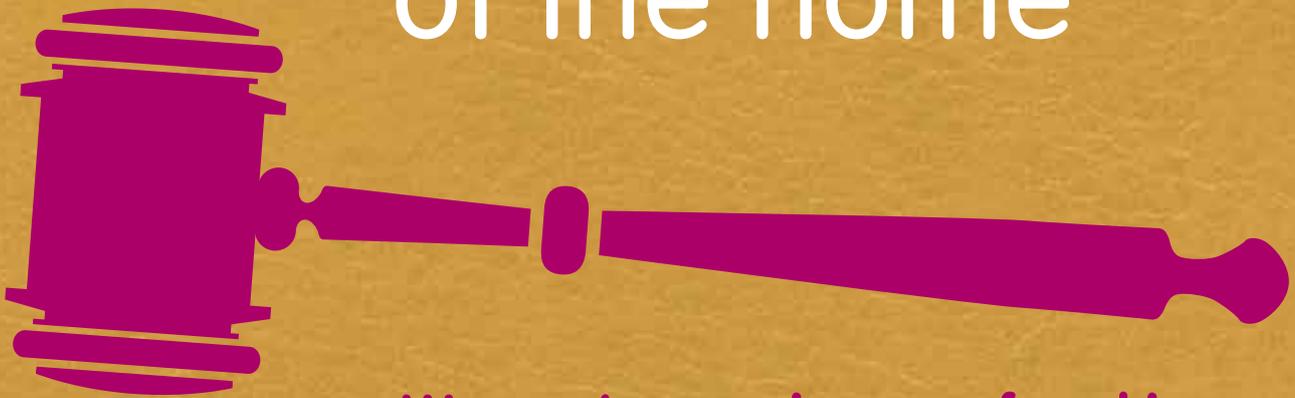


# The lawlessness of the home



**Women's experiences of seeking  
legal remedies to domestic violence  
and abuse in the Irish legal system**



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# Prologue

“

*I was in a small room I had never been in before, in a west of Ireland town I had never been to before, yet the room was familiar, being so similar to others I had been in around the country. Some rooms were smaller, some had no window, or the curtains were permanently drawn because they faced the street. But they all had the same borrowed, mismatched furniture, a corner with a box of well-used children's toys and books, and the feeling that someone had tried to make them comfortable. The room in this refuge was different in one way - it had some wardrobes, perhaps allowing it to double-up as a bedroom when the refuge was full.*

*It was late afternoon and I had half an hour before the third woman that day came to talk to me. I sat on the small couch staring at the wardrobe doors listening through the pulled curtains to children playing on the swing set outside. From where I was sitting I could see above the wardrobes and into four clear plastic boxes. Each was marked: 'baby clothes'; 'women's skirts'; 'women's tops.' The final bucket was marked 'shoes.' In it were sandals, flip-flops, runners and I could not understand why there was a box of shoes. Why would they need shoes? And, then I realised – they need a box of shoes because some women leave their homes barefoot. They leave in the middle of the night or they leave in a moment when they can see nothing else other than leaving. They don't think about the consequences. They don't even stop to put their shoes on.*

I am telling you the story above, over all the others I could tell, for a reason. Although I had heard nine first-hand accounts of abuse and violence and would go on to hear more, that realisation, that connection my mind made, gave me an insight into the dynamics of abusive relationships.

SAFE Ireland asked me to work with them and their member services, reviewing the legal system's response to domestic abuse and violence. We listened to and transcribed women's accounts of their experience of the legal system, we recorded domestic violence services' accounts and we reviewed the academic research on the subject. This report is the culmination of many people's work, but I chose to tell the story about the box of shoes from my perspective because I am learning that women's experience of domestic violence depends also on the experience of those who meet them: their communities, larger society, the media, the Garda who are called to the house, the local domestic violence service advocate giving refuge and support, the lawyer advising her and the judge hearing the case.

I had heard heart-rending accounts of abuse and accounts of the failings and successes of our legal system in protecting the rights of these women. But it was the box of shoes that provided the illustration I needed to begin to understand what I was hearing. I had to see the individual and the consequences she faced if she left, as much as the consequences for her if she stayed. I had to see beyond the perpetrator and victim, to the violence and the abuse as acts in isolation that require society's intervention and assistance. At times the accounts were so dark and apparently hopeless that my mind had no file for what I was hearing and therefore on some level I couldn't believe what I was hearing. It is in fact fantastical that your husband fills your petrol tank with a pint bottle in order to control how far you can drive, that this is happening in the small country town where you were born and raised. It is cliché, it cannot be true, it is what we understand only as fiction that the law leaves these women trapped hiding in wardrobes, insists that children spend time unsupervised with a parent proven to be abusive or violent. I wonder whether people who experience cruelty like this at the hands of a loved one in their home, themselves don't believe it happened, even though they heard the words, were under the control, or covered up the bruises.

We need to start assessing the pattern of abusive acts, to isolate the behaviours and judge them. We need to work at not being blinded by our own experience of life and judgement of individuals' choices, to see and hear each individual as an individual. We have to understand the real consequences of leaving an abusive relationship; if we don't understand them we don't address them and we can't ensure those consequences aren't the reason that they decide to stay. How will I feed my children? Where will we live? I can manage the abuse. How will I manage access and maintenance and the courts? Now that he has lost control over me and has nothing to lose, will he kill me? Will he kill our children?

And we have come so far in such a short time; 40 years ago, there was no refuge from domestic violence, no services, no national network of services. Acknowledgement of domestic abuse and violence as occurring at all and its requiring society's and the state's intervention is relatively new. Until the 1970s, there was often no response at all and it was not 'society' generally that demanded these interventions, but grassroots activists. The first service in the modern world was opened in Chiswick in Britain in 1971, by the organisation known today as Refuge. The first refuge in Ireland opened in 1974 and the first domestic violence legislation followed in 1976, providing the courts with the power to make barring orders for the first time. In Ireland, marital rape was criminalised only in 1990.

The key goal of the battered women's movement has been to create options for women seeking haven from abusive relationships<sup>1</sup>. Leigh Goodmark writes that shelters were soon followed by advocacy for effective civil and criminal justice interventions and that the growth in legal responses to domestic violence has been spurred over the last decade. Despite this, domestic violence rates in the US have not appreciably declined, instead keeping pace with decreases in the crime rate generally. This would hold true in Ireland also and this report will look at some key statistics from Ireland in some detail.

“

“Until everyone is safe,  
no one is safe.”

National Network to End Domestic Violence,  
USA, 24-Hour Census 2013

While we should not expect the legal system to be a panacea, throughout the world it has become the default response to domestic violence<sup>2</sup>. And so this report is a step towards assessing the efficacy of its response. Its intervention at all was a massive step forward for Irish society. But, as this report will show, those who do engage with the Irish legal system do so with very mixed results. Still relatively few women report domestic violence to police. Most domestic violence perpetrators are not convicted and when they are convicted, jail time is rare. It must be noted that this research could not capture those who are denied justice because they are unable or unwilling to engage with the legal system.

At this point it is important to think of the legal system as two parts – firstly, the law itself, the legislation applicable to domestic violence and, secondly, the actual, practical application of that law; policy and practice, rules and enforcement. The legal system's failure to comply with existing law is a repeated theme in the women's narratives that are the backbone of this research and report.

When we don't provide for the consequences of leaving a violent and abusive relationship by providing safe shelter, or removing the threats of homelessness, physical harm and poverty from women's decision-making, we tacitly condone violence against them. We also encourage and justify those who beat, abuse and control them. Abuse by a family member inflicted on another who is consequently less able to defend themselves is a violation of the most basic human rights. It is a violation of the conditions of civilised society, of Irish society: the right to live in physical security, free from the fear that brute force will determine the conditions of daily life<sup>3</sup>. When those who live with abuse ask the legal system to intervene and it does so inadequately, it in turn violates their rights.

Those women affected by domestic violence are a diverse group of women, with unique and individual characteristics and coping mechanisms, which requires us to think in a more sophisticated way about the attributes and needs of women who experience violence and abuse<sup>4</sup>. The legal system is the most developed and best-funded response to domestic violence but it does not appear to understand and therefore respond to the particular needs of individuals before it. And relying on the legal system has enabled us, as a society, to believe that something has been done about domestic violence. Reform of the Irish legal system could solve some of the problems of responding to each individual case, but we have to be brave enough to completely re-think how we address domestic violence generally.

**Simone George, Solicitor, SAFE Ireland Researcher**



## Rationale for the study

SAFE Ireland is the national representative for 40 domestic violence support services in Ireland, leading on research and dissemination of good practice to its members, other professionals and statutory bodies. The organisation collates the experience of member services and gives them and the survivors a public voice, sharing the experiences and the enormity of domestic violence in our country. Members of SAFE Ireland have heard of women's struggles with the legal system from all over the country and the difficulties they face in securing protection from domestic violence for themselves and their children. SAFE Ireland services have continuously reported on the barriers and issues that women face while navigating the system seeking justice. Now is the time that these issues, that have let so many down, be examined and addressed. We must give voice to the women who have been silenced by the failures of our legal system. The enormity of the problem of domestic violence in Ireland reinforces the need for us all to examine how we deal with it. Each year thousands of women flee their home with their children to escape violence, and the Irish government and people must be responsible for providing those women with an effective remedy.

Critique of the Irish legal system and how it deals with domestic violence was forthcoming as far back as 1995 and much of it still holds today. The Law Reform Committee; Rosemary Horgan; Eileen Glynn; Genevieve Coonan; Patricia Kelleher; Monica O'Connor; Claire Hogan and Sinead Kelly are among those who have examined the way in which the Irish system works and where the system fails. They have offered recommendations to better the experience and outcomes for victims of domestic violence. Their work has highlighted the issues rampant in the system and brought attention to the flaws of a system which urgently needs to be addressed. SAFE Ireland acknowledges that their work encouraged further exploration of the legal system and gave public voice to the women who have had experience with it as they seek protection from domestic violence.

### Current context: the enormity of the problem

The World Health Organisation (WHO) has described violence against women as a "global health problem of epidemic proportions."<sup>5</sup> The WHO's 'Multi-Country Study on Violence Against Women' found that prevalence figures of women ever physically abused by a male partner ranged from 15% in Japan to 71% in Ethiopia. On average they maintain that 30% of the world's women that have been in a relationship have been sexually or physically abused by their intimate partner<sup>6</sup>. Domestic violence is rampant in all countries worldwide regardless of culture and class. When we focus on Ireland, the number of women and children who have lived with and continue to live with domestic violence is truly shocking, disturbing and sad.

The SAVI (Sexual Abuse and Violence in Ireland) report found that 23% of sexual assaults occurring in Ireland are by an intimate partner<sup>7</sup>. According to research carried out by the European Union Agency for Fundamental Rights<sup>8</sup>, 31% of Irish women surveyed had experienced some form of psychological abuse by a partner since the age of 15. This equates to nearly one in three women in Ireland who have been subjected to controlling behaviour by a partner; economic violence; abusive behaviour; or threatening behaviour. 26% of women surveyed in Ireland had experienced physical/and or sexual violence by a partner or non-partner since the age of 15. 14% of women surveyed had experienced physical violence by a partner since the age of 15 and 6% of women had experienced sexual violence by a partner since the age of 15.

However, the actual number of women who continue to live with domestic violence is unknown; the majority of women never report the violence or seek assistance. The EU FRA study<sup>9</sup> also focused

on the services that women contacted for help following the most serious incident of violence by a partner; 21% of Irish women went to the police; 20% went to hospital and 24% of women went to a doctor or other health care professional. Only 8% of women went to a women's shelter. SAFE Ireland annual statistics 2012 revealed that 8,449 women and 3,606 children received support from a domestic violence service. SAFE Ireland member domestic violence services across the country provide a range of information, support and advocacy services to women and children experiencing or at risk from violence, abuse and control, every day of the year. These services include safety, information, emotional and practical support, aftercare, support groups, transitional housing, court accompaniment and children's services. There are 20 dedicated refuges that provide essential emergency accommodation to women and their children looking for immediate safety. Victims of domestic violence have wide-ranging support needs. A core part of working with women and children to address their safety needs and the impact of domestic violence, involves SAFE Ireland member services having to navigate and respond to an array of legal, migration, housing, funding and language issues which a woman will present with to a domestic violence service.

Respondents to the FRA study were asked to cite the reasons for not contacting the police for assistance. 53% of women stated that they dealt with it themselves/involved a friend/family member. The reason for such a response may be connected to the shame and embarrassment which 16% of Irish respondents cited as reasons for not reporting. Similarly 22% of Irish women said that they did not want anyone to know and wanted to keep it private, while 18% of women feared offender reprisal and 7% of women revealed that they had been discouraged or stopped from reporting the incident. 13% thought the incident was too minor to bring attention to. 9% of women surveyed did not want the offender to be in trouble and 8% did not want the relationship to end. 8% of Irish women believed the police would not do anything while 6% of women felt the police could not do anything about the incident. 8% of women believed the incident was their own fault and 5% thought they would not be believed by police if they reported the abuse. 4% cited that someone else had reported the incident. 2% of women went somewhere else for help. And, 3% of Irish women surveyed were afraid that they would lose their children if they reported the abuse to the police.

When asked for the reasons for not contacting services other than the police, responses were similar. 70% of women said they dealt with it themselves/involved a friend/family member. Shame, embarrassment (17%) and wanting to keep it to themselves (21%) ranked high among reasons for not accessing other services. 14% of Irish women surveyed said that they thought the incident was too minor to seek help; 4% believed the abuse was their own fault; 3% were afraid that they would be blamed, and 2% feared that they would not be believed. 10% of women cited fear of the offender as a reason for not seeking assistance; 11% were too emotionally upset to seek help, and 9% of women did not know where to turn to. 2% of Irish women were stopped or discouraged from looking for help.

However, differing from the reasons given for not contacting the police, 2% of women said that there were no services available, 5% stated that services were too far away or hard to get to and 7% of Irish women cited not being able to afford a service as a reason for not seeking help. We know from *Safety in a Time of Crisis*<sup>10</sup> that the demand on services is increasing year-on-year, with resources afforded to these services being reduced consistently for the past number of years. Issues such as the reduction in rent allowance; the increased legal aid fee; and overall reductions in payments from the Department of Social Protection have posed real barriers to women accessing the supports they need to escape violence. A system that cannot ensure that a woman's needs will be met and her safety assured deters women from coming forward, leaving them and their children at high risk living with a violent partner.

# The Irish legal system and domestic violence

The Irish legal framework on domestic violence is mostly contained in the Domestic Violence Act 1996 - 2002. The 1996 - 2002 Act provides for a civil remedy to protect victims from domestic violence. The only criminal element of the Act applies to a breach of an order.

Other criminal law pertaining to domestic violence and the protection of victims can be found in the following pieces of legislation: Non-Fatal Offences against the Person Act 1997; Criminal Law (Rape) Amendment Act, 1990; Guardianship of Infants Act, 1964; Children Act 2001.

## Domestic Violence Act, 1996 and Domestic Violence (Amendment) Act, 2002

The Domestic Violence Acts, 1996-2002 grant relief for spousal misconduct and domestic violence<sup>11</sup>. The act provides civil remedies to protect individuals from domestic violence. The Domestic Violence Act, 1996 (as amended) was introduced to perform three functions:

- 1) To protect spouses, children and other dependent persons and persons in other domestic relationships where the threat to their safety or welfare is at risk because of the conduct of the other person in the domestic relationship;
- 2) To increase the powers of An Garda Síochána to arrest without warrant; and
- 3) To provide for the hearing at the same time of applications to court for other orders regarding custody and access, maintenance, conduct leading to the loss of the family home, restriction on the disposal of household chattels, and child care orders<sup>12</sup>.

The Act provides for a number of remedies to assist victims of domestic violence. These include: **barring order**, which removes the offender from the residence and also prohibits the person from further violence or threats of violence, and from watching or being near the home; **interim barring order**, which can be granted until a full hearing can be heard; **protection order**, which orders the respondent not to use violence or threaten to use violence against, molest or put in fear the applicant or any dependent person and can be made *ex parte*<sup>13</sup>; **safety order**, which prohibits the violent person from further violence or threats of violence.

## Sanctions for contravention

A respondent who breaches any of the conditions of the orders enumerated above or, in respect of a barring order or interim barring order, who refuses to permit the applicant or any dependent person to enter in and remain in the place to which the order relates or does any act for the purpose of preventing the applicant or such dependent person from so doing shall be guilty of an offence under Section 17 of the Act and liable on summary conviction to a fine not exceeding €1,904.61 or imprisonment for a term not exceeding 12 months. The penalties for breach of the barring order will be clearly stated on the order<sup>14</sup>.

Section 18(2) of the Act provides for additional powers of arrest for the Gardaí where they have reasonable cause to believe that a person is being assaulted (occasioning actual bodily harm, malicious wounding or inflicting any grievous bodily harm) and the person is someone who could apply for a safety order or a barring order<sup>15</sup>. Under this Section the Garda may enter, if need be by force, and search any place where he suspects the respondent to be without obtaining a warrant<sup>16</sup>.

## Critique of the Domestic Violence Act 1996 - 2002

Commentators on the Domestic Violence Act 1996 have expressed concerns over multiple aspects of the Act. Those aspects which garner the most concern include – the issue of *ex parte* applications; the requirements for the granting of an order; including the residence of an applicant; and the limitations on what individuals are entitled to a protective order.

### The lack of statutory guidance in granting orders

Under the 1996 Act, the court must be of the opinion that there are reasonable grounds for believing that the safety or welfare of the applicant or any dependent person requires a protective order to be made<sup>17</sup>. Nestor has noted that the definition of ‘welfare’ in the 1996 Act does not require the court to take any specific criteria into consideration when making protective orders<sup>18</sup>. He goes on to argue that the absence of any statutory guidance surrounding the concept of welfare renders the application of law uncertain and therefore creates difficulties for solicitors advising their clients<sup>19</sup>. Horgan has also expressed regret that there is not more guidance contained in the legislation for the granting of orders<sup>20</sup>. This opportunity for discretion has proven itself to be problematic for women and is evident from our research.

Further statutory guidance needs to be provided regarding the standard of proof necessary to establish abuse. This lack of statutory guidance has led to a variation of practices between district court areas. This is illustrated through data from the Law Reform Committee where 72% of respondents to the survey indicated that allegations are generally supported by the evidence of the applicant alone, with 26% indicating that evidence of the applicant and medical evidence is always required and 2% replying that medical evidence is always required<sup>21</sup>. In non-violent cases involving emotional abuse, neglect or addiction, 59% indicated that the abuse is generally supported by evidence of the applicant alone, with 22% stating that both the evidence of the applicant and medical evidence are required and 18% noting that medical or other evidence is always required in such cases<sup>22</sup>. This data illustrates the lack of uniformity in court practice, rendering the application of law uncertain, making cases difficult for both the lawyers and their clients.

### Ex parte granting of orders

Reviews of the protective orders available to individuals to protect from domestic violence and the requirements for obtaining these orders reveal the apprehension that surrounds them. For example, in exceptional cases interim barring order applications may be made *ex parte*<sup>23</sup>. Commentators pointed out that this provision had the potential to render injustice unless a speedy return date was given for the hearing of the case<sup>24</sup>. The District Court (Domestic Violence) Rules 199 provide that a return date for the hearing of the full application be inserted into the body of the interim barring order. The power to grant such orders is considered to be an excellent device for the protection of victims of domestic violence<sup>25</sup>.

Also in relation to *ex parte* interim barring orders the Law Reform Committee recommends that the district court rules be amended to require that *ex parte* applications for a protection order or an interim barring order be made on affidavit and that the respondents automatically be provided with a note of all the evidence given at a hearing. It also proposes that personal service of the barring summons should be required in all cases or at least where the respondent is barred *ex parte*<sup>26</sup>.

### The grounds required for the granting of orders

Horgan highlights the deficiency in the Domestic Violence Act 1996 as amended of not being available to certain individuals, such as persons affected by a decree of nullity, cohabitants who do not satisfy

requirements, adult siblings who want a barring order, and finally where property is owned by an adult child the court cannot bar such a child. All other categories of applicants should be protected under the legislation. Once violence occurs in a domestic situation it follows that relief should be available under domestic violence legislation. Equivalent legislation was introduced in Britain to tackle this problem where they developed the concept of ‘associated persons.’ In this way British legislation covers a larger category of persons entitled to apply for either an occupation order or a non-molestation order<sup>27</sup>.

The Law Reform Committee recommends that the residence requirement be removed for cohabitants seeking a safety order and for cohabitants with sole ownership or tenancy rights in the home seeking a barring order. It also proposes the introduction of provisions permitting parents or elderly relations to apply for protective orders against abusive relations or persons other than an adult child. These should include safety or barring orders against such relations or persons residing in the home and safety orders against those residing elsewhere<sup>28</sup>.

It also proposes the introduction of a category of associated persons who are entitled to apply for a safety order and the provision of a non-exhaustive list of persons to include those affected by or pending decree of divorce and non-cohabitants with a child in common. Also, associated persons with sole ownership or tenancy rights in the home should be entitled to apply for a barring order<sup>29</sup>.

The Law Reform Committee further recommends the introduction of either detailed statutory guidance or a list of criteria to be considered by the courts in determining whether to grant a protective order as the courts do not provide any clarification as to the circumstances in which it would be more appropriate to grant a barring order rather than a safety order and vice versa where either option is available to the court.

### The Act’s major weakness

The Act’s major weakness is that it introduces a victim to a legal process through a policy of arresting an alleged abuser regardless of the victim’s wishes, however, it refuses to take that legal process to its logical conclusion: that is a trial and possible conviction, unless the very same victim agrees to the prosecution. This creates a potentially dangerous situation. The victim is at a risk of increased violence if the abuser is informed that there will be no prosecution without the victim’s consent and the victim is statistically at a greater risk of further abuse having entered into a legal process. The essence of the problem is that a pro-arrest policy which is not supported by a mandated participation programme is inconsistent, and may expose victims to a risk of retribution. If we force a victim into a legal process through a pro-arrest policy then we must extend the added protection of a mandated victim participation scheme to that same victim.

### What about the children?

As with most research on domestic violence and the legal system in Ireland, there is unfortunately a limited amount detailing the impacts of domestic violence and the implications of the legal system on children in Ireland. From the research we explored, we have identified the main issues found within the legal system appropriate to the protection of children from domestic violence.

### *In-camera* rule and the *Guardian Ad Litem*

Coonan has explored the implications of the *in-camera* rule in family law and issues relating to child welfare and offers the court recommendations to improve the experience for children involved in these situations. Coonan argues that when exercising its discretion, the court should have regard to two different lines of analysis<sup>30</sup>. The first views the admissibility of a victim support worker as warranted due

to the fact that children are vulnerable witnesses. The second line of reasoning Coonan uses is that a trial judge sitting in children's court may also have regard to the law in relation to McKenzie friends<sup>31</sup>.

It is argued that where a child victim is unable to testify in the absence of a support worker, a refusal to allow that person to attend proceedings in the children's court violates that child's constitutional right of access to the courts<sup>32</sup>. In the US, under the Victims of Child Abuse Act 1990, a child testifying in court is entitled to an adult attendant who provides emotional support and who may also remain in close proximity to the child when giving evidence<sup>33</sup>. Similar legislation exists in Canada, Western Australia and Scotland where Section 271L of the Criminal Procedure (Scotland) Act 1995 empowers the trial judge to permit a 'supporter' to accompany a child witness to court<sup>34</sup>.

## Section 47 reporting

Horgan and Kelly have also examined the mechanisms in place to protect children in situations of domestic violence. Their attentions were drawn to Section 47 of the Guardianship of Infant Act 1964 and they conclude that there are various shortcomings relating to Section 47 reporting. They argue that while it cannot be expected that judges, who may not have any specific training or expertise in this area, make decisions concerning the welfare of children without sight of a report setting out the views of a suitably qualified expert, the costs involved in preparing such reports can be enormous given the involvements of private practitioners such as psychologists and psychiatrists; and the fee involved may go far beyond the means of some families<sup>35</sup>. The court is conferred with a general discretion to determine whether both parties to the proceedings or only one party should pay the fees and expenses incurred in the preparation of a Section 47 report and, where it directs that both parties are to contribute, it may also determine the proportion of such fees and expenses to be paid by each party<sup>36</sup>. Preparation of a thorough Section 47 report is very time consuming, usually taking approximately three months from receipt of initial instructions to the completion of the report<sup>37</sup>. The absence of any specific guidance or training for judges in dealing with child welfare and family law matters means that they must exercise their own discretion and judgment, inevitably resulting in a lack of consistency and a divergence in practice<sup>38</sup>.

It has been argued that Section 47 reports should be carried out as a matter of course in all cases involving the welfare of children<sup>39</sup>. It is also submitted that a number of the problems with the system might be alleviated by the formulation of clear guidelines for judges, practitioners and the experts themselves. Such guidelines could deal with issues including letters of instruction, matters to be addressed by the experts, the manner of assessments, the recommended time frame for conducting assessments, and the parties who should be assessed<sup>40</sup>.

## Access

Access to children, by the perpetrator after separation, has proven to be an issue which requires a cautious response. The Law Reform Committee's survey supports the important role of court orders providing for supervised access, however when asked whether after the grant of a barring order on grounds of domestic violence, access to children results in further problems, 67% of respondents replied that access often gives rise to problems while 30% reported that access rarely does so. Only 1% of respondents reported that access arrangements never resulted in further problems. Though the courts often make orders for supervised access arrangements, the Task Force on Violence Against Women considers that this supervision should be provided by a trained professional who is aware of the potential dangers in each situation<sup>41</sup>.

# Government obligations and policy context

Ireland has attempted to address the issue of domestic violence in recent years with a number of initiatives. Policies on domestic violence have been forthcoming from statutory agencies such as An Garda Síochána, the Health Service Executive (HSE), and the Probation Service. The Irish Government have also committed to a number of international and regional human rights treaties and instruments, which contain provisions to protect from and prevent domestic violence.

- The 1997 Task Force on Violence Against Women appointed by the government in 1996 called for a more holistic and integrated approach to domestic violence and highlighted the importance of adequate provision of services for victims and perpetrators of domestic violence. The task force produced a report which contained a definition of domestic violence which has been widely used among statutory agencies since<sup>42</sup>.
- In accordance with the recommendations of the Task Force a National Steering Committee on Violence Against Women (NSCVAW) was set up. The NSC was commissioned to develop public awareness campaigns; establish regional planning committees; oversee funding and distribution; and explore policies in relation to justice interventions and service provision for victims and perpetrators.
- In 2007, the new office for the National Office for the Prevention of Domestic, Sexual and Gender-based Violence (Cosc) was established. Cosc was set up by the government to strategise for service provision that is in a coordinated and efficient manner.

Cosc's National Strategy on Domestic, Sexual and Gender-Based Violence 2010 – 2014<sup>43</sup> contains provisions to reform the legal system and improve the experience and outcomes for individuals turning to the legal system for a remedy.

Action 2 of the strategy seeks to promote and develop understanding and recognition of domestic, sexual and gender-based violence across the state sector; this includes conducting an analysis of training needs for all relevant justice sector organisations including identification of areas suitable for cross-sectoral training.

Action 12 of the strategy aspires to minimise attrition in domestic and sexual violence cases, where appropriate by, a) Developing a greater understanding of the extent and nature of attrition in domestic and sexual violence case, and, b) Developing proposals to minimise attrition in domestic and sexual violence cases, where appropriate, including an examination of the feasibility of pre-trial hearings in sexual violence cases.

Action 14 of the strategy is to strengthen measures to manage the risks posed by sexual and domestic violence perpetrators by, a) Providing for pre-sentence risk assessments for the courts in relation to convicted sexual violence perpetrators, b) Further developing current risk management arrangements for convicted sexual violence perpetrators, c) Exploring the feasibility of multi-agency risk management arrangements for unconvicted sexual violence perpetrators, and, d) Developing and implementing risk management arrangements for high-risk domestic violence perpetrators.

Action 18 of the strategy aims to update the law on domestic violence to give further protection to victims; however the strategy contains no real indicators of how this action is going to be achieved.

While these incentives were greatly welcomed in 2010, now in 2014 at the end of the proposed timeline it is clear that the strategy has not delivered on all these objectives and we must reconsider these objectives and address them.

## Other institutional policies

Earlier, the report cited the European Union Fundamental Rights Agency's study on violence against women<sup>44</sup>. Women reported that they accessed a number of different agencies for assistance, indicating the diverse range of needs women leaving violent relationships have. It is necessary therefore to examine and explore these agencies and what their policies are in responding to domestic violence.

### The Child and Family Agency

The Child and Family Agency (Tusla) was established in 2014. The statutory responsibility for domestic violence which previously resided with the HSE, now lies with Tusla. Contained in the Child and Family Agency Act 2013, the remit of the new agency includes:

"Without prejudice to the generality of subsection (1), in supporting and encouraging the effective functioning of families pursuant to subsection (1)(c), the Agency shall provide-

- (a) preventative family support services aimed at promoting the welfare of children,
- (b) care and protection for victims of domestic, sexual or gender-based violence, whether in the context of the family or otherwise, and
- (c) services relating to the psychological welfare of children and their families."

### HSE

The Health Service Executive's (HSE) Policy on Domestic, Sexual and Gender-Based Violence<sup>45</sup> focuses on a strength-based approach to the issue and has eight main goals:

- 1) To ensure that a comprehensive and appropriate Health Service response is delivered at all points of entry to the Health Service Executive.
- 2) To promote primary prevention of violence and invest in early intervention.
- 3) To provide best practice in all service provision to victims of domestic violence and/or sexual violence.
- 4) To support multi-sectoral approaches.
- 5) To ensure the safeguarding of children in situations of domestic violence and/or sexual violence.
- 6) To ensure data collection as a basis for driving high quality and more relevant service development.
- 7) To monitor and evaluate service provision
- 8) To ensure consumer involvement.

The HSE define domestic violence using the definition of the 1997 Task Force:

"Domestic violence refers to the use of physical or emotional force or threat of physical force, including sexual violence, in close adult relationships. This includes violence perpetrated by a spouse, partner, son, daughter or any other person who has a close or blood relationship with the victim. The term "domestic violence" goes beyond actual physical violence. It can also involve emotional abuse; the destruction of property; isolation from friends, family and other potential sources of support; threats to others including children; stalking; and control over access to money, personal items, food, transportation and the telephone." (Report of the Task Force on Violence Against Women 1997)

The HSE have also produced a practice guide<sup>46</sup> for working with families and children living with domestic violence, which details the procedures to be carried out for recognising, responding and referring those individuals who are experiencing domestic violence.

## An Garda Síochána

An Garda Síochána have also issued policy on domestic violence intervention. In their policy document, Gardaí are advised on the procedures for dealing with a scene of domestic violence, to take proper evidence and to inform the victim of their options. Gardaí are ordered to treat the situation with sensitivity, respect and understanding. There are sections on cultural awareness and situations involving domestic violence and disability, they also provide guidance for situations involving elder abuse.

The Garda policy on domestic violence has a strong emphasis on the Garda's duty to provide information and support to the victim of the abuse.

They define domestic violence as follows:

“Domestic Violence includes the physical, sexual, emotional or mental abuse of one partner by the other partner in the relationship which may or may not be one of marriage or cohabitation and includes abuse by any family member against whom a Safety Order or a Barring Order may be obtained by another family member.”

The policy on domestic violence also states that Gardaí are to work with a pro-active approach to arresting and charging perpetrators where there are reasonable grounds and the pieces of legislation which are appropriate to use to this end are listed as follows:

- Domestic Violence Act, 1996 (as amended);
- Criminal Damage Act, 1991;
- Non Fatal Offences Against the Person Act, 1997;
- Criminal Law(Rape) Amendment Act, 1990;
- Criminal Justice Public Order Act, 1994;
- Children Act, 2001 – S.254 (Offences Against Children); and
- Breach of the Peace at Common Law.

Ireland has no criminal code pertaining to domestic violence. When, or if, criminal sanctions are to be brought against a perpetrator, these other pieces of legislation are used to prosecute the suspect. The policy document also contains information on the domestic violence orders available – what they mean and who may apply for these orders.

## The Probation Service

The Probation Service policy on domestic violence<sup>47</sup> uses the definition of domestic violence provided by the Report of the Task Force on Violence Against Women 1997<sup>48</sup>. The policy emphasises the safety of the victim as paramount, and advises that the safety of the victims and children is the primary guiding principle.

Contained within the policy are guidelines for pre-sanction reports; victim safety; service reports on persons whose index offence is linked to domestic violence; meeting the offender; contacting the victim; interviewing the victim; children and child protection; risk assessment and proposals to the court.

The probation service has the task of supervising the offender and offering recommendations to the court on the case; it is therefore vital that the probation officer is fully informed, understands the nature of domestic violence and the risks in each case are identified from the earliest opportunity. According to the policy, probation officers must have knowledge of the risk factors associated with domestic violence

when discussing a case with an offender. If an officer has received training, they must carry out the Spousal Assault Risk Assessment (SARA)<sup>49</sup>.

The probation officer must focus on all risk factors but in particular the offenders attitude to the victim, the level of awareness of the impact of the crime upon the victim, the degree of remorse and the victim's perception of risk (if available). Upon detection of risk factors the officer must share his findings with the victim in a sensitive and supportive manner. The presence of risk factors and the need to manage such risks will also be shared with the offender.

