



**Department of Justice Criminal Justice Strategy**  
**Submission from Safe Ireland**

10<sup>th</sup> August 2020

## **Background – Safe Ireland**

SAFE Ireland is the National Social Change Agency working to end gender based violence with a specific focus on male violence against women in intimate/domestic relationships. We believe that at the root of all violence is what happens in the home and that the single biggest barrier to achieving gender equality and human rights for women is the high prevalence of gender based violence and its wider personal, family, social and economic impacts. We are working to make Ireland the safest country in the world for women and children. We collaborate closely with 39 frontline domestic violence services across communities in Ireland, state agencies, civic society organisations, business, community, and cultural organisations throughout the country. We work directly with women to bring their experiences and voices into research, policy, service development and violence prevention programmes. Our core strategic focus is to change culture and transform the response to gender based violence in Ireland and to progress towards realising our vision for a safe Ireland.

## **Background – This Submission**

The Department of Justice is conducting an open consultation on the proposed new Criminal Justice Strategy, which aims to create a cross-departmental, inter-agency response to crime which is effective both as a means of preventing crime and as a means of holding its perpetrators accountable. Safe Ireland is well aware that domestic violence-related crimes are numerous and sometimes challenging to investigate and prosecute successfully, on the basis of its own and other research findings and also, from its daily work supporting women and children who are the victims of these crimes. We know that a compassionate, professional and individually tailored response from all criminal justice agencies and professionals involved is a powerful support to victims of domestic violence-related crime, whatever the outcome in any individual case. It is empowering, it is reassuring, and it goes a long way to help victims of these crimes to sustain their complaints through to the end of the criminal justice process. The Domestic Violence Act 2018 (DVA)<sup>1</sup> created the new offence of coercive control, which means that the range of abusive behaviours in intimate relationships which can result in a criminal conviction has increased, as has the likelihood of a longer sentence being imposed for certain offences against the person in the context of an intimate relationship. Less than a year before DVA came into force in January 2019, the Criminal Justice (Victims of Crime) Act 2017<sup>2</sup> (CJVOCA) was commenced. This Act has introduced a wider range of special measures and other rights and protections for victims of these crimes.

In 2017, An Garda Síochána National Protective Services Bureau began the process of rolling out specialist Divisional Protective Services Units in each of the Garda Divisions, to focus on a few related areas including domestic violence related crimes. This process is now nearing

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<sup>1</sup> Available online via this web-link: <http://www.irishstatutebook.ie/eli/2018/act/6/enacted/en/html>

<sup>2</sup> Available online via this web-link: <http://www.irishstatutebook.ie/eli/2017/act/28/enacted/en/html>

completion and has created a cadre of dedicated and specially trained investigators in most regions.

These and other welcome developments to assist victims of domestic violence related crime are all extremely welcome, and Safe Ireland's view is that they have already had a positive effect on these victims' experience of the criminal justice system. However, more must be done, and this Submission will focus most on those areas where an inter-agency approach has the potential to be most effective from the point of view of this particularly vulnerable group of victims of crime.

### **Structure of this Submission**

Safe Ireland will examine each one of the most important subject areas from the point of view of victims of domestic violence related crime and where possible, make recommendations for positive change under each subject area heading. These areas will be considered in the light of the aims of the proposed Criminal Justice Strategy, its principles, and its high-level outcomes..

There is a further reading list with references at Appendix 1.

### **Subject Area 1: Training of criminal justice professionals on the nature, dynamics and impacts of the various forms of domestic violence and abuse, especially coercive control:**

