



Kent Academic Repository

Duggan, Marian (2019) *Reflections on the Domestic Violence Disclosure Scheme (England and Wales)*. *Journal of Gender Based Violence*, 3 (2). pp. 249-257. ISSN 2398-6808.

Downloaded from

<https://kar.kent.ac.uk/72651/> The University of Kent's Academic Repository KAR

The version of record is available from

<https://doi.org/10.1332/239868019X15538584809332>

This document version

Author's Accepted Manuscript

DOI for this version

Licence for this version

UNSPECIFIED

Additional information

"This is a post-peer-review, pre-copy edited version of an extract in *Journal of Gender Based Violence*/Bristol University Press. Details of the definitive published version and how to purchase it are available online at: <https://www.ingentaconnect.com/content/tpp/jgbv/2019/000>

Versions of research works

Versions of Record

If this version is the version of record, it is the same as the published version available on the publisher's web site. Cite as the published version.

Author Accepted Manuscripts

If this document is identified as the Author Accepted Manuscript it is the version after peer review but before type setting, copy editing or publisher branding. Cite as Surname, Initial. (Year) 'Title of article'. To be published in *Title of Journal*, Volume and issue numbers [peer-reviewed accepted version]. Available at: DOI or URL (Accessed: date).

Enquiries

If you have questions about this document contact ResearchSupport@kent.ac.uk. Please include the URL of the record in KAR. If you believe that your, or a third party's rights have been compromised through this document please see our [Take Down policy](https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies) (available from <https://www.kent.ac.uk/guides/kar-the-kent-academic-repository#policies>).

Reflections on the Domestic Violence Disclosure Scheme (England and Wales)

Dr Marian Duggan, University of Kent

Abstract

The Domestic Violence Disclosure Scheme (DVDS) aims to reduce harm through improving access to background information for people with concerns about a romantic partner's behaviour. This reduction is predicated on the disclosure recipient taking steps to ensure their safety, either by managing the situation or ending the relationship. As fewer than half of the thousands of annual applications result in disclosures, and no information is held about any subsequent steps taken by applicants or recipients, it is unclear whether or not the DVDS is actually reducing domestic violence. Nonetheless, Scotland and Northern Ireland have implemented their own variations of this policy, as have some Canadian and Australian states.

This policy analysis draws on empirical research into the DVDS in terms of its national and local operation in order to assess the strengths and limitations of its capacity to reduce harm. The analysis outlines how the policy may be difficult to access; deflect – rather than prevent – harm; shift safeguarding responsibilities onto the most vulnerable; and be incorrectly interpreted in terms of outcome. The paper makes recommendations for improvement in order to enhance the policy's efficacy.

Key Words: Domestic Violence; Prevention Policies; Victims; Clare's Law

Key messages:

- Domestic violence prevention policies which require active citizenship may be less effective at preventing victimisation.
- The monitoring of outcomes following a DVDS application / disclosure is required.
- Care needs to be taken to ensure engagement with the DVDS does not put people at a greater risk of harm.

Introduction

The Domestic Violence Disclosure Scheme (DVDS) gives members of the public the 'right to ask' the police for background information on a person if they have concerns about their propensity for domestic violence. This aspect of the policy supplements an existing measure where previously only people with safeguarding responsibilities could instigate the sharing of such information, under the 'right to know'. The rationale behind the 'right to ask' is that a person who feels that they may be at

risk from a violent partner should be able to access available information early enough to make an informed decision about their safety and the future of the relationship. Therefore, the DVDS is the first step in a process that may or may not reduce a person's *exposure* to violence; it does not address the abuser's violent behaviour. Thousands of DVDS applications have been made since 2014 (when it was made available nationally), with approximately 43% resulting in a disclosure (ONS, 2018). Variations of the model have since been adopted elsewhere, including Scotland (2015), New South Wales, Australia (2016), Northern Ireland (2018) and Saskatchewan, Canada (2018).