The assessment will indicate the level of risk and intervention required. The findings of the risk assessment must be included in the proposal/conclusion of the report to the court. An outline of a risk management plan will be included in the proposal of the report. If an offender is at a medium to high risk of re-offending and is in denial of this risk the recommendation from the probation service is that this individual would be unsuitable for supervision in the community.

Offenders who have been identified as at high risk of re-offending, and acknowledge their offending with a proven commitment to rehabilitation should be considered for a referral to a perpetrator programme. The referral will assess the suitability of the offender to the programme. Where there has been a low to medium risk of domestic violence re-offending and there is not a perpetrator programme available, that individual will be recommended to engage with probationary supervision using one-to-one interventions<sup>50</sup>.

The policy also emphasises the importance of a working relationship with the Gardaí, domestic violence specialist services and the courts service in order to ensure the safety of the victim and children.

## International policies responding to domestic violence

Since the 1970s the scientific, clinical, and feminist community have been debating the best way to conceptualise and respond to domestic violence. The international community, both globally and regionally, have issued a number of policies and instruments to combat violence against women and domestic violence since the late 1970s.

- In 1979, the UN enacted the Convention on the Elimination of All Forms of Discrimination Against Women. The convention defines discrimination against women and provides a programme of action to end discrimination against women.
- In 1992, the Committee on the Elimination of All Forms of Discrimination Against Women, adopted General Recommendation 19 to CEDAW which specifically named gender-based violence as a "form of discrimination which seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."
- The 1993 World Conference on Human Rights declared violence against women a human rights violation. The Vienna Declaration highlighted the importance of working to eradicate violence against women.
- Following from the Commission of the Status of Women in 1993 the Declaration on the Elimination of Violence Against Women (DEVAW) was the first international declaration to explicitly address violence against women. While DEVAW does not have the same legal binding as a convention or treaty it sends a strong and clear message to the international community. It also provides a framework for international and national action to address the issue.
- In 1994, the Commission on Human Rights appointed a Special Rapporteur on Violence Against Women, Its Causes and Consequences.

The appointment of a Special Rapporteur on the Causes and Consequences of Violence Against Women was greatly welcomed and the role has since advanced many issues on the international agenda. Rashida Manjoo and her predecessors have worked tirelessly to establish the notion of 'due diligence'<sup>51</sup> in regard to domestic violence and also state responsibility to tackle the issue by supporting its victims, and holding perpetrators accountable for their crimes.

Domestic violence has been established as a human rights violation, and therefore governments must exercise due diligence in tackling the issue. The silence and secretiveness of this crime has resulted in a privatisation of the horrendous abuse women endure from their intimate partners. The work of the Special Rapporteur on Violence Against Women has acted to highlight domestic violence as an issue of public concern. The Special Rapporteur produces both country reports as well as thematic reports on the issue each year.

- Also in 1994 the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women – this convention was the first regional legally binding instrument against violence against women.
- The Beijing Declaration and Platform for Action was adopted by the Fourth World Conference on Women 1995, where ending violence against women was included as a priority area for action. It also called on states to take action and identified specific ways in which states could do this.
- Five years after the Beijing Declaration and Platform for Action, Beijing +5 documented the progress that had been made in tackling violence against women. It also set forth goals to achieve in ending violence against women.
- In 2011, the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence was introduced. The Istanbul Convention would bind governments to train all professionals working in the area; run awareness campaigns; increase police power to arrest in situations of immediate danger; provide sufficient support services for women; ensure access to information. The convention also names, defines and criminalises different aspects of domestic violence and would call governments who sign the convention to do the same within their own laws where these laws do not exist currently. Currently the Convention is under review by the Irish Government.

Ireland has also signed and ratified the following treaties and instruments relevant to the protection of women from domestic violence: The International Bill of Human Rights comprised of The Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights 15 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of all forms of Discrimination against Women along with its optional protocol; the Convention against Torture and Other Cruel Inhuman, or Degrading Treatment or Punishment; and The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

More recently Ireland has opted into the Directive 2012/29/EU of the European Parliament of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. The directive must be transposed into national law by November 2015. Contained in the directive are a number of provisions to directly protect individuals experiencing domestic violence throughout the judicial trajectory. With specific regard to the legal system's obligations under the directive a number of changes must be implemented in order for Ireland to satisfy its commitments.

The directive highlights the particular risk that victims of such crimes as domestic violence are at for secondary or repeat victimisation. Individual assessments must be carried out at the earliest opportunity for such risks to be effectively identified. Article 20 of the directive provides for the protection of victims

during the criminal investigation. It is advised that in cases such as domestic violence the victim be assessed to determine whether they have special needs, these needs must be accounted and catered for during the judicial trajectory. Special protection measures which aim to protect the victim from further harm during the criminal process noted in the directive include conducting interviews without delay; the number of interviews is to be kept to a minimum and victims may be accompanied by their legal representation or other support of their choice. This article recognises the importance of having a support person in place for the victim, which strengthens the role played by domestic violence support workers.

Gardaí will now be tasked with informing the victim of their rights to information about any ongoing criminal proceedings, any decision not to proceed with proceedings and reasons for this, when a perpetrator is released and the place and time of the trial (Article 4). Currently this information needs to be requested by the victim, and while this practice will remain, many victims are not aware of their right to this information.

The directive ensures that complaints made by a victim will be acknowledged with a written receipt by the relevant authority (Articles 4 and 5). The directive also bolsters the state's responsibility in providing translation and interpretation services to all victims who face a language barrier (Article 5). The state should supply these services from the first point of making a complaint and any point along the judicial trajectory so that the victim can understand and be understood fully.

The directive echoes other international and regional human rights documents when it enshrines the victim's right to be heard in court and to give evidence (Article 10). This right is extended also to any child victims of crime.

Training for police, court staff, judiciary and the legal profession in general should be made available, on violence within close relationships and the needs of the victims affected by this crime (Article 25). The directive would mean that training would be rolled out nationwide to all Gardaí, and court staff. Generic and specialist training on victim's needs should be provided. Training on domestic violence is to also be made available to the judiciary and the legal profession.

## Challenges to seeing the gendered nature of domestic violence

While both men and women experience domestic violence, the nature and dynamics of male-to-female and female-to-male violence differ. Evidence from national crime surveys, police, court and hospital reports show that the overwhelming majority of people experiencing domestic violence are women<sup>52</sup>. Women are not only more likely to experience violence from an intimate partner, but are significantly more likely than men to be injured from attacks by their partner<sup>53</sup>. Yet the challenge to a discussion about violence against women and children is invariably that this issue cannot be addressed without also, or first, addressing the issue of men who experience violence. One only has to do a cursory review of the internet search results for domestic violence and the comments the subject receives to understand the extent of the denial of violence against women. You will see claims that the violence is either instigated by her, or that it is mutual or in defence. It also simply insists that the discussion be changed to a discussion about violence against men; the effect of this deflection is that it ends the discussion about violence against women and it becomes a conversation about violence by women. It is an argument that also denies and distracts from the international data. Domestic violence has been established as violence with aetiology rooted in historic gender power imbalances. The UN state that “Gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>54</sup> The WHO, as well as other international and regional human rights bodies, has also declared violence against women and domestic violence as a gender-based phenomenon<sup>55</sup>. This argument is supported by international data on violence against women; the US Department of Justice have estimated that 95% of the victims of domestic violence are women<sup>56</sup>. The Beijing Platform for Action declared violence against women as a result of unequal power relations between men and women, which has led to a domination and discrimination of women by men. Violence against women prevents women from reaching their full advancement, and both violates and nullifies a woman’s right to the full enjoyment of her human rights and fundamental freedom<sup>57</sup>.

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SAFE Ireland’s MAN UP campaign wants men to see men not only as possible offenders but as empowered bystanders who can confront abusive peers. Our recent video campaign addressed men who abuse their partners, highlighting their behaviour as unacceptable, rather than focussing on the repercussions for women. We would like men to stop looking the other way when a friend or colleague is abusing his female partner, or is abusive about, or to, girls and women in general. We ask them to have the courage to look inward and question their own attitudes, to be an ally to women who are working to end all forms of gender violence.

SAFE Ireland does not condone violence of any kind against any member of society. Its member services protect both male and female children. However, from a practical perspective, existing domestic violence services cannot support both adult men and women from the same premises. SAFE Ireland wants to have an open dialogue with men about the phenomenon that is violence against women and children.

### The exception becoming the rule

The woman who won't leave, or who drops the prosecution at the last minute, who doesn't want it to end with a criminal prosecution often dominates debate to the point that domestic violence is reaffirmed as a private problem public society can never solve<sup>58</sup>. Although there are women who want alternative solutions to barring orders or criminal prosecution, not one of the women we interviewed really said this. They almost all said that they wanted the protection and/or punishment provided for by law.

When the 'woman who won't leave' or the 'woman who drops the prosecution' dominates the discussion about domestic violence, we forget the women that we actually meet and the thousands like them who want the legal remedies the law provides. Though it is difficult to understand, there are many women who ask the court to stop abuse, that the man does not even deny to the court, who are still not given the court's protection, while often that man is also given access to the children.

# Research methodology

## Why use first-person narratives?

Our member services tell SAFE Ireland that the women they support are really struggling with the legal system. This feedback ranged from standout stories of dereliction of duty to repeat stories for example, of refusing to deal with violence if the woman who was being abused defends herself.

More recently, we listened to first-hand accounts made by women during other SAFE Ireland research<sup>59</sup>. A group of women who experienced domestic abuse and violence were asked to list the crimes committed by their partners against them and their children. Out of a total of 13 women who took part in the project, not one man who battered and controlled had been prosecuted for the crimes he committed. This is disturbing when you hear that they include: repeated rape; child abuse; murder of the unborn child; attempted murder; threats to kill; assault causing harm; harassment; mental torture; bullying; stalking; and false imprisonment.

Few of these men were treated as criminals even though the women they hurt had reported to state institutions such as the HSE, hospitals, An Garda Síochána, court clerks, legal professionals and judges. We heard that often men who abuse use the family court system, access to their children and financial control through maintenance, to continue to control, abuse and violate these women and their children, after the relationships have substantively and even legally ended. It appeared that the state was failing in its constitutionally mandated purpose, through the courts, to vindicate the personal rights of the citizen.

We believe that the reader can only get to know the individual by hearing their story in full. Each person asking the legal system for protection from domestic abuse and violence must be heard and to the greatest extent possible, understood. She must be heard as a person, like any other, with rights and needs, aspirations and failings.

First-person narratives have long been used in reporting on human rights violations. More recently, they have been used in the US to look at domestic violence and the legal system. In order to understand and to draw from this report we will attempt to summarise some of the theories behind first-person narrative qualitative studies and to note some of the criticisms of them. Miller<sup>60</sup> distinguishes stories from narratives, explaining, "A story describes an account of a happening, while a narrative denotes a broader theme or meaning. Stories are the raw material of personal experience; narratives are a construction from those stories." Narratives can bridge the gap between the law, which is largely abstract, and the individual experiences of the humans involved in legal proceedings.

There is also perhaps a benefit to the women who have lived with abuse and who share their narratives with society. Lawless<sup>61</sup>, who conducted narrative research with women in Missouri, says that in telling their stories, many women who have experienced violence are able to construct themselves for the first time. Lawless believes that the time the women spent telling their stories to her allowed them to try to make "some sense of a life that perhaps has not made a great deal of sense to her as she has lived it." The SAFE Ireland interviewer also experienced this, as have our members and advocates working on

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"If we are careful to listen to women when they describe the harms they experience as women, we are likely to get the legal theory right..."

Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S LJ. 191, 205 (1989- 90)

other SAFE Ireland research<sup>62</sup>. The almost universal criticism from them of the legal system was that no one would listen to them, that they were not heard. Not only did the SAFE Ireland interviewer listen, but their narratives were transcribed and SAFE Ireland is committed to giving these to Irish society, through the government, the legal system and the media.

“Law lives on narrative, for reasons both banal and deep. For one, the law is awash in storytelling. Clients tell stories to lawyers, who must figure out what to make of what they hear. As clients and lawyers talk, the client’s story gets recast into plights and prospects, plots and pilgrimages into possible worlds. Those stories are then told to judges, who retell them in findings of fact, conclusions of law and orders.”<sup>63</sup>

Amsterdam and Bruner’s description of how narratives are the mainstay of the legal system will resonate with those who work with the Irish courts. Descriptions of the legal system have little value and are unconnected to the women’s experiences, and stories are the means by which human beings understand and relate experiences. While quantitative research is of huge value, it is presented as pages of statistics which demonstrate the extent of the problem of violence against women and children, but do not lead us to the reasons why SAFE Ireland’s members need more and more beds each year rather than less, despite how we are progressing with this issue. They don’t reveal how an increase in numbers may be a good thing – illustrative of a reduction in the needs-must acceptance of a violent marriage, for example. As referenced earlier, Ireland’s national domestic violence services annual statistics are quite overwhelming. From those thousands we want you to pluck the women who have given you their stories, and to see society’s individuals behind those numbers.

Narrative analysis has two goals: to understand how people and/or groups make sense of their experiences and to describe the social worlds they inhabit and social resources, “they draw on, resist and transform as they tell their stories.” Goodmark reminds us that: “Narratives are not simply offered in a vacuum, but rather used to construct theory.”<sup>64</sup> Leigh Goodmark’s words come from an article she wrote analysing why the Battered Women Speak Out Research into domestic violence and the legal system in Massachusetts was criticised by the some of the judiciary. This is the description of the Battered Women Speak Out Study<sup>65</sup>:

“This human rights report documents and analyzes instances in which the Massachusetts family courts are violating internationally accepted human rights laws and standards. The report focuses specifically on cases involving child custody and visitation issues where there is a history of partner abuse. In the vast majority of examples discussed in the report, the family courts also are violating Massachusetts’s law and policy... Our findings are based primarily on the in-depth testimonies of 40 battered mothers who experienced family court litigation in 11 of the 14 counties in Massachusetts.”

In particular, the judges made the argument that first-hand accounts, first-person narratives such as these, are not “good science” and require some sort of external verification. Goodmark<sup>66</sup> argues that asking for external validation on these types of “unverifiable” claims misses the point of the report. The relevant inquiry is not how many battered mothers received poor treatment on a number of dimensions at the hands of state actors. Instead, the question being asked is how and why battered mothers perceived that they were being mistreated by the family court system. Only the narratives of the battered mothers involved with the system can answer that question.

The authors of Battered Mothers Speak Out note that human rights documentation’s central source of information is first-hand testimonies of the survivors. Typically, these are the very voices that are muted or silenced by the government and society. In human rights documentation, survivor accounts are corroborated by witnesses, with fact checking, secondary research, and interviews with state actors carried out<sup>67</sup>. Still, survivors’ voices remain paramount to the process of investigation. Why shouldn’t the

voices of Irish women abused in their homes not be given the same weight in society's dialogue on this issue? In fact, first-person accounts of events and facts are the bedrock of our legal system: the courts rely on *in vivo* evidence or on evidence on affidavit as trustworthy enough for it to make its judgements. SAFE Ireland hopes that providing the women's narratives in their complete form will allow you to form an opinion of the evidence in the same way that you would listening to a witness in a courtroom.

Goodmark<sup>68</sup> says that the persuasiveness of a narrative is in turn affected by whether the narrative is perceived as true, as typical, and can create understanding in a listener who has not shared the experience. You will recall the prologue to this report and the interviewer's realisation of the part that our personal experience, or lack of, plays in preventing us from gaining a deeper understanding of this issue. The reader, the judge, the legal professionals hearing accounts of abuse or violence in isolation from the rest of a woman's life story can find him or herself in a state of disbelief.

The minute Gittany threw his fiancée, Lisa Cecilia Harnum, off the balcony of their high-rise apartment in a fit of uncontrollable rage in July 2011 he left a trail of clues that would inevitably lead to his downfall. The case against Gittany had almost everything a prosecutor could ask for: CCTV footage leading up to the murder, a string of abusive text messages, intelligent witnesses the victim had confided her fears to. Most importantly of all it had a smoking gun - a reliable eyewitness. But, Gittany persisted in maintaining his innocence. In a verdict that took more than four hours to deliver, Justice McCallum said she found Gittany to be "glib and unconvincing," that he lied "with telling ease" and distorted the truth when he took the stand in an attempt to discredit the woman he murdered. She said, "At many times in his evidence the accused struck me as being a person playing a role, telling a story which fit with the objective evidence but which did no more than that." Justice McCallum in part made her decision based on his story, his account of their relationship and his narrative of the events on the night his partner died. With all the objective evidence available to the court the judge still assessed his story, his narrative and she found, "His account of what happened appeared to exist on borrowed detail. It lacked originality and the subtlety of actual experience." Like the judge in the Gittany case we can assess whether the incidences of abuse recounted by the women in this report have the subtlety of actual experience.

<sup>1</sup> Extract of an account of the trial taken from: <http://www.theaustralian.com.au/news/nation/judge-says-evidence-by-simon-gittany-in-the-high-rise-murder-case-was-distorted/story-e6frg6nf1226769495096#sthash.RUBeWFH2.dpuf>

Reforming the legal system’s response to domestic violence may require more fundamental reform than consolidating existing legislation or adding more law or policies because the policies in place, as described in these narratives, are not performing. It requires a universal perspective, a specific perspective, and all points in between. Then we can begin to identify the many, often conflicting, voices within ourselves. It requires that we listen to these narratives and that we provide support to those engaging with how difficult this subject is so that reform will be meaningful.

## The desk-based research

Upon commencing this research a large desk-based study was conducted. The researcher focused first on the Irish legal framework and domestic violence. An extensive search was carried out to identify any literature on the Irish legal system and domestic violence, this included reviews, official reports, legal doctrine, case law and articles contained in law journals. All information was then compiled, and this provided a knowledge base which was referred to throughout the entire research process.

International literature, legal frameworks and laws, mechanisms and theories were then explored. In addition a review of various countries’ definitions of domestic violence was conducted along with a review of the specialist court models in place around the world. To do this the researcher engaged online journal databases, books, official government documents and reports, conference materials and conversations with academics and advocates of this subject to ensure a varied but solid foundation was established before embarking on the qualitative research. Following a preliminary analysis of the qualitative interviews, core themes were extracted and explored using the international literature available.

## The interviews

This report is based on the narratives of 13 women in Ireland who have engaged the legal system because they experienced domestic abuse or violence. Their narratives are analysed for common themes, illustrated with extracts from other narratives and followed with our review of the academic research on the subject. We also interviewed people who work at the front line with SAFE Ireland’s domestic violence member services. Most provide women with a court accompaniment service that includes all or some of the support required such as: filling in court forms; applying for legal aid; and attending court.

To be included in the study, a woman had to: have experienced abuse and/or violence from an intimate partner; have engaged the legal system, (meaning An Garda Síochána and/or the courts and/or Alternative Dispute Resolution (ADR)) with that partner in the Irish legal system; have expressed either praise of, or grievances about court processes and/or actors; and be willing to speak with a documenter.

Resources limited the size of the study. However, care was taken to meet women from around the country and from different backgrounds. Some of the women were born here, some were not. The age range is from 32 to 72. While we managed to include a representation of minority groups such as women

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“One of the remarkable qualities of the story is that it creates space. We can dwell in a story, walk around, find our own place. The story confronts but does not oppress; the story inspires but does not manipulate. The story invites us to an encounter, a dialog, a mutual sharing.”

Henri J. M. Nouwen *The Living Reminder*. NewYork: Seabury Press, 65-66. 1984

of colour and women living with disabilities, we have not yet interviewed any lesbian or transgender women, and, although scheduled for interview, a member of the Traveller community could not attend. Some of the women had children, some did not. Some were married and some were not. Most were in long-term relationships; none of the relationships were what is described now as 'dating,' though one relationship was relatively short in duration.

We met and interviewed 13 women and six service providers. Interviews with the 13 women who had experienced domestic abuse and the legal system were conducted on a one-to-one basis. Interviews with the six domestic violence service providers were semi-structured and were carried out either one-to-one with the researcher, or in some cases, two support workers took part in the interview. All interviews were recorded, and later the audio recordings were transcribed by a transcription service. Strict confidentiality agreements were put in place with the transcribers.

## A thematic review

Our researchers identified preliminary themes emerging across the interviews, such as 'the right to be heard.' These themes were further explored by re-examining each interview for accounts of these major themes. As the data became more familiar, subsequent themes emerged. The interviews had common threads, apparent in each woman's experience of the legal system even though their individual circumstances differed. Coding categories were established, for example: 'animal cruelty by the perpetrator' and each interview reviewed again with these coding categories in mind. Then overarching themes were developed such as 'risk factors' to include similar codes.

Three researchers worked on the thematic review to ensure thematic relevance and validity. The interview transcripts were audited several times in order to include all examples of a certain theme. Excerpts of the women's own words were then extracted from the transcripts to represent the presence and commonality of the overarching themes. The interviews were also case-studied as first-person narratives, and a number of these have been included in this report, allowing another comprehensive review of the data. The interviews with service providers provided a means for further validating of identified themes and code categories.

## Anonymising the interviews

While all details of a woman's story are significant in conveying her experience, for safety reasons some aspects of the women's stories had to be removed or altered. Every effort has been made to preserve the essence of each woman's experience but because of the high-risk nature of domestic violence, safety takes precedence.

The process of anonymising the interviews first involved removing all obvious identifying features, e.g. names, places, or dates. The search option in Microsoft Word was used to search for names and other identifying factors to ensure that all had been removed. We read each transcript again and highlighted parts that contained situations that could be identifiable. On another read, these situations were either completely removed or details were edited. The women's words have been altered, where relevant, so that they cannot be identified from their speech style.

SAFE Ireland is aware that breaking the silence around domestic violence serves a great public interest. So, we have tried to balance protecting the anonymity of those in the narratives with shining a light on this issue. We have taken care when making these alterations not to edit the substance of women's narratives. We aimed at all times to preserve the character, and individuality of each account so that you could meet these women as real people and not as a set of distressing and disturbing circumstances.

SAFE Ireland has learned through the publication of its annual census that the most obscure detail of an abuser's violence is similar to a dozen other accounts that we are aware of. So, by way of example, a man who controls his wife by repeated threats and attempts at suicide sounds unique, but it is not unique; it is very common. The cruelty to and killing of family pets is common. A man's manipulation of the family law system to control and dominate the woman is repeated over and over across county, colour, and religion. Therefore, any attempt to identify an individual or family from a narrative in this submission is pointless, because these women are not just telling their own stories - without knowing it, they are telling many, many women's stories.

## Language

We have minimised the use of the terms: 'victim', 'survivor', or 'battered woman', all of which reduce women to their experience of violence and ignore the other facets of their lives. The word: 'victim', also conjures a picture of the recognised domestic violence victim and excludes those who don't fit the stereotype. So, we have tried to say instead: women who live with or experience violence. These terms are intended to bring attention to the violence women face without describing them only as a product of that violence. Most of the language used when talking about this subject also ignores the role of the men who control and who carry out the abusive and violent acts<sup>69</sup>. It erases those men from the subject that is squarely about them. Therefore, in this report we also describe 'perpetrators' instead as: men who abuse, or men who use violence.

These language constructions may also remind men that domestic abuse and violence in Irish society is their issue too. It may also lift women who experience violence from the stereotype and its narrowing of the law and their options. We have to begin to see women who have lived with abuse and violence as individuals who have different desires and constraints; using this language construction, while less compact, is at least a step in that direction.

# Narratives of women who have experienced abuse, violence and the legal system

Given the importance of meeting these women and engaging with their experience we have reproduced eight of the 13 narratives almost in full. We identified themes common to all or many of the narratives and chose eight themes from them. We then extracted parts of each narrative where they best illustrated the theme.

With a small and diverse cohort like this it is difficult to claim a definitive pattern, but that is not the aim of this report. We simply hope that this starts an analysis of the issues, which in turn can lead to action.

The themes are:

1. The right to be heard;
2. The consequences of the court not hearing the evidence.  
High-risk factors: the case of cruelty to animals;
3. Consistency and continuity in the application of the law;
4. The victim and perpetrator stereotypes;
5. The importance of good advocacy, expertise and policing;
6. The need for a legal definition of domestic abuse and violence;
7. Why she doesn't just leave – the barriers to safety and help-seeking; and
8. The dangers of a fragmented system – the continued case for a multi-agency approach.

“

“That women have voluntarily engaged law at all is a triumph of determination over experience. It has not been an act of faith.”

Catherine McKinnon, *Reflections on Sex Equality Under Law*, 100 Yale LJ 1281, 1284 (1991)

## 1. The right to be heard

One of the most fundamental rights in Irish law is the right for both sides of a dispute to be heard. In fact one of the paradigm changing cases<sup>70</sup> in recent years, in domestic violence law, focused on the right of the man alleged to be using violence to be heard by the court. It also looked at the right to fair procedures in the granting of an interim barring order against him. The right to be heard is one of natural justice<sup>71</sup> and is also enshrined in Irish constitutional law.

To a large extent the women's narratives show that in practice the same right was not afforded to them or in some cases to the children of the relationship. Many illustrate some difficulty with being heard from the moment they contact the Gardaí to when they are before the court.

### Ciara

*"I was walking on eggshells for years and I didn't realise I was in a domestic violence situation even though I was being hit and bet, and it was very easy for that person to hit. Anything could startle him. It could be the way you look at him, it could be that you mightn't answer him right and he would just lash out at you. The sexual violence was... I didn't realise... I knew what was happening to me wasn't right but I didn't realise until I went into the counselling what he was actually doing to me. If I didn't do what he wanted me to do, myself and the kids would suffer the consequences. He'd get into really bad form and start fighting and hitting us, so I sort of went that way, just to keep me and my kids safe.*

*He had control of the finances as well. He'd give me the card for shopping, his bank card, but I'd hand back the card and hand back the exact change every week. I'd have no money for the week. If I wanted to buy a paper, or buy a mineral, I had to use my child benefit. I had to look after all the children's needs from the child benefit. He was trying to control everything. He'd spend all for himself, he'd go up and he'd buy maybe something, jeans for €180 or something, and I'd be standing there watching him like, and he would never pick up anything, he'd bring you up to the shops, and he'd pick up all the best for himself. I deserved nothing but he had to have everything. He never said why the marriage was like that.*

*It got to a point where it had gone on for too long; I had enough. I was bet through my pregnancies. The last incident where my ex-partner flew into a rage, forcing me to lock myself and the kids into a room for a day drove me to get a protection order. I rang the guards in another town. So the guard said maybe if I go out you will suffer because you've no protection order or safety order. And I said, 'yeah, that's what I'm worried about.' And he said, 'is there no family member you can contact?' And I said, 'like, no, really.' So we just stayed in the room.*

*The kids got nothing to eat from about six o'clock until eight o'clock, until he went out. They were afraid to go to the toilet; I was afraid to leave the room in case he would grab me. He came back into the house around ten o'clock and started again. He went to grab me out of the bed by the head of hair and the child was crying in his sleep and the other two were crying in the room in their sleep as well. I rang the guard again and he said, 'look it, I told you to contact family, why didn't you do that?' So he said, 'I'll tell you what you'll do, go and get yourself a safety order.'*

*My first port of call when I decided I'd had enough was the domestic violence service, they did the safety order, I applied to the legal aid board and I got a legal aid board solicitor. They were booked up so they had to give me a private solicitor. So we went to court. When the guard came out to deliver the safety order he was only in the door a few minutes and my ex-husband had him manipulated so well - it was just a little row, (I could hear this), it was just a little row and she's just blowing it out of proportion and, I'm getting on very well now and I think she's jealous. He had the guard almost*

believing. So the guard came out and called me into the kitchen and he says, 'he thinks you just need family support on this or counselling.' And I just said, 'oh, my God.' I said, 'my child was standing there with tears coming out of his eyes, screaming from the top of his voice while he was beating me and pulling my hair.' I said, 'an attempt of rape in that room up there,' I said, 'and you're telling me this?' 'Oh,' he says, 'this what he's saying now, but I'd advise you to go ahead for the full safety order.' To go ahead. I only had the order, but I had to go for the full hearing at the time. But like the guard never said to me - do you want to come down and make a statement and that, no, nothing. Nothing.

I had the safety order but it kept being adjourned, it kept going on and on. Then the kids wouldn't go on access, they didn't want to go, and we went to court. It was an awful experience of the court. They manipulated the judge so much he was shouting at me. At one point he said, 'I believe there's a bit of domestic violence but I think it's highly exaggerated.' A bit? I don't think it's taken seriously, that judge didn't take me one bit seriously, and I felt very hurt, I felt really hurt, to say like - a little bit of domestic violence - there like, and what does he know at the end of the day.

The child was crying, very upset, didn't want to go on access, near him, she says, 'I'm not going, I'm not going.' I said, 'the judge ordered, if you don't go on the access I'll suffer the consequences.' He told me he'd put me in jail and hand the kids back to the father. But when they hadn't seen him for a number of months, they disclosed what he was doing, they were telling me he was putting his hand down the leg, rubbing their legs. I had to stop the access and reported it to the social worker and the solicitor. So there was a file went to the DPP on myself and the kids, it's still ongoing. I'm waiting on a decision from the HSE about supervised access. And they plan therapy for the kids. The kids to go in for therapy, is my main priority. And then who is going to supervise the access, because the social worker said the judge will give access like, even though the kids don't want to go? I don't know what's going to happen there. I've told the social worker of the details of the abuse and she wrote to the HSE and I have the letter, where she said - I'm worried that her husband is bullying her. Like there's a difference between domestic violence and bullying, she didn't put in the domestic violence. And she had all the information on all the assaults on myself. It's just waiting to see is it therapy or what's going to come of it, and this is since 2010.

The file on the child abuse - they hadn't enough evidence, only one child made a statement. I thought the guards' interviews were very bad, there was no build-up of rapport with the kids. They came out twice then, the guard went on leave and I feel there was more information there that should've been got. Even when we put forward for the kids to talk to the judge, he wouldn't have anything to do with them. He wouldn't let my eldest daughter in, she would've been 19 at the time, and the judge says, 'well, she's a child.' My solicitor said, 'no, well she's 18, judge.' And the judge says, 'we're all children,' that's what he said, 'we're all children here.' Wouldn't let her in.

The file went to the DPP on the kids, on the sexual abuse, but that didn't come back, they didn't press any charges on that. My domestic violence statements were never taken, when I was talking to the Garda interviewer, she says, 'you'll have to get your domestic violence, ask that guard.' I ask her, she says, 'that's not my job, it's another guard's job.' I ask her then, 'oh I'll have to see her about that.' This is the way it was going on. And then before my daughter's last interview the guard rang me up and she said that, 'we're going to interview your daughter again, the final interview, and I'll have someone take your domestic violence statements.' And no one ever did, no, no one ever did.

The judge cancelled out the safety order because he has no access to me or the kids, it was suspended over the allegations. When the first judge cancelled out the safety order we appealed that to another judge, to the circuit court. And they were trying to make out it was tit for tat and I was hitting him and all this. The judge put it that maybe I would get him to sign something just to say he'll

*stay away and all that but why should I sign anything? I'm not the violent person. And the solicitor said, 'are you going to sign it or not?' And I said, 'well I'm not the violent person.' He never gave me advice saying, no, go to the witness box and give ... he said, 'it's up to you, it's up to you what you do, what do you want to do?' And I said, 'well I'm not going to sign anything, I'm going to the witness box,' I said. The barrister was very hard cross-examining me. So it ended up I got no safety order. He was in the witness box as well, so it made it look like it was tit for tat...So I ended up walking out with no safety order. Which I thought was a bit disappointing with the solicitor, I thought he should have said, no, get up on the stand like, I think you should get into the stand.*

*I was awarded fifty euro a week for the kids. And he didn't want to pay fifty euro, because he said, 'I'm not seeing my kids.' Like its big money for the barrister he's paying, but yet he couldn't pay maintenance? It's all wrong like. I am struggling to keep up with paying rent and all that like, which he's paying absolutely nothing because he's no bills to pay but he's making out he has. So it's out of the court now at the minute.*

*I would actually want him to be prosecuted for what he has done. I think he should be put away for what he's done, because we suffered a life of hell, a life of hell of abuse like, I was left without money and I was bet, like hitting the kids and he was just so controlling. I think he should go to prison; I feel very angry because he's after getting away with it because I'd no proof either of what he was doing and I know I've suffered the consequences of him like. I think there's still a lot of fear in me today and I think if I see him I'd probably start shaking; it's still that strong, after coming from the violence and knowing what he's done to the kids. My little lad is badly affected, he actually kicks out, he boxes me, he goes for my head, the same way as his father; he is acting out like this man, I think it's the effect of the violence and abuse. I've done a lot of courses and that on how to hold him when he gets angry and different things, I'm doing everything I can do like at the minute. That's my main concern, to see that they get the proper therapy, because I have a little lad, he has sexualised behaviour, and if he doesn't get help, where is that child going to end up. That's my main concern today."*

### **Lisa**

Lisa's ex-husband was in breach of the safety order against him by staying parked outside her house for two hours. Lisa rang the Gardaí for assistance and subsequently her ex-husband also rang the Gardaí to make a complaint against her. When the Gardaí arrived they spoke to her ex-husband outside the house and then left.

*"So I rang back the guards and the guards said, 'well you didn't let them know you were there.' They went and spoke to him but didn't speak to me and then he told them I threatened him. So I rang the guards that night again, to say this is what happened and that and I got told, 'well the guards aren't getting involved because it's only a domestic,' and I was like, 'but I have a safety order.'"*

Another breach of the safety order took place following on from that incident. Lisa was made to wait hours before the guards would give her complaint attention and take a statement.

