

WOMEN'S AID

Briefing Paper on Domestic Violence, 14th November 2012

RECOMMENDATIONS

1. Protecting children in Family Law proceedings where there is domestic violence

- a) A mechanism to provide the Family Law Court with child welfare and safety assessments should be re-instated.
- b) A mechanism to allow children to have their voice heard in Family Law proceedings should be introduced.
- c) A rebuttable presumption should be introduced, by which Custody and unsupervised Access should not be granted to a parent who is a perpetrator of domestic violence unless the Court is wholly satisfied that the child would be safe from abuse while in the custody of or unsupervised access with such parent, including safe from emotional abuse caused by exposure to domestic violence.
- d) When granting a Barring Order, the Court should consider the safety and well-being of any children of the relationship and take interim measures for their protection while Custody and Access proceeding are pending.

2. Prioritise the review of Domestic Violence Legislation

- a) The review should include: improving eligibility for both Safety and Barring Orders, addressing the lack of emergency protection when the Courts are not sitting, addressing the need for guidelines to improve consistency on the granting of orders, addressing the protection of children from domestic violence in the context of separation and divorce, and improving legislation on stalking.

3. Ireland should sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

4. **Domestic violence and funding challenges:** Women's Aid and other vital domestic violence services should be protected in Budget 2013 by at least maintaining current funding levels. Local community groups should be sufficiently resourced to respond to domestic violence in their communities.

RATIONALES

1. Protecting children in Family Law proceedings where there is domestic violence

Children are impacted by domestic violence in multiple ways:

- They may be directly abused by the perpetrator, who abuses both the mother and the children. The co-occurrence of child abuse and domestic violence has been clearly established and is very high.
- They often witness the abuse experienced by their mother. Exposure to domestic violence is recognised as a form of emotional abuse, with detrimental effects to children's well-being.
- The abuser often undermines the bond between the children and their mother, which is critical to the children's well-being and healing. Protecting and supporting the non-abusive parent is internationally recognised as the best practice in protecting children living with domestic violence.

When parents separate in the context of domestic violence, Access and Custody orders are often made that disregard their impact on children and the risk of continuing abuse to both children and their mothers. This is compounded by a lack of expert child welfare and safety assessment to support the Courts when making determinations regarding Custody and Access. The voice of the child is also absent from such proceedings.

Recent Irish research confirming both the experience of Women's Aid and international research, found:

- A lack of understanding within the Family Law system that domestic abuse often continues after separation
- The history of domestic abuse is often not identified when Custody and Access are being decided on
- Even when domestic abuse is identified, it is not considered relevant, leading to unsafe arrangements.



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Women's Aid believes that exposure to domestic violence must be taken into account when determinations are made regarding the best interests of the child in Custody, Access and Guardianship proceedings, so that children are protected from both direct abuse and the emotional abuse caused by exposure to domestic violence.

This is best achieved through a rebuttable presumption approach against granting Custody and unsupervised Access to a perpetrator of domestic violence.

When a Court grants a Barring Order, it has found that there is a significant risk to the welfare and safety of the applicant. In our experience, when Barring Orders are granted to protect a woman from her abusive partner, there is often no assessment process looking at the safety and well-being of the children. The perpetrator may be barred from the house but still have unsupervised access to the children and use that access to continue abusing them.

It is therefore essential that, when granting a Barring order, the Court gives full consideration to any risk the perpetrator may pose to the children and ensure their protection while Custody and Access orders are pending.

2. Prioritise the review of Domestic Violence Legislation

Women's Aid welcomes the government's commitment to review Domestic Violence legislation and encourages the government to prioritise such review. We have identified a number of legislative and procedural gaps that must be considered in order to improve protection for women and children experiencing domestic violence, including:

- Eligibility for Safety orders for dating partners, currently still outside protection in the Domestic Violence Act
- Lack of Emergency Orders for immediate protection from domestic violence when the Courts are not sitting
- Restrictions on Barring Orders for unmarried cohabitants, who need to satisfy both a length of cohabitation and a property test
- Considerable variation on the grounds on which Domestic Violence orders are granted among/within Courts
- The interface of domestic violence and children-related matters as discussed above
- The need to update and improve stalking legislation. The current legislation is rarely used and does not explicitly refer to a number of new technologies that are used to stalk and harass women.

In preparation of the review, Women's Aid has developed a paper on these issues, available on request.

3. The Council of Europe Convention on preventing and combating violence against women and domestic violence

This convention is an innovative and comprehensive measure to combat violence against women, including domestic violence, recognising it as both a violation of human rights and a form of discrimination. It includes measures in the areas of prevention of violence, protection of victims, prosecution of the perpetrators, and integrated policies.

By signing the Convention, the Government would signal a strong commitment to ending violence against women.

4. Domestic violence and funding challenges

The Women's Aid National Freephone Helpline 1800 341 900 answered over 11, 000 calls in 2011. It is the only free, national, domestic violence helpline with specialised trained staff, accredited by The Helplines Association and with a Telephone Interpretation service covering 170 languages.

Women's Aid has experienced a 19% drop in state funding since 2008. So far, we have maintained the same level of service to women, but any further cut would mean a reduction in services. Other domestic violence specialist services as well as community groups who provide a vital first point of response and referral have also been greatly impacted, while demand for services has increased.

Women's Aid is aware of women at extremely high risk being unable to access refuge because it is full or there are no refuges in the area. At the same time, Teach Tearmain in Kildare has a refuge built, without funding to staff it. We are deeply worried about the impact of Budget 2013 on our vital services and the sector's capacity. Protecting the vulnerable in the recession surely must include protecting women and children from domestic violence.