As the DVDS continues to garner global attention, this policy analysis provides a timely scrutiny of its operational strengths and limitations to discern its capacity to reduce domestic violence. This evaluation is informed by the author's ongoing research into the DVDS, particularly the 'right-to-ask' element. The discussion draws on the findings from a two-phase pilot project undertaken between 2015 and 2016. First, Freedom of Information (FOI) requests were made to all 43 police forces in England and Wales requesting information about the number of DVDS applications and disclosures, reasons for granting a disclosure or denying an application, and applicant demographic information. Thirty-nine forces responded fully or in part with the FOI information requested; the remaining four declined on the basis that it was too costly. The responses were thematically analysed whereupon national discrepancies regarding how the policy was operating became evident. The analysis informed the second phase of the project: semi-structured interviews with eight selected domestic violence specialists in one of the policing districts. This purposive sample included two police officers and one police community support officer who were designated domestic violence 'single point of contact' officers, three Independent Domestic Violence Advisors (IDVAs), one manager of a central domestic violence charitable organisation, and one retired police officer who facilitated a domestic violence perpetrator prevention programme. Using information from the FOIs and interviews, this analysis illustrates current practice regarding the policy's operation, paying particular attention to access, outcomes and impediments, while also offering suggestions for potential reform throughout.

The Domestic Violence Disclosure Scheme: An Evaluation

The DVDS is commonly known as 'Clare's Law' in memory of Clare Wood who was killed by her former partner George Appleton in 2009. The inquest into her death indicated that Clare had repeatedly contacted Greater Manchester Police about Appleton's increasingly violent behaviour towards her following their separation. While the police were aware that he had a history of violence towards women, they did not disclose this information to Clare. A subsequent campaign for greater public access to police information, supported by Clare's father Michael Brown, resulted in the DVDS being piloted in four forces (Gwent, Wiltshire, Nottinghamshire and Greater Manchester) between 2012 and 2013 before being rolled out nationally. Prior to the DVDS, other protections included the Domestic Violence Crimes and Victims Act 2004 which amended the Protection from Harassment Act 1997 to allow courts to issue restraining orders to defendants who had been acquitted in order to protect people from further harassment (by that defendant). The 2004 Act also made breaching non-molestation orders (introduced under the Family Law Act 1996) a criminal offence to prevent ongoing abuse. Protections were further strengthened by the Crime and Security Act 2010 which established the Domestic Violence Protection Notice (DVPN) and Domestic Violence Protection Order (DVPO) (Bessant, 2015). Following an incident, police can issue the perpetrator with a DVPN to give the victim up to 48 hours of 'breathing space' while also allowing them time to apply for a DVPO to protect the victim for a further 14 to 28 days. A failure to comply may result in the perpetrator being detained into custody for up to two months, so there is some strength in

these measures. Ultimately, though, they can only prevent the *escalation*, rather than *instigation*, of domestic violence. Furthermore, members of the public are often unaware of available protections. Research by the European Union Agency for Fundamental Rights indicated that only 43% of people in the UK had knowledge of policies or programs to prevent domestic violence, far less than the survey average of 49% (EU FRA, 2014).

Using information from the FOIs and interviews, this section illustrates current practice regarding the policy's operation, paying particular attention to access, outcomes and impediments, while also offering potentials for reform.

Access and Information Barriers

The emotional dynamics of domestic violence means that someone who is being abused by their romantic partner may not recognise the behaviour as harmful, or may deny, minimise or excuse it (especially if as part of the abuse they have been told it is all their fault) (Fugate et al, 2005). The type of abuse is important here; while coercive control is now recognised in law, many still consider physical harm as a threshold for domestic violence, with cultural or family dynamics often informing such perceptions (Graca, 2017). Even if there is acknowledgement, a victim may be dissuaded from seeking help if the abuser has convinced them that their suspicions are deluded (as in 'gaslighting'), or has isolated them from friends and family, or has blackmailed them in some way (Stark, 2009). Despite all of this, the DVDS requires active citizen engagement in that it relies on a person recognising abusive behaviour and taking action accordingly (Duggan, 2012). Where this is impeded, the 'third party application' allows someone to apply for information on another's behalf. It is important to raise more awareness about this option as the specific nature of domestic violence may mean the person at risk is unable to take the necessary action to safeguard themselves.