*"So I rang the guards again and I went into the guards that night to make a statement to them and I got notes taken down, but no proper statement. I eventually got to get into the guards, I got them to realise. I rang and everything and I was told just come in, any Garda will take the statement off you. I went in for 12 o'clock and I was told, 'we don't have any guards available can you come back later on - at half four.' So my support worker said she'd come back with me again to support me. So we were back at half four and we got told the same things. 'We don't have any guards to take the statement off you, can you come on back tomorrow?' But we refused to leave. Sat there for, I would say maybe anything up to two hours waiting for a guard to take a statement."*

## Margaret

At Margaret's divorce hearing she was advised not to speak by her barrister, while her ex-husband was allowed to take the witness box and present his evidence. The judge or solicitors allowed no opportunity for the violence Margaret endured during her marriage to be presented to the court.

*"We were walking in the door and my barrister said to me, 'you are not to say anything that will upset the judge.' She said, 'you are not to open your mouth,' and we were in the court. My husband was called up onto the bench and he said that I was a useless mother and a useless wife and I had men in the house every night and he said my children hated me and that he had to dress me if I was going anywhere. He had to put on my clothes and he said, oh he said that I was dirty and I wasn't able to clean the house and he had to do all the cleaning and everything. And he was saying horrible things and I was sitting there and my head, I was just, like what was he saying like, and I was told not to open my mouth.*

*But after he got down from the bench I was told, 'that's it now,' I wasn't allowed to speak. They probably explained why at the time but I felt cheated that I didn't get my say.*

*There was no mention of the violence, or his drinking...*

*The solicitors knew about the violence and they had it in a file but that didn't come to anything, it was him bringing me to court and that's why he was up there. But I had no opportunity to respond.*

*I feel that I should have got as much hearing as my husband got. Allowed tell my story like he was allowed get up there and say all those things about me. I just felt alienated and shunned and I felt really disempowered. I felt really, really bad and I did complain to my solicitor and he said, 'that's the way it is.' Then two months later we had to go back to court again and in the rooms my solicitor said to me, 'you are as well off to settle here because if you go in front of the judge she'll take more.' And I was there on my own. I said to my solicitor, 'why was he allowed up there and I wasn't?' and he said, 'because he brought you to court.' So he said, 'he's allowed out first to talk.' I really felt very aggrieved."*

The divorce proceedings were not finalised, instead Margaret and her husband were legally separated.

*"During the judicial separation nothing was said about the violence by the barrister or by my solicitor or anything. When I think about the court system I hate this silence. And that's what that barrister said to me going in that day that I, 'was not to open,' and she used those words, 'open my mouth,' and I was not to say anything that would upset the judge. And I kind of think as a human being - how could I upset the judge? Sure she was a knowledgeable woman as well and I felt she was kind of just domineering and keeping me down as well. And that's the way I feel and I have a thing about silence. It is very, very dangerous."*

## Rachel

The judge accused Rachel in court of making false allegations against her ex-husband regarding the children.

*"And that I made these unfounded allegations against my ex-husband, that I never did. I tried to explain that I have witnesses to support me, and actually my ex-husband has written a response that said that I never made allegations against him. But none of that was ever produced in court, the judge never looked at it, I tried to produce it to the judge, but she said, 'I'm not going to look at it.'"*

Again it is not only the mother's voice that is silenced, but also the voices of the children.

*"Despite everything, unsupervised access over the weekends was granted by the courts. When I complained to the judge that the children refused to go on access with their dad, the judge said, 'then we'll take the children out of the equation, they won't have an option.' When they did go with him for the weekend, they'd come back saying he doesn't feed them. Or, he would lock the front door, the kids can't leave, or he would lock them outside that they have to stay outside, he would punish them."*

Rachel's ex-husband had fifty per cent access for summer but wanted it for the whole year. The judge would not listen to Rachel's concerns over the welfare of the children while in her ex-husband's care.

*"We were back again then in the circuit court because my ex-husband wanted fifty per cent access all year round, I told the judge that there are problems with access, I told her all about the situation and my concerns. But she didn't listen. She basically ordered me to go out and settle with my ex-husband in the best interests of the children, to - stop that fighting with daddy. So my barrister was concerned and he said, 'look, give him extra access because if we go in front of this judge we have no idea what she might do.' That frightened the hell out of me, because I had a daughter who was still very fragile. So access was agreed and it was all over the place."*

When the welfare report was nearly complete, the psychiatrist who had interviewed Rachel's daughter was still not granted access to her GP.

*"The doctor was so concerned about my daughter and her not getting help he faxed an urgent request to the judge to please allow him to talk to my daughter's GP, that she can get urgent help for her condition that was trauma induced. Unfortunately by the time the child got to him it was so late he could not identify the origin of the trauma. But she needed specialised help because she was developing coping mechanisms that were very unhealthy. The judge said, 'no.' The report wasn't completed for a year after that, and in the meantime there was no therapy."*

At the divorce hearing the domestic violence Rachel endured was not recognised. The Section 47 report on the children was not considered by the judge in making access arrangements.

*"So it went into court later that year, for the divorce hearing. The judge heard my side, she didn't believe me. She basically thought everything about domestic violence was hearsay."*

*"Now the judge, although the [Section 47] report was ready, said she's not going to look at it, she is not going to look at the access because access is happening. I said, 'but there's huge issues with access, you know, that they're starting to refuse to go.' But no, it wasn't looked at."*

### **Rita**

Rita's concerns about her children were not heard by the social workers. She was made to feel she was a nuisance when seeking help and advice and as a result received no support.

*"And when I'd ring the social workers and tell them what happened, the head social worker said to me, she said to me, what did she say to me, she said, 'what is it this time? What problem have you got this time? You need to get help for yourself, for God's sake.' That was the response I was getting from the social work team. That was the response I got from the social work team."*

Rita was also not heard by the Gardaí. She was ignored when she attempted to report her ex-husband's breach of her protection order.

*"During all that time, obviously I had a lot of contact with the guards. I got no support from them, so I didn't. Even when I had the protection order I got no support. And when I called them after he breached the order, they didn't come out, I had to go up. They said, 'it's a domestic, you deal with it.'*

*I was never even asked to make a statement ever. I did say at some stage - I want to make a statement and they said, 'there's no point you don't need to make a statement.' It was ridiculous."*

Rita's ex-husband got sole custody of the children, as Rita was accused of damaging the children's relationship with their father. She was warned to stop making allegations against her husband and to accept the findings of the Section 20 report. Rita was left unable to voice her concerns about the children for fear that she would lose them completely.

*"I did exactly what I was told, I shut my mouth, if something happened I said nothing, we went back to court, we got my kids back on condition that I stopped reporting and I stopped making allegations*

...

*But my whole life practically of down there for five years was just abusive texts all the time, continual phone calls, the kids were always hungry.*

*My hands were tied, I couldn't ask the guards or the courts for help, I had nothing.*

*And the youngest child started to tell me that dad was touching him as well and he ran from his babysitter one day and he ran all the way to me and I held him and I knew that I couldn't report it because I would have been screwed if I did again."*

Rita's eldest daughter is now old enough and in a position to give evidence about the abuse, however that has not happened.

*"So a report of how she was suffering severe post-traumatic stress disorder as a result of the abuse that she endured and also as a result of having known what happened to her and nobody believing her. And although she is an adult and she is in a position to give evidence for her younger siblings, that has never come up.*

*You don't get to be heard in the court. This is the funny thing. All you hear all along is you will get your day in court. No, you don't, you get five minutes to be abused further. It's nothing else."*

### **Siobhan**

Siobhán's experience in court:

*"I remember we came out of court and I was livid, just saying, this is ridiculous, because he seemed to be just saying what he wanted, getting what he wanted, doing what he wanted. And nobody was there saying or speaking my things for me."*

### **Mary**

Mary is a woman with a disability whose abusive husband is her main carer - the judge in her case missed the complexity of this situation. Mary was not allowed to speak in court to explain these complexities.

*"I saw the judge three times, I've been there three times and the last time he wouldn't let me speak. Fortunately I had a solicitor with me, because I wasn't sure how it was going to go. I had a protection order already..*

*He did say to me, 'you got the protection order; we're going to serve your husband with a summons.' Apparently it was for the safety order and for the barring order, but I said to him you see, I was little panicky about it; I was scared of my husband. 'I thought I put in for a safety order,' but he said, 'no, it was a barring order.' So when I went back the next time to the court he told me then, 'no, you can't have a safety order, you've got to have the barring order, that's what you wanted, a barring order.' I said, 'no, I want the safety order, because I need my husband there because he is my carer.' So the judge wasn't very helpful...*

*But then I went back to the court the judge said to me, he kept saying to me, 'you wanted a barring order, shall we proceed?' I said, 'no, a safety order.' I said, 'no, I wanted a safety order.' Then my solicitor was with me, she actually spoke up and she said, 'a safety order...'*

*My solicitor wasn't really able to put my case to the judge."*

### **Geraldine**

During her divorce hearing there was no acknowledgement that domestic abuse had been a factor of the relationship. Geraldine was never asked to give evidence about the violence.

*"My solicitor didn't bring up that he was violent or that I had a safety order. My support worker had to say it to the barrister.*

*So violence never came up in the context of my divorce, I was never told that it was relevant. I didn't give evidence during it, my solicitor said to me, 'you don't need to talk, Geraldine,' he said, 'your barrister will talk for you, and if he wants to talk,' he said, 'he'll probably talk.'"*

### **Niamh**

When Niamh ran from her home to escape a beating from her husband, she ran to the Garda Station. However when she attempted to report this attack by her husband, the guard refused to take a statement, as she had no domestic violence order in place.

*"He started beating me and I was trying to get away. I put the child in the car and went to the local Garda station. The Garda on duty did absolutely nothing. He just wrote it down and then he said, 'well, it is only the once, like, and it was during an argument.'*

*The child was crying and I said, 'well, I want to report domestic violence.' But the Garda didn't want to deal with me. He said, 'go to a solicitor, there is nothing I can do. You need some court order or something.'"*

### **Caroline**

Caroline was in court to get a safety order. She had also found out that her boyfriend had a history of domestic violence. The judge would not hear her evidence. While a safety order was granted it did not last as long as she needed.

*"I had the GP report and a report from my support worker about me staying in the B and B. My solicitor said, 'judge we have evidence.' He refused to see the evidence. I found official court papers saying how he had abused his ex, how he was abusive to his kids, and I brought that and I said, 'is this any help?' This is nothing to do with this case was the response. I think the judge was not interested to see anything. It was really emotional for me; I was lost. I was a victim at the time, I was still really, really hurt and the judge believed my ex."*

### Domestic violence service provider no. 5

A service gives a number of accounts of the practice of refusing to hear evidence relevant to the cases before the court.

*"...as she was separating from him a member of his extended family came to her and told her that he had a history of sexual abuse. She was terrified because he was seeking unsupervised access to the children. The social workers were involved and he was assessed by the sexual abuser treatment service. The service found there was a possibility of risk and so came and stood outside the court waiting to go in to give that evidence to the judge. But the judge never even let him in the court room. He didn't hear his evidence and gave overnight unsupervised access to the children.*

*The mother had to let them go. The judge told her he would jail her, he told her she'd be in contempt of court and she'd be put in jail. So, she kept going back in, she kept saying 'please don't do this, I'm really concerned.' She wanted supervised access and for him to get treatment. He was eventually ordered to get treatment, which he wasn't getting. She was being really facilitative and saying, 'well when he gets treatment and when he's assessed not to be a risk then he can have them, but until then it should be supervised.' But the judge absolutely refused. Eventually she got it out of his court and into the circuit court and the circuit court overturned everything that he had ordered and granted supervised access only.*

*The consensus here is that this judge bases who or what he will hear on his own preferences: I like the look of you, I don't like the look of you, I believe you, I don't believe you, I'll allow experts in because I want your case to be backed up, if I don't want your case to be backed up - they're not getting in the door. As far our experience goes there is no rhyme or reason to how the district court here operates at the moment, none whatsoever. And then there have been one or two cases where it worked in the way that you'd expect it to work if it was working well, but still that has no rhyme or reason.*

*We've had a couple of judges who've been here when our resident judge is on holidays, or sick or whatever. We have had one in particular and is really consistent. That doesn't mean a woman has always got what she wanted, but it's been fair. He always listened. He gives the solicitors an opportunity to speak; he is professional. So, we can tell women before they go in - this judge will listen to your side, and he'll also listen to his side. He will make judgment based on the information he has and any evidence before him. It'll be as fair as he can make it, you know, it might not always be the way you want it to be, maybe because of the way your partner or husband presents things. Even those who don't get exactly what they want out of court, they know when they're being vindicated. I was in court with a woman once who came out and said, 'well I didn't get all the maintenance I wanted, but it was clear the judge could see he was lying through his teeth but he couldn't prove it.' Even that alone meant a huge amount to the woman, that the judge said to her husband - who'd lied all his life to her, 'I don't believe you.' I mean - women are as rational and reasonable as anybody else. So even though it affects the woman's life hugely, she can see that the judge has done all that he can and in fairness you know then it's much easier for her to get on and think about other options."*

## Commentary

We have heard that Gardaí are reluctant to take statements, that legal professionals silence their clients before they even step foot in court and that judges refuse to hear the evidence and the evidence of experts that could assist the court in making its decision. A number of factors may be the cause of this and one worth analysing is the reaction caused by the concern about the rights of the man accused of abuse and violence being heard; and that concern leading unnecessarily to the silencing of women and children.

Not allowing women and children to be heard when they disclose abusive and violent events leads to justice not being done and to dangerous orders being made such as those giving access or custody to a high-risk, violent person. It is a right to be heard in court and many women are not afforded this constitutional right in a forum that is now hyper-vigilant to the alleged perpetrator's right.

Not taking, and hearing and considering, statements and evidence of domestic abuse also means that the area of law doesn't evolve. Women are advised to behave in a certain way – don't speak, don't react – which fits the stereotype of the domestic violence victim. They are encouraged to enter the court with their heads bowed, looking for the patrician assistance of the court, because at the moment that approach is what is most likely to get them the order. If the importance of individuality, autonomy and narrative are accepted, it also makes victim and perpetrator stereotypes self-fulfilling prophecies that affect the precedence of the court and how the entire system works. It also seems that even when bad decisions are made they are rarely appealed or reviewed, whether due to the cost or the will to repeat what was such a traumatising experience for the woman applicant. Without cases that are properly brought and heard that challenge the dominant paradigm, nothing will change.



## 2. The consequences of the court not hearing the evidence. High-risk factors: the case of cruelty to animals

The most serious of all of the outcomes of the Gardaí and/or the court not hearing the evidence is the missed opportunity for spotting high-risk behaviour and doing something about it before it is too late. 53% of women murdered in Ireland were killed by a partner or former partner<sup>72</sup>. It is vital that all practitioners coming into contact with domestic violence are trained to identify risk factors and carry out risk assessments. If the Gardaí do not collect all of the evidence, it is impossible that a court will ever hear the evidence that would indicate a situation of high risk.

Domestic violence service providers are made aware of a number of 'high-risk' behaviours to note and bring to the attention of the women they counsel. Cruelty to animals is one of them. While many of the 13 women we interviewed recounted a number of those high-risk behaviours – threat to kill, coerced sex, for examples - we have chosen cruelty to animals to illustrate this point. We did so because it is one, which, for different reasons in each case, was not heard by the court. These women told us that their partner had abused animals in front of their children, or as a tactic to intimidate them and to perpetuate terror.

Cruelty to animals is associated with a spectrum of violent and anti-social behaviours<sup>73</sup>. A better understanding of the links between the two could help to protect victims and aid people in the identification of such traits. In a study by Walton-Moss et al., a history of pet abuse or threatened pet abuse had been found among a number of the perpetrators involved. The study concluded that cruelty to animals constituted a risk factor for domestic abuse<sup>74</sup>.

### Jane

*"It was emotional or mental abuse. Like if I am looking well he wouldn't like it and he'd say, 'I don't like you having all the confidence because I like them depressed and fat.' He says, 'at least when you're depressed and fat you don't have confidence.' That's what he was doing to bring me down. It can be more dangerous than violence. He says he's been a sex addict for a very long time. Even the time I was in hospital with a serious health condition he would come in to me, strings attached to me, he says I have to help him, that he needs sex. Even my friends were there one day when he came in, like my head was still swollen, like my face and all. And he said he wanted just to head butt me like that and it was all because of sex. My friends would say, 'Jane, you just have to stay away from this guy, he saw what you went through, and what the doctors said to you about your health, and still he's looking for sex.' Tears would just go down my eyes, like just come down, rolling.*

*Sometimes I think this serious health condition is from the punches he gave me. The doctors asked me, 'did you fall before, or did anything happen to you?' I'd just say, 'no.' I didn't tell them because at the time I didn't realise, it was after I thought like - did the punches bring this thing on me? I don't know. I would tell him, 'I don't feel well,' and he would say, 'Oh, you're a big baby, you're a faker, or you're lazy.' That's what he'd say, 'you're very lazy.' He believed that women were to do everything in the house.*

*Once I rang the guards, the guards came, he went ballistic - why would I send the guards up to my house? He said, 'I'm going to burn your house down and I'm going to break everything,' and I'm to keep everybody in there. And there's me sitting, can you imagine the headache and stress and everything and I'm just crying and my kids ask me, 'mammy what's wrong?' I just say, 'I'm okay.' The guards say, 'we can't offer you anything because he's not in your house; he's not staying with you.'*

*So the only thing they can do is just warn him and that wasn't really helpful. I sat up until 12 o'clock, then I rang the refuge; basically I think I was about to collapse. I didn't know if he was going to come and break the windows, burn the house or do something to me. So I rang the refuge that night; that's when I went to the refuge. I stayed in the refuge for a couple of weeks.*

*He would send me abusive messages and the guards still couldn't do anything. So I went for a barring order and a protection order because he used to come to the house that I lived in shouting and screaming. At first I did get the barring order, then I don't know what I got this time when we went. They say he's not allowed to my house, only when he's picking up his child. He's not allowed to upset the kids, he's not allowed around where I am, I think, but I don't think it's a barring order, I don't know what it is.*

*He beat me and my friend one time, a female friend. My friend had to go to the hospital and get stitches. He had given me black eyes. It came from nowhere. My friend was in the house minding the kids, then he just walked in the house, from nowhere. He just attacked my friend. He didn't like me having friends and would accuse me of all sorts of things. I've been called all sorts. I've been called a prostitute. There is no name he hasn't called me. When he was finished someone rang an ambulance and rang the police, because my friend had to go in an ambulance. I think the Gardaí went with her to the hospital. I didn't go to the hospital that time. The police didn't encourage us to continue, and I never saw them after that, they did no follow up or anything like that.*

*I have been told that what he has done to me are crimes, but I have never been given the opportunity to prosecute or give a statement to the police. With domestic violence, they won't do it, they say, 'it is a domestic problem, a domestic matter.' I remember one time I went to the police station with a support worker saying he was screaming and shouting and the guard says, 'anybody can say they'll kill you and they don't mean anything by it.'*

*My court experience has been good, I think I had good judges. My lawyer presented my case and did a good job, so I haven't spoken or given evidence.*

*I'm not really happy when my son is with his father like, because when he comes home and the stories and the things he says, the things... Do you know how I feel? I say I'm an adult and the things that my child is probably facing are the things that I ran from. Like if he's at his father's house he has seen all sorts that a five-year-old shouldn't see. My son has had to endure mental and emotional abuse. And that type of cruelty is very damaging. He has access two days a week. My son sometimes says, 'mammy, he's an angry man, he's always shouting and screaming and I don't know and I get scared sometimes the way he does.' Sometimes he comes home saying, 'mammy, my daddy says when he sees you up in the town he's going to give you a big box.' And I feel sorry for my kid, like now the refuge if they can help me, he may be able to see a counsellor.*

*One weekend he was worried about a dog; he has a dog. 'Mammy, if you see the way he beat the dog and the dog was crying, would you beat a dog?' And for about three days, 'Mammy!' He just wakes up, 'Mammy! Would you beat a dog like that when you have a pet?' And I said, 'no baby I wouldn't do anything like that.' He's taking that anger on my child and that's what breaks my heart and when he gets picked up on Friday he cries, 'Mammy, why are you letting me go, because I don't want to go.' He doesn't want to go. But if I don't let him go I'm going to be in trouble for breaching access.*

*I find the court accompaniment service here in refuge very helpful. Because just thinking I'm going to court like I was shaking. I was very, very, very, scared, even though I didn't do nothing wrong, but they have a way of calming you down, like you know. And they don't push you to do anything, like*

*whatever you want to do they're just behind you. They don't try to influence you or to do whatever. They just give you a space and just tell you, we are at your back, whatever you want to do, whatever you want to say, whichever way you want to go we are there. And I find that very, very, helpful. Knowing that there is some people back there, like gives you courage as well. Like I was shaking and all but knowing that there was somebody there with me, just holding my hand, just asking are you okay. That's a big help. I really, really, appreciate - from the bottom of my heart I really appreciate that. Because if it was by myself I don't think I would have gone through with that."*

### **Niamh**

Niamh had devoted time, energy and money into her farm. She treasured her farm animals. She returned home one day to find her plants and trees destroyed and her animals gone.

*"That same day, when I arrived at the house it was unexpected. The cousin was running out of the house looking very guilty. My husband came out holding our child. I asked, 'what is going on here?' Something was different. There were no birds, no animals. I loved my birds, they all had names and they would come to me. My garden had been destroyed – burnt and sprayed with weed killer; my strawberries, everything...*

*...I said to him, 'where are my animals?' Holding the child, he looked in my eyes and he said, 'they disappeared; you will be next...'He had changed the locks, he had killed my animals, he had killed my garden, he had threatened me and he had taken my son away."*

### **Rachel**

Rachel's ex-husband displays cruel behaviour in front of the children.

*"This man killed a pet rabbit in front of his children. They're not allowed to have toys, mobile phones or access to a telephone just in case they call me, no computer games, nothing."*

### **Caroline**

In a bid to stop Caroline from leaving the relationship her ex-partner threatened to harm her dog.

*"He was punishing me because I wasn't a really good person for him or something, he left my dog in the apartment and he said, 'if you don't go back to apartment your dog will die.'"*

### **Commentary**

An abuser's cruelty to animals is a tactic in his arsenal. There is growing evidence that perpetrators may use threats of or actual violence towards animals as a means of controlling and coercing women<sup>75</sup>. This is supported by clinical evidence<sup>76</sup>, which suggests that harming or threatening to harm a pet animal may be a form of intimidation, control and/or vindication toward both human and animal. "Killing a cherished companion animal can be an act of revenge; it also can be a way of removing an important source of comfort and love, an act that further isolates the abused."<sup>77</sup>

Fear for the welfare of their pet may prevent women from leaving the home, hampering a woman's help-seeking capacity, forcing her to remain in a dangerous situation. The use of violence against a woman or a child's pet is used instrumentally in order to achieve desired outcomes; instilling fear and keeping their victim in a vulnerable position<sup>78</sup>. The progression thesis explains the correlative relationship between animal cruelty and domestic violence, as a relationship of stepping stones from animal abuse to inter-human violence. When women and children are not heard by the legal system and evidence is not presented, these indicators of both actual and potential harm are missed and the opportunity to protect and to prevent serious harm to these victims is missed.

## The importance of assessing risk

Risk assessment has become a vital step in the protection of individuals from continued and repetitive domestic abuse. It is now acknowledged that serious or fatal assaults may be predicted if the established risk factors are identified in a domestic abuse situation. We can hear from the women's stories the opportunities to identify risk to themselves and their children that were missed by the Gardaí and other practitioners. It is vital that all professionals in the relevant agencies are equipped with the tools and training to carry out risk assessments of all women and children who may be vulnerable to further harm.

A number of risk assessment tools have been empirically tested and are in use by professionals in the justice systems, domestic violence services, social work service, health services and probation services of other jurisdictions. For example, in Northern Ireland, a police officer attending the scene of domestic violence will conduct a risk assessment and then pass that information to an Independent Domestic Violence Advisor. If the situation is deemed as high risk the case will be referred to a Multi-Agency Risk Assessment Conference (MARAC), where information will be shared between all relevant agencies and a risk management plan developed and put in place.

Despite the general consensus that risk assessment can be extremely useful to the protection of domestic violence victims, in Ireland there is no prescribed risk assessment tool to be used in the case of domestic violence. Organisations differ in the tools which they choose to use and while this may work (Probation Service use the SARA tool), there are also organisations and state institutions which are involved with domestic violence that do not engage in any form of risk assessment. Currently neither the Gardaí nor the court service have any agreed risk assessment tools in place.



### 3. Consistency and continuity in the application of the law

Many of the women and the support workers spoke about the difficulties of one judge hearing the domestic violence application, making the order and then not also hearing the access and maintenance applications, or making the orders for separation and divorce. Some also said that even when the judge who made the domestic violence order made the other family law orders at a later date they did so without taking the violence into account.

We also heard about the actual and philosophical divide between the civil and criminal jurisdictions of the courts. The knee-jerk reaction to this is to look to and recommend a 'One Judge, One Family' model or specialist domestic violence courts. These would limit the ability for the man who uses violence to forum shop, or to deny the violent behaviour in an access application that had been found in a previous barring order application. However, caution is required here. We also heard accounts of judges in certain district court areas with a precedence of not making domestic violence orders. We heard an account of a judge retaining seisen<sup>79</sup> of a case as well as her unchangeable view of the case and then refusing to hear expert evidence that would have challenged her view. For those families, being restricted to one judge was disastrous. While the fragmentation of the family law system is more often than not a bad thing, without good education of practitioners and judges and a working accessible right of appeal, a jump to such restrictions should be taken with caution.

#### Noeleen

*"I saw a change in my ex as soon as my child was born. My abuse started off with more mental abuse, taking friends' names, taking everything away. I wasn't aware of getting orders. I wasn't aware of anything until I went and got the information. So then I went and got an interim order. While I was waiting to get the final order he broke into my home and raped me. So the interim order didn't work. It didn't faze him. I did call the police and go to the hospital. To be honest I was traumatised by that; I just wanted to get myself and my child safe and I just wanted to build myself up and get on with my life. I actually have been getting away ever since.*

*When he found out I was in refuge, he stood across the road from the refuge and we could see him through the window. So that wasn't safe, so miles and miles I had to get away, to be able to even walk down the street to buy a packet of nappies.*

*So, still to this day I'm trying to keep him at arm's length because of flaws in the legal system. I think I've had 12 different judges. The barring order ran out and then I was in court on an access issue. The application was in, but this particular judge said to me, 'oh I'm not hearing any of that today,' so therefore I was without. Then I was told I couldn't renew it. I was left nearly two years without an order. The guards know the capability of this man; they have been witness to his violent behaviour, as I have had to have access take place from the Garda station in the past. He was found in possession of a weapon, breaking his bail conditions not to be in my current hometown. He was on bail for harassing me and he received a suspended sentence for that. I said, 'talk about a little smack on the wrist,' you know... I mean he ran at me one time to hit me in front of the judge. My solicitor at the time said to the judge, 'this is the type of behaviour that you're dealing with.' But some don't realise the severity of it. And if you've an order in place sometimes it's hard enough to get the Gardaí to do something about the order. So then I was a long time without the order. And then, because I hadn't lived with him for six out of nine months, which was the law at the time, because the order ran out, I found myself in a situation that I couldn't get an order. It's a nightmare; it's an absolute nightmare. But now I managed to get a safety order.*

*I had to leave my job behind and my home behind, and I actually had a judge at one stage that said to me, 'you're not leaving your home under any circumstances, there'll be people queuing to move into your apartment.' Now I was after being advised by another judge before him to come away and start a new life, which I was battling to try and do. One judge could see the need for me to get up and move for safety reasons. But when I went back to the same court on the next occasion, again the first judge, he said to me, 'under no circumstances will you be leaving your home, you stand up to this man and you use your barring order.' I didn't want to leave my home. I was leaving everything behind - I had a job at the time, I had my son settled into a crèche, I had my home, which I had long before I met him, which I worked very hard for, I had a lovely family I was leaving behind, so it's not an easy decision, it takes a lot of courage to get up and leave all that behind. And for a judge to come along and say to you, 'under no circumstances are you leaving your home?' To me I was being controlled by another male person, that was telling me what I was doing and what I wasn't doing, you know? And I've seen him since and this particular judge just doesn't seem to have any understanding, you know. Just doesn't seem to get it, although he would've seen him that day and would've seen that I did have to leave my home, you know. The same judge would've said to me, while I was up against him for breaking the order, 'oh I'm not going to handle this situation today, I'm aware of the difficulties in this relationship,' is what he said. But then on another occasion had seen him in court and knew he was on bail conditions and knew he broke the bail conditions and said to him, 'don't let me see you in this court again, take yourself back to your own home town now where you belong.' It's exhausting.*

*My ex-partner has been before the courts on numerous occasions, but he hasn't gone to prison for it, I haven't seen him getting a fine for it. The guards are telling me that there are summonses out there for him, he carries a weapon, he does all the things that he does, and he's still walking the streets. Then it will probably be adjourned when they do get him to the court, as it is over and over again, then they're getting a suspended sentence.*

*Now I had another judge that sent me for mediation. And we went for mediation. The refuge staff again travelled with me. It was just to see if we could come to some kind of an arrangement for access. So we went for mediation and I could not get a word in edgeways, not a word in edgeways. And the mediator could see this. So in the end she had to stop - she knew then she was banging her head off a brick wall. The lady had to actually give me and my support worker a separate room for safety reasons. Now this is a person you're going for mediation with, you know? So he left the building, as he does, trying to make out he's all nicey-nicey and when I walked out of the building with my support worker he was down the street hiding. So he was hoping I was going to walk down the street on my own, so he could attack me.*

*I don't think he should have any access to the child. The HSE stood up in court and said that they were going to stop access because of his behaviour around the child which was angry, threatening, controlling, and it was stopped. And then a different judge set it up and running again because they kind of wanted out of court at this stage. She made a final order then - she wanted access up and running to be supervised, (that was passing the buck onto an agency, the agency are supervising the access). So then she made a final order to say access was to remain supervised. After years in the court and bringing people in to give evidence and everything else. The minute the final order was made he was straight down the stairs to vary the order. Really there's enough evidence gone into the court, this is what I'm saying, if the judge is heeded and listened to, there's enough evidence in the court to say access will always remain supervised. And when he hears that he'll go away, he won't come back, he doesn't want that. When he hears that he's not going to have the opportunity to be*

*seeing me all the time. He still feels he's controlling me by having me sitting in the courtroom, thinking he's going to win all the time.*

*And they're not taking time to read the notes. They're only reading what was there on the last occasion. But they're not looking at what they should be, the judge should surely to God say, if one judge is after making a final order after four years and all the evidence gone to the court, surely to God shouldn't even consider waiting on reports to be coming back from the agency and supervisors. [The abusers ...] they know every time they go in they're going to get a different judge, they know they're going to have their barrister asking for an adjournment, you know, they know then that it's adjourned, they know then they might be sent for probation, they know then they're probably going to get a suspended sentence or a fine.*

*The access worker actually said to me, 'I look after supervising an awful lot of access, where some of the parents are this, that and the other,' blah, blah, blah, 'but the kids want to go and want to hug the parent and spend time with parent.' He said, 'I can see it in your child he doesn't want to be there, he wants to go home, you know.' Well this will all be going in to the court, thank God, which will let the judge see. The supervisor is going to say it in court. And I brought it to his attention and I brought it to his manager's attention, I said, 'this is serious, you're supervising my child's access, you're taking my place when I'm not there.' So it all has to go into the report, what's happening on the day, you know, so the judge can see what's happening. I feel that when a man is abusive and a woman has to flee her home, and once there's an order put in place, access should remain supervised, so the child has little contact. Because does the child think it's all right then for the father to go and abuse the women? Is that the normal way of life?*

*My barrister asked this judge the last time, 'could you please hear this case when you're in this court on the next occasion.' But the judge said, 'oh, I don't take to doing those things, to hang onto cases.' But it was him that made the maintenance order, it was him that was looking into why the other side wanted to change the order, to vary it when there was a final order made. So then when the barrister said, 'could you please try and make yourself available to hear this case,' the judge said, in other words, - I'm not guaranteed to be here, I may not be here.*

*So we'll go in front a different judge again. So this is how it's so confusing. I'm not saying the same judge has to be there all the time. But this fellow is shouting in front of all these different judges and losing his rag and effing from a height and then he'll say, 'oh sorry, your Honour.' And I'm like - have you not seen this Jekyll and Hyde? Hopefully you'll have it noted for the next occasion, that he's not fit for access, you know."*

### **Ciara**

The second judge Ciara dealt with in relation to access didn't consider the domestic violence that had been a factor in the separation.

*"He said, 'I believe there's a bit of domestic violence but I think it's highly exaggerated.'"*

Because Ciara had to deal with different judges and she received different responses from each one, the outcome of her case could not be predicted.

*"It's hard to know any outcome, the judges are all different like. I think my solicitor said that he would've preferred a certain judge for my case."*

## Lisa

Lisa's first interaction with the court:

*"I was applying for a domestic violence order. But for the whole 15 minutes I was in the courtroom the judge's take on it was – well if you're leaving him and you're not going to talk to him, who is going to support him, who is going to help him? The judge said to me, 'can you not speak to your friends and ask them to support him?' I felt that judge was telling me – well, if you hadn't have left him he wouldn't have done it [harmed himself]."*

Lisa was advised not to proceed with the barring order, because it was thought that the particular judge would not grant one.