- Safe Ireland acknowledges that significant progress has been made in this area by An Garda Síochána, the Office of the Director of Public Prosecutions, the Courts Service, the Bar Council, the Law Society, the Probation Service and the judiciary among others, in this area in recent times;
- Safe Ireland also acknowledges that the importance of judges having access to training is now recognized to the extent that there is a statutory framework through which such training may be organised (Judicial Council Act 2019<sup>3</sup>);
- To be truly effective from the point of view of domestic violence victims, all such training should include direct input from specialists: experienced domestic violence service managers and trainers first of all, but also psychologists and academics with specialised knowledge in this area; The direct experience of victims where appropriate should also be included in training.
- Safe Ireland is able and willing to help any State agency to find expert trainers both inside and outside the NGO community and to assist in other ways as appropriate, for example by helping the agency to access critical readers for domestic violence related training materials to be delivered by others and/or provide bespoke training.
- Any training initiative should be recognised as a necessary and legitimate use of employees' time (and other workers' time) across all State agencies and relevant

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<sup>3</sup> Available online via this web-link: <http://www.irishstatutebook.ie/eli/2019/act/33/enacted/en/html>



professions: training time should be built into the working year for all criminal justice professionals and should be paid – it should not be necessary for any such professional to undergo necessary training in their own time;

- While it is clear that training in this area must address the demands of each individual professional role in the criminal justice system, Safe Ireland’s view is that each separate training programme should aim to develop a common understanding across all justice professionals of the nature and effects of domestic violence and coercive control, and that this could be done most easily by including a certain amount of common material in all the individual training programmes;
- Domestic violence service experts, psychologists and academics could advise on what should be included in this common core material, in collaboration with a range of criminal justice professionals;
- Any criminal justice or domestic violence professional who is part of such of a collaborative inter-agency group should do their level best to keep themselves informed of the latest thinking in this area and should share their learning with the rest of the group so that its guidance on training material is as good as it can be.

#### **Subject Area 2: Delays at every point in criminal justice process**

- The delay problem, particularly once a case has been sent forward for trial from District Court to Circuit Court or Central Criminal Court, is longstanding and hard to fix – and does much to reduce the effectiveness of the criminal justice system as a whole. Protracted delays and the attendant uncertainty and often continuing risks to personal safety are extremely stressful, even re-traumatising sometimes, for victims of serious crime such as domestic violence related offences. Delays also make it harder for victims to remember the events surrounding the crime in detail, and sometimes lead to a decision to withdraw from the case altogether. While some delays are appropriate and necessary to ensure that the interests of justice are served, many more are not. These are the delays that reduce both public confidence in the criminal justice system, and the confidence of its most vulnerable constituency, victims of serious crime. The new Strategy should make the reduction of these delays **an absolute priority**.
- Safe Ireland’s view is that no fix for this problem can be effective without serious and sustained inter-agency co-operation, and without the commitment of significant resources: more forensic science staff, more specialist investigators, more prosecution staff, judges, more court rooms, more court time would all help to reduce delays.
- Safe Ireland also recognises that the problem of delay for proceedings on indictment is compounded by the lack of a formal statutory pre-trial hearing framework. Legal and administrative issues which could have been raised and addressed months ahead of the trial are not brought up till the morning of the trial still far too often, and the

result is that trials may be postponed for few hours or days, or worse, adjourned for weeks or months. This is both enormously stressful for all victims and other warned participants in the court proceedings concerned, and a huge waste of time and money.

- Safe Ireland’s view is that a more proactive approach to case management combined with a statutory pre-trial hearing framework which would enable **binding** rulings to be made on discrete issues which could not be overturned later in the same proceedings (absent a material change in circumstances) – would do much to reduce both delay before trial and delays during the trial itself.
- On this aspect of the delay issue, the Department of Justice has an opportunity to work closely with criminal justice professionals and others to bring forward proposals for the necessary statutory changes to be made. A vehicle already exists which could be modified if need be to achieve these aims, the Revised General Scheme of the Criminal Procedure Bill 2015<sup>4</sup>;
- The delay issue is a good example of the need for a forum in which those representing victims and others could raise problems and ask for the help of all other responsible criminal justice agencies and representatives of the relevant professions, in finding a solution which is acceptable and workable from the point of view of every interest represented therein.