The annual number of applications made to the DVDS is dwarfed by domestic violence statistics. These are gathered by the Office for National Statistics (ONS) using information obtained from the Crime Survey of England and Wales (CSEW) and police recorded data. The most recent CSEW data indicated that 7.9% of women (1.3 million) and 4.2% of men (695,000) aged 16-59 experienced domestic abuse in the previous 12 months, while 28.9% of women and 13.2% of men had experienced domestic abuse since the age of 16 (ONS, 2018). By contrast, the police recorded 599,549 domestic abuse-related crimes. It is important to note the difference in the CSEW recording victims versus the police recording incidents; one domestic violence victim may be subject to more than one incident during the course of the relationship. Therefore, the significant discrepancy in these statistics indicates that most domestic violence is not reported to the police. This has implications for the DVDS as disclosures can only contain information the police hold. Of the 110,562 domestic violence cases referred to the Crown Prosecution Service, 70% resulted in a decision to charge with 77,725 defendants prosecuted (ONS, 2018). It is important that the incident, charge or outcome (especially if a conviction) is consistently flagged as relating to domestic violence so that the information can be more readily and comprehensively accessed for future DVDS applications.

Monitoring Engagement

Part of the DVDS process involves recording the gender, age, ethnicity, sexual orientation and disability status of the applicant (and, where possible, the subject of the application). This is important as it indicates who is, and is not, engaging with the policy. Most DVDS applicants are women seeking information on men. All of the 39 police FOI responses indicated that requests were about men, but many failed to collect the demographical data of the applicant consistently.

Furthermore, in some cases, it was unclear if the data referred to the applicant or the person at risk (i.e. a third-party application). Correctly recording gender data is vital to see whether men are using the DVDS, and whether they are doing so on their own or someone else's behalf. Media reports have indicated the low number of men accessing the policy, but typically assume male applicants to be victims (Jones, 2017). Gender data should be clearly captured and presented to ascertain whether male victims *are* accessing the policy, particularly as media stories typically refer to the DVDS as 'Clare's Law' (Duggan, 2018). This issue was raised by several interviewees who were mindful to use the correct terminology in public communications to improve inclusivity.

DVDS 'right to ask' requests can take up to six weeks to process, during which the applicant must report to a police station to verify their identity. Interviewees raised concerns about the waiting time and verification process, recognising that either may prompt a person to withdraw their request. While neither of these factors can be avoided, the research indicated that they can be managed through the use of 'One-Stop Shops'. These are weekly morning or afternoon drop-in sessions organised by the local domestic violence charity, held in 'neutral' spaces such as children's or community centres across the county. Housing, welfare, legal, counselling and police representatives attend these One-Stop Shops to give specialist domestic violence support and information to anyone who requests it. This includes information about the DVDS (these spaces are also used to deliver disclosures) therefore applicants could be guided to one of these resources to begin safeguarding immediately while their request is being processed, and police officers could undertake all necessary identity checks in these spaces too.

