result of a person's involvement with this scheme. It is also important that the responsibility for such follow-up care does not shift towards domestic violence organisations, many of whom are reliant on decreasing levels of government funding to survive.

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