**Subject Area 3: Effective monitoring of protective measures outside court and of special measures in court including, but not confined to, the protective and special measures in the Criminal Justice (Victims of Crime) Act 2017<sup>5</sup>**

- The current “menu” of special measures, including new ones such as the prevention of personal cross-examination in sexual cases for adult victims and the use of screens, the expansion of video-link evidence, anonymity in breach of DVA cases, hearings in camera in non-sexual cases, and the right to object to cross-examination on aspects of one’s private life which are “unrelated to the case” - constitutes significant improvement to the previous arrangements for special measures, in theory. However, how can we be certain that these measures are effective for victims?
- In Safe Ireland’s view, it is important that data is gathered professionally and comprehensively on the use of special measures, including the newest among them, so that we can answer readily such questions as: how often are they recommended, sought, granted, refused, and what are the factors associated with low or high use of these special measures? And, once granted, do they in fact result in victims feeling more comfortable or safer? If they are not granted, what is the effect on the victim? What if anything would have improved that victim’s experience of the criminal justice

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<sup>4</sup> Available online through this web-link:  
<http://www.justice.ie/en/JELR/Criminal%20Procedure%20Bill%20Revised%20General%20Scheme.pdf/Files/Criminal%20Procedure%20Bill%20Revised%20General%20Scheme.pdf>

<sup>5</sup> See footnote 2 above for web-link to text

system? If the case was ended by the victim's withdrawal, what role did the absence or denial of any special measure play in that victim's decision to withdraw?

- Similar considerations apply to protective measures put in place to help protect victims pre-trial – such as DVA orders themselves, bail conditions, arrest for witness intimidation, breach of DVA order offences and so on – are these measures being recommended and/or sought in court and/or granted, and followed through on and if so in each case, are they working to protect women?
- Establish clear protocols to support victim preparation for witness testimony. Current practice often means victims get limited (24 hour) notice of criminal proceedings relating to breaches of orders or there has been communication breakdowns and they find out about the proceedings after they have taken place.

#### **Subject Area 4: Examining Remote Testimony in Criminal Proceedings for Domestic Violence Victims and Witnesses**

- With ongoing plans in place for the establishment of remote application and evidence procedures in civil cases involving domestic violence, Safe Ireland submits that the possibilities of victims and witnesses giving evidence remotely in criminal proceedings should now be examined, ideally by an inter-agency criminal justice group, so that it could be tried out on a pilot basis in the near future.

#### **Subject Area 5: Full and accurate recording of domestic violence related offences at every stage of the criminal justice process**

- Safe Ireland's view is that domestic violence related criminal offences are not easily visible at any stage of the criminal justice process. We would know so much more about the number and range of these offences if at least the gender and relationship<sup>6</sup> of the perpetrator to the victim and the gender of the victim was disaggregated in at least the main such offences, including Section 39 DVA, coercive control, were separately identifiable in a separate category of recorded [etc] crime in CSO/AGS statistics, and if the same categorisation were also used by the DPP and the Courts Service in their respective Annual Reports.
- It is clear that this would need close collaboration among the relevant statistical, investigative, prosecutorial and administrative professionals. In Safe Ireland's submission, it is worth the effort to make domestic violence visible in our criminal justice system. This data is an important tool with which to recognise the need for, and achieve, evidence-based changes.

#### **Subject Area 6: Sentencing**

- Is Section 40 Domestic Violence Act 2018 (which says certain offences should be regarded as aggravated if they occur in the context of intimate relationship, unless

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<sup>6</sup> Relationship could be defined similar to the definition of 'Relevant Person' in Section 39 of DVA 2018.

there are exceptional circumstances) being implemented in our courts and/or to put it another way, will the sentencing guidelines and information committee monitor sentences to which Section 40 applies once it is functioning, with the help of Courts Service? These are examples of the questions on which it would be very helpful to have reliable data with which to inform future changes to the sentencing system, including statutory changes.