Negotiating Risk and Responsibilisation

Media reports use application and disclosure data to claim that the DVDS is 'saving lives' and 'protecting people from violent relationships', but such assumptions are incorrect and dangerous. All the policy can do is empower recipients to make an informed decision about whether or not to continue the relationship. Conversely, the research findings indicated that engagement with the DVDS may *increase* a person's risk of harm (Duggan, 2018). For example, seeking or receiving information about a partner without that person's knowledge or consent means keeping secrets which can be burdensome; or might change the dynamics of the relationship in a way that arouses suspicion; or could be dangerous if they inadvertently mention something related to their experience of the DVDS. These dangers must be highlighted to applicants as early as possible in the DVDS process. If a disclosure recipient chooses to remain in the relationship and is subjected to further abuse, they may be dissuaded from seeking help through embarrassment or self-blame. Such emotions are the result of culturally-pervasive rhetoric which places the onus on the victim to end an abusive relationship if given reason to. This not only assumes that a person can, and will, leave, but erroneously suggests that ending the relationship means ending the abuse. Decades of feminist and domestic violence research has demonstrated that women who leave an abusive relationship may be a *greater* risk of (fatal) violence from their male ex-partner (Wilson and Daly, 1993; Fleury et al., 2000; Dobash et al., 2009). It is therefore vital that a disclosure recipient is made aware that ending the relationship doesn't guarantee their safety; as was evident in Clare's case, separating may instigate a *greater* need for safeguarding and protection than before.

Prior to 2016, separating from a partner while awaiting a DVDS decision rendered the application void. Whether this separation was temporary or not was immaterial, as were the grounds for it; a disclosure *could not* be issued as sharing the information would breach Article 8 of the European Convention of Human Rights. This stipulation was relaxed in the 2016 DVDS Guidance,

but the FOI findings demonstrated its impact while in place. For example, one police force received 166 applications in the first year; 67 of these did not result in a disclosure, but over half (n=39) were due to applicants falling foul of the separation clause. Several interviewees also shared their experiences of terminating applications on this ground despite recognising that relationships would often resume at a later date (Duggan, 2018). This is evidence of how those tasked with making disclosure decisions must strike a delicate balance when measuring risks against rights, therefore regular reviews of the DVDS guidance should take into account the policy's impediments as experienced by those implementing it.

Before receiving the disclosure, the recipient must sign the Data Protection Act 1998 thereby promising not to share the information with anyone else. This means any decisions about the future of their relationship are made alone, without input or advice from friends or family. The only people who know are the recipient, the disclosing police officer and the accompanying IDVA (where available). The recipient is also provided with safeguarding information and the contact details for local domestic violence organisations. To ensure or improve uptake of available support, the research findings suggested that future DVDS Guidance should make it clear that recipients can contact *another* IDVA or domestic violence specialist for subsequent input and advice at a later date without falling foul of the 1998 Act (Duggan, 2018). The importance of this is compounded by the fact that the police's involvement with the recipient ends at the point of disclosure. There is currently no mechanism for discovering or recording what happened next, unless – as demonstrated in the research – they are subjected to further violence. While there is no follow up protocol in place, it would be good practice for the police to initiate contact after a designated period of time in order to update the Police National Computer with the outcome for future reference and to see what impact the DVDS is having on violence reduction. This would also address calls for better, more thorough evaluations of the police and more robust guidance for practitioners (Grace, 2014).

Resourcing and Reviewing Outcomes

The Committee on Women's Rights and Gender Equality (2011) estimates the annual cost of violence against women in the European Union at EUR 33 billion. The costs related to the DVDS are significantly lower than those incurred later on in domestic violence cases (Walby, 2004; Duggan, 2018). This was part of the rationale for its implementation, however, no additional resources were allocated to the police or domestic violence organisations. Advertising, processing applications, holding multi-agency risk assessment conferences to make decisions, inputting the information into the Police National Computer, liaising with the applicant to arrange a disclosure, coordinating with an IDVA: this all involves time and money. Domestic violence organisations who are already struggling under austerity measures are expected to stretch their resources to offer additional advice and support without reservation. Capacity-building is therefore needed to ensure that those tasked with undertaking DVDS-related activities can do so fully and without impediment to their other services. Additional resourcing would also allow for the policy to be enhanced more effectively. Several of the IDVA interviewees indicated the benefits of interacting with a DVDS applicant at the *first* point of contact with the police to furnish them with specialist advice. At present, they accompany police officers at the *final* point of contact to deliver a disclosure (or not at all if no disclosure is forthcoming). As IDVAs are ordinarily assigned to medium- to high-risk domestic violence cases, such a proposal would mean significantly increasing their workload, therefore a telephone call from an IDVA following the initial application (with the consent of the applicant) may be a preferable way of allowing for this contact to be made earlier in the process.