*"I had to come back to get the final barring order. But the first thing the solicitor said when we got there was, 'oh, this judge is not going to give you a barring order, we'll drop the barring order and we'll look for just another safety order, or a protection order.' My solicitor told me, 'there is not enough grounds for it – he didn't do anything, he hasn't hit you.' And I said, 'no he hasn't but only because I left before he got the chance to hit me. But he threatened to kill me and my kids.' So they just said, 'we'll get you a safety or a protection order.'"*

The third judge she was before ordered supervised access:

*"This judge was good because she listened to me and she went to the psychiatric reports and she asked my support worker because she was a representative of the domestic violence refuge...*

*She read them and she said, 'I do believe there is something dangerous here, so I believe it has to be supervised.'"*

There were issues with maintenance – one judge ordered fifty euro a week, then another judge reduced it to thirty euro a week.

*"The judge said to him, 'if you haven't tried to pay her back what you owe her and pay your maintenance to her, I will jail you...' On appeal to another judge he said, 'I'll drop the maintenance to thirty euro.' Only thirty euro for three kids and the judge said, 'she's making more money than this gentleman is getting, she'll be happy with what she gets' and that was it. I was down to thirty euro a week."*

Lisa feels some judges understand domestic abuse while others don't. This inconsistency has resulted in different outcomes for her case.

*"The third judge I dealt with, I think he understood, but I think sometimes he doesn't grasp the full extent - that just because there wasn't physical violence, the emotional can be worse than the physical sometimes, because it's the fear of when is he going to get me. He says he's going to get me but when? I know he hasn't got me yet, but he says he's going to hurt me and there is a chance he will do. Like you need to take it serious. But I've had the other two judges and they didn't care. They just sort of said, 'nothing happened to you, so what are you here for?'"<sup>80</sup>*

## Mary

It is very difficult for Mary to predict the reactions of different judges:

*"The last time I came out I was crying, because he said, 'do you want a barring order and I said, no, a safety order.' I said it twice to him. I really did think I was going in to get a safety order. My court accompaniment worker said to me, 'you can never tell with a judge, you can never tell, Mary, don't be banking on it.'"*

## Rita

Rita describes her experience with the first judge she dealt with. Concerned about the welfare of the children, Rita sought a barring order.

*"I went into the judge looking for the barring order and she asked me why and I explained to her about my concern around the possibility of there being child abuse and I'd reported it and whatever and she said she wanted to order a Section 20 to see what was happening. But she wouldn't give me the barring order. She actually said to me, she said to me, 'you are well able to look after yourself, now get out of my court.' The hearing was very brief, it was only like a couple of minutes."*

A Section 20 report was conducted and while the report was pending Rita got sole custody. Her ex-husband got unsupervised access for a couple of hours on weekends. The Section 20 report was presented in court, a different judge stated that Rita and her eldest daughter were damaging the relationship between the younger children and their father (by making allegations of sexual abuse by the father).

*"The judge said that he would give him sole custody. He was giving sole to their dad and he was putting me and my eldest daughter out of my home..."*

*"There was no acknowledgement that I had a protection order, or that there had been violence or that he breached the order. It didn't matter."*

## Rachel

The district court judge dealt with access in one way. Then her ex-husband sought fifty per cent access from a second judge. The third judge pushed Rachel to sort it out with her ex-husband herself, despite a history of domestic violence and serious difficulties with access.

*"I told the judge that there are problems with access, I told her all about the situation and my concerns. But she didn't listen. She basically ordered me to go out and settle with my ex-husband in the best interests of the children, to - stop that fighting with daddy. So my barrister was concerned and he said, 'look, give him extra access because if we go in front of this judge we have no idea what she might do.' That frightened the hell out of me, because I had a daughter who was still very fragile. So access was agreed and it was all over the place."*

## Domestic violence service provider no. 1

Domestic violence orders are seen to counteract each other. The decision to make them does not seem to be based on whether there is abuse or violence as a matter of fact, but on the ability to enforce or police the court's orders.

*"Another big problem in the courts and one I find very frustrating is when we have a woman and she applies for a safety order - she builds up the courage, fills up the forms, goes in but then he applies for one against her. I believe it's about one in every three women this happens with now; it's very common. Instead of the judge looking at the case, he just quashes both orders because apparently they 'counteract each other.' So the woman leaves with nothing and her husband says, 'Ha-ha, I've now quashed your order and I'm going to control you even further.' Judges take the view - well she applied for one and he applied for one so they're both as bad as each other. But we know that it's a tactic that abusive men use. Anyway, even in the tiny percentage of cases perhaps where it is mutual violence or she defends herself, how is quashing both and sending them away a solution?"*

#### **Domestic violence service provider no. 4**

In one court area there is a victim support service to support the victim at the hearing of the breach of her domestic violence order.

*"...the victim was a little over an hour in the witness box, but she was being interrupted, interrogated really, by the guy's barrister. It was really horrific. The guards had arranged for the victim support person to be there, so she knew the running of the courts and was able to go and kind of ask could an interpreter be there, even though her English is quite good, and the judge said he'd wait until the interpreter got there."*

There are issues of consistency in judgments, from the making of the domestic violence order to making subsequent access and financial orders.

*"...It's like what we call 'dual abuse.' The man will use the access to the children to abuse the woman. A judge will say he'll be looking at access in terms of what is best for the children and it is best for children to meet their dad. So the children are handed over for access at a Garda station, or shopping centre, or the mother's house or whatever. And then the father is shouting and roaring and abusing their mother in front of them. You know that's not in the 'best interests of the children.' One lady we worked with, her ex-husband took the children but he had no car seats. He just threw them into the car and drove off because she was saying to him, 'Where are the car seats? You're not taking them.' He just grabbed the kiddies, (because they're only little), and threw them into the car. She went straight to the guards and said, 'He's gone with my two children, he took off at 80 miles an hour, the children are not even strapped in.' She said she had to jump because he could have hit her with the car."*

*Also often women with barring orders don't realise, if the man comes into the house, (maybe something has happened and she needs to bring one child to the hospital or something), that her barring order is still good. One of the guards in our area actually told a woman, 'well you let him back in now, so there's no point in calling us again.' And another case I had - she had a barring order and after three months the man started being nice. He was calling and taking the children and one day he said, 'I was just noticing when I was standing there that hall is getting very shabby; I'll paint it for you.' She was saying 'no it's grand.' But he insisted and she let him in to paint the house and everything was grand and she made him a cup of tea while he was doing it and then maybe two weeks later he said, 'I was just noticing, maybe the grass could do with a cutting, and, what's the back garden like?' Eventually he got in and he beat her very severely. And she was afraid of her life to ring the guards because she said 'it's my own fault, I let him in.'"*

#### **Domestic violence service provider no. 5**

There is a perception that different standards apply for 'civil-criminal' cases than for 'criminal-criminal' cases.

*"The judge always gave him suspended sentences: '...if you come up in front of me, I will put you in jail for breaching that barring order.' He'd go back in front of the judge and it'd be suspended again. So he knew that it didn't matter, he knew that he was going to get away with it. And this man was caught in the house by the guards, the woman and her two children terrified. They were so terrified of him. This judge saw CCTV evidence of him on the street, screaming and roaring into her face, 'I'll fucking kill you, I'll see you in the grave! I'll see you in the ground!' Independent evidence, not just based on the woman's testimony, and he just kept doing it and doing it again. The court completely failed to hold him to account, completely, and you know women are just left totally at risk by it."*

The divide between criminal and civil court:

### **Noeleen**

There doesn't seem to be any communication or collaboration between the two courts. Noeleen's perpetrator's hearings are completely separate and he tells the judges different things (different addresses, income details etc.) with no fear that the information will be passed from the criminal to the civil court.

*"Ah sure you'll get away with that, just go in and tell them this, that and the other. Just go in and give a load of baloney. But he's cute, when he's in the criminal court he'll tell the judge he's working, every time he comes before the criminal courts he'll give references in from workplaces, do you know what I mean.... because I'm told family law and criminal courts are two separate issues. Well it's concerning the same thing as far as I'm concerned."*

### **Ciara**

While a file on the child abuse was sent to the DPP, no file has been sent in relation to the abuse Ciara endured.

*"My domestic violence statements were never taken, when I was talking to the Garda interviewer, she says, 'you'll have to get your domestic violence, ask that guard.' I ask her, she says, 'that's not my job, it's another guard's job,' I ask her then, 'oh I'll have to see her about that.' This is the way it was going on. And then before my daughter's last interview the guard rang me up and she said that we're 'going to interview your daughter again, the final interview, and I'll have someone take your domestic violence statements.' And no one ever did, no, no one ever did."*

### **Lisa**

Lisa witnessed the difference between how criminals are treated in the criminal court compared to perpetrators who breach domestic violence orders.

*"The way that he [the judge] was talking to the people that had been in for speeding or in for possession of cannabis and the way he'd say, 'you got a chance, you're not getting no more chances,' that type of thing. I was thinking - I am coming in here for the seventh time with him and I'm submitting the same evidence, he's done this, I have text messages and everything and they just keep giving him his chances..."*

*...Domestic violence, it's constantly - go away and try and get some help. They get told, 'if you're brought before me the next time I'll do this,' but they never do it."*

### **Jane**

Judges in the district court cover criminal and family law cases. Because the man who abused Jane has a criminal record the judge recognised him. She feels this has been helpful to her case. Also she felt that the Gardaí were disinterested in her case until they knew that her ex-partner had been involved in other crimes.

*"I remember one time I went to the police station with a support worker saying he was screaming and shouting and the guard says, 'anybody can say they'll kill you and they don't mean anything by it.' It was before I gave them the name, told them who he is. He wasn't very helpful, but the minute I mentioned the name of my ex that's when he started getting interested. Even the support worker said, 'Jane, did you see that?' She says, 'the first time you went there and you were reporting he had*

*no interest at all.' But the minute I mentioned the name, because he's a known man around here and I think they are really dying to get him, that's when he got interested."*

#### **Domestic violence service provider no. 5**

*"There's no tracking between the civil and the criminal justice courts at all, there's no connection, there's no tracking of cases across the two systems. I mean it's absolutely crazy.*

*So this woman had a barring order against her husband who was extremely physically violent, there was lots of evidence of past violence, injuries, threats to kill, he told her many times he would put her into a grave in the ground and she was absolutely terrified of him, got a barring order, I looked at her file recently - I think there were nine breaches of the barring order within about a six to nine month period. He was back up in front of the judge five times for breach of barring order, but he never got a jail sentence for any of those breaches and yet he was put in jail for a month for non-payment of parking fines in the same year."*

#### **Commentary**

The narratives above illustrate clearly the risks to women and children where systems of investigation and justice are inconsistent and discontinuous, and reluctant to engage with domestic violence complaints. Custody and access issues are dealt with independent of domestic violence so that the violence is not seen as significant and relevant to determining these matters in most of the cases. Inconsistencies in applying the law lead to reversals of judgements with potential consequences for the safety, welfare and subsistence of children and their mothers. Those who use violence can also use the divide between the family and criminal courts to delay cases, evade consequences and prevent women from moving on in their lives. Empty threats by judges and treating criminal behaviour (traffic fines, possession of cannabis) that occurs in the public domain as more serious than violent criminal behaviour occurring in the home, undermines complainants' faith in the system and their attempts to protect their children.

There is some evidence that specialised domestic violence courts are more responsive and effective in dealing with domestic violence than traditional courts. The establishment of these courts may facilitate the development of expertise in this area and may result in an increase in the number of cases investigated and a better quality and more efficient process for the complainant. However, in some countries, experience indicates that the establishment of such courts may result in the marginalisation of women's issues among other difficulties. It is therefore crucial that adequate funding and training of staff accompany the establishment of specialised courts<sup>81</sup>.

### **An analysis of specialist domestic violence court models**

SAFE Ireland's aim is to centre stage the voices and needs of women and children. A specialist domestic violence court which would deliver on this objective would have to give women the freedom to choose, without placing boundaries and conditions on her decisions. We conducted an extensive review of the specialist court models in place around the world. The following is a summary of our findings from that review.

Three basic principles underpin specialised domestic violence courts, however each court has its own unique structure:

- Early intervention for low-risk offenders;
- Vigorous prosecution for serious and or repeat offenders; and
- A commitment to rehabilitation and treatment.

The building blocks for a successful domestic violence court are<sup>82</sup>:

- 1) Victim services (immediate access to advocates, referral to appropriate services, keeping victims informed, safety at court, reduced delays);
- 2) Judicial monitoring (single judge, judicial supervision of defendants, establishment of a system for monitoring defendants in the community);
- 3) Accountability (strong relationships with and between services, ensuring perpetrator programs reinforce offender accountability); and
- 4) Coordinated community response (strong linkages between justice system partners and a wide range of agencies, regular meetings and training).

These courts are often described in the literature as ‘victim centred’ with a primary focus on victim protection<sup>83</sup>. There are many varieties of domestic violence specialist courts in place in Britain, US, Canada, New Zealand and Australia. There are more than 130 confirmed domestic violence courts in the US, more than 50 in Canada and nearly 100 in England<sup>84</sup>. Evident from the review that we have conducted is that there are multiple variations of the model in operation depending on the legal jurisdiction.

Stewart outlines two approaches to specialist domestic violence courts: the integration model and the interventionist model<sup>85</sup>. An interventionist approach implies that the court takes on a role which steps into the private lives of victims, offenders and their children, overseeing treatment and the ongoing progress and safety of victims and children by requesting ongoing reports. An integrated response is one where the court is the focal point for which all other responses from a range of agencies flow facilitated by victim advocates on behalf of the victims and children and by probation services on behalf of the offenders. The integrated response means collaboration and co-operation amongst services to receive referrals and, as well, a significant level of coordination of these services to ensure appropriate and non-duplicative services can be delivered<sup>86</sup>.

In the US, the Federal Violence Against Women Act (VAWA) now requires mandatory arrest or pro-arrest policies by state and local governments as a condition to receive federal funding<sup>87</sup>. Changes in the handling of domestic violence cases were implemented in the 1980s and 1990s, including the creation of specialised domestic violence prosecution units, the emergence of more batterer treatment programs, and the adoption of protection order system reforms to improve emergency access and widen the options available to victims for legal relief<sup>88</sup>. Many reforms were based on the theory that holding batterers criminally accountable would reduce future violence.

There are three variations of specialised courts in the US, namely the criminal cluster model, the civil court model and the combined civil/criminal model.

Sack (2002) identifies the following components of a US domestic violence court:

- Early access to advocacy and services;
- Coordination of community partners;
- Victim and child-friendly court;
- Specialised staff and judges;
- Even-handed treatment in the courtroom;
- Leveraging the role of the judge;
- Integrated information system;
- Evaluation and accountability;

- Protocols for evaluation of dangerousness;
- Ongoing training and education; and
- Compliance monitoring.

Criminal court models retain their emphasis on the adversarial process and defendant accountability as well as dealing with the unique needs of domestic violence cases and victim safety. One of the first domestic violence courts to be developed in New York was the Brooklyn Felony Domestic Violence Court launched in June 1996<sup>89</sup>. The evaluation of this court concluded that the specialist support both within and outside the criminal justice agencies increased the likelihood of the victim remaining committed to the prosecution and enhanced the quality of information available to the prosecution. The specialist court was found to have a positive impact on the management of cases, by reducing the overall amount of time taken and the number of hearings to finalise a case<sup>90</sup>.

Civil specialist domestic violence courts deal solely with requests for protective orders as well as their enforcement, prioritising domestic violence cases over other civil matters. One such court is the Quincy District Court, Massachusetts<sup>91</sup>. This court was set up to cope with the demand for restraining orders by prioritising domestic violence over other civil matters. The court has two dedicated sessions every day (morning and afternoon) for dealing exclusively with restraining orders. There is a separate restraining orders office at the court staffed by a domestic violence abuse clerk who will assist victims to fill out the paperwork to apply for a restraining order. Specialised advocacy is provided for women (usually by student volunteers) and women are referred to daily briefing sessions at the district attorney's office where they can get legal advice and support. The district attorney's office employs full-time staff to advise women on the services available and their rights in relation to making a criminal complaint. The court can encourage offenders to enter and remain in treatment by offering diversion, probation or a reduced sentence as an incentive<sup>92</sup>. In some courts it may be possible to assess and manage offender risk, possibly based on an actuarial assessment.

The court has been evaluated as successful in developing a powerful and coordinated judicial response to domestic violence, although in its early years, areas for improvement were identified. The Quincy District Court is not strictly speaking a civil only court because it does try to link in with possible criminal matters through referrals to the district attorney office. There is no direct equivalent specialist domestic violence court operating in the civil setting in England and Wales.

Combined civil/criminal models have been developed to consolidate to the greatest extent possible, all related civil and criminal matters and all cases are assigned to a single judicial officer<sup>93</sup>. Specialised domestic violence courts that integrate criminal and civil functions are often suggested by reformers as a way to improve court-based approaches to the problem of domestic violence<sup>94</sup>. A fragmented court system in which a single incident of domestic violence can spawn multiple civil and criminal actions, makes it difficult for victims to access important legal remedies and leads to conflicting court orders, endangering victims and allowing perpetrators to evade accountability<sup>95</sup>.

The Vera Institute of Justice recently completed a qualitative study examining the impact of the Queens Integrated Domestic Violence Court on victims of domestic violence. The results indicated that the 14 victims interviewed found the court more efficient than the traditional court system<sup>96</sup>. Positive court experiences appeared to result from a positive relationship between victims and their attorneys and a feeling that the judge was responsive to victim concerns. The physical layout of the court and the presence of victim advocates led to a greater sense of safety; victims indicated a high level of coordination between the court and local service providers and rated the victim advocates highly. However, some victims were discouraged when batterers were not always sanctioned for retaliatory

actions and some also felt that the court did not place enough emphasis on securing child support payments, although this matter is beyond the court's formal jurisdiction<sup>97</sup>.

Research in the US has found that integrated systems that include family proceedings, or systems where there is a high level of information sharing, may deter some women from accessing the system for several reasons, including the fear of losing their children<sup>98</sup>. Epstein has commented that integration may maximise women's access to services but also "can reduce their ability to decline such services if they wish to do so."<sup>99</sup> For example, victims who want help with the civil justice route may be pushed into pursuing criminal proceedings as well. Implementation of a combined specialist domestic violence court has to remain responsive to the individual victims' needs and wishes.

From the findings of evaluations of specialist domestic violence courts in the US, Labriola (2009) reports the following success and qualified successes:

- Specialist domestic violence court listings speed up case processing.
- Improved communication and coordination across agencies involved in a specialist domestic violence court have not been shown to produce a positive impact but collaboration has been shown to improve information sharing, access to services, stakeholder confidence, knowledge and awareness of issues and availability of services.
- Informed and consistent decision-making can be attributed to the continuity provided by utilising a single specialist judge throughout a matter and for domestic violence matters in general.
- The evidence regarding conviction rates is unclear (conviction rates increased in three studies, yet three other evaluation studies found no significant relationship between domestic violence courts and conviction rates).
- Outcomes on sentencing were ambiguous with some domestic violence courts showing greater and some showing lesser use of incarceration than traditional courts.
- Domestic violence courts are more likely than others to mandate offenders to a wide range of special conditions (e.g. treatment programmes, special bail conditions, judicial monitoring etc.).
- Judicial monitoring of compliance was found to raise the likelihood of sanctioning of non-compliance and increase the severity of penalties; scrutiny and threat of sanctions increased compliance.
- The results of studies examining recidivism in ten domestic violence court sites was inconclusive. In some locations re arrest in the 12 months following conviction may be reduced due to incarceration for non-compliance or to intensive judicial supervision; mandating offenders to a programme did not produce lower rates of re-offending than community service or probation alone. Reduced recidivism has been linked to both an expedited and lengthier period of time between arrest and disposition.
- Specialist domestic violence courts were more likely to connect victims with services than non-specialist courts. Victim satisfaction was found to be greater in domestic violence courts, however, victims were still highly critical of police and prosecutors.
- Safety was seen to be achieved through a combination of protection orders, offender monitoring, courthouse safety measures and victim services.

In Canada, the unified family court models found in several Canadian provinces permit all aspects of family law to be dealt with in a single court with specialised judges and services. The unified family courts consist of superior court judges who hear matters of both provincial/territorial and federal jurisdiction. These courts encourage the use of constructive non-adversarial techniques to resolve issues and provide access to support services.

The models discussed here are applied in various ways in different individual courts. There is little evidence available to ensure a full comparison between specialist and non specialist courts. The courts however provide a good example of putting the victim at the centre of the criminal justice system:

- In terms of victim satisfaction, they send a message to the victim that she is being heard;
- They send a message to the offender that domestic violence will not be tolerated and that the offence is taken seriously;
- They act as a beacon of good practice in terms of victim-centred justice;
- Increases public confidence in the justice system;
- The courts provide a catalyst for multi-agency working; and
- They promote the coordination of effort to support the victim and bring offenders to justice.

However, specialist domestic violence courts have also been criticised, for example, for ghettoising family law and gender-based violence within the legal system. Further examination of the diverse variation between the models in operation is warranted in order to develop an approach which prioritises women and children's safety, their choice and voice, and which is effective.



## 4. The victim and perpetrator stereotypes

This report deals in some detail below with the double-edged sword that is the stereotype. It is how human beings assess people and situations and it is incredibly useful. But often it blocks our view of what is really happening. The domestic violence victim and perpetrator stereotypes affect whether a woman who lives with violence gets a barring order and whether a man who is violent is punished for its breach. There are stereotypes based on gender, ethnicity, perceived class or level of education, whether someone is a criminal and on the type of abuse and violence and whether it is defended. These stereotypes can pull our focus away from the situation, assessing the act of abuse or violence and on to whom the people are and by which groups they are represented.

### Domestic violence service provider no. 5

*"... it seems to matter more to the court who the woman is as opposed to the merit of her case. You know, that would be our experience as a service and hearing the women coming back to us, or being with women in court. You're asking, 'why did that woman get an order and that woman didn't?'"*

*[An ideal domestic violence victim is...] white, compliant, not too angry, you know somebody who seems kind of beaten down and passive. You go in there advocating for yourself as a strong woman? That's one thing you don't do. I suppose there is also an issue around ethnicity; there is a reverse racism where sometimes the court, sometimes the judge here, tends to respond very proactively to women who are minority ethnic women and respond very punitively towards their husbands and partners. It benefits the women but we know that it's actually rooted in racism because it's about who he is as opposed to what he's done. We can have a white woman in there with a very similar profile in terms of risk, and in terms of the history of the violence and the abuse and the severity and nature of the violence and the abuse, whose husband, if he's a white, middle class guy, is going to get off with a slap on the wrist.*

*We've found definitely with minority ethnic women that the barriers and the issues and, I suppose the discriminatory and differential treatment that they experience in court, is more around maintenance and things like that, they're being dismissed and you know not dealt with as seriously maybe. It's just so inconsistent; it really is crazy.*

*One of the women we support is a very empowered middle class, educated woman who stood up for herself in court and by God, the judge, ... I mean the system is so vindictive, full of problems. Her ex-partner has a huge history of physical violence, intimidation, harassment and the guards were so worried about him and him having access to his children and they had a list of incidents as long in the Garda station, they were really on board and they were doing an excellent job. There was a woman guard who said, 'I'm going to make sure I'm available for every court case, I'm going to be there, I'm going to give evidence.' But the judge ... didn't even let the guard in the court; he didn't let the social workers in the court. He basically told the woman, 'to step back and stop being so bolshie'. Basically giving him complete permission to continue to terrorise and intimidate this woman. He has tried to run her off the road, he had followed her in her car for miles and miles and when she stopped, he tried to drag the kids out of the back of the car, he threatened to kill her on numerous occasions, the kids were absolutely terrified of him...*

*... I think the issue was that this woman was not going to put up with it. She's well able to stand up for herself and she went in to assert her rights and to assert the rights of her children, and the judge was having none of it, totally putting her in her place."*

### **Domestic violence service provider no. 1**

There is a focus upon the woman's behaviour instead of focusing on the person using violence.

*"So we would still find in this day and age that, this woman had a guard ask her how many sexual partners she had in her life and was she going out on a Saturday night and having a few drinks, bringing someone home? Her husband sexually assaulted her."*

### **Domestic violence service provider no. 3**

Again, a focus upon a woman's behaviour instead of on the abuse:

*"It's very much about the value of a life. We talk about stuff like this all the time, you know - the value of someone's life being different to somebody else's life. If we leave here today and someone assaults and kills us on the street there'll be an outcry, it'll make the news. If we go home and the same thing happens, depending on each of our reputations, it may not make the news, there may be no outcry. If I'm a woman living with abuse and I use alcohol, because that's how I get by, was my life as valuable as somebody else's? I've no doubt that if she uses alcohol or other substances, it will be used in the divorce - about how tough it was to live with her. I'm not saying every person who drinks is dealing with an issue, but certainly there's evidence that trauma can have a relationship. For us it's about seeing through a different lens and then it all makes sense. It has been a challenge also for us in the past."*

### **Rachel**

*"I said, 'can the child get help?' she said, 'no, I'm not going to take her father's rights away to - no, I'm not going to allow one parent to medicate the child against another parent's wishes.' And that's when I went ballistic in court and I started to shout at the judge, I admit to that, that, 'this is a joke!' I said, 'do you hear me?' I said, 'for five years this man has stopped my child's medical treatment, this is your chance to give my child the freedom to get help and you're not allowing him to do that.' She looked at me and said, 'I made my decision,' and walked out. So my punishment was for this shouting, the divorce, you know, decision."*

The judge viewed it as a dysfunctional relationship. Rachel thinks her husband is favoured because of how he presents himself, while she is viewed as a 'crazy woman.'

*"I think when a man, and he's a good-looking man, in a suit, with his sisters, his mother with pearls and, as I said to you, they're very well respected, a very well-connected family, middle class, you know.... And then, the crying woman. And he's there in his Armani suit with his computer, with his box, with his cool glasses or with his contact lenses, (it depends on the judge), and he's prepared, his family have the money."*

### **Caroline**

Caroline thinks that she was not believed about the abuse she endured because she is not the stereotypical 'battered woman.'

*"I never really looked like an abused woman. I have experience of that - when you dress well and you are saying what you think ... I don't think they believe really."*

## Commentary

Goodmark summarises what we know about women as witnesses to the court: “Social science research establishes that women are generally perceived as less credible than men (and occasionally, as no more credible than children). The claims of battered women are viewed with a great deal of suspicion; the credibility of battered women is challenged at every turn. Judges share their cynicism about battered women’s claims with their colleagues; the judicial grapevine buzzes with the received wisdom that women seek protective orders only to gain advantage in divorce and custody proceedings.”<sup>100</sup>

We hope it is clear from the women’s narratives that part of the reason for this is perhaps that women who have been abused and violated often deal with it in ways that are suspect to those who place their faith in the ability of the state and its legal system to solve the problem: they refuse to turn to the Gardaí and are cynical about the courts’ power, they delay telling their stories, and they minimise or underestimate the damage to them. They disclose more details in their recovery process, as they gain confidence about not being to blame for the violence and being believed. SAFE Ireland finds, drawing on findings from another research study<sup>101</sup>, that sexual abuse and rape can be the hardest violations for women to acknowledge because denial is a self-preservation mechanism against pain and shame.

Women who have suffered violence may appear angry or display inappropriate affect; judges and others may be more inclined to believe the calm, charming, and vehement denials of the man instead<sup>102</sup>. On her commentary on the criticism of the Massachusetts Battered Mothers Speak Out Project, Goodmark points out that judges who lack an understanding of domestic violence may have difficulty squaring the picture of the composed and persuasive litigant before them with the abusive father described by the battered woman. In fact one of the women who contributed her narrative to this report described her partner verbally attacking her in court, which attack would have become physical if his barrister hadn’t held him back. No prosecution, or offer of prosecution of the witnessed attack, was offered. As the California Judicial Council Advisory Committee on Gender Bias in the courts noted in the context of child sexual abuse allegations, “It is much easier and more in accordance with our images of the world to regard a mother as crazy or hysterical than to recognise an otherwise seemingly rational and caring father as capable of the behaviours described.”<sup>103</sup>

Joan Meier argues that this scepticism makes any claim of judicial neutrality inherently suspect; “those who are predisposed to believe that women often fabricate or exaggerate domestic violence allegations are likely to be harder to persuade of the truth of such allegations than those who are predisposed to believe that men frequently beat women. Rather, her very status as a litigant, a mother, and battered, seems to ensure that she will be viewed as, at best, merely self-interested, and at worst, not credible.”

<sup>104</sup> That judges and other state actors are sceptical of claims of domestic violence yet again presents the woman with Hobson’s choice: if she doesn’t raise and bring home the domestic violence issue, the court has no context for considering her needs at separation or divorce or her reluctance to permit unsupervised access or to share custody with her former partner. If she discloses the abuse, what we have seen generally of the attitudes of judges and others, makes it highly unusual that she will be recognised as sincerely advocating for her own or her children’s welfare and safety.

Lee Hasselbacher has also written about the pervasiveness and deep-rooted nature of this dichotomy stating, “Although governments may deny gender bias in justice mechanisms, the public/private framework often influences the very structure.”<sup>105</sup>

## Anti-essentialism and the dangers of the stereotype

Commonalities in the women's narratives and feedback from service providers are striking and require some consideration. Women generally were silenced in court or their allegations of domestic violence not fully investigated or requests to make statements not facilitated readily and breaches of orders go by unpunished. Access and custody issues were generally adjudicated without reference to the domestic violence or consultation with children. The different layers of the justice system from the Gardaí to the judges are failing to give each woman the time and attention necessary to properly analyse her specific case.

In philosophy, 'essentialism' is the view that for any specific kind of entity there is a set of characteristics or properties all of which any entity of that kind must possess. Therefore, all things can be precisely defined or described. While the feminist movement has achieved great things for women and for women who live with abuse and violence, there is a growing body of work warning against confusing the reality of many women with that of all women. To some extent, how the grassroots movement sought to get domestic violence acknowledged has influenced the images of 'victims' and 'perpetrators,' and the definitions of what domestic violence is and the measures we put in place to deal with it. Stereotypes emerged which were useful to some extent in raising awareness and concern in a society reluctant to involve itself in the privacy of marital relations, but these stereotypes have become part of the reason that many women's experience of the legal system is so destructive.

Goodmark suggests a re-evaluation of the legal system's responsiveness to the complex and variable needs of women subjected to abuse by shifting the theoretical lens through which domestic violence law and policy is viewed. This would allow the experiences of individual women to be seen, rather than the stereotyped universal woman - a subordinated victim<sup>106</sup>. As evident from the narratives in this report not only does the traditional domestic violence victim stereotype, or story we are familiar with, not necessarily apply to these 13 women, it does not apply to their particular individual reactions to the abuse. A case of - 'the theory is great, but the practice is killing us.' People are more than the social groups that are seen to represent them. Our system needs to catch up with this change in thinking and to see each individual as just that, an individual.

Goodmark says that:

"...critics of anti-essentialist feminism<sup>107</sup> have argued that its focus on the individual creates a fragmentation of interests that can render policymaking impossible. But focusing on an individual's autonomy, her right to make her own decisions creates a clear path for policymakers. Domestic violence law and policy should not act on individuals, but rather should be available to be deployed by them as they see fit. Domestic violence law and policy need not address each individual's personal concerns; it need only give her the ability to choose whether and when and how to utilize tools like arrest, prosecution and mediation. Creating space for choice honours the differences between women, recognising that race, class, sexual orientation, disability status, and a multiplicity of other variables colour how a particular woman might want to respond to a particular incidence of violence at a particular moment in time."

During an interview with a SAFE Ireland service in a district court area where the narratives described a particularly uniform and distressing inability for women to be heard, the interviewer asked, "well, who does get barring orders from this court?" The person providing the court accompaniment service said in her experience, a woman who has lived with violence has to be: "White, compliant, not too angry. You know, somebody who seems kind of beaten down and passive? You go in there advocating for yourself as a strong woman - that's one thing you don't do..." She also said that in order for a man

who is violent to his partner to be made the subject of a domestic violence order, he is more likely to be foreign.

There is a need to understand how a particular narrative of women as victims of domestic violence and men as perpetrators becomes dominant in society and our institutions and can lead to a failure to examine the merits of individual cases. Social science has progressed its understanding of this phenomenon in recent times. The pinnacle of this science is the work of Mahzarin Banaji and Anthony Greenwald and is largely captured in their recent book: *Blind Spot. Hidden Biases of Good People*<sup>108</sup>. The hidden biases referred to in the book's title are bits of knowledge about social groups. Bits of knowledge are stored in our brains because we encounter them so frequently in our cultural environments. Once lodged in our minds, hidden biases can influence our behaviour toward members of particular social groups, but we remain oblivious to their influence. They say in the book, "In talking to others about hidden biases, we have discovered that most people find it unbelievable that their behaviour can be guided by mental content of which they are unaware." They acknowledge that convincing readers of this is no simple challenge – how can you show the existence of something in our own minds of which we remain completely unaware? In fact, a test, called the Implicit Association Test, has been used to do this on a massive scale and over 4.5 million people have completed it online. In taking the Implicit Association Tests, the most surprised are those whose blind spots or prejudices are against the groups to which they belong – whether the test looks for stereotypes based on colour of skin or sexual orientation, or by reference to any other group.