### **Subject Area 7: Legal Advice for victims of domestic violence on the criminal justice process**

- At present, unlike victims of certain serious sexual offences, victims of violence in a close relationship are not entitled to free legal advice from State on the criminal justice system. It has been argued before the Dáil and in the Joint Oireachtas Committee on Justice and Equality that this would be a very helpful measure (see [www.oireachtas.ie](http://www.oireachtas.ie) JOCJE debate for 13<sup>th</sup> November 2019<sup>7</sup>) and would encourage vulnerable victims to come forward to make a complaint to AGS and stick with it. This debate was the in-depth scrutiny of FF PMB Criminal Justice (Victims of Crime) (Amendment) Bill 2018<sup>8</sup> put forward by former FF Justice spokesperson Jim O’Callaghan TD.
- Safe Ireland recommends that legal advice is made available to victims of violence in a close relationship and submits that to be an effective measure to assist and empower them, it **must** be available from the pre-complaint stage and it **must** cover a wide range of domestic violence related offences.
- The evidence to the Joint Oireachtas Committee was that such a measure would not be likely to be very costly and could be established and managed by the Legal Aid Board.

#### **Additional Recommendations:**

##### **1. Establishment of integrated specialist domestic violence courts**

- There is considerable evidence of fragmented and inconsistent responses to victims of DV in both civil and criminal proceedings. A perpetrator of coercive control is often very skilled at using the system to further abuse their victim or to minimise the outcomes for the victim. The NYC<sup>9</sup> integrated specialist domestic violence courts operates with specialist judges who oversee all criminal and civil matters relating to the victim and/or perpetrator. The establishment of specialist DV courts in Ireland will increase victim confidence and protection, reduce offenders abuse of process and should also have the secondary benefit of reducing use of court resources.

##### **2. Establishment of Domestic Homicide Reviews**

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<sup>7</sup> You can access the text of this debate via this web-link:

[https://www.oireachtas.ie/en/debates/debate/joint\\_committee\\_on\\_justice\\_and\\_equality/2019-11-13/](https://www.oireachtas.ie/en/debates/debate/joint_committee_on_justice_and_equality/2019-11-13/)

<sup>8</sup> Available online via this web-link:

<https://data.oireachtas.ie/ie/oireachtas/bill/2018/67/eng/initiated/b6718d.pdf>

<sup>9</sup> See [New York City model for integrated DV courts](#)

The primary purposes of DHR's is to evaluate any areas where victim safety and perpetrator accountability could have been strengthened. DHR's also serve to support homicide victims families and friends in their trauma recovery/bereavement process. It is critical that DHR's are established with independent oversight and the full cooperation and engagement of all relevant agencies.

## **Conclusion**

Safe Ireland submits that it is apparent from each separate subject area discussed above, that effective and targeted inter-agency collaboration is needed to achieve them. In our view, there is need for three things:

- An over-arching high-level structure similar to the existing Criminal Justice Strategic Committee but wide enough and flexible enough to include some representation from specialist victim support organisations, on those issues which concern their clients directly – whose function is to establish guiding principles, aims, and outcomes;
- A number of smaller, more specialised, ad-hoc Sub-Committees whose function is to examine and address specific issues at the direction of the parent Committee, each one composed not only of the relevant State agency representatives but also of outside experts, including NGO representatives and others with specialised knowledge;
- In each case, an infrastructure which ensures that each Committee and Sub-Committee has an effective Chair and has adequate resources to do its job well without undue imposition on its members.

Please do not hesitate to contact us at Safe Ireland if you would like more information on any point, or would like to discuss any of them further. We would be delighted to assist you in this vital initiative in any way we can.



## **APPENDIX 1: Selected Reading**

**These documents are all accessible on Safe Ireland's website at: [www.safeireland.ie/policy-publications](http://www.safeireland.ie/policy-publications)**

1. The Lawlessness of the Home: Research Report (2014);
2. In Search of Justice: Women and the Irish Legal System – Research Report (2016)
3. Make It Happen! Toolkit – Resource for Criminal Justice Professionals (2016)
4. Safe Ireland Submission on the Future of Policing in Ireland (2018)
5. Gender Matters 2019: Summary Findings on public attitudes to gender equality and roles, domestic abuse and coercive control in Ireland (2019).



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