Not all DVDS applications will result in a disclosure. The research findings demonstrated the need for caution when interpreting data, as there are many reasons for non-disclosure outcomes (Duggan, 2018). For example, in cases where the police do not hold any information on a person, this will be communicated to the applicant but would not necessarily be recorded as a 'disclosure'. Other examples include: dismissing duplicate applications; reorienting applications more suited to the Sex Offenders Register (otherwise known as 'Sarah's Law'); dismissing applications not linked to safeguarding; applicants withdrawing their request; and potential recipients refusing the information (Duggan, 2018). Also, application decisions may be 'pending' at the time of data capture as the process can take up to six weeks. Police forces have different mechanisms for recording these 'nothing to disclose' outcomes, with some considering them 'successfully' processed despite no disclosures being made. Therefore, it is highly unlikely that any one force will have a 100% *disclosure* rate, as opposed to a 100% processed rate. This should be acknowledged and accurately reported in media communications.

Recognising these variances is important to fully explore the potential of the DVDS and those tasked with implementing it. In 2018, Clare Woods' father Michael Brown criticised police forces for perceived failings towards victims applying to the DVDS. Citing the significant variation in disclosures made between different police forces, he suggested that the worst performing police forces were "not only letting Clare down, but the women of this country" by not prioritising victims (BBC News, 2018). His critique was based upon data obtained by the Office for National Statistics which indicated that the national average disclosure rate for England and Wales was 43%, equating to 3,612 disclosures being granted from 8,490 requests (ONS, 2017). The media report highlighted the 'best' performing constabularies as Cumbria (96% disclosure rate: 245 disclosures out of 256 requests), South Wales (71%: 143 out of 200) and Cleveland (68%: 188 out of 275), with the 'worst' being Bedfordshire (7%: 3 out of 38 requests), Northumbria (9%: 25 out of 273) and Essex (9%: 110 out of 1,127).

As outlined above, caution is advised when reviewing these figures, especially in relation to inferences made about 'non-disclosures'. There is also the possibility that a higher rate of disclosure reflects the established nature and working of the policy in that force; for example, Greater Manchester Police were part of the initial pilot, plus have an enhanced commitment as a result of the notoriety of Clare's case, therefore their data may be less comparable to other forces. It is important that DVDS applications or their outcomes do not become the measurement of 'success' with this policy in a manner reminiscent of the shifting goalposts around key performance indicators in the criminal justice system (Garland, 2001). To this end, it may be more useful to invest in DVDS scrutiny panels, where completed outcomes are reviewed by an independent group of domestic violence experts and laypersons. Such initiatives exist for other forms of victimisation, for example Stop Hate UK run monthly scrutiny panels to review the police's handling of hate crime cases, offering commendations where relevant. This, coupled with follow up information on disclosures, would offer more insight into the working of the policy and its capacity to reduce or prevent domestic violence.

Conclusion

On average, two women a week die as a result of domestic violence every year in the UK. It is clear that prevention policies must go further than addressing harm on an individual level and consider the wider societal factors informing such victimisation (Wangmann, 2016). The UK Government is currently reviewing the terms of the forthcoming 'Domestic Violence and Abuse Act' (Home Office,

2017). This Act could be the mechanism needed to educate the public around police and multi-agency methods for addressing and preventing domestic violence in society while codifying the exact operation, scope and value of the DVDS (Grace, 2015; Duggan and Grace, 2018). This, coupled with the Government recently pledging £40million to support victims of domestic violence while also establishing a dedicated Domestic Violence Commissioner post, looks promising for future domestic violence policies.

This work was supported by the Socio-Legal Studies Association under the Research Grant Award (£1005.00).

The author declares that there is no conflict of interest.