The court accompaniment service's experience was described to Professor Banaji, during a conversation in Harvard University<sup>109</sup>. She said, in her experience, legal professionals and judges were the hardest to convince of the existence of these blind spots in their minds. She thinks that this is perhaps to do with the fact that legal professionals are so sure of their open minds, so sure that justice is blind. We are so sure of the fact that we are 'good people.' The book explains that 'good people' is not a moral judgment, but a way of describing people who "intend well and who strive to align their behaviour with their intentions." The aim of the book and the science behind it is to explain this phenomenon sufficiently so that these 'good people' will be better able to achieve that alignment. While many variables may factor into this finding, one common theme in the literature on this subject is the 'illusion of objectivity,' which contributes to judges feeling overly confident in their ability to remain unbiased<sup>110</sup>. How can we relate the science of blind spots to the account of the judge who has an established pattern of granting protective orders against men who are not ethnically Irish over those who are? It is quite likely that that judge is completely unaware of the pattern and would be surprised to see it pointed out.

Another social psychologist Amy Cuddy, associate professor at Harvard, uses experimental methods to investigate how people judge each other and themselves. Her research suggests that judgments along two critical trait dimensions – warmth/trustworthiness and competence/power – shape social interactions, determining such outcomes as who gets hired and who doesn't, when we are more or less likely to take risks, why we admire, envy, or disparage certain people, elect politicians, or even target minority groups for genocide.

Amy Cuddy's work shows that women are seen as either warm and incompetent, or cold and competent. The view is completely binary. Of course there are intersections for colour and membership of other identifiable social groups, but this is what the world sees. We asked Amy, would this make some sense of the lack of correlation between the extent of the abuse brought to court and the court orders made or not? For example, the lack of correlation between the evidence of high-risk behaviour, such as killing family pets and the judge allowing that man nonetheless to have overnight access with his children? She believed it may well explain the judgment if the woman appeared in court to be defending herself, to be angry or dismissive of the other's feelings on the subject of his children. And we also know this

to be the case, because some manipulation of this human phenomenon does go on – women are told by their advisors to “stop crying,” “don’t speak,” to come across in a way that fits the stereotype of the ‘domestic violence victim,’ or ‘stoic survivor.’

To a large extent, the media, as it represents and influences the view of the people, has perpetuated certain stereotyped accounts of what are otherwise acts of domestic abuse and violence. In fact an internet search for images representing domestic violence which pulls from the media and even from some domestic violence services shows that the great majority of images focus almost completely on the victim and she is portrayed as a certain type of victim<sup>111</sup>. Often a woman’s murder, even a woman and her children’s murder, is reported with reasons that sound more like crimes of passion – “he couldn’t accept their relationship was over”<sup>112</sup> – rather than often what is the inevitable end point of domestic abuse in these cases, i.e. the escalation of pre-existing violence and control to fatal levels, and violence that was mismanaged by our society. Often these women are known to SAFE Ireland’s member services. Often these women have looked for help from the legal system<sup>113</sup>. How can the law be developed if women are advised to behave in certain ways in court which reinforce stereotypical views of victims and of women? As long as the system fails to examine how it operates in applying the law, the vagaries of hidden biases go unacknowledged and unchecked and as a society we cannot be sure that the operations of our civil and criminal justice systems are in alignment with our intentions.

Reform could include: using research and consultation with underrepresented women; developing policies in response to particular experiences rather than particular groups; and continually deconstructing identity categories so that women can expand the types of legal claims they can make. Is it possible that better solutions might lie beyond the reach of the state – does the legal system have to be the primary societal response to domestic violence? Rather than assuming we know which interventions would be most useful to people subjected to abuse, can’t we ask what would be most beneficial to them? Thinking about women or children as ‘women’ or ‘children’ is unavoidable, but in doing so, we must remember, which women, which children we are thinking about.

## 5. The importance of good advocacy, expertise and policing

Even in legal systems with sophisticated specialised domestic violence courts the experience of the women and children who seek support in escaping violence say that the difference between a good and a bad experience comes down to the quality of the individuals acting on their behalf. Often the ability of a support worker to attend court and explain procedures and outcomes to a woman applying for a protective order is what she cites as making that difference. Education and ongoing training of those who meet and work with these women can go a long way to ensuring that this good experience is less by chance and more by design.

### Geraldine

*‘I’ve been married nearly 50 years; I married the first fella I ever went with. We had three children, all boys. I lived in the same place for 25 years; that’s where we married and we bought a house there. Seven days of the week he drank. One day he came in and I didn’t hear him at the door - I was up putting one of the kids to bed - and so he put his foot through the door and came in and split my lip. I went nowhere about it, I put up with it. Years ago I should’ve got out of my marriage; I’m always saying that to my support worker.*

*He worked day and night, but he hoarded the money; he was very tight. I didn’t drink nor smoke and I was there for my children, but he wasn’t. He was working day and night and when he wasn’t working he was gambling and drinking. He was hot and cold. And he’d query you if you wanted money. And you couldn’t move that chair to there, or he’d be complaining. But I put up with the marriage for the sake of the children. When I rang the guards, when there was violence in the house, there was nothing done. They would come up and just warn him, tell him to behave himself, and me there with a split lip. He’s like a cat with nine lives. I used to go out, but he would try to control me by giving out when he’d come in the evenings that his dinner wasn’t on the table. I said, ‘you’ve two hands on your body.’ When I said that, he’d give out more or throw something on the floor.*

*It was after my husband robbed me I decided to leave. My room was kicked open, the door. All my jewellery and all my money that was in it was taken. I rang the police and they came down. One of the policemen said to me, ‘I think your husband did it.’ But he wasn’t quizzed at all. So one day he forgot to lock his bedroom door, and there was some of my jewellery and about €1,000 in it. They still didn’t charge him. And that was that; they did nothing about it. I was locking my bedroom door at night, I was locking this and I was locking that, and I said I couldn’t live with him. So I went up and had a chat with my solicitor. And he said, ‘the best thing to do, Geraldine, is get a separation, sell the house.’ And I said, ‘Jesus, at my age, all through that.’ He said, ‘Geraldine, you will get through with it.’*

*I lived in the same house as him throughout the divorce process, and I wasn’t safe, because I got afraid of my life with him. But sure it was only a week after my divorce and he came in and he was in bad humour. I love a bit of fruit, bananas and mandarin oranges, he got the bowl and he emptied it out on the floor. I was getting nervous of him then. Jesus, I said, ‘I’ll be dead before the house is sold.’ I got a safety order. And they wouldn’t allow my support worker in with me in the courts to get the safety order. I was nervous, because that was my first time ever applying for one of them. This was before the separation or divorce. My solicitor had said that I should go into the court by myself to get the order. But sure he moved out then a while after my divorce.*

*I came in one day before he left, and I had lovely furniture and it was gone. I was there that morning. I have the keys of the house and I can go in when I want to in the daytime. And he was there and he says to me, 'are you going to work today?' I says, 'that's nothing to do with you, where I'm going, I owe you nothing,' (I was kind of being brave). And when I came back from work my furniture was gone. I'm lucky enough I had the receipt for it. I rang the police and they came down and they said to me, 'now when he's on the drive, ring me.' They came but my ex-husband kept saying to them, 'it's not her furniture, it's mine.' He finally told them it was down in the auction rooms. The police never came back to charge him.*

*So I got my safety order and then I got the judicial separation, but it was divorce he wanted. So the barrister said, 'we'll go for a divorce.' That was heard by the judge; she was terrible cranky. But she never even asked why we were breaking up. My solicitor didn't bring up that he was violent or that I had a safety order. My support worker had to say it to the barrister. My solicitor said that I'd have to have a barrister as well. And my solicitor got me him. But he was hopeless. So violence never came up in the context of my divorce, I was never told that it was relevant. I didn't give evidence during it, my solicitor said to me, 'you don't need to talk, Geraldine,' he said, 'your barrister will talk for you, and if he wants to talk,' he said, 'he'll probably talk.'*

*So we have sold the house now. My safety order only covers my former hometown and was valid only until the sale of the family home. I'll have to get a new one if he torments me in my current hometown. He has been following me around. I don't trust him. I'm still scared of him. You wouldn't know what he'd do. I wouldn't trust him, and he gets away with everything, I said that to my support worker. I would want him to spend time in jail, even six months in jail, even for doing my robbery. He robbed all my jewellery; I had beautiful jewellery, because I was going for years to the auctions. My support worker said she can't understand how he gets away with everything. The police have never said why there was no prosecution for the robbery. It went to the [Director of Public Prosecutions]. The DPP has thrown it out; not enough evidence. I said, to the detective, 'there was plenty of evidence,' I said, 'he gets away with everything, but I'm not letting it go there,' I said to him. But sure, my solicitor said, 'what can you do?' He said, 'the police weren't quick enough.' They should have went in with a search warrant and searched his room straight away. And they should have took him up and quizzed him and took his fingerprints.*

*That's what I say - God help people. Thank God that people have good husbands and they should put their hands under their feet. Because I'll tell you, I did everything to a tee and yet I got nowhere."*

### **Ciara**

On her experience with the solicitors:

*"His solicitor has a personal relationship with him and knows what he's like, that's the worst. It's unethical like. It'd be different if they were caught for something else, but in a family law case where there's allegations of sexual abuse, and that was on children he knows. He knew every trick of the court, everything. His solicitor knew my solicitor so well, and there was information being passed without me being asked. He had her ringing my doctor behind my back, he had her contacting the superintendent behind my back.*

*After the mistakes the first solicitor made, I went to a second solicitor, who was a woman, and I knew she was very strong. But she was over booked, they had to put me down to a male solicitor. But he's so laid back and easy going. When the first judge cancelled out the safety order we appealed that to another judge, to the circuit court. And they were trying to make out it was tit for tat and I was hitting him and all this. The judge put it that maybe I would get him to sign something just to say he'll stay*

*away and all that but why should I sign anything? I'm not the violent person. And the solicitor said, 'are you going to sign it or not?' And I said, 'well I'm not the violent person.' He never gave me advice saying, no, go to the witness box and give ... he said, 'it's up to you, it's up to you what you do, what do you want to do?' And I said, 'well I'm not going to sign anything, I'm going to the witness box,' I said. The barrister was very hard cross-examining me. So it ended up I got no safety order. He was in the witness box as well, so it made it look like it was tit for tat..."*

The social worker involved in the case seemed to have no understanding of domestic violence – undermining the abuse Ciara had endured:

*"I've told the social worker of the details of the abuse and she wrote to the HSE and I have the letter where she said, 'I'm worried that her husband is bullying her.' Like there's a difference between domestic violence and bullying, she didn't put in the domestic violence. And she had all the information on all the assaults on myself."*

On the domestic violence service:

*"My first port of call when I decided I'd had enough was the domestic violence service, they did the safety order, I applied to the legal aid board and I got a legal aid board solicitor."*

*If I could change the court system I think women should be allowed bring a support with them into the court. And once the judge can see that they're in with, say, my support worker now, she was beside me, the judge - like she should be there, because they're for domestic violence, and let the judge see that you're in support, maybe it would be a help in his way of looking at things rather than telling them, because they don't know are you in support."*

## **Jane**

On the domestic violence support service:

*"I find the court accompaniment service here in refuge very helpful. Because just thinking I'm going to court like I was shaking. I was very, very, very, scared, even though I didn't do nothing wrong, but they have a way of calming you down, like you know. And they don't push you to do anything, like whatever you want to do they're just behind you. They don't try to influence you or to do whatever. They just give you a space and just tell you, we are at your back, whatever you want to do, whatever you want to say, whichever way you want to go we are there. And I find that very, very, helpful. Knowing that there is some people back there, like gives you courage as well. Like I was shaking and all but knowing that there was somebody there with me, just holding my hand, just asking are you okay. That's a big help. I really, really, appreciate - from the bottom of my heart I really appreciate that. Because if it was by myself I don't think I would have gone through with that."*

*His family turned their backs and blamed me. I said to them, 'I was at the bottom, I came to you and I told you what my ex-partner was doing and yet you didn't do anything.' I say, 'now my family is the refuge. Because those are the people that have been there when I needed help.'"*

Jane was happy with her court experience and solicitor:

*"My court experience has been good, I think I had good judges. My lawyer presented my case and did a good job, so I haven't spoken or given evidence. The judges know my ex-partner to be a criminal so I think that is helpful for me."*

## Karen

Financial problems held her back from leaving.

*"Initially after I left I came to stay in refuge, but I kept going back because of money and mortgage and everything. When I left I went to the dole office for help, to go on the lone parents, but they weren't very nice. So I ended up going back home. And then finally, two weeks later I left. I rang the refuge and they were really great. But I didn't think I had a problem at that time. I still didn't think I was being abused, it was me abusing him."*

The refuge was the only place where Karen felt people believed her.

*"The rest of my life is just totally wrecked. Only for the refuge, oh my God. People don't want to hear about it, like they don't believe half the stuff you're saying, because how could you be ... because my ex acted the real family man."*

*Besides the refuge I have no support, I've got no friends. I've got a couple of friends now in the last year. But it got so bad I couldn't even speak to people. I'm a little bit better now but I wouldn't even know what to say, it's like I lost 20 years of my life, especially education and that."*

She has had a number of solicitors and varying experiences with each.

*"I had one solicitor that thought that domestic violence doesn't happen. You kind of have to prove yourself, I felt like he didn't believe me ...*

*... I didn't feel my first two solicitors had an understanding of domestic violence. The last one then can't take legal aid on, but he was great. He had to speak directly to my ex-husband because he had no solicitor, and he said that my ex-husband only wanted the kids taken into care. He got the drift of him whilst speaking to him."*

## Lisa

Lisa's first-time court experience wasn't positive due to the lack of support.

*"The first time I went to court I didn't have the [domestic violence court accompaniment service] with me. I was applying for a domestic violence order. But for the whole 15 minutes I was in the courtroom the judge's take on it was – well if you're leaving him and you're not going to talk to him, who is going to support him? Who is going to help him? The judge said to me, 'can you not speak to your friends and ask them to support him?' I felt that judge was telling me – well, if you hadn't have left him he wouldn't have done it. I know now that I have some support that it's not my fault, but on that day I had no one."*

Lisa felt that she received little support from her solicitor:

*"But the first thing the solicitor said when we got there was, 'oh, this judge is not going to give you a barring order, we'll drop the barring order and we'll look for just another safety order, or a protection order.' My solicitor told me, 'there is not enough grounds for it – he didn't do anything, he hasn't hit you.' And I said, 'no he hasn't but only because I left before he got the chance to hit me. But he threatened to kill me and my kids.' So they just said, 'we'll get you a safety or a protection order, it's just as good, but he can live in the house with you.' And I said, 'well I can't go home then, I'll stay with my sister.' So finally we got the safety order and he gave an undertaking to leave the house, but I was back and forth to the court."*

## Margaret

Margaret has had difficulty with support from family, as they believed domestic violence was a private matter.

*"I have a family member who is a guard and they used to always tell me, 'don't let anyone hear you talking about anything that's going on in your home.' And they really ostracised me and were giving out to me even, because somebody saw me coming into the refuge one day and they said, 'we don't want people seeing you coming in here.'*

*I had no support during this time, I couldn't go to my family, I couldn't go to my doctor because my GP used to go drinking with him. I didn't have any friends because my husband made sure I didn't have any friends."*

Margaret had a bad experience with her solicitor during the judicial separation.

*"One of the ladies from the domestic violence service came with me, but my solicitor said, 'you can't have her in the court.' But I could have had, I could have had. Afterwards the ladies told me here they could have gone in. But in actual fact the solicitor said, 'no' and I was really embarrassed for her to hear what he would say, because I know he would be very horrible. But I should have brought her in; I was sorry I didn't. I missed that opportunity, I should have brought her in."*

Also the violence was not raised when they were in court.

*"There was no mention of the violence, or his drinking, but I think the judge knew about his drinking because she told him to get help. The solicitors knew about the violence and they had it in a file but that didn't come to anything, it was him bringing me to court and that's why he was up there. But I had no opportunity to respond."*

She had no support from her solicitor.

*"I felt I was treated really unfairly but my solicitor said to me I was not to be talking like that because I did say it to him as well that I felt the whole system devalued me. He was very cross with me actually and even before we went to court I remember one day he was livid with me. I actually thought he was going to throw the file at me. He was so annoyed with me for saying - I'm sorry I didn't get another solicitor or somebody that would really make me feel a little bit better about me. And he was livid over it. He was so mad with me. I went into court then and I was really broken, I just didn't know what to do. And I had nobody and I think a lot of woman feel like that..."*

*... I told him that I could fire him, that was the day he was going to fire the file at me. And he gave out and he said things to me. And I said, 'well I don't think it's nice if you speak like that.' And he said, 'if you said that to anyone, who do you think they'd believe?' I didn't have the confidence at that time to report him to the law society. They know when you go to them like that that you are broken. So that's where I think the system fails us and I do wish that women were more independent."*

Margaret was not eligible for legal aid because of assets over which she was not in control of.

*"I wouldn't have a huge amount of money now; I had to borrow that money to pay [the solicitor]. So I just felt they are just stripping me of everything. Every ha'penny I have. I did look for legal aid and they told me there was a six month waiting list for it. My solicitor had the grip on me and he said then - on account of we having the land I wouldn't get free legal aid. But my husband had control of all that, you know."*

## Mary

Mary was happy with the domestic violence service.

*"They've been great, especially my court accompaniment worker. She has come to court with me, I'm so pleased she was there."*

## Niamh

Niamh was not informed of any support services and as a result was left very confused.

*"I didn't know about the domestic violence service at that stage and the Garda or the solicitors didn't tell me about it. Now, looking back, it would have made a difference if I had been referred to the domestic violence service for support, or even to find out where to go next."*

She was pleased with one Garda's response who took photographs of Niamh's bruises; however:

*"In preparing my case, because at this point I didn't really trust the solicitor, I rang the female Garda who had taken the photos of my bruises after my husband assaulted me. I asked for the number of abuse case, you know, that we did. She said, 'but I closed it.' She said she called to my husband and he said, 'okay I won't do it again, I won't beat her again.' So, she told me that the case was closed. I said, 'I needed the number of the case to prove the violence.' She said that she thought we were back together and that the violence was 'only the once.' I think this was the specific domestic violence Garda in the station. I told her I was relying on her and she said, 'but he didn't beat you again. Now he understands and is behaving, you can't bring it against him anymore.' I said, 'no, I want to bring it against him. Is it not enough he beat me once?' She offered to meet me before court but she never rang me, she never did. She is gone."*

Niamh had problems with the legal aid solicitor not paying enough attention to her case.

*"The solicitor I was given by legal aid sent her junior the day of my hearing. She called me the wrong name three times in court until the judge asked her, 'are you sure you know who your client is?' She knew nothing about my case; she didn't tell me I could appeal the access decision. When I asked the private solicitor I had previously if we could bring him back to court because he wasn't paying my rent as he agreed or paying for anything for the child, I was told that the cost of the legal fees would be more than the arrears of the payment so there was no point. I have no faith in the free legal aid system."*

## Noeleen

Noeleen had a good experience with the access worker and supervisor, who agreed to put forward their opinions on access.

*"The access worker actually said to me, 'I look after supervising an awful lot of access, where some of the parents are this, that and the other,' blah, blah, blah, 'but the kids want to go and want to hug the parent and spend time with parent.' He said, 'I can see it in your child he doesn't want to be there, he wants to go home,' you know. Well this will all be going in to the court, thank God, which will let the judge see. The supervisor is going to say it in court. And I brought it to his attention and I brought it to his manager's attention, I said, 'this is serious, you're supervising my child's access, you're taking my place when I'm not there.' So it all has to go into the report, what's happening on the day, you know, so the judge can see what's happening."*

## Rachel

Rachel's GP tried his best to have her daughter seen by a psychologist.

*"In the meantime she was self-harming on a regular basis, she was getting no special therapy, my GP was writing almost weekly to the social workers who were in charge of my child, to get help."*

However, the GP's efforts were unsuccessful.

*"The doctor was so concerned about my daughter and her not getting help he faxed an urgent request to the judge to please allow him to talk to my daughter's GP, that she can get urgent help for her condition that was trauma induced. Unfortunately by the time the child got to him it was so late he could not identify the origin of the trauma. But she needed specialised help because she was developing coping mechanisms that were very unhealthy. The judge said, 'no.' The report wasn't completed for a year after that, and in the meantime there was no therapy."*

The HSE undermined Rachel's efforts to have the abuse she and her children endured acknowledged.

*"Then the HSE started to backtrack. They said, 'it's parental acrimony, not domestic violence.' I believed that even if they were right, even in a case of parental acrimony, surely children should be seen and heard. Even if it is to tell the therapist and the court that both parents are to blame and that their welfare is at risk."*

They didn't acknowledge that domestic violence had been a factor and ordered mediation, which is not advised for domestic violence cases.

*"We were sent to mediation because then the HSE said, 'the parents have to go to mediation.' They made it a condition of my daughter's therapy, if I go to mediation with my ex-husband then they will give our child therapy, if I undergo psychological assessment and then my ex-husband does, then they will give her therapy."*

The solicitors settled access out of court because of uncertainty about the judge's potential decisions, despite Rachel being concerned about the children's welfare.

*"So my barrister was concerned and he said, 'look, give him extra access because if we go in front of this judge we have no idea what she might do.' That frightened the hell out of me, because I had a daughter who was still very fragile. So access was agreed and it was all over the place."*

Legal aid solicitors did not want to deal with her case.

*"So then I had to fight with legal aid to get legal aid because at that stage like no solicitor would take the case because they said, Rachel, you'll be in court all the time."*

## Rita

Rita's family doctor showed no support to her and did not refer her to somewhere she could get help.

*"So I went into my own doctor to say like, 'this is too much for me, I need some kind of support.' I told her what was happening with my children, I got no support from her. She knew about the child abuse. But it was all in my imagination as far as they were concerned. It was all in my imagination. Because I'd never seen anything exactly."*

Social workers provided little support and made Rita feel like a nuisance for seeking help.

*"And when I'd ring the social workers and tell them what happened, the head social worker said to me, she said to me, what did she say to me, she said, 'what is it this time? What problem have you got this time? You need to get help for yourself, for God's sake.' That was the response I was getting from the social work team. That was the response I got from the social work team."*

Rita feels that the solicitors are not doing enough background work.

*"And that's the problem with the solicitors, my gut feeling is they are not doing their work. They need to compile the case. Gather your evidence and then get your case law to back it up. There's plenty of case law there. The case law was there. Use it."*

## Siobhán

A counsellor referred Siobhán and her husband to a mediator, who then advised Siobhán to get a solicitor because of her ex-partner's abusive behaviour in mediation.

*"[ex-partner] was getting abusive, he was getting annoyed, angry, and all that kind of stuff, and the [mediator] just put a stop to it. He walked me to my car then and he told me I should go to see a solicitor."*

## Domestic violence service provider no. 2

Court clerks referrals to domestic violence services:

*"... the court clerks that I know do refer on. Now sometimes a woman would go in and say, 'I need a safety or barring order,' and they'll do all the paperwork but they will also offer the support service phone number. They are very supportive of the court accompaniment role and are always available to offer information i.e. court dates, times etc. All of the court office staff are supportive and helpful in our area; both district and circuit."*

General attitudes:

*"Court accompaniment was a new role in our domestic violence service. We didn't know anyone. The first morning a woman knocked at the door who needed a protection order, but didn't know how to go about it. She'd got some paperwork from a solicitor, so we filled it in the best we could. We went to the courthouse and we waited and waited and in the end I went up with the forms to the court clerk and the clerk was annoyed that we had come up late. I said, 'I'm sorry, I'm new to this role, I didn't know what to do, we've been here all morning,' and the annoyed clerk said, 'Well, I've been here all morning too.' I was delighted I was the buffer between her and the woman. We got the forms straight and within an hour she gave us the nod and, as it happened, she got the judge to see us in private and the woman got her protection order. I got to see the difficulties that the women face going in with this very personal, emotional stuff, in crisis and meeting civil servants who haven't been given an understanding of the dynamic of domestic violence."*

## Domestic violence service provider no. 1

### Court facilities:

*"In the courthouse here you're all in the same room, perpetrator, victim, support workers. It's an old classroom, so it's very small, you're sitting beside each other; it's really intimidating. In fact, often there are no seats, so you stand in a corridor with the perpetrator from ten o'clock to five o'clock. He has a good view of you and can stare at you for the entire day. We say, 'on a good day it's unfriendly.'"*

Ensuring the legal system is properly explained to those seeking its intervention and protection:

*"We provide a court accompaniment service and are very clear that we're not giving legal advice. We often find that their solicitor or the judge does not explain well to them what things mean or what could happen. For example: undertakings. A woman applies for a barring order, has serious injuries, we support her and might even attend the solicitor with her if needed. So, she knows the possible outcomes on the day - either she'll get the order or she won't. But then on the day somebody says, 'What if your husband gives an undertaking?' Women don't understand what that means, and under pressure they agree to it. Then they come back to me saying, 'I got my barring order.' I say, 'Oh brilliant. Let me see it,' and she explains, 'Well he gave an undertaking to the court.' No one has explained to her that it is not an order. Then he is violent again and they ring the guards, and the guards say they can't arrest him, because it's only an undertaking to the court. It's not an order. Total waste of time and money.*

*Women are also told sometimes that if they choose to vary the order or to allow him back into the family home and the violence begins again that they're not entitled to apply for another order - 'because you didn't use the last one appropriately.' Even though that's up to the judge, we hear clerks saying that an awful lot more lately. We support one woman in particular and she went back to court and said, 'I want to amend my order for the moment, because he's getting counselling.' (That's often part of the cycle of abuse and control, a big apology and an offer to get help.) The court clerk told her, 'well, if you make me amend that order, you'll never get another one.' So now she already feels she can't actually go back and apply for another one. We say it's her choice. If she believes in that moment that things are going to change, then who are we to tell her different?"*

### Administrative difficulties:

*"Some of our courts have no administration, no office. So she doesn't leave the court with an order because they've no printer. Sometimes they handwrite them. Once they gave a woman we were supporting a handwritten order and she gave it to her local Garda station and the Garda said, 'Did a child write that? That's not an order.' They didn't believe her. If we are in court with them we won't let the women leave without getting the order there and then. But often women don't realise that they have to wait for the order to come downstairs from the office, so they just leave the court. The court staff should say - wait outside, don't leave. We always say to women, 'go straight to the Garda station and they'll photocopy it.' But, as I said at the beginning, that depends on there being an office in the first place. Sometimes no order gets sent to the Garda station, because it wasn't printed. The order is in place, it's on file, but it doesn't get to the Gardaí. Then, a couple of weeks after she's been in court, he breaks the order, and she rings the guards, and they say 'no, no order.' So then we have to go back to court, ask for a copy, which takes forever, get the copy, bring it to the guards. But often days have passed and you are asking the Gardaí to make an arrest they should have made last week when he was attacking her. It's all kind of backtracking from there, messy."*

Making a statement to An Garda Síochána and the interpretation of what constitutes a breach of a domestic violence order:

*"Many women leave the Garda Station believing they have made a statement when they haven't. Women, (I'd say nearly nine out of ten women), when you ask them, say that they made a statement because the Garda took it all down in his notepad. If you ask them then whether what they said was written out, signed and dated saying 'I hereby swear that the above is true,' they say, 'no.' And the Gardaí are not making women aware that it is not an official statement.*

*We tell them to go back and make a statement. If they get a good Garda, the statement will be taken, you know, and if it's a sensitive issue, if it's a sexual assault, you'll have a female guard and it will be dealt with properly. But in a lot of cases it isn't, and it will take someone from our service to keep ringing them and reminding them that this woman has an entitlement to make a statement. Then we have to arrange to make a date and you know, the guard might say – 'well that's not really a breach,' and you have to argue that it is a breach. We had a woman and she had a barring order against her ex-husband and he would follow her down the town. One time he pinned her up against the wall with his car, he followed her at her daughter's communion. He threatened her, spat at her, threatened to kill her in front of people. He rang the doorbell, injured her with her own mobile phone, hitting her with it. It was physical, there were threats and he was following, watching. He was sitting across the road all night. But the Gardaí kept saying, 'that's not a breach though, you have it wrong - a breach is when he physically attacks you.' She'd ring the guards when he was in the car behind her following her, and the guards would follow him following her, and tell her, 'we're watching him,' and she'd say, 'no, I want him arrested,' and they'd say, 'you haven't got the right ingredients for an arrest.' We went to a meeting with the guards twice, and we said 'this is high-risk behaviour, he is going to beat her if you don't hurry up and arrest him.' And he did beat her, and that woman took that beating and then reported it to the guards and they said, 'you should have rung us when he was beating you up, and then we could have arrested him, but seeing as you waited until he left after he beat you and you went to the doctor - that's not a breach.' All of the bruising was documented, everything, she needed medical attention. So, I even went to the county domestic violence inspector, we really exhausted all avenues. He said, 'Oh he'll be arrested, a couple of days now, Monday, it's on my desk.' Then nothing. It's the same in a lot of cases.*

*With another woman I went over and back trying to make a statement. The guard that called out to the house was supposedly the guard that was meant to take the statement and deal with the case from beginning to end, because if he takes the statement he should give evidence in court. But the Gardaí work shifts and they're not always available. So I tried to get another guard to take it and they said 'no we're not allowed do that.' So we waited, I think three weeks, we got our appointment, and we went along and all of a sudden he wasn't available. I asked if another Garda could take the statement because we'd been waiting quite a while, (this breach was five weeks ago at this stage.) They said, 'there's no Garda available.' This is a huge Garda Station, one of the biggest in Ireland I'd say, but they told us all the staff were on lunch and asked could we come back in the afternoon when the shifts change over. So, we went over at four o' clock as agreed and we waited and we waited. Eventually we knocked and they opened the hatch. We weren't given any privacy. The Garda wanted to know what the breach was and I said, 'no, we won't be going into that in public,' (there was huge queue). I said, 'we have an appointment, we were here this morning, we're now after coming back at four can we make a statement?' We were left sitting for another 30 minutes, so I knocked again and said, 'I'm still sitting here waiting, our appointment was at four,' but I then noticed that it was*

coming closer to quarter to five and I thought, they already told us that the Garda who was to take our statement was going at quarter to five. So I had to ring the bell again and they said, 'sorry, we can't actually take a statement.' Now, this was our eighth attempt at making a statement, which should have taken 20 minutes. We were then asked to leave the station, and I refused and asked to speak to the superintendent. I was told I couldn't speak to him because he wasn't there. I told him, 'he just walked by me ten minutes ago.' That Garda came out, stood over me, (I was sitting on a bench with the woman), put his foot up beside my knee, and towered over me with his elbow. I had to ask him to remove his foot away from my knee. He was intimidating me, standing over me. He said, 'You know, you need to come back another time.' I said, 'can you not stand over me like that, you're in my personal space.' I told him I was not happy, that this woman's safety order was breached five weeks ago and that while I appreciated that the Gardaí were busy, I had given my time to come in twice today and he just needed to take the woman's statement. He went back out and eventually he came back with a female guard. So we went in and after the female guard had taken the statement she realised how upset the woman was, how, you know, how serious this was - this was a very violent man who had breached her order on every level. When the guard realised, she apologised for how we had been treated. She said that it was definitely a breach of the safety order and that he needed to be arrested and she said, 'I'm going to bring this to the superintendent first thing tomorrow morning and I guarantee you that he will be arrested.' And guess what? That was a month ago and he hasn't been arrested."

### **Domestic violence service provider no. 3**

Understanding the dynamics of domestic violence:

"The district court judge here is good, although he's coming close to retirement. He seems to be able to unpack what the women are saying. Do you know the way sometimes the subtlety of abuse can be lost? A woman might talk about her experiences say, for example, financial abuse. She might say that he takes responsibility for all the bill paying and stuff like that. People working in the area of domestic violence, they get the subtlety; understand that that is often a method of control. The judge we have at the moment seems to get that. He certainly would unpack it enough; explore it more. Isn't it a shame that we know that we are lucky in that way? We're fearful of when he goes."

Understanding the complexities of a domestic violence family situation:

"Some women who live with abuse use alcohol or substance abuse as a crutch to survive. This particular woman has been drinking for a number of years and it has really been used against her. The domestic violence definitely went on the back burner because the whole case was about her parenting and her drinking and not why she's drinking. The kids were talking about 'mammy's black eye,' you know, so the violence was very well documented, but it was overshadowed, yeah, it wasn't seen as an issue. The children went into voluntary care in the end, (initially it presented as homelessness). But as we listened to this woman we learnt there was a lot of control right from early on and she was not allowed to parent, not involved in major decisions, he was very manipulative. But the social workers couldn't see this. Even the young children spoke about it - 'it's not fair the way daddy makes mammy do this, that and the other.' It was like everybody at the table knew that he was physically abusive to her and controlling, but still that wasn't the main issue. The main thing was - what are you going to do about your drinking? You'd hope child protection would spot that."

#### **Domestic violence service provider no. 4**

Legal professionals attacking the character of the victim rather than whether the crime occurred or not:

*"He breached the protection order but it was as if the woman was on trial. She was questioned by the guard first and then his solicitor. This lady had suffered from postnatal depression and her ex-husband's solicitor said, 'you suffer from depression.' I have to say he was a stand-in judge on the day and he said, 'I'm going to stop you there, this person's depression has nothing to do with this court case.' The solicitor tried to say - it's all relevant. But the judge said it wasn't and that was good because the ex-husband was making out that she was crazy, the usual..."*

Even though the order was not made in this case, the message sent by the judge to the alleged perpetrator was useful to the alleged victim.

*"The judge said, 'I am going to dismiss the case [protection order breach].' But, he said, 'I'm going to explain why I'm doing that. I cannot say beyond a reasonable doubt that he was in breach.' Then he said to the woman, 'I highly commend you for taking this step, it's a very hard thing to do, to come to a criminal court.' He kept saying that. He also said, 'I am not saying that what you're saying is not true and what this man is saying is true.' He then said to the man, 'I am telling you, you did not win this case. Do you understand what I'm saying? You did not win this case, nobody won this case. I just can't say beyond a reasonable doubt that it happened. I don't want you leaving this court and getting back at your wife, saying, 'I won.'" The judge also reminded the woman that she still had her protection order."*

The importance of the basic quality of professional legal services:

*"I was in court before Christmas and I said to the solicitor, 'I have never seen a solicitor more organised with his paperwork.' He had a separate file done up for the barrister, it was all bound, I was so impressed. The barrister heard me and she said, 'he is the best solicitor I have ever worked with.' He and the barrister had another case on that morning, but that was separate, that was in his briefcase, when he was with us it was - this is the client we're dealing with. Some solicitors are really good - they might only have one sheet of paper, their own little bullet points and they get the woman what she needs. But I've seen other solicitors who have two or three cases on and are 'Oh God, where is that? Oh no, that's not your file.'"*

#### **Domestic violence service provider no. 5**

Professionals working on or even near this area need to recognise and understand the dynamics of abuse violence and how it affects children.

*"These two young boys had been so groomed by their dad that by the time they were 12 they were the most abusive children you could ever come across. There was huge emotional abuse of those children and the HSE were really concerned. The HSE tried to stop it; they made recommendations that it should only be very limited supervised access. They were emotionally and physically abusive to their mum. He has totally distorted those poor kids view of women, of their mother, of relationships. But the judge gave him access every single day, after school, unsupervised. So she picks the children up from school, she feeds them, then they go directly to their father and spend hours with him, they come home and they've no homework done, so she has to do homework with them in the evening. This happens every day after school and all weekend. She has to do all the drudgework with them and he has more access to them than she does, even though they live with her and she does all*

*the work. The judge wouldn't order a Section 47 report and he overrode the recommendations of the social workers completely. He doesn't see access as a child's privilege. He sees it as the parent's privilege, that these men have a right to see their children. And, you know, he dismisses and minimises..., he doesn't believe the reports detailing the risk and the harm."*

The perception of the importance of professional working relationships in the court system:

*"We think solicitors are often intimidated; they won't stand up. Some of the solicitors are not very assertive in court. Some of them try, you know, some of them do try and stand up, but if our judge decides he doesn't want to hear, then he doesn't want to hear it. He's the only district court judge, so that's a real flaw in the system because it means that they're dependent on him. So, the ones we know will stand up to him, we will tell a woman – 'some women have found this solicitor to be pretty good.'"*

### **Commentary**

This research has found that the support that court accompaniment workers<sup>114</sup> provide to women is of utmost value to women as they navigate through the legal system. Women often report that it is simply having someone with them who believes in what they are saying that can reduce the overwhelming feelings of stress and anxiety. Having a support worker accompany a woman to court may increase her confidence, decrease her unease of seeing the perpetrator and reduce the overall nerve-wracking experience.

Women cannot always negotiate the legal system on their own, they need the know-how and expertise to interpret the legal language into everyday language e.g. not knowing to get orders printed for example, not knowing what an undertaking is, and when statements have been taken and when they haven't. All these failures of the system to provide safety – through knowledge of what that system is, mean that more than ever, for this reason alone, good advocacy and expertise is key.

Within the justice system, adequate knowledge of domestic violence and related orders is required to ensure that criminal actions are not excused because of the nature of the relationship between the parties. There are risks that longer-term harm can result in women and children where there is no awareness that domestic violence does not stop when couples separate and may involve stalking, denial of financial resources and use of the legal system to continue control of the ex-partner and children. Individual Gardaí, solicitors and social workers providing advice in relation to orders in the absence of fully understanding the dynamics of domestic violence and risk assessments, or through erroneous interpretations of the law, or minding the humour of the judge, can have serious consequences for women and their children. Where individuals show an understanding of domestic violence, a willingness to investigate and probe subtleties and counter claims, the outcomes for women and children are safer. While we have seen above how individuals can clearly make a difference, leadership within systems to follow through on commitments and responsibilities, and ensure accountability to service users, is the best guarantee of consistency and quality of response.

## 6. The need for a legal definition of domestic abuse and violence

The preamble to the Rome Statute recalls that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.” It has therefore been argued that it is “essential for all state parties, as well as other states, to amend existing legislation or enact new national legislation defining the crimes in accordance with international law.”<sup>115</sup>

There are many ways to define domestic violence. However, in most criminal laws, the essential actus reus for domestic violence is an act intended to cause, or that which causes physical pain or injury<sup>116</sup>. Mulligan notes that within the legal system there are two contrasting definitions of domestic violence: (1) domestic assault and battery statutes in criminal codes (criminal definition or legal definition), and, (2) more broadly defined domestic violence or abuse used for the purpose of obtaining civil orders of protection (which can be classified as a civil definition)<sup>117</sup>. The civil definition which is used to determine whether to grant a victim an order of protection, is generally more expansive than the criminal definition and normally includes other elements such as nonphysical attacks, including intimidation, threatening and harassment<sup>118</sup>.

Defining domestic violence crimes separately allows legislatures to attach harsher penalties for domestic violence crimes and to address high rates of recidivism by requiring more severe punishments for multiple domestic convictions than for multiple general convictions. Social scientists stress the importance of developing a broad definition of domestic violence to include the most malicious form of domestic violence, whereby the abuser employs a wide range of methods including psychological and emotional abuse to dominate<sup>119</sup>.

In Ireland, there is no statutory definition of domestic violence. In 1997, a task force assigned by the Irish government to formulate an approach to domestic violence defined domestic violence as:

“the use of physical or emotional force or threat of physical force, including sexual violence, in close adult relationships. This includes violence perpetrated by spouse, partner, son, daughter or any other person who is a close blood relation to the victim.”<sup>120</sup>

This definition has become the most widely used definition of domestic violence in Ireland, with the government using this in policy and statutory institutions. However, there are differing definitions in use simultaneously in Ireland, for example the Garda Síochána Policy Statement on Domestic Violence defines it as:

“The physical, sexual, emotional, or mental abuse of one partner by another partner in a relationship which may or may not be based on marriage or cohabitation and includes abuse by any family member against whom a safety order or a barring order may be obtained by another family member.”

Other definitions have been forwarded such as Watson and Parsons’ definition contained in the 2005 National Crime Council Report<sup>121</sup>.

Would a definition of domestic violence that encompasses coercive control, as Britain has introduced, better inform the legal system of what it is seeing?

## Lisa

“...I was pottering around doing my housework and he came and he was, you know - get downstairs, do this and that. I said, ‘I’m not dealing with you while we’re fighting; I’m not doing this.’ He said to me, ‘if you love me you’d come downstairs or I’m going to hurt myself.’ I didn’t think he meant it. I went down about ten minutes later and he was trying to kill himself. He told me it was my fault, that I was a bad mother and everything. I ended up having to get the guards that night.

The following day it was like nothing had happened. But he went up to my father’s house and he had a row and he told him, ‘don’t you worry, you’ll never see your daughter or grandchildren ever again.’ So my father rang the guards. He also told me he had no problem killing me and the kids. The following day, he said he was depressed, that he didn’t mean it - you know I love you - that sort of thing. Because of the kids and because he said afterwards that he didn’t mean it and would get help, I stayed. For about a week or two everything was grand and then he started back on me again, criticising me, harassing me. He never physically did anything to me, if you know what I mean.

Another time he was being abusive to me and threatening to kill himself if I didn’t do what he wanted. And I said to him, ‘I’m after ringing the guards and I’m after ringing an ambulance and you can deal with them. I’m not doing it, you can deal with them.’ He laughed at me and he started to take some tablets, because normally he’ll start taking tablets and I’d run to him. But this time I didn’t. The guards and the ambulance came out and he was saying to the ambulance man, ‘I don’t know why she hurts me so much that I feel I have to kill myself.’ Then the Garda said to me, ‘I hope to God you haven’t got the kids in this environment because I’m telling you this, if this continues, (because this is our fourth time out with him), it’s not him we’re going to be taking, it’s the kids, because they can’t be in this environment.’

The first time I went to court I didn’t have [the domestic violence court accompaniment service] with me. I was applying for a domestic violence order. But for the whole 15 minutes I was in the courtroom the judge’s take on it was - well if you’re leaving him and you’re not going to talk to him, who is going to support him, who is going to help him? The judge said to me, ‘can you not speak to your friends and ask them to support him?’ I felt that that judge was telling me - well, if you hadn’t have left him he wouldn’t have done it [harmed himself]. I know now that I have some support that it’s not my fault, but on that day I had no one.

I went to the courts for my protection and I walked out thinking - they are more worried about him than they are about me. He says he’s going to kill me and they’re asking me can I not do something to help him.

So I got a solicitor and eventually I got my protection order, and an interim barring order. I had to come back to get the final barring order. But the first thing the solicitor said when we got there was, ‘oh, this judge is not going to give you a barring order, we’ll drop the barring order and we’ll look for just another safety order, or a protection order.’ My solicitor told me, ‘there is not enough grounds for it - he didn’t do anything, he hasn’t hit you.’ And I said, ‘no he hasn’t, but only because I left before he got the chance to hit me. But he threatened to kill me and my kids.’ So they just said, ‘we’ll get you a safety or a protection order, it’s just as good, but he can live in the house with you.’ And I said, ‘well I can’t go home then, I’ll stay with my sister.’ So finally we got the safety order and he gave an undertaking to leave the house, but I was back and forth to the court.

I think sometimes [the judge] doesn’t grasp the full extent - that just because there wasn’t physical violence, the emotional can be worse than the physical sometimes because it’s the fear of when is he going to get me. He says he’s going to get me but when? Like you need to take it serious. But like

*I've had the other two judges like and they didn't care. They just sort of said, 'nothing happened to you, so what are you here for?'*

*Being beat is bad, like, but sometimes I would have rather if he had of hit me because you could deal with the beating, you could say well look at the bruises he left. It was the little bits, slowly like picking at things, breaking down things slowly until eventually I felt worthless."*

### Commentary

There is no provision for the crime of domestic violence in Irish criminal law. There is a range of offences under Irish law, which may be used to prosecute offences of domestic violence. These include, Non-Fatal Offences Against the Person Act 1997, Criminal Law (Rape) Amendment Act 1990, Criminal Legal Public Order Act 1994, Child Trafficking and Pornography Act 1998, Sex Offenders Act 2001, Criminal Law (Sexual Offences) Act 2006, Criminal Law (Human Trafficking) Act 2008 and Criminal Law (Defence and the Dwelling) Act 2011. While this list of legislation provides for the criminalisation of forms of domestic violence such as assault and sexual violence, provision is not made for coercive control nor are repeated patterns of violence legislated for. We also know that prosecutions under these criminal statutes are rare.

A common reaction to domestic violence can be summarised by the phrase often used in police forces around the world: "They're having a domestic." This phenomenon makes society and those in our institutions blind to behaviour that would be punished if it happened in public, or between two people not in an intimate relationship. In other words, it effects how we see the crime.

We need to change the effect that this minimising has on those who represent our society - on legal professionals, medical professionals, on judges, and on An Garda Síochána. The continued treatment of domestic violence as a lesser crime feeds into our incomplete and dangerous lack of understanding of abusive relationships. What has been described as "the lawlessness of the home" comes in part from the fact that those who meet it at the front line aren't adequately educated, trained or supported in this work.

### Definitions of domestic violence around the world

Coercive control - domestic violence legislation<sup>122</sup>:

If the law is to be successful in its goals of protecting women from domestic abuse and deterring perpetrators from committing this abuse it must base legal doctrine and day-to-day practice on an accurate understanding of what is really happening in abusive intimate relationships<sup>123</sup>. The UN has recommended that domestic violence legislation include physical and sexual violence, and coercive control<sup>124</sup>. Stark argues that there is mounting evidence that a combination of coercion and control is the most devastating and debilitating form of abuse and the most common. Currently the definition of domestic violence in Ireland fails to recognise the broader range of behaviours associated with an abusive relationship, mainly focusing on single events of assault and battery. However, the hallmark of a domestic violence relationship is low-level, frequent assaults and degrading treatment over a significant, extended period of time.

Coercive control includes psychological and economic violence but describes it as working in a patterned continuum. It ranges from being told how to dress or act, being isolated and cut off from the outside world to being denied basic necessities<sup>125</sup>. Being controlled or isolated undermines a woman's capability of independent decision-making, impedes her help-seeking capacity and depletes her quality of life. Following our review of international domestic violence laws and definitions of domestic violence,

we identified both Britain and Sweden as examples to reference. The British definition is a statutory definition, while the Swedish definition is a legal definition used in criminal code.

In March 2013, Britain expanded the definition of domestic violence to include coercive control. The new definition recognises that a number of separate incidents collectively constitute abuse. Similar to Ireland, there is no law specifically against domestic violence in Britain. While the new definition is not a legal definition, it will inform other government bodies on policy and institutional developments by broadening thoughts on what traditionally constituted domestic violence, and changing their approaches to dealing with domestic violence. It is hoped that the widening of the definition will help statutory and other organisations to recognise the dynamics of domestic violence that have been previously ignored.

In Britain, a government consultation process was set up to determine a response to the proposed change; 85% of the respondents voted in favour of the expansion of the definition to include coercive control, 8% felt it should not be included, while the remainder did not know or did not answer the question. Of those who felt that the inclusion of coercive control was a positive step they noted that a repeated pattern of psychological and emotional abuse can be the most minimised and invisible, and individuals enduring this type of abuse may not consider it as abuse, thus it is vital to clearly include coercive control in the definition of domestic violence. The definition has also been expanded to protect individuals from domestic violence from the age of 16 upwards.

Without the inclusion of coercive control in the definition of domestic violence it may be viewed as a singular event, with women living with domestic violence unsure of what constitutes domestic abuse and violence.

The new definition of domestic violence currently in use in Britain is:

“Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse:

- Psychological
- Physical
- Sexual
- Financial
- Emotional”

The British government defines controlling behaviour as:

“A range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.”

And coercive behaviour as:

“An act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.”<sup>126</sup>

The Swedish “Kinnofrid” reform package of 1998 introduced the new offence: “gross violation of a woman’s integrity”, under Chapter 4 Section 4(A) to address situations where a man repeatedly commits certain criminal acts against a woman with whom he is or has been married or cohabiting. The offence is punishable by imprisonment of no less than six months and no more than six years<sup>127</sup>. An offence committed by an individual against an intimate partner is viewed to be a worse violation than an offence carried out between strangers because of the betrayal of trust.

“Gross violation of a woman’s integrity means that if a man commits certain criminal acts (assault, unlawful threat or coercion, sexual or other molestation, sexual exploitation, et cetera) against a woman to who he is or has been married or with whom he is or has been co-habiting, he shall be sentenced for gross violation of the woman’s integrity, instead of for each single offence he has committed.”

Swedish Penal Code Chapter 4, Section 4a:

“A person who commits criminal acts as defined in chapters 3, 4 or 6 [*certain crimes against life and health, liberty and peace and sexual crimes*] against a closely related person or formerly closely related person shall, if each of the acts form a part of a repeated violation of that person’s self-esteem, be sentenced for gross violation of integrity to imprisonment for at least six months and at most six years.”

The definitions of domestic violence contained in the laws of other countries include a range of acts that result in physical, mental or sexual injury. Some have adopted broad definitions that can be interpreted to take into account any illegal act that results in harm or injury. Others provide specific examples of acts that constitute domestic violence.

The UN notes that it is advisable to have a detailed definition in the law that captures women’s experience of violence in all its manifestations. This reduces the scope for judicial discretion, thereby guarding against the influence of patriarchal biases in judicial decision-making. By and large, most countries have covered all forms of domestic violence including, in particular, psychological, sexual and economic abuse. The inclusion of sexual violence is particularly significant as it rules out any tolerance of rape within marriage.

The Irish government chose a gender-neutral definition for domestic violence. We need to look at whether this masks the reality – that domestic violence, in the vast majority of cases, is male violence against women. Do we, as they have done in Sweden, need to legislate for violence against women as a distinct subset of violence that occurs in intimate relationships, whether those relationships are spousal, cohabiting or dating? This would certainly make more visible a substantial amount of the domestic violence and abuse that is happening in Ireland, as illustrated by these narratives. And above all, it is the present invisibility of these crimes that is not only stopping, but making it utterly impossible, for justice to be done for these women.

Could legislative change bring about a cultural change as to how we view domestic violence? Do we follow Sweden’s lead?

## 7. Why she doesn't just leave – the barriers to safety and help-seeking

American domestic violence survivor Leslie Morgan Steiner explored this question in her 2013 TED Talk: “The question I am going to tackle is the one question everyone always asks: why does she stay? Why would anyone stay with a man who beats her?” A Harvard graduate, writer and editor of a successful magazine, she flags to the audience that she is not the stereotypical domestic violence victim. She goes on to talk about how society stereotypes the violence, the victims and the abusers. How the focus is always on the victim and almost never on the abusers. She talks about her own violent and abusive marriage to an abuser, also an Ivy League graduate.

She then says that the other question that everybody asks is: why doesn't she just leave? She explains that these are the saddest and most painful questions people ask, because: “... we victims know something that you usually don't – it's incredibly dangerous to leave an abuser. Because the final step in the domestic violence pattern is: kill her. Over 70% of domestic violence murders happen after the victim has ended the relationship. After she has got out, because then the abuser has nothing left to lose. Other outcomes include: long-term stalking - even after the abuser re-marries, denial of financial resources and manipulation of the family court system to terrify the victim and her children who are regularly forced by family court judges to spend unsupervised time with the man who beat their mother.” And still we ask – why doesn't she just leave?

### Rachel

Her husband admitted domestic violence but was not prosecuted. She has spent years looking for support for herself and her children. She gave up counting her trips to court after 43 appearances.

*“It's just very difficult to describe when you're married to an intelligent, charming man and then you all of a sudden have glimpses of another person altogether. Someone who is just cold and mean, and you want to recapture the man you thought you married. And you are pregnant with your first baby and he shoves you against the wall because you turned on the heating, or he screams into your face. All of a sudden he hits you because you're just a burden. And then he comes home and, 'I'm so sorry, I have a very stressful job.' And he did, he travelled a lot abroad, you know, he had a high-powered job and I felt sorry for him. And then the baby was born and I was very happy. But it got worse. I had mastitis but was not allowed to buy a breast pump because it cost money. He tried to show me how to express milk with my hand - because that's cheaper. Or you have to keep a ledger of every expense. Then you go to your priest and he says to you that 'you have to leave, to pack up and go, because there's something wrong.' He referred my husband for counselling but it escalated; I tried everything: you change your look, you change your attitude, you go back to work.*

*You know, you don't have money. You get an allowance from your husband, and then you have to pay for everything from cable TV to nappies, and he checks how much it costs. And you're on your own, you have no friends, because you're taking care of a baby and keeping down a full time job. I was living in a house with no curtains, no heating; I was warming bottles on a hotplate. But from the outside it looked lovely.*

*Then I got pregnant with his son, and he kicked me because he was stressed. But he made sure he didn't kick my stomach. And I was in and out of hospital because I was bleeding, and they were worried I was going to lose the baby.*

*It's very difficult to explain. That a good-looking, intelligent man could do this. People were envious that I married so well. And it makes you question your sanity, you know. So you make excuses. I*

went to a solicitor and she said, 'we'll apply for a barring order, this is domestic violence. I said, 'no, no, no, it's not domestic violence, he's just stressed and, you know, I'm fat and I know I'm not a good mammy and I'm not a good housekeeper, you know, I can't clean properly.'

But my children were being affected by things. My little girl started to self-harm. I told my GP but my husband blocked the treatment, and that frightened me. My husband is very litigious. He started to attack the social workers because they found that there was domestic violence.

I got private rented accommodation and counselling was supposed to start for both children but their father wouldn't give consent. Then the HSE started to backtrack. They said, 'it's parental acrimony, not domestic violence.'

I believed that even if they were right, even in a case of parental acrimony, surely children should be seen and heard. Even if it is to tell the therapist and the court that both parents are to blame and that their welfare is at risk. When my daughter eventually started therapy, I think one or two sessions in, my husband insisted he sit in on the sessions. Then therapy was stopped. But nobody saw the red flags. I was begging, my GP was begging, I had a daughter who needed help and I had no support other than the refuge. She was only ten years of age.

Despite everything, unsupervised access over the weekends was granted by the court. When I complained to the judge that the children refused to go on access with their dad, the judge said, 'then we'll take the children out of the equation, they won't have an option.' When they did go with him for the weekend, they'd come back saying he doesn't feed them. Or, he would lock the front door, the kids can't leave, or he would lock them outside that they have to stay outside; he would punish them. There were so many court cases.

The kids didn't know if they were coming or going. You know, it was so confusing. With a child who I was told had to be kept steady, with a father who had admitted to domestic violence, and who had since admitted to hitting his children, (there was an incident when the children were on an access visit and I had to call the guards because he hit my son so hard, the kids thought his hand was broken).

I stopped counting at 43 court appearances. After all these years, I have nothing. My name is on the family home, so I'm still tied to him. I can't get a rent allowance, I can't go on the housing list, and I can't get a loan. If my car breaks down I can't get a loan now because he's not paying the mortgage. I'm already with the Irish Credit Bureau because my credit rating is destroyed. But I don't care about any of this. What really bothers me is that access was not looked at properly, nor was the welfare of my children.

I gave evidence that this man held me by my hair, driving with one hand, holding me down with the kids sitting in the back seat, because I didn't behave on our walk as I should have. But a circuit court judge found that I was alienating my children from their dad.

Do you know what really alienated the children from their dad? Not being fed. Being put in the corner of the street because one of the children couldn't make up his mind about lunch. This man neglected the children's sick guinea pig, he did not seek help, he did not give food or water to the guinea pig, he let it die. The children were aware of this and helpless in it. He refused to allow me or the children to care for or seek help from a vet for the pet. They're not allowed to have toys, mobile phones or access to a telephone just in case they call me, no computer games, nothing.

In all our dealings with the legal system, it has never been mentioned that what he did to me was criminal or that he could be prosecuted. I think that they minimise domestic violence. I don't think that the judges get training in how a power imbalance can develop between spouses and how vulnerable

*one spouse can be, for whatever reason. Or that just because somebody hits you in a way that it doesn't bruise, it doesn't mean that you're not terrified.*

*I don't know how women can be heard. You have to understand that this is my shame for the rest of my life, and nobody can make me feel any other way. I feel responsible for choosing a father for my children who treats them like this. And I live with that every day, every day."*

#### **Domestic violence service provider no. 4**

How the fear and the abuse continue even when the woman leaves:

*"She moved house after the divorce so she isn't sure if her order protects her. He knows where her new house is and she sees him; he pulled up along in the car and she got a fright and he said, 'do you want a lift?' and then put the fist up to her. That's threatening behaviour. When we came to meet you at this hotel today, she said, 'well I wonder would he be here; you'd never know where he'd be.'"*

#### **Commentary**

In the prologue to this report we tried to illustrate how the consequences of leaving an abusive relationship are enormous, how some women arrive at our member services barefoot. They then enter a system put in place to assist them out of their relationship and into a future. In Ireland, 40 years ago, there was no support, no system and we have achieved much in that short space of time. What we understand, and hope is evident from these narratives, is the reality that the trauma resulting from violence is often exacerbated by a system that is itself traumatic for a woman to navigate. Refuges have limited spaces and resources – some were threatened with closure this year. The legal system often will not name what has happened to these women as crimes or even as sufficient enough to get a civil protection order. Women face homelessness and poverty, and cannot feel supported in leaving.

We heard that women learn how society, and the system as a whole, treats the abuse as separate to the other interconnected areas of their lives and that they should be interconnected under the protection of the family law system – issues such as financial orders on separation or divorce, child access and custody and so on. They know, or soon learn, that the legal system itself is authoritarian and prescriptive in nature and that abusers are increasingly educated about using the system to continue the control and abuse, even after a civil or criminal court order is made.

We heard many accounts of violent men citing violence against them in defence of their partner's application for a domestic violence order. Women described situations where courts interpreted that a second domestic violence order 'cancelled out' the first. Gardaí said that they couldn't police a house where both adults had domestic violence orders particularly where there were children, because removing both parents would leave the children unattended. It seems that the system often defaults to a 'no order for anyone' solution to this dilemma.

Similarly, difficulties in getting reports on the welfare of children for the purpose of, either the domestic violence orders or for access and custody, is cited as a reason not to get a report at all. The child's voice is therefore not heard. The result can be that access orders, whether supervised or not, are then made, forcing children to spend time with a parent who has abused and violated their mother. Women are often left with a choice to leave but to face homelessness as a result. They can leave and live with the knowledge that their children are being forced to be with their violent father under court determined access orders. Or, they can stay in the relationship and manage their own and their children's survival for as long as they can.

## 8. The dangers of a fragmented system – the continued case for a multi-agency approach <sup>128</sup>

All our interviews referenced some sort of system failure. None identified an issue resulting from a lack of legislation. The weak links in the safety chain they pointed to were not doctrinal, but were where the existing law is applied badly or not at all. The existence of the system on paper and our initial instinct to add to it acts like a decoy distracting us from the actual experience of those accessing it. The system is described as fragmented. Either the constituent parts do not link up, or they do not work at all; therefore the existence of a 'system' is something of an illusion.

Niamh's narrative is reproduced almost in full here because it best illustrates what happens when the safety chain is not linked together or when links are missing or broken.

### Niamh

*"I am self-employed and married. We have a three-year-old child. Before we married his parents gave us a house on their land. I finished the house, well, I say 'I' because at that time I had more money because I was working hard and I had some savings. I finished the floors, painting, tiles and then we lived there, happily, for eight years. I had my own farm, my poultry, dogs and pigs. The last three years I had my vegetable garden and we didn't have to buy any fruit or vegetables. I planted fruit trees that will be there for life. I put lots into this, physical energy and money. It was my home.*

*But last year things went suddenly wrong. I caught my husband taking a photo of my business account bank statement. He wouldn't explain why. Then he stopped working. I wanted to help him, but he was getting aggressive with me. Not physical but mental. You know, laughing at me all the time. My family were supposed to visit us from abroad and he cancelled their tickets and told me this with a big smile on his face. He blocked me out of the family computer. He locked all the doors in the house. Only my bedroom was unlocked. I asked, 'why are you hurting me?' He said, 'I am not hurting you; I'm not even touching you.'*

*Then one day something I did made him really angry. He grabbed our child in a very aggressive way, put him in the van and started driving. I grabbed the child and we started to fight. He started beating me and I was trying to get away. I put the child in the car and went to the local Garda station. The Garda on duty did absolutely nothing. He just wrote it down and then he said, 'well, it is only the once, like, and it was during an argument.'*

*The child was crying and I said, 'well, I want to report domestic violence.' But the Garda didn't want to deal with me. He said, 'go to a solicitor, there is nothing I can do. You need some court order or something.' I mean I was bruised, not the face but my arms were bruised. He could see – I was wearing a small t-shirt. I had been watering my garden so I wasn't even dressed properly – I was in flip-flops and shorts. He didn't take a statement from me. He just took my details and said, 'you have to go solicitor.' But, I don't have a solicitor; I've never needed one. The Garda also said, 'to be honest with you it is not enough to throw him out of the house. If you get a court order then you can.' I explained that I didn't want him thrown out of the house; I wanted help.*

*The Garda told me, 'your next step is to find a solicitor, and then the solicitor knows what to do.' But where do I find solicitor? I need time, I need money, and I need a recommendation. My husband just beat me, what will I do?*

*I started walking the main street of the town with the child in my arms. I was crying and shaking, and the child was crying. The bruises were coming up on my arms. I went to every solicitor and they*

looked at me, a foreigner. They don't want to deal with me. They would say, 'Oh no, no we don't do family law.' One solicitor rang around for me and sent me to another firm but it was Friday and I was told that the family law solicitor finished early on Fridays. I was told to ring maybe on Monday.

I didn't know about the domestic violence service at that stage and the Garda or the solicitors didn't tell me about it. Now, looking back, it would have made a difference if I had been referred to the domestic violence service for support, or even to find out where to go next.

I was afraid to go home at first. I went to a friend's house, but I had to go home – I had to take care of my farm animals. I took another friend and three of us went to the house. It was wide open and there was nobody there. Then my husband arrived and he was calm. We talked. I went to collect our child and came home because I thought - he is all right now. I put the child to bed and went to sleep. At two o'clock in the morning got a call from the police to say that my husband had reported his child missing. I said, 'I am in the house and the child is in the house and we are all asleep. If you don't believe me come and check.'

The next day he said he wanted a divorce and told me that I was not going to get anything. I didn't want a divorce. I didn't want to be thrown out of my home but I started to adapt to the idea. I didn't see myself as having much of a choice. My husband then started to intimidate me. He had a cousin who was ostracised from the family because he is violent and has a gun and is mentally unstable. Suddenly, after seven years of no contact with this cousin, my husband invites him to the house. This man is now in my garden, walking around my garden, going in the house and saying things like: 'aren't you the good girl...'

I met a solicitor. I was advised that I needed to get an out-of-town solicitor, because anyone practicing in our town would be 'too close' to the situation.

That same day, when I arrived at the house it was unexpected. The cousin was running out of the house looking very guilty. My husband came out holding our child. I asked, 'what is going on here?' Something was different. There were no birds, no animals. I loved my birds, they all had names and they would come to me. My garden had been destroyed – burnt and sprayed with weed killer; my strawberries, everything. That morning everything was green. Now it was all yellow, the trees were broken. I said to him, 'where are my animals?' Holding the child, he looked in my eyes and he said, 'they disappeared; you will be next.' I tried to grab the child but he pushed me and was gone. I tried to get into the house, but it was locked. He had changed the locks, he had killed my animals, he had killed my garden, he had threatened me and he had taken my son away. When, some days later I told the Gardaí about my animals they wouldn't take a statement.

I rang my solicitor, and told her. She said, 'ring the guards, ring the guards now.' I rang the guards and two guards arrived. I said, 'I want my child; he is in his father's cousin's house down the road.' I said, 'my animals have disappeared and I have been locked out of the house.' They took notes and tried to communicate with my husband's cousin; they had to force their way in. But the child wasn't there.

After three hours the Gardaí came back. They found my house key and my husband's brother was holding our child. The police told me, 'you are not going to get the child and the father is not going to get the child. Your in-laws will have child for tonight because there is a family dispute. You have to sort this out through your solicitors, to get access to the child. He is also not allowed to lock you out. Here is the key. Go in and get the clothes for the child.' I was hysterical seeing my child but not able to have him.

I want to have my child to me. I am not a drug addict, I am not an alcoholic. I am not a bad mother or a danger to my child, but they took my child overnight.

*I went out that evening and when I came back about three hours later, somebody changed locks again. After the police had given me the key. I was devastated. I got in the car. I was also afraid. I rang the guards again and they arrived. They went to where my husband was staying, 'gave out to him' and got me another key. It didn't work so I went into town and slept on the floor of my office.*

*Then the nightmare of the legal system started. My solicitor tries to connect with his solicitor, but he is on holiday, or he is with another client, or he can't find my husband, or he doesn't have instructions. Monday gone. I sleep in my office again and I don't see my child. Tuesday, I speak to my child on the phone but I can't see him. I sleep in the same clothes I work in; I am like a ghost. I sit in my solicitor's office all day. My husband's solicitor is on the break. He is on the lunch. He is on the phone. He doesn't know where my husband is. Wednesday comes. I am suicidal. I didn't sleep for four nights. I am in the same clothes. I have no money, and I have no time because I am all day with my solicitor, crying, trying to do something. No application to court. Nothing. No ex parte application. Nothing, nothing. My solicitor is saying, 'we have to sort out between solicitors,' you know, between herself and himself, what instructions my husband is giving, what instructions I am giving...'. 'Access to the child.' It is new to me. I said, 'what do you mean 'access'? This is my child. I want to see him.' No, you can't see him. Thursday arrived. I can't even ring to speak to my baby anymore because my husband's family are now upset with me that I brought the police into this 'private family matter.' That was my punishment on the Thursday.*

*When I told my solicitor that I would just have to go and take my child she started saying, 'oh, you need a private, quick mediation. You need mediation.' I said I would do anything. I called the mediator she recommended on the phone and he was disgusted. He said, 'this is not a mediation case; it is a court case immediately. Who is your solicitor and his solicitor? I am going to talk to them and you will have your child tonight.'*

*My solicitor still did not think this was a good idea, but she gave me a letter to hand to his family, as I took my child back. She recommended I go home or stay with a friend. His family would not take the letter. They said, 'we don't care about solicitors.' They said the Gardaí told them not to give the child to anybody.*

*So they called the Gardaí and gave me the phone. I talked to the policeman who couldn't see why I couldn't take the child. She said, 'of course you can take the child. There is no problem.' But the family called around until they found the original Garda dealing with the case. He got on the phone and said to me, 'Niamh - you have to listen to me very, very carefully. If you take this child now you will be arrested. The child will end up in the foster house and you won't see your child for a long, long time.' That is what he told me, and I swear on my child's life, 'you will be arrested. You probably won't even be able to leave the state, when you will be arrested and you won't see your child for a long time and your child is going to a foster home or into care.'*

*I rang my solicitor and she said, 'nobody can arrest you.' So, I sat in my in-laws house saying that the police would have to remove me because I am not going anywhere without the child. Then my husband appeared. No one can find him and now they find him? They encouraged us to all move back into the family home with the plan for me to find rented accommodation and move out. I didn't ask why. Then the psychological pressure really began. You know, the cousin was stalking me for five days. He was behind me everywhere I went. He was driving behind me. I slammed on my brakes once to try to scare him off but it didn't work. He even drove behind me all the way to the Garda station and waited outside when I went in to report him. I went into the Garda and said, 'this guy is harassing me, driving behind me.' The Garda said, 'oh, Jesus Christ.' He went out, and spoke to my husband's cousin and came back and said, 'he says he is waiting for his wife.' It was like I was the*

crazy one. I said, 'no, he has been following me for two days. He is my husband's cousin.' And the Garda said, 'well, you see, if he was your husband I could do something, but because he is the cousin I can't do anything.' In the end I went to the police three times and it was such a waste.