References

- BBC News (2018) Police forces 'ignoring Clare's Law and failing women', 4th December. <https://www.bbc.co.uk/news/uk-england-42622597>
- C Bessant, (2015) 'Protecting Victims of Domestic Violence – Have We Got the Balance Right?' *J Crim Law*, 79(2): 102-121.
- Crown Prosecution Service (2017) Violence Against Women and Girls Crime Report 2015-16. 4th December. https://www.cps.gov.uk/sites/default/files/documents/publications/cps_vawg_report_2016.pdf
- Dobash, R., Dobash, R., and Cavanagh, K. (2009) "'Out of the Blue": Men who murder an intimate partner', *Feminist Criminology*, 4(3): 194–225.
- Duggan, M. (2018) 'Victim hierarchies in the Domestic Violence Disclosure Scheme'. *International Review of Victimology*, 24 (2): 199-217.
- Duggan, M. (2012) 'Using Victims' Voices to Prevent Violence Against Women: A Critique', *British Journal of Community Justice*, 10(2): 25 - 38.
- Duggan, M. and Grace, J. (2018) 'Assessing vulnerabilities in the Domestic Violence Disclosure Scheme' *Child and Family Law Quarterly*, 30:145-166.
- EU FRA (2014) *Violence Against Women: an EU-Wide Survey*. 4th December. <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>
- Fitz-Gibbon, K. and Walklate, S (2017) 'The efficacy of Clare's Law in domestic violence law reform in England and Wales'. *Criminology and Criminal Justice*, 17(3): 284-300.
- Fleury, R. E., Sullivan C. M., and Bybee, D. I. (2000) 'When ending the relationship doesn't end the violence: Women's experiences of violence by former partners'. *Violence Against Women*, 6: 1363-1383.

- Fugate, M., Landis, L., Riordan, K., Naureckas, S. and Engel, B. (2005) 'Barriers to Domestic Violence Help Seeking'. *Violence Against Women*, 11(3): 290-310.
- Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford: Oxford University Press.
- Graca, S. (2017) 'Domestic violence policy and legislation in the UK: A discussion of immigrant women's vulnerabilities' *European Journal of Current Legal Issues* (online) 22(1) www.webjcli.org/article/view/531/715
- Grace, J.(2015) 'Clare's Law, or the national Domestic Violence Disclosure Scheme : the contested legalities of criminality information sharing'. *The Journal of Criminal Law*, 79 (1): 36-45.
- Grace, J. (2014) 'Disclosing domestic violence', *Criminal Justice Matters*, 97(1): 18-19.
- Home Office (2017) *Prime Minister's plans to transform the way we tackle domestic violence and abuse*, 4th December. <https://www.gov.uk/government/news/prime-ministers-plans-to-transform-the-way-we-tackle-domestic-violence-and-abuse>
- Jones, A. (2017) 'Clare's Law: Call to rename domestic abuse scheme after only nine men contact West Mercia Police', *Express & Star*, 4th December <https://www.expressandstar.com/news/crime/2017/08/26/clares-law-call-to-rename-domestic-abuse-scheme-after-only-nine-men-contact-west-mercia-police/>
- Office for National Statistics (2017) *Focus on violent crime and sexual offences, England and Wales: year ending Mar 2016*, 4th December <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/compendium/focusonviolentcrimeandsexualoffences/yearendingmarch2016>
- Office for National Statistics (ONS), *Domestic abuse in England and Wales: year ending March 2018*, 4th December <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2018>
- Stark, E. (2009) *Coercive Control: How Men Entrap Women in Personal Life*. Oxford: Oxford University Press
- Walby, S. (2004) *The Cost of Domestic Violence*, Women and Equality Unit http://eprints.lancs.ac.uk/55255/1/cost_of_dv_report_sept04.pdf
- Wangmann, J. (2016). 'Has He Been Violent Before?: Domestic Violence Disclosure Schemes. *Alternative Law Journal*, 41(4): 230–234.
- Wilson, M. and Daly, M. (1993) 'Spousal homicide risk and estrangement', *Violence and Victims*, 8(1): 3-16.