Anyway, then I moved out. Again, it was very bad. Both solicitors and I and my husband met in the court and we signed an agreement that he would pay half of my rent and half of the crèche fees and let me take my things from the house. I was to have custody of the child and his father had access a number of days. He broke the agreement the day I moved out because he wouldn't give me my stuff, but that was okay. I didn't want any more trouble even if it meant losing the little I owned.

Then he didn't pay for half of my rent for six months. Because I am self-employed, I couldn't get state assistance and I went through hell. I had no money to live on. I would go to the shop with five euro and have to decide - will I get milk or will I get two nappies? I was hungry. A woman who a few months before had grown enough food to feed her family was hungry.

Because my husband kept the child's passport I couldn't leave the country to see my family and he blocked their visa applications to come and see me. I was completely isolated. If it wasn't for my friends here I don't know what I would have done. I am a hostage here. And no one will listen to me. My husband has looked for and got more access but the violence was never mentioned again. The threats on my life and intimidation and the killing of my animals was never looked at again.

In preparing my case, because at this point I didn't really trust the solicitor, I rang the female Garda who had taken the photos of my bruises after my husband assaulted me. I asked for the number of the abuse case, you know, that we did. She said, 'but I closed it.' She said she called to my husband and that he said, 'okay, I won't do it again, I won't beat her again.' So, she told me that the case was closed. I said, 'I needed the number of the case to prove the violence.' She said that she thought we were back together and that the violence was 'only the once.' I think this was the specific domestic violence Garda in the station. I told her, 'I was relying on her,' and she said, 'but he didn't beat you again. Now he understands and is behaving, you can't bring it against him anymore.' I said, 'no, I want to bring it against him. Is it not enough he beat me once?' She offered to meet me before court but she never rang me, she never did. She is gone.

The solicitor I was given by legal aid sent her junior the day of my hearing. She called me the wrong name three times in court until the judge asked her, 'are you sure you know who your client is?' She knew nothing about my case; she didn't tell me I could appeal the access decision. When I asked the private solicitor I had previously could we bring him back to court because he wasn't paying my rent as he agreed or paying for anything for the child, I was told that the cost of the legal fees would be more than the arrears of the payment so there was no point.

I have no faith in the free legal aid system. I have no faith in the judges. I don't believe in solicitors anymore. Then I came to the domestic violence service and they helped me. They told me that I am entitled to the rent allowance. I have only ever paid tax in this country; I have never asked for anything until now. I am trying to rebuild my life and my business but it is hard when some months he pays for the crèche and rent and some months he doesn't. I have used the domestic violence court accompaniment service and it was useful but what I need is the right legal advice. The solicitor has to advise me and represent me.

I have lived here for nearly 20 years and I have never been abused or discriminated against. If I was I would have left. I love Ireland. I adopt their rules and regulations and everything of the country, but the judge, as soon as she called me, she said, 'Niamh, okay, where are you from?' I told her where I was from and she said, 'What are you doing here?' I said, 'I live here and I have my family here.' There

*is one judge, she is a district court judge and she has all the power in one hand. If you disagree with her decision there is no other way to go. You can't go to the other judge because it is only the judge in the district where you live. I have to go back to her to have the order varied and I was never told I could appeal. I was in court one time before Christmas to ask for an access decision around Christmas and my case wasn't reached before four o'clock and so I didn't get before the judge until January, when it was too late. The court only hears family law cases once a month.*

*The Gardaí need a place in each station where one Garda specialises in domestic violence and knows exactly what to do. It needs to be 24/7, to be useful. I didn't know where to go and nobody wanted to be involved, but then if I go to the person you must get involved, because it is your job. It is thought differently to any other crime. If a man in the street hurt you like that with your child, the Garda would deal with you. When it is personal they don't want to, it is not right. It is not right."*

### **Domestic violence service provider no. 1**

Government services are not communicating effectively with each other:

*"He would threaten her and then he would say, 'I'm mentally ill,' so the guards weren't able to arrest him. But the mental health services said he was just bed-blocking. When she went for the barring order the judge said, 'if I gave you a barring order, I'd be on the front of the Daily Star.' The judge didn't want to bar someone who may have mental health problems. More often than not the woman is totally worn down by the abuse and then by the gaps in the system, or she is terrified that, 'if I take the system to task, they then won't be there when I need them.' So it's a real catch-22."*

The court must have the welfare of the child at the forefront of its decision yet Section 20 and Section 47 reports seem to be a rarity. The voice of and needs of the child are not heard.

*"She left the relationship, there was an access order in place and she had a safety order. But because of the abuse that the children witnessed in the relationship they were terrified of their dad. But they were made go on access with him over night and one of the children wouldn't get into the car. The judge asked her, 'do your children like going to the dentist?' and she said 'no' and he said, 'exactly, you make them go and you must make them go on access with their father.' So she did what she was told. She tried her best and she actually had CCTV of her pulling the child from the car screaming. She said to the judge, 'I'm trying my best' and he screamed at her and he said, 'you are a rat, you are a horrible rat. If you don't listen to me - I will lock you up.' She got so upset that she couldn't breathe, she was in the box and they had to call off the court for ten minutes and we had to get her a cup of tea."*

### **Domestic violence service provider no. 3**

The domestic violence is only relevant in the context of the application for the domestic violence orders:

*"The post-separation abuse doesn't even enter into it. What about abuse during, after, before access. For us it's madness that this could operate in isolation. It doesn't even seem to feature at separation or divorce."*

The connection between the abuse, and orders for access and custody is ignored:

*"Even women themselves sometimes say, 'he does this to me, but he's a good father.' People are just starting to understand the effects on children so, you know, it's still in the early stages. In the courts they still believe that children having two parents in their life is much better than one. But we think if there's anybody in a child's life who is abusive then they're probably better off without abuse in their lives. And that's whether it is one parent or both. But it's still seen very much as 'the family*

unit.' I think that's why sometimes the abuse is separated out - that a barring order, when it comes to access or anything with children, is seen as a totally different thing. The courts do it and in some ways social work does it as well. Social work will say to a woman, 'you need to go and get a barring order and get him out of this house, or else the children will be taken off you.' They put that on the woman. So the women will do that and the next thing is, the father looks for access. Then the mother goes back to social work to see if there's anything they can do to help and they tell her, 'he doesn't live there anymore; we have no more concerns about him,' or 'that case is closed.' So all the history that got to them to the point where social work said, 'you need to get him removed from the house,' is suddenly in a file that is closed and that's that. The social workers often correct us and say that they are not appointed to the family, they're appointed to the children. But it's the mother who is told to get the barring order to protect the children. They often have little or no interaction with the father, particularly where there's very obvious violence within that relationship. Again it's very much about looking to the woman to solve something that she hasn't actually caused. And they won't intervene when that man then looks for access to the children."

Intervening in the continuation of the effects of the abuse after the legal system process is finished:

"We have a pretty good child support project. We work with the children; we have a part-time play therapist. That's very much the future of the work we do, that preventative piece. We are trying, but you know, they keep cutting the services. A little bit of investment, not just in our services but in the front-line services that work with children, to try and lessen the impact of what they're going through, would make such a difference. We need to do something so that they're no longer over-represented in the prison system, or homelessness, or substance use, or prostitution, you know, all of the unfortunate groupings that survivors of abuse can sometimes find themselves in.

We're now starting to work with women whose mams we worked with years ago. One in particular was saying how the guards were always calling to her house and how they always left. She says, as children, they were looking for somebody to take them away from what was happening. She really feels she was failed as a child. They were left to deal with it, you know, the guards would come down and tell the abuser, 'that's enough of that,' and go and the children were left to deal with the fallout. Now, as an 18-year-old looking back, she knows that wasn't right."

#### **Domestic violence service provider no. 4**

Issues with securing legal aid:

"If you're going for a protective order, you get legal aid immediately, but for custody and access and maintenance it is such a long waiting list and a lot of the women I work with just don't have the money to pay for a solicitor. We advise them to apply for custody, access and maintenance to be heard on the same day so they can get it all under that legal aid. It is fifty euro if they're eligible, but fifty euro is a lot to someone who doesn't have it. Maybe their maintenance has stopped and they have to go to court with no solicitor, because they apply today but don't get an appointment until May. There's an eight to nine month waiting list for legal aid for access and maintenance without a protective order and if a man has left and he was supposed to pay maintenance and he's not turning up for the kids that is abusive as well. It's financial abuse, it's abuse of children and she has to go in and face a judge without a solicitor."

## Commentary

Evident from these women's narratives is that a fragmented system facilitates a perpetrator's behaviour; undoubtedly because any consistency of truth becomes lost. Women and children's chance of a satisfactory outcome is therefore severely diminished. Where there is understanding and the will to do things well, the benefits are huge for women and children. There are small pockets of good practice around the country where the system is cohesive and works. The courts work with An Garda Síochána and with the local domestic violence service. These are pockets where stereotypes and preconceptions about domestic violence are trumped by solid data-based evidence and where the default position is the physical wellbeing and welfare of the vulnerable until such a time as the issue can be and is resolved. These limited pockets of good practice need to become what all women and children in Ireland can expect. The solution is in understanding and the will to make a change.

If the powers already in our statutes were used they would streamline proceedings and overnight make many women's experience of the legal system less traumatic. For example, the Domestic Violence Act 1996 empowers the court to deal contemporaneously with the issues of access, maintenance, restriction on conduct, the disposal of household chattels and orders under the Child Care Act 1991. There is no need to institute separate proceedings. In the case of maintenance matters, there is a requirement for the mutual exchange of particulars of property and income; and some district courts will not deal with maintenance on an impromptu basis without statements of means being exchanged in advance.

However, our research, like the 1999 Law Society's Law Reform Committee's survey<sup>129</sup>, shows a considerable reluctance among judges to deal with these associated matters during domestic violence proceedings. What is even more damaging is where a judge dealing with access will not hear mention of the domestic violence she heard in the past 'because it has been dealt with' or because the violence was against the mother and not against the children. In a consultation conducted with 26 domestic violence specialist support workers, it was reported that when judges use Section 9, the domestic violence often gets lost. Applications of Section 9 must hold the domestic violence and be a consideration in all decisions<sup>130</sup>.

The 1999 Law Reform Committee's report says that this variation in practice creates uncertainty as to the practical outcome of domestic violence proceedings and creates difficulty for lawyers in advising their clients. Not possessing any information on why many judges decline to deal with related issues contemporaneously, the Law Reform Committee suggested training for judges along with other measures, which would encourage this 'fast-track' approach. Now, fourteen years on from this report, little has changed. From the daily experience of SAFE Ireland members, either this training has not occurred or has been ineffective.

SAFE Ireland also believes that the use of a multi-agency framework designed to meet the specific needs of domestic violence victims is a moral imperative. This would include such things as: improved support and advocacy for victims; mandatory use of Section 47 and Section 20 reporting to the court on the welfare of the child, looked at from the point of view of the welfare of the child and not from the parent's access wishes; enhanced information sharing; greater victim participation and satisfaction; reduction in charging alterations; reduction in the use of undertakings and settlements; and, overall, a shorter, speedier legal process.

# Conclusions on domestic violence and the role of the legal system

The system built to implement the rule of law takes sets of facts from the parties involved and applies the law to them on a 'case by case' basis. This system requires those cases to be heard in court. But women who live with abuse have a number of factors that limit their access to the courts including: timely provision of legal aid or other ability to finance litigation; available sittings of the family law court in their area; legal advisors encouragement to reach settlements rather than to go for hearing; willingness to invite the state into her life<sup>131</sup>, etc. The list is long. Many of the women and the SAFE Ireland member services' advocates we listened to did not perceive the legal system as fair and offering a hearing to women and children. You can argue that this is subjective, a perception of an experience. But doesn't that itself beg the question – why are they so dissatisfied with an outcome viewed by others as fair?

The challenge, as Morrison recognises, is transforming the system from one that "picks and chooses who is worthy of protection and from whom those people need to be protected" to one that treats all who are subjected to abuse and who choose to engage with the state with dignity and concern<sup>132</sup>.

That there is a legal response to domestic abuse and violence at all is worth examining. As previously explained, in Ireland, this response is not yet 40 years old. Domestic violence was treated as a private affair and the state's intervention at all in matters crossing the public/private divide is still greatly debated. In this short space of time the belief that the legal system is the best, or sometimes the only response to domestic violence has become a norm. Can it ever be a cure-all? What role can our legal system play in effecting significant cultural change to prevent these crimes? If we were to consider, for a moment, that our laws could give the clear message to perpetrators that violation of a person who is your intimate partner is a much greater offence than 'a domestic', would this contribute to the broader cultural change we need? Are we brave enough to ask what is reasonable to expect our systems to achieve? If we agree that SAFE Ireland's belief and aim is right and is shared by our society - that Ireland can be the safest place in the world for women and children – are we brave enough to ask for the necessary reform of our systems? And are we brave enough to ask the difficult questions this would involve, and accept the answers?

We would ask, whose goals are presently served by the legal system? Women's goals? Children's goals? Society's goals? And can these goals ever be universal? Can we get past the perception that all that can be done has been done, for domestic violence, and that the problem is just impossible to solve? Can more legislation effect real change? Or does this just distract from the systemic problems that are too hard to tackle? How does each party's place or role within the system affect their perceptions of reform? How can Ireland cure and prevent the systemic failures, and understand and apply existing law, relating to domestic violence victims? There is a clear need too to design and sustain robust monitoring and evaluation mechanisms across our legal system, which draw on data relating to the experience and outcomes from victims. We could ask what limits our willingness and ability, in the present time, to apply rigorous evaluative techniques that determine whether we are reaching the goal of a fairer system? And, most importantly, if we are failing, can we acknowledge that failure and learn from it<sup>133</sup>?

All of these questions are a starting point for investigation and change. But our need is this: as we see it, knowing as we do, the silence surrounding domestic violence and abuse, it is imperative that we start to instil public confidence for the hundreds of thousands of women in Ireland who have never disclosed their experience of violence. If a system is not there to give remedy to these women, how can they have

the faith to disclose to that 'system' what is happening to them? And let's be clear, what's happening are crimes. To support these women, we need them to come forward. A system that is inconsistent in its provision of remedy will not persuade women living in fear to do this. To facilitate disclosure, Ireland needs a legal system with a reputation of excellence, consistency, fairness and accessibility for all who rely on it, particularly those most vulnerable to future harm.

## The rule of law

The rule of law is, as the words suggest, a set of rules that govern our society and our behaviour in that society. It is modern civilisation's best attempt at a 'one size fits all' solution. In fact, this admittedly imperfect system was modern civilisation's replacement for feudalism, in which vindication for the rights of your clan would be made, by declaring war on the clan that had, you felt, wronged you.

The inability for the law to work with exception or nuance is remedied in part by the right of access to the courts. This is where the rights of the individual should be heard and where appropriate, vindicated. In a constitutional democracy such as ours, where there is a separation of powers and an independent judiciary, democracy is represented in the ability of the minority to ask for the court's protection from the might of the majority. Throughout the narratives, inconsistencies and the lack of continuity in applying the law have led to unjust treatment of women and a failure to adequately protect them and their children by holding perpetrators accountable. This suggests that part of the problem, for those affected by domestic violence, in being heard is the implementation of current legislation and policies. One of the most respected Irish commentators on the criminal justice system, Tom O'Malley<sup>134</sup> makes comments that have relevance here to both the civil and criminal justice systems and how they meet domestic abuse and violence:

"The criminal justice system consists of a set of rules, principles, practices and institutions, the content and operation of which vary across time and space to reflect prevailing social and legal values. ...Central to the idea of the rule of law is the requirement that the law itself should be clear and accessible. ...it is anything but... because of the frequency with which it has been amended in recent years. [...] in this country there are particular causes for concern, which derive largely from structural and systemic deficiencies. One major problem is the inadequate level of parliamentary scrutiny currently devoted to criminal justice legislation. [...] The other systemic deficiency, which in many ways is more serious, is the absence of any mechanism for monitoring the operation and implementation of legislation once it comes into force. For the best part of 25 years many... have been drawing attention to the absence of empirical research on the operation of our criminal justice system."

Failures in responding to domestic violence have been addressed in some jurisdictions by enacting changes in legislation and legislative structures to target perpetrators and strengthen the likelihood of successful prosecutions. The effectiveness, or not, of mandatory arrest and prosecution policies in domestic violence cases in the US have been hotly debated over the past few years<sup>135</sup>. In fact, the paucity of data relating to them restricts a true debate of the topic. Researchers suspect that the failure of mandatory arrest policies in the US is related to the manner in which they are brought in, rather than the policies themselves. In short, even these extreme measures have not impacted on the problem of domestic violence and it is believed that these are largely detrimental to women who have different needs and goals than those envisaged by the policies. As O'Malley writes: "There is the ever-present danger of assuming that more aggressive prosecution policies, higher conviction rates and more severe punishment automatically advance the rights and needs of victims." Clearly interventions to make

the justice system more responsive to the needs of those affected by domestic violence need to be informed by those affected, and implementation also needs to be monitored and evaluated to assess effectiveness and outcomes for victims and offenders.

## Agency and autonomy

There could be a temptation to seek to ensure that domestic violence is treated seriously as a crime through instigating mandatory policies. While there has been support of mandatory arrest policies, highlighted earlier in the report, to hold perpetrators accountable, the experience in the US has been problematic. Mandatory policies such as no-drop arrests and bans on mediation for domestic violence cases were the solution in the US to the fact that domestic violence was not taken seriously by the police. But it became increasingly about overcoming women who ultimately withdrew the charges against their partners. The high profile case of a man who stabbed his wife, stepping on her throat and breaking her neck in front of a police officer, who watched and did nothing to prevent it, changed everything in the US<sup>136</sup>. Commentators think that the mandatory policies could work in binding the police and the courts to do the job they are tasked to do, except in their implementation they have been used to bind women to following through with charges irrespective of whether that is right for them or not. In some US states this has led to women being imprisoned for refusing to give evidence against their spouses. Again, there are heated debates about this, but for our purposes here, it is enough to suggest that the solution to this problem is perhaps just more nuance and less sledgehammer. These mandatory policies are deeply problematic because they deprive individual women of the self-determination and self-direction that are essential for autonomy and empowerment.

Goodmark describes mandatory arrest and no-drop prosecution policies as reflecting a struggle over who will control the woman who has been battered; if the state does not exercise its control over her by compelling her testimony, the batterer will, by preventing her from testifying. She writes that the focus on safety can compromise the woman's ability to make choices, to be autonomous. And while domestic violence can certainly involve coercion, these thinkers assume that the choice not to engage the legal system is a coerced choice when often it is an intelligent strategy put in place in order to avoid the poverty and homelessness trap, or in order to maintain the relationship either with her or with their children.

As advocates, we inform women that involving the legal system in their lives can mean a loss of control; once the Gardaí or courts are involved, she becomes only one of several decision-makers with some ability to determine how a case will proceed. The goal of this warning is to ensure that clients are able to make informed decisions about whether to use the legal system, or not. Each woman has to be able to make that decision for herself and empowering court experiences can certainly mean improvements in the quality of life for some women who have been abused.

Women who have lived with abuse will make decisions that will have consequences, and some of those consequences will be bad, dangerous. But the freedom to make choices comes with the responsibility for the consequences of those choices. Allowing individuals to exercise their ability to choose, regardless of the outcomes of those choices, is a hallmark of autonomy. And many other women will be empowered by the ability to make these choices for themselves, in the contexts of their own lives, rather than having the system impose decisions upon them. They may choose to stay, but want the violence to be stopped. Some may want the man who uses violence to be prosecuted and some may not.

The women who have given us their narratives have all in some way referenced legal professionals who don't listen and who don't ask, and who substitute their own decision-making for their client's. Equally they told us of wanting to make a statement and being denied, of deciding to pursue a particular legal strategy and being denied, or being denied the advice on how to proceed to hearing, and the decision being made for them by a legal team who have inside knowledge of the judge's tendencies. While Ireland hasn't yet resorted to mandatory policies to cure the issue of a police force, the legal profession and court service are reluctant to engage with domestic violence and so we see regularly, in more subversive ways, how their decisions are substituted for the woman's.

## The legal system's failure

The present legal system does not work, and cannot work, for all women. The goals and methods of the system do not mirror the goals of many women who have been abused or battered. We have already discussed how the system operates in ways that undermine women's autonomy. And, many men who abuse are not deterred by the possibility of legal action. Also too, the systematic pattern of abuse and coercive control is not clearly defined in our statutes and law. If assessing for risk, in many of the presented cases, this would have clarified the specifics of the violence and highlighted a requirement to provide protection for those families, in particular to attend to and monitor the welfare of the children. The narratives demonstrate the serious deficiency, especially among the Gardaí in risk assessment, and we heard accounts from women of being left in situations of increased danger even after reaching out for help. The lack of consistency and continuity in cases where hearings for domestic violence orders and family law orders are heard separately contributes too to minimising domestic violence and its impacts. The legal system is not responsive to certain claims and certain women. Dominant discourses on domestic violence lead to assumptions of the appropriate behaviour and demeanour of victims and perpetrators. There seems to be little or no understanding of how the separation, access, custody and maintenance proceedings can be used to continue to abuse, harass and intimidate victims. The narratives also reflect the experiences of many women who realise that leaving the relationship does not mean the domestic violence stops and that leaving may indeed mean her capacity to protect her children is lessened.

But, shockingly, relying on the legal system has enabled us as a society to believe that something has been done about domestic violence.

The legal system has to be concerned if justice is being done but for some reason is not seen to be done. If the Irish public lose confidence in the court system, its role in protecting legal rights and creating meaningful and effective public policy is undermined. Men who use violence also have an experience and a perception of the efficacy of the legal system, and they can use it against their victims. As we have seen from the narratives, many of the women felt that when the legal system failed them it empowered their partners.

By contrast, we also met a consensus in certain district court areas that the legal system works for some women. Women described being given the protection they needed, their children being provided for, in particular that the default preference was for safety until proven otherwise. The SAFE Ireland member service in one of these towns described the Garda station working with the law clerk, with the district court judge and the service's court accompaniment person. They described the local legal aid solicitors as also being good. They described a system where its constituent parts meshed to ensure that domestic violence applications were heard and, where appropriate, made and enforced. But it is not good enough that this positive experience is only to be found in some district court areas. The system has to be robust enough in its protection of women and their children to withstand any changes in its constituent parts. It also has to be more than a geographical lottery.

These small pockets of good practice starkly highlight the failings of the system as a whole. Through its network of member organisations, SAFE Ireland can see that where women and their children are safe it is partly by chance and partly because of the design of some knowledgeable, willing individuals, collaborating with other knowledgeable, willing individuals. We also see what happens when those individuals retire or move on, or the parties are removed to another court, whether on appeal or due to the absence of the judge on a particular day. Rachel told us:

*“...I’m not saying the judge and me in the district court saw eye to eye all the time, I did walk away sometimes from the district court thinking - what was the judge thinking? But I was never demeaned, I was listened to, and I felt - in the end when I discussed the decisions with my support worker - I felt, yeah, the guy tried to balance everything.”*

One of the major failings of the legal system, which has been evidenced in the narratives and discussed throughout this report, is the blatant inconsistency rampant throughout the system, which results in women like Rachel left surprised when the system actually operates in the way it should, the way, in theory, it was committed to work.

## What we at SAFE Ireland propose to do next

This report only breaks the surface of the issue of domestic violence in Ireland and the legal system that tries to remedy it. SAFE Ireland wants to start a campaign for cultural and whole system change. We want to see widespread reform of how the legal system deals with domestic violence. We want to be, where needed, a catalyst for that change. There are champions for reform in every Irish institution that meets these women and children: in An Garda Síochána, in the legal professions and the courts. We know that they can contribute to this reform. We are confident about that. We have stated very clearly in this report that there are ‘pockets of good practice’ around this country. SAFE Ireland will use this report as a starting point for the following initiatives:

- 1) Further investigation of the findings in this report, and gathering and collating further data to inform some of the questions this research has raised;
- 2) Engagement with other experts from across the current systems, and women and children who have lived with domestic violence to contribute to the SAFE Ireland campaign for cultural and whole system change. Through these collaborations we will devise and execute the steps required, addressing the unintended consequences of these steps in order to achieve the aim of Ireland being the safest country in the world for women and children;
- 3) Work with each link in the safety chain - from An Garda Síochána to the courts - to share best practice and to devise training and knowledge-sharing on domestic violence; and
- 4) Where appropriate to lobby and agitate for change at a national level.

## Closing address

SAFE Ireland has invested time in dialoguing with women, legal professionals, academics and other experts to consider the serious failings that have been identified from our direct contact with women and the many services supporting women in this report. This report raises many questions and challenges for our government, our country's legal system and the broader cultural norms that inform many of the problems that the report has highlighted.

If we are talking about the **'right to be heard'**, as we are in our first narrative theme, and **'the consequences of the court not hearing the evidence'**, in our second theme, let's notice how the human sense of **hearing** features in just these two themes alone. Suffice to say, these women are simply not being heard. They are silent. The crimes of domestic abuse and violence are hidden safely in the voicelessness of these victims. We know they have a voice, but if the system doesn't hear them, do they really have one?

In, **3. Consistency and continuity in the application of the law**, we saw how certain judges at subsequent hearings will not take into account instances of domestic abuse and violence from the past. The crimes are effectively non-existent in the present; they are silent, as they fade into the distance apparently without significance, to be covered over with new words, again made voiceless. In, **4. The victim and perpetrator stereotypes**, we heard from Caroline, a woman not fitting the expected stereotype of someone who had suffered domestic violence and abuse, say, "I don't think they believe really." If 'they' don't believe, then Caroline, and thousands like her, is also rendered silent by an audience that don't seem able to credit her sufferings with any reality.

In, **5. The important of good advocacy, expertise and policing**, we plainly saw how, without good advocacy, the women who suffer domestic abuse and violence are in tremendous difficulty when trying to speak to the 'system'; their words are not heard, their testimonies greeted as incredulous. They rarely have the language necessary to navigate the legal highways. Without an advocate, they are silent. And, in our sixth theme we talked about the need for **definition of the crime of domestic abuse and violence**. Without definition there are no meaningful parameters to what is being said about this crime, by the women that suffer it, if we can even agree what the crime is. Is our current criminal legislation effective enough to capture the spectrum of crimes perpetrated by an intimate partner? Would a change in law act as a greater deterrent? In Sweden they mention 'integrity' in their definition, and define the crime of domestic abuse and violence as including the harm done to a woman's integrity. This gives meaning and light to the area that we seem so reluctant to do similar with. The word 'integrity' encapsulates all of the human experience, indicating that a lack of it dehumanises and demeans. Can we find a legal remedy in Ireland that could facilitate a similar cultural shift?

In, **7. Why she doesn't just leave**, we learn about the secret knowledge of the woman who suffers domestic abuse and violence. That if she leaves, she may die. Why is this fact so elusive to those within the legal system? An answer might be, yet again, because of the silence surrounding these women and their experience, and the men that abuse. And it is not so simple to plainly ask a woman who suffers domestic violence and abuse why she doesn't 'just leave' because, even though now we know the answer, we imagine that the words can barely be formed and spoken, so little confidence might the woman have in a system that may or may not hear her, even if she could bear to put into words the truth of such an appalling prediction.

In, our last section, **8. The dangers of a fragmented system**, we talk of the illusion of an actual cohesive system. Of course, if something is an illusion, it isn't real. We can't meet the needs of those who need our support from domestic abuse and violence with an illusion. All we do is meet their silence with another, adding further to trauma, confusion, and ultimately, more abuse.

It is the silence of the crimes of domestic abuse and violence which helps them to flourish unhealthily, affecting our society, and its current and future generations. All of the eight themes in our report either directly, or indirectly, come down to silence in one way or another and how we are still failing to bring these crimes into the light of disclosure. We encourage women who suffer to do so, but the legal system itself is not yet equipped to deal with the consequences of these disclosures.

The legal system is steeped in history; it is archaic in its origins. We like to believe it has weight for these reasons, but we would also say it brings with it the prejudices of the past. And a theme of the past, when it comes to domestic trouble, is silence. In the past, women were married young, leaving the family home and told - we don't have to look far for such anecdotes - 'you made your bed, so lie in it.' In, **3. Consistency and continuity in the application of the law** we talked about a system that is 'reluctant to engage with domestic violence complaints.' We would suggest that the realisation - accepted to a large degree, in theory - that domestic violence must be exposed and no longer allowed to breed in silence, is at odds with a legal system that has not come as far in this realisation. The legal system is, as such, chronically outdated, behind, and ill-equipped to serve our women of today.

We've cited again and again in real-life narrative themes, the cynicism that meets these brave women as they step forward into a largely disbelieving, certainly reluctant, legal system. We've discussed too, the academic theory that posits how female witnesses can be perceived as 'little more credible than a child.' We can quote legal professionals as saying, 'there is an issue of domestic violence but it is greatly exaggerated.'

Such cynicism of domestic violence, and yet, really, we know deep-down of the unspoken knowledge that domestic violence goes on all around us. We only have to look at the statistics; we all know of someone, or someone's children, either personally, at work, or in the neighbourhood, who is being affected. We wonder at the contradiction of this. We wonder at the cynicism that works against its own better knowledge. The habit of the past, to believe that the domestic remains private no matter what is happening unlawfully within, has a fast hold. More than a reluctance to deal with, it is, bar the pockets of good practice and the supporting people and bodies like SAFE Ireland and its member services who work to tackle domestic violence head-on and support these women, practically a turning-away en masse. No wonder the silence then, if society itself is so oppressed by the attitudes of the past into the cynical behaviour and reluctant action that fails to protect and support the women and children who need its help so desperately.

We believe that change is possible and together we can make it happen. We believe that there are enough interested and committed professionals across our current systems who can work together and with us, to effect meaningful and sustainable change. A collective commitment to transformative change can ultimately provide a state of the art system of excellence – a global model. If together we can achieve this model of excellence it can play a vital role in responding to the needs of women and children. Ultimately, together we can help prevent and reduce the incidence of violence against women in intimate relationships and prevent the long-lasting impacts on these terrible violations for future generations. We just need the will and collective commitment to make it happen.

# Recommendations

The following are the recommendations SAFE Ireland has developed based on the eight themes identified throughout the research.

## 1. The right to be heard

- (i) Procedural rules for hearing women/complainants should be developed and implemented to ensure that the agency remains with the victim as far as possible. Implementation of EU Victims Directive<sup>137</sup>.
- (ii) The best interests of the child and where appropriate the voice of the child should be heard and be paramount in all proceedings relating to their care, custody, access and guardianship. (Head 32 of the CFRB General Scheme should address this if passed into law.)
- (iii) Section 11 of the Children Act 1997 – part 4 which extended the power of district judges to appoint assessors to carry out ‘Section 47 reports’ to district courts should be commenced. (This should be addressed by the CFRB General Scheme 2014.)
- (iv) Implementation of a systematic collection of evidence relating to any crimes perpetrated on the victim at all points of presentation across a coordinated multi-agency response system.
- (v) Information should be consistently provided to victims at all entry points to the state and non-state system regarding the process for making complaints and statements to Gardaí and other justice professionals. Implementation of EU Victims Directive<sup>138</sup>.

## 2. The consequences of the court not hearing the evidence. High-risk factors: the case of cruelty to animals

- (i) Implementation of risk assessment tools for all front-line statutory and non-statutory professionals responding to women and children experiencing domestic violence.
- (ii) Professional development training which is based on the best available national and international evidence and delivered within a quality assurance framework on a regular basis to all relevant professionals across all statutory and non-statutory locations.
- (iii) Evaluation and monitoring systems in place to ensure consistent capacity to use risk assessment tools appropriately and effectively across all relevant statutory and non-statutory agencies.
- (iv) Consideration of domestic violence in any interim and/or final child custody/access hearing. At a minimum should ensure qualified supervised access visits and where there is risk of further violence, no access should be granted until risk is removed – with the priority at all times being to protect the child. (Welcome of General scheme of Children and Family Relationships Bill for further consideration/unintended consequences with further analysis to understand domestic violence versus family violence.)

## 3. Consistency and continuity in the application of the law

- (i) A decision to either establish a specialist domestic violence court model that ensures victim autonomy/agency which is operated by professionals trained with understanding of the dynamics of domestic violence and risk minimisation, OR, training of all justice professionals including the judiciary who are hearing/representing domestic violence cases in both civil and criminal courts, **OR BOTH**.

#### 4. The victim and perpetrator stereotypes

- (i) Awareness raising/training which shifts the stereotypes of victim and perpetrator for all legal and social professionals.
- (ii) Legal advocacy support and information to victims who decide to appeal decisions.

#### 5. The importance of good advocacy, expertise and policing

- (i) Formalise the role of specialist domestic violence advocates to ensure that victims have the choice to access specialist support throughout their process of seeking protection and justice. (Implement EU Victims Directive – Articles 3.3, 8, 20 and 25.)
- (ii) Design and deliver quality training in partnership with non-governmental organisation specialists to all legal advocates/litigators.

#### 6. The need for a legal definition of domestic abuse and violence

- (i) Explore the benefits and unintended consequences of developing a comprehensive legislative definition for domestic violence, which encompasses ‘coercive control’ and explicitly recognises these violations of human rights within Irish criminal law.
- (ii) Explore the potential and unintended consequences of developing an offence which criminalises coercive control. An aggravating factor to include that where the offence was committed in an intimate relationship the breach of the victim’s trust is even greater.
- (iii) Amend the Domestic Violence Act in terms of:
  - The threshold of domestic violence, or risk of same, which should trigger a safety or other order;
  - The list of factors which must be taken into account when the judge is deciding whether this threshold has been reached:

The existing wording is as follows in relation to safety orders:

[Section 2(2) DVA 1996 as amended] ‘... [if in the opinion of the court there are] reasonable grounds for believing that the safety or welfare of the applicant or any dependent person so requires;’

And there is no list of factors to be taken into account, other than those in Section 2 (1) (b) which relate to whether certain relationships are “primarily contractual”.

Commentary and suggested rewording:

- (1) “safety or welfare:” The safety aspect of this phrase is general enough to cover a wide range of physically threatening and already dangerous situations, and specific enough to convey the idea of physical safety from harm. As physical safety is the aim of a safety order, we would be inclined to leave “safety” in the wording. “Welfare” is also general, but so wide and vague as to make it difficult for a decision maker to discern how it differs from “safety” exactly. There is something to be said for a catch-all term, because the range of abusive behaviour itself is so wide. Something like, “psychological or physical health, and/or housing conditions, and/or economic status” could be considered, in relation to applicants, but in relation to children, it is appropriate to consider the “best interests of the child,” and for that purpose, to adapt the language of the forthcoming Children and Family Relationships Bill General Scheme (See Head 32, subhead 3).

List of factors to be taken into account in determining what is in the best interests of the child:

“....

(a)(...)

(b) the ascertainable views of the child concerned, giving due weight to such views having regard to the age and maturity of the child;

(c) the physical, psychological and emotional needs of the child including the child's need for continuity, stability and physical and psychological health and well-being, taking into consideration the child's age and stage of development;

(d) the history of the child's upbringing and care, including the nature of the relationship between the child and each of his parents and with other relatives and the desirability of preserving and strengthening such relationships;

(e) (...);

(f) the child's social, intellectual and educational upbringing and needs;

(g) the child's age and any special characteristics;

(h) any harm which the child suffered or is at risk of suffering and the protection of the child's safety and psychological wellbeing, including harm caused by harassment;

(i) (...)

(j) (...)

(k) (...)

and

(l) any other fact or circumstance that the court regards as relevant.

(4) In considering the matters detailed in subhead (3), the court shall have regard to any family violence including its impact on:

(a) the safety of the child and other family members;

(b) the child's personal wellbeing, including the child's psychological and emotional wellbeing; and

(c) the victim of such violence and the capacity of the perpetrator of the violence to properly care for the child and the risk, if any, that the perpetrator poses to the child.

(5) .... “family violence” includes behaviour by a parent or guardian or a household member causing or attempting to cause physical harm to the child or another parent or household member, including sexual abuse or causing the child or a parent or other household member to fear for his safety or that of another household member, including use of threats and/or weapons;.

(6) A parent's conduct may only be considered to the extent, if any, that it is relevant to the child's welfare and best interests.

(7) In obtaining the ascertainable views of the child in accordance with subhead (3)(b), the court shall ensure that the manner in which such views are provided to the court facilitates the child freely expressing such views and, in so far as is practicable, that the views so expressed are not as a result of the undue influence of another, including a parent of a child....”

(2) In determining the nature, extent and duration of any actual violence used by respondent against the applicant, the following factors shall be considered:

(iii) Nature, extent and duration of any threats of violence by respondent against the applicant;

- (iv) Actual or threatened use of any weapon by respondent against the applicant;
- (v) Nature, extent and duration of any harassment by respondent against the applicant;
- (vi) Housing status and living conditions of the applicant;
- (vii) Economic status of the applicant;
- (viii) Educational status of the applicant; and
- (ix) Any other matter which in the opinion of the court is relevant to the safety or physical or psychological health, and/or housing conditions, and/or economic status, of the applicant...<sup>139</sup>

## 7. Why she doesn't just leave – the barriers to safety and help-seeking

- (i) Provide consistent nationwide 24-hour access to state supports, from protection to court access, to all women and their children seeking immediate and long-term protection from a violent perpetrator. This might be provided through a judicial 'out of hours' rota.
- (ii) This 24-hour access should include the provision for the granting of an emergency barring order to remove the perpetrator from the residence of the victim until a full judicial hearing can be conducted/next nearest available sitting. The provision of this order should also include the requirement of any attending Gardaí or other professional to also inform the specialist 24-hour domestic violence service of the contact details of the victim. The specialist domestic violence services in turn should have statutory duty to make contact with the victim to inform her of the supports available. This provision is in line with the provisions in place in those European countries that operate the emergency 24-hour barring order.
- (iii) It is critical that all professionals involved in assessing the need for an emergency barring order are trained to understand the dynamics of domestic violence.
- (iv) This 24-hour access should also include the adequate provision of refuge accommodation for women who wish to leave their current residence for greater safety and support.
- (v) The state should ensure provision of Section 20<sup>140</sup> and Section 47<sup>141</sup> reports for all relevant cases so that no victim has to resource these reports.
- (vi) All Section 47 and Section 20<sup>142</sup> reports should be admissible to court proceedings and the experts who produce the reports should be subject to cross-examination.
- (vii) Urgent review of the legal aid charges for women who have no means to pay them. (Recent increase from €50 to €130.)
- (viii) Increase accessibility to protection orders for those victims who are in 'dating relationships' and who do not satisfy the eligibility criteria based on cohabitation.

## 8. The dangers of a fragmented system – the continued case for a multi-agency approach

- (i) The establishment and resourcing of locally coordinated multi-agency response teams which prioritises the safety and autonomy and right to privacy of victims while working to hold perpetrators accountable for their violent behaviour.
- (ii) The development of formal protocols between various statutory and non-statutory locations to support the coordinated multi-agency response.
- (iii) The establishment of homicide review legislation and implementation structures which means that a multi-agency review is conducted, following a domestic homicide, to assist all those involved in the review process, in identifying the lessons that can be learned with a view to preventing future homicides and violence. (See Section 9 of Britain's Domestic Violence Act 2004.)

## Notes

- 1 Leigh Goodmark, *Law Is The Answer? Do We Know That For Sure?: Questioning The Efficacy Of Legal Interventions for Battered Women* SAINT LOUIS UNIVERSITY PUBLIC LAW REVIEW Vol 23:7 (2004). Leigh Goodmark is a Professor of Law Director at the University of Baltimore, Clinical Education and Family Law Clinic Co-Director, Center on Applied Feminism. Prior to joining the faculty in 2003, she directed the Children and Domestic Violence Project at the American Bar Association's Center on Children and the Law and previously taught in the Families and the Law Clinic at the Catholic University of America, Columbus School of Law. She also practiced family law in the District of Columbia at Bread for the City and Zacchaeus Free Clinic, a holistic neighborhood service centre. She has written extensively on domestic violence and the law and though her work concentrates on the subject in America, its common law system and the challenges it faces are similar to the issues in Ireland. Her work is referenced throughout this report and we suggest that any review of this subject requires a review of her research. For further reading see Leigh Goodmark, *A Troubled Marriage. Domestic Violence and the Legal System*. (2012).
- 2 Some even argue that not every social problem can or should be solved by the legal system. Ann Scales notes, "Lawyers have learned to view a legal dispute as the beginning and end of a controversy. But that is usually not true."
- 3 Paraphrased from the court's words in US case, *Custody of Vaughn*, 664 N.E.2d 434, 437 (Mass. (1996). "Quite simply, abuse by a family member inflicted on those who are weaker and less able to defend themselves - almost invariably a child or a woman - is a violation of the most basic human right, the most basic condition of civilized society: the right to live in physical security, free from the fear that brute force will determine the conditions of one's daily life. . . . Particularly for children the sense that the place which is supposed to be the place of security is the place of greatest danger is the ultimate denial that this is a world of justice and restraint, where people have rights and are entitled to respect."
- 4 Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*. Available at: [http://works.bepress.com/leigh\\_goodmark/6](http://works.bepress.com/leigh_goodmark/6). She writes: "An anti-essentialist reframing would refocus domestic violence law and policy around the diversity of women who experience domestic violence. A reframing would ask what the law can do to help individual women with unique characteristics, prompting us to think in a more complex way about the attributes and needs of women who experience violence."
- 5 Stated by Dr. Margaret Chan, Director-General, WHO at the press release for the launch of a new report by the World Health Organisation in partnership with London School of Hygiene & Tropical Medicine and the South African Medical Research Council. The report: *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence*, World Health Organisation 2013. Violence against women: a 'global health problem of epidemic proportions'. [press release] 20 June 2013.
- 6 The World Health Organisation, *WHO Multi-country Study on Women's Health and Domestic Violence against Women*, (2005). Geneva: World Health Organisation.
- 7 See McGee, H. et al. (2002). *The SAVI Report Sexual Abuse and Violence in Ireland*. Dublin: Dublin Rape Crisis Centre; 2002.
- 8 European Union Agency for Fundamental Rights (2014) *Violence against women: an EU-wide survey*. Luxembourg: Publications Office of the European Union.
- 9 Ibid.
- 10 See SAFE Ireland's safety audit. SAFE Ireland (2014) *Safety in a Time of Crisis*. Athlone, Ireland: SAFE Ireland.
- 11 See Nestor, J. (2011) *An introduction Irish family law*. 4th ed. Dublin: Gill & Macmillan.
- 12 See Glynn, E. (2011) 'Is Current Domestic Violence Legislation Appropriate in Ireland?', *Irish Law Times*. 29.
- 13 An *ex parte* judicial proceeding is conducted for the benefit of only one party. *Ex parte* may also describe contact with a person represented by a lawyer, outside the presence of the lawyer. The term *ex parte* is used in a case name to signify that the suit was brought by the person whose name follows the term.
- 14 Order 59 Family Law Rule 5-Domestic Violence: Consolidated Circuit Court Rules (Release 13, July 12, 2011).
- 15 See Horgan, R. (1998) 'Domestic Violence a case for reform?', *IJFL*. 1(2), 9.
- 16 See Nestor, J. (2011) *An introduction Irish family law*. 4th ed. Dublin: Gill & Macmillan.
- 17 Under Sections 2(2) and 3(2).
- 18 Nestor, *An Introduction to Irish Family Law* (Gill and Macmillan, 4th ed. 2011).
- 19 Ibid.
- 20 Horgan, 'Domestic Violence a case for reform?' (1998) 1(2) *IJFL* 9.
- 21 Domestic Violence: The Case For Reform, A report by the Law Society's Law Reform Committee (1999).
- 22 Ibid.

- 23 See note 13.
- 24 Glynn, 'Is Current Domestic Violence Legislation Appropriate in Ireland?' (2011) 29 *ILT* 64.
- 25 Domestic Violence: The Case For Reform, A report by the Law Society's Law Reform Committee (1999).
- 26 *Ibid.*
- 27 Horgan, 'Domestic Violence A case for reform' (1998) 1(2) *IJFL* 9.
- 28 Domestic Violence: The Case For Reform, A report by the Law Society's Law Reform Committee (1999).
- 29 *Ibid.*
- 30 Coonan, 'The Children's Court and the Presence of Victim Support during in camera Proceedings' (2008) 10(3) *Irish Journal of Family Law* 17.
- 31 A McKenzie Friend is somebody who accompanies a litigant to a court hearing. They may provide support, and assistance with documents, taking notes or making suggestions. The use of McKenzie Friend was given statutory recognition in Section 40(5) of the Civil Liability and Courts Act 2004. The court must approve this and can provide directions as appropriate.
- 32 *Ibid.*
- 33 *Ibid.*
- 34 Coonan, 'The Children's Court and the Presence of Victim Support during in camera Proceedings' (2008) 10(3) *Irish Journal of Family Law* 17.
- 35 Hogan and Kelly, 'Section 47 Reports in Family Law Proceedings: Purpose, Evidential Weight and Proposals for Reform' (2011) 14(2) *IJFL* 27.
- 36 *Ibid.*
- 37 *Ibid.*
- 38 *Ibid.*
- 39 *Ibid.*
- 40 *Ibid.*
- 41 McIntyre, 'Domestic Violence The Case For Reform' (2000) 3(1) *IJFL* 10.
- 42 The Task Force on Violence Against Women (1997) *Report of the Task Force on Violence Against Women*. Dublin: The Stationery Office.
- 43 Cosc (2010) *National Strategy on Domestic, Sexual and Gender-based Violence 2010-2014*. Dublin: The Stationary Office.
- 44 *Supra* at note 8.
- 45 *Ibid.*
- 46 Health Service Executive (2012) *HSE Practice Guide on Domestic, Sexual and Gender Based Violence: For staff working with children and families*. Dublin: HSE.
- 47 The Probation Service (2009) *Domestic Violence. Probation Service: Policy and Practice Guidelines 2009*. Dublin: The Probation Service.
- 48 *Supra* at note 11.
- 49 Kropp, P. R., Hart, S. D., Webster, C. D., & Eaves, D. (1999) *Spousal Assault Risk Assessment guide (SARA)*. Toronto: Multi-Health Systems.
- 50 The Probation Service (2009).
- 51 See United Nations (2006) *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women: Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women*. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk. USA: UN Human Rights Council.
- 52 The literature also suggests that women who are abused are more likely to experience depression, and fear or anxiety than men who are abused (Vivian & Langhinrichsen-Rohling, 1994). Research from Britain (Walby and Allen, 2004) found that women were more likely to experience repeated and more severe forms of violence, 32% of the women surveyed who had ever experienced domestic violence had been subject to four or more attacks, while 11% of a smaller number of males had experienced repeated incidents of domestic violence. Women represented 89% of those ever abused four times or more. Gender is described by Walby and Allen (2004) as a significant risk factor for intimate partner violence.
- 53 See the work by Cris M. Sullivan PhD in which she discusses the nature of male and female inter-partner violence, contained in: Sullivan, C. M. (2012) *Examining the Work of Domestic Violence Programs within a "Social and Emotional Well-Being Promotion" Conceptual Framework*. Harrisburg, PA: National Resource Center on Domestic Violence, pp. 3-4.

- <sup>54</sup> United Nations (1992): General Recommendation No. 19 on Violence against Women, Committee on the Elimination of Discrimination against Women (CEDAW) 11th session, 1992, New York.
- <sup>55</sup> See such international documents as:  
Council of Europe, *Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)*, 12 April 2011. United Nations, *Beijing Declaration and Platform for Action, adopted at the fourth World Conference on Women*, 27 Oct 1995. UN General Assembly, *Declaration on the Elimination of Violence Against Women*, 20 December 1993. World Health Organisation, *Violence Against Women: Fact Sheet no. 239*, World Health Organisation: Geneva, (2013).
- <sup>56</sup> US Dept of Justice. "Violence Between Intimates." National Institute of Justice/NCJRS, 1994.
- <sup>57</sup> See, United Nations, *Beijing Declaration and Platform for Action, adopted at the fourth World Conference on Women*, 27 Oct 1995.
- <sup>58</sup> See for example, "judge 'sick to the teeth' of withdrawal of testimony," <http://www.irishtimes.com/news/judge-sick-to-the-teeth-of-withdrawal-of-testimony-1.538973> "He [judge Seán MacBride of Monaghan district court] told Garda Inspector Pat McMorrow that this was not the fault of Gardaí, who showed great patience, but that something should be done to call a halt to these cases where people were 'falling into love again' and giving 'mealy-mouthed excuses to the court.'"
- <sup>59</sup> SAFE Ireland. (2014) *Healing from Domestic Violence and Trauma*. Athlone, Ireland: SAFE Ireland.
- <sup>60</sup> Binny Miller, Telling Stories About Cases and Clients: The Ethics of Narrative, 14 GEO. J. LEGAL ETHICS 1 (2000). (Reference via Leigh Goodmark).
- <sup>61</sup> Elaine J. Lawless, *Women Escaping Violence: Empowerment Through Narrative* (2001).
- <sup>62</sup> Supra at note 44.
- <sup>63</sup> Anthony G. Amsterdam & Jerome Bruner, *Minding The Law: How Courts Rely On Storytelling, And How their Stories Change The Ways We Understand The Law-And Ourselves* 111 (2000). See also, Toni M. Massaro, Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds? 87 MICH. L. REV. 2099, 2105 (1989); and Elizabeth J. Samuels, Stories Out of School: Teaching the Case of Brown v. Voss, 16 CARDOZO L. REV. 1445, 1446-48 (1995).
- <sup>64</sup> Supra at note 44.
- <sup>65</sup> Carrie Cuthbert et al., *Battered Mothers Speak Out: A Human Rights Report On Domestic Violence And Child Custody In The Massachusetts Family courts iv* (2002). See also the Arizona Coalition Against Domestic Violence report entitled *Battered Mothers' Testimony Project: A Human Rights Approach To Child Custody And Domestic Violence* (2003). Modelled on the Massachusetts report, the Arizona study collected the stories of 57 women to support its claim that battered mothers involved in custody actions in the Arizona Superior court system were being subjected to human rights abuses. The short stories that are relayed at various points in the report echo the stories told by the mothers in Massachusetts: failure to take partner abuse seriously; denial of due process right to be heard; and bias against battered women. The study concludes that "domestic violence in Arizona is torture and...the failure of Arizona's legal system to prevent torture places the state in noncompliance with international laws and norms that condemn torture." Id. at 86, 87-96. (All references via Leigh Goodmark).
- <sup>66</sup> Supra at note 44.
- <sup>67</sup> Supra at note 7. Goodmark goes on to say: "Because [t]he value of the evidence depends on its accuracy, reliability, and specificity, investigators should also seek to corroborate what they have learned through direct testimony; methods of corroboration include interviewing other witnesses or collecting similar complaints from other sources."
- <sup>68</sup> Ibid.
- <sup>69</sup> See generally, Jackson Katz, *Violence against women - it's a men's issue*: at <http://www.youtube.com/watch?v=KTvSfeCRxe8>. He uses this example coined by theorist Julia Penelope in explaining how we use language that shifts issues such as domestic violence and sexual abuse away from the perpetrator and towards the victim: "John Beat Mary," became, "Mary was beaten by John," became, "Mary was battered," became, "Mary is a battered woman." Katz says that by doing this, not only are we creating a shield of invisibility around John but we are setting up a language structure which places blame solely on the victim. As seen in the above example, John completely disappears from the problem by the end of the last sentence. Now we see Mary as a battered woman, and we begin to ask questions that range from: what did Mary do? Why is Mary a battered woman? Or why did Mary stay? However, Katz proposes we ask a different set of questions, based not on Mary but on John. By not adding men into the discussion we're creating an atmosphere where gender violence or sexual abuse is solely looked at as a women's issue, and in Katz's opinion, "A women's issue that some good men help out with. Now just think: if men are so central to the issue, then why are they often left out? Or even - what happens when they're left out? Not recognizing this allows men to have an excuse as to why they don't necessarily have to pay attention. They have the ability to go un-examined because they aren't challenged." He goes on to explain: "the same system that produces men abusing women is the same system that produces men abusing other men."
- <sup>70</sup> Barring order Case Keating v. The Director of Public Prosecutions [2002] IR 220/00.
- <sup>71</sup> In relation to a potential breach of natural justice (in the refusal of the judge to hear the adjournment application), *audi alteram partem* and in particular the impact of *Re Haughey* [1971] IR 217. Also see: *Ahern v Judge Mahon* [2008] IEHC 119; *Flanagan v UCD* [1988] IR 724 and *Ryan v V.I.P. Co-operative Society*, Unreported, High Court, January 10th 1989 (Lardner J.).

- 72 Women's Aid, *Female Homicide Media Watch*, September 2013.
- 73 (McPhedron, 2009).
- 74 Angela Browne, *When Battered Women Kill* 110 (1987) Battered women who kill frequently report the destruction of their pets; these women believe that the murder of a pet represents their own imminent deaths.
- 75 Works Cited: Faver, C. and Strand, E. (2003) *Domestic Violence and Animal Cruelty: Untangling the Web of Abuse*, *Journal of Social Work Education* 39(2), pp.237- 253; McPhedron, S. (2009) *A review of the evidence for associations between empathy, violence and animal cruelty*, *Aggression and Violent Behaviour* 14(1) pp.1-4. Walton-Moss, B et al, (2005) *Risk Factors for Intimate Partner Violence and Associated Injury Among Urban Women* *Journal of Community Health* 30(5), pp. 377 -389.
- 76 Dutton, M. A. (1992). *Empowering and healing the battered woman*. New York: Springer.
- 77 The Humane Society of the United States. (2008) *First Strike: The Violence Connection*. Washington: HSUS.
- 78 Gupta, M. (2008) 'Functional Links Between Intimate Partner Violence and Animal Abuse: Personality Features and Representations of Aggression,' *Society and Animals*, 16(3), pp.223-242.
- 79 Legal term that means a judge will retain a certain case, even if another judge is sitting in that court room when the case returns for hearing.
- 80 Lisa's ex-partner has since been convicted of a crime he committed which was a follow-through of a threat he had made against her and her family.
- 81 N Handbook for Legislation on Violence Against Women (Department of Economic and Social Affairs 2010).
- 82 Mazur and Aldrich (2003).
- 83 Goldberg, *Judging for the 21st Century a Problem Solving Approach* (2005) Canada, National Judicial Institute.
- 84 Moore, 'Two Decades of Specialized Domestic Violence Courts: A Review of the Literature,' Centre for Court Innovation, New York.
- 85 Stewart, 'Specialist Domestic/Family Violence Courts within the Australian Context,' Australian Domestic and Family Violence Clearing House, Issues Paper 3, (2001).
- 86 Ibid.
- 87 Shaffer, 'Therapeutic Domestic Violence Courts: An Efficient Approach to Adjudication?' (2003-2004) 27 *Seattle University Law Review* 981.
- 88 Ibid.
- 89 Newmark, Diffily and Kane (2001) *Specialized Felony Domestic Violence Courts: Lessons on Implementation and Impacts from the Kings County Experience* (Urban institute Justice Policy Center).
- 90 Ibid.
- 91 Salzman, (1994) *The Quincy District Court Domestic Violence Prevention Program: A Model Legal Framework for Domestic Violence Intervention*, *Boston University Law Review*, 329.
- 92 Posner, *Therapeutic Domestic Violence Courts* (2003-2004) 27 *Seattle University Law Review* 995.
- 93 MacDowell, *When Courts Collide: Integrated Domestic Violence Courts and Court Pluralism* 20 *Tex. J. Women & L.* 2010-2011 95.
- 94 Ibid.
- 95 Ibid.
- 96 Katz and Rempel, 'The Impact of Integrated Domestic Violence Courts on Case Outcomes: Results for Nine New York State Courts,' (2011) Centre for Court Innovation.
- 97 Levy, F., Ross, T., and Guthrie, P. 2008. *Enhancing Safety and Justice for Victims of Domestic Violence: Voices of Women in the Queens Integrated Domestic Violence Court*. New York, NY: Vera Institute of Justice.
- 98 Steketee, Levy and Kelitz (2000) *Implementing an Integrated Domestic Violence Court: Systematic Change in the District of Columbia*, National Centre for State Courts.
- 99 Epstein, 'Effective intervention in Domestic Violence Cases,' (1999) 11 *Yale Journal of Law and Feminism* 3.
- 100 Leigh Goodmark, *When Is A Battered Woman Not A Battered Woman? When She Fights Back*, *Yale Journal of Law & Feminism* (August 2007) referring at footnote 245, to Ronald L. Ellis & Lynn Hecht Schafran, *Achieving Race and Gender Fairness in the Courtroom*, in *The Judges' Book* 91, 110 (2d ed. 1994); and at footnote 246 to, Susan Scott, Judge, Super. Ct. of NJ. Panel Discussion: *Advocating for Victims of Domestic Violence* (Oct. 7, 1998) in 20 *Women's RTS. L. REP.* 73, 76-77 (1999); and at footnote 247, Martha Albertson Fineman, *Domestic Violence, Custody, and Visitation*, 36 *FAM. L. Q.* 211, 212, 218-19 (2002).
- 101 *Supra* at note 44.

- <sup>102</sup> See also 165 Martha Albertson Fineman, *Domestic Violence, Custody, and Visitation*, 36 FAM. L. Q. 211, 219 (2002), at 222-23. "... inferences are made despite the understanding of professionals working with domestic violence victims that women are actually reluctant to disclose abuse to legal system professionals, particularly in custody cases, because of fear of both the abuser and the system's perception of women who make such claims."
- <sup>103</sup> Via Leigh Goodmark, National Conference of State Trial Judges, National Conference of State Trial Judges, *The Judge's Book* (citing study on decision making in right to die cases where no living will exists). *The Judge's Book* concludes about the findings of that study, "In other words, men are rational, independent beings whose moral agency must be respected even when they become incompetent, but women are only children."
- <sup>104</sup> Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 AM. J. J. GENDER, SOC. POL'Y & L. 657, 682 (2003).
- <sup>105</sup> Hasselbacher, L. 'State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection,' *Northwestern Journal of International Human Rights*, 8 (2), p.190-215, (2010).
- <sup>106</sup> Leigh Goodmark, *A Troubled Marriage. Domestic Violence and the Legal System*. (2011) at page 4.
- <sup>107</sup> See, e.g., Leslie Friedman Goldstein, *Can This Marriage Be Saved? Feminist Public Policy and Feminist Jurisprudence*, in *Feminist Jurisprudence: The Difference Debate 29* (Leslie Friedman Goldstein ed. 1997). Citation and extract from Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*, p.45 (February 2009).
- <sup>108</sup> Mahzarin R. Banaji and Anthony Greenwald largely captured in their recent book, *Blind Spot. Hidden Biases of Good People*, Delacourt Press/New York 2013.
- <sup>109</sup> Notes of conversation are on the writer's file.
- <sup>110</sup> See also Kirwan Institute for the Study of Race and Ethnicity, *Implicit Bias Review 2013*. Published at [http://kirwaninstitute.osu.edu/docs/SOTS-Implicit\\_Bias.pdf](http://kirwaninstitute.osu.edu/docs/SOTS-Implicit_Bias.pdf). Also see "In response to criticism that judicial evaluation methods show implicit bias and over reliance on stereotypes as to race and gender, Jennifer K. Elek (NCSC) and her colleagues have published *Judicial Performance Evaluation: Steps to Improve Survey Process and Measurement*. For more on the topic, see Natalie Knowlton & Malia Reddick, *Levelling the Playing Field: Gender, Ethnicity, and Judicial Performance Evaluation*, recommending that "Bar associations and court systems should take steps to raise awareness of, and promote education about, the potential for implicit biases to influence thoughts and decisions." Also see *Implicit Bias in the Courtroom*, 59 UCLA L. Rev. 1124 (2012).
- <sup>111</sup> For example, image entitled: "Almost 1 million women experience domestic violence every year, according to the CPS." Photograph: Dani Rodriguez / Alam. <http://www.theguardian.com/law/2011/apr/15/domestic-violence-legal-aid-keir-starmer> "Time for some joined-up thinking on domestic violence" by Jon Robins.



- <sup>112</sup> For example see the reporting of the murder of Sarah Hines, five month old Amy, Reece Hines and Alicia Brough by John Geary, who "... could not accept that his relationship with his former partner had ended and murdered her." <http://www.independent.ie/irish-news/killer-could-not-accept-his-relationship-had-failed-29352164.html>.
- <sup>113</sup> For a discussion of the ways in which media depictions of domestic violence render women subjected to abuse less visible, see generally Elizabeth McDowell, *When Reading Between the Lines Is Not Enough: Lessons from Media Coverage of a Domestic Violence Homicide- Suicide*, 17 J. OF GENDER, SOC. POL'Y & L. 269 (2009).
- <sup>114</sup> Court accompaniment workers are employed by specialist domestic violence support services. Court accompaniment workers provide women with support and advocacy throughout the court process.
- <sup>115</sup> General Assembly resolution 48/104 of 19th December 1993.
- <sup>116</sup> Mulligan, 'Redefining Domestic Violence: using the power and control Paradigm for criminal domestic violence legislation' (2009) *Child Legal Rights Journal* 34.
- <sup>117</sup> *Ibid.*
- <sup>118</sup> 750 Ill Comp Stat 60/103 (1) (3) 2006.
- <sup>119</sup> Mulligan, 'Redefining Domestic Violence: using the power and control Paradigm for criminal domestic violence legislation' (2009) *Child Legal Rights Journal* 34.

- 120 The National Task Force on Violence Against Women (1997) Report of the National Task Force on Violence Against Women. Dublin: Office of the Tánaiste.
- 121 Watson, D and S. Parsons (2005). Domestic Abuse of Women and Men in Ireland: report on the national study of domestic abuse. Dublin: National Crime Council.
- 122 Articles researched for this section; for further reading are: Hanna, Cheryl. (2009) "The Paradox of Progress: Translating Evan Stark's Coercive Control Into Legal Doctrine for Abused Women." *Violence Against Women*, 15(12) pp. 1458-476. ; Stark, Evan. (2007) *Coercive Control: How Men Entrap Women in Personal Life*. New York: Oxford UP. ; United Kingdom. Home Office. *Cross Government Definition of Domestic Violence- A Consultation: Summary of Responses*. N.p.: Home Office, 2012. Print.
- 123 (Hanna, 2009).
- 124 (UN, 2013).
- 125 (Stark, 2007).
- 126 (Home Office, 2012).
- 127 UN Handbook for Legislation on Violence Against Women (2010) Department of Economic and Social Affairs.
- 128 Fragmentation [from legislation LRC to specialised DV courts, handover to and from HSE and Gardaí].
- 129 When asked whether the court will deal with these issues contemporaneously, 30 per cent of respondents replied that it will never do so and 35 per cent reported that it will only sometimes do so. Only 33 per cent reported that the court will usually try to deal with these issues together.
- 130 Consultation held between SAFE Ireland and our member organisations. 26 court accompaniment workers participated on the day and shared their experiences of the legal system from around the country.
- 131 McQuigg recognises a degree of merit in the argument that private life must remain beyond the reach of the state and unregulated, she notes that most citizens would hold the opinion that there simply are certain areas of personal life that must remain private and unregulated to order to avoid an authoritarian state (McQuigg, 2011). Similarly Moore argues that while the 'personal' and private must be respected, they can no longer be synonymous with being invisible (Moore, 2003, p.104). The concept of state responsibility has been expanded so that states are not only responsible for refraining from committing human rights violations directly but also to positively protect the human rights of its citizens. Under international law states' obligations are to respect, protect and fulfil human rights, this includes their obligation to prevent, protect and punish acts of violence against women, and to provide redress for these acts, wherever they take place (Benniger-budel, 2008, p.11).
- 132 Leigh Goodmark, *Transgender people, intimate partner abuse, and the legal system*. (2012) At page 47. Available at: [http://works.bepress.com/leigh\\_goodmark/7](http://works.bepress.com/leigh_goodmark/7).
- 133 Some of these questions are paraphrased from questions asked about American family court reform by 1. Jane Spinak, *Reforming Family Court: Getting It Right between Rhetoric and Reality*, 31 WASH. U. J.L. & POL'Y 11 (2010).
- 134 *The Criminal Process*, by Thomas O'Malley (2009).
- 135 For further reading see Leigh Goodmark, *A Troubled Marriage. Domestic Violence and the Legal System*. (2012), Chapter 5 Mandatory Interventions and Leigh Goodmark, *Autonomy Feminism: An Anti-Essentialist Critique of Mandatory Interventions in Domestic Violence Cases*. Available at: [http://works.bepress.com/leigh\\_goodmark/6](http://works.bepress.com/leigh_goodmark/6), and *Victims of Domestic Violence*, by Gwen DeVasto at Page 122 for a contrasting view: "...the burden of prosecution should not be on the victim. The criminal system should go forward without the testimony of the hesitant or frightened victims. .... In the model San Diego program ... prosecution goes forward on 60% of cases in which the victim is unwilling or too afraid to testify and they claim to have a 90% conviction rate. DV is a crime and should be treated as such. We don't ask bank tellers if they would like us to file charges."
- 136 *Thurman v. City of Torrington*, 595 F. Supp. 1521, 1526 (1984).
- 137 Article 10 - DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA – Article 4, 6 and 9.
- 138 Article 4, 6 and 9. DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA – Article 4, 6 and 9.
- 139 Taken from General Scheme of a Children and Family relationship Bill 2014, Head 32, p 58-59).
- 140 Section 20, Childcare Act 1991, allows for the court (or an application to the court) to order the health board (Child & Family Agency Act 2013) to carry out an investigation of the child's circumstances.
- 141 Section 47 of the Family Law Act, 1995.

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