

Domestic Violence Disclosure Schemes – “Clare’s Law”

Introduction

In 2011, following the murder of Clare Wood by a former partner, the United Kingdom introduced The Domestic Violence Disclosure Scheme (“Clare’s Law”). The legislation establishes a process to support police in disclosing information about previously violent and abusive offenders. The process is based on existing law and was developed to protect those who may be at risk of intimate partner violence. Domestic violence disclosure processes have since been replicated in jurisdictions in Australia and Canada. The ultimate aim of a disclosure process like Clare’s Law is to prevent future violence through the sharing of relevant information about prior histories of intimate partner violence. While many recognize the potentially life-saving value of such schemes, there have been concerns raised about the practicality of their implementation and possible implications they may present to women’s safety. To date, there has been very little evaluation of domestic violence disclosure schemes.

The ‘right to know’ and the ‘right to ask’ in the UK

The domestic violence disclosure scheme in the UK provides a clear and standardized procedure for the police to disclose information to someone about their partner’s previous history of violence, including intimate partner violence. The scheme offers two routes to disclosure: the ‘right to ask’ and the ‘right to know’. The ‘right to ask’ route allows a member of the public to request a disclosure. The ‘right to know’ route allows the police to make a disclosure to protect the public without being initiated by an individual request. Clare’s Law in the UK did not introduce new legislation when it was enacted but rather provided a standardized process to exercise existing common law related to disclosure.ⁱ

Key aspects of the domestic violence disclosure scheme

While domestic violence disclosure processes differ in detail, many of them share the same key principles. In the ‘right to ask’ route, a member of the public can make a direct application to the police for information on an individual in relation to their history of violence. Upon initial request, a risk assessment is conducted to assess if the applicant is at imminent risk of intimate partner violence. The decision to disclose information is based on an in-person meeting with the applicant, intelligence checks and a full risk assessment. The request is then presented to a multi-agency panel made up of justice and community partners for review and guidance. In the UK, the disclosure scheme utilizes the Multi-Agency

Risk Assessment Conference (MARAC) meetings for this purpose. MARAC is a multi-agency meeting made up of cross-sectoral agencies. The ‘right to know’ route is initiated by the police but follows the same process in which a risk assessment is completed and the request is taken to a multi-agency panel for guidance before a member of the public is informed of the risk posed to them by a partner or ex-partner.

If a disclosure under Clare’s Law in the UK is made to an applicant, it must be accompanied by an offer of a safety plan and the engagement of community partners. This is applied in both ‘right to ask’ and ‘right to know’ cases. If a decision is made not to disclose, the applicant is informed that this does not mean that there is no risk of harm and is provided with the option of a safety plan with the engagement of community partners. At the closure of every request, whether there is a disclosure or not, information about the application is recorded by the police.ⁱⁱ

Clare Wood

The Domestic Violence Disclosure Scheme (DVDS) is often referred to as Clare’s Law after Clare Wood, who was killed by a former partner in England in 2009. Following her death, there was a public outcry for improved responses to intimate partner violence. Her former partner had previous convictions of intimate partner violence and her family claimed that she would not have become involved with him had she been aware of his past violent offences. In 2010, the Independent Police Complaints Commissioner found failings on part of the police, including a lack of risk assessment, prior to

her death and found that Clare Wood had contacted the police on several occasions about harassment, threats and assaults by her ex-partner.ⁱⁱⁱ

UK Domestic Violence Disclosure Scheme Pilot

In 2012, the UK ran a 14-month pilot of the disclosure scheme in four police areas. During this pilot, a total of 386 applications for disclosure were made, of which 231 (60%) were initiated by members of the public and 155 (40%) were initiated by police, statutory or voluntary services. Of the 386 applications, 98% of applications were requests for disclosures in which women were at risk of violence from their male partners. Of the 386 applications, 111 (29%) resulted in a disclosure. Challenges identified through the pilot included that police officers reported that the process was too administrative. In addition, community agencies reported that there was little awareness or knowledge of the disclosure scheme among the public. Practitioners involved in the process reported that it was essential to have a safety plan in place and a support worker in attendance with the police during a disclosure. Applicants also reported this cooperative process as useful.^{iv} In general, the majority of those involved in the process were positive about their experience and the majority of applicants who received a disclosure reported that the information helped them make a more informed decision about their relationship and personal safety. Differences in the number of applications and disclosures across different police forces suggested that understanding, interpretation or practice of Clare's Law may vary across communities or police forces.^v

Following the pilot phase, the disclosure scheme was implemented across 43 police forces in the United Kingdom in 2014. After 12 months, a total of 4,724 applications had taken place with 1,938 (41%) disclosures made. Upon review of the pilot phase, the majority of police and partner agencies were positive about the disclosure scheme. There was a need identified for greater transparency about the fact that Clare's Law is a process to help facilitate existing laws on information sharing.^{vi}

Benefits of the scheme

While there has been limited research and analysis of domestic violence disclosure schemes, some have praised such schemes for placing the victim's needs and choice at the center of legislation and police responses.^{vii} While the police generally have powers to disclose information about previous convictions in order to prevent further crime, or reduce harm, the domestic violence disclosure schemes offer a clear process for the police on disclosing information. This may allow survivors to be able to make an informed decision about continuing the relationship with their personal safety in mind. In cases of disclosure to third party safeguarding agencies, it ensures that they have the information they need to better help protect the individual.^{viii}

Critiques of domestic violence disclosure schemes

Places the responsibility on the victim

While some have recognized the disclosure scheme as a means to empower women by providing them information and enabling them to make an informed choice^{ix}, others

are concerned that it shifts the accountability from the perpetrator to the victim^x and the burden from protection agencies to the victim.^{xi} Others are concerned about the potential for victim blaming as a consequence of disclosure schemes. If a woman learns that her partner has a history of violence and decides not to leave him, she may be blamed if she does experience abuse. This may impact how services, including the police, respond.^{xii}

In addition, the scheme relies on information on police reports or convictions despite the fact that domestic violence is underreported. This may lead to individuals underestimating the level of risk they may face if they are informed by police that their partner does not have a history of violence.^{xiii}

Diverts attention and resources

Domestic violence disclosure schemes are built upon existing information sharing legislation. Under this legislation, information on an individual's criminal record can be shared as long as it is necessary to protect public from harm and the criminal information is relevant and proportionate.^{xiv} Domestic violence organizations in the UK have raised concerns that police common law powers already enable police to disclose this nature of information, so these processes may divert time and resources from others supports.^{xv} Similarly, violence against women agencies in Canada have stated that there are existing privacy laws that allow information to be shared to reduce the risk of domestic violence where it is likely to occur and that introducing a specialized disclosure process would not provide any new protections.^{xvi}

Overlooks the challenges in leaving an abusive relationship

While the scheme is based on the assumption that someone can make an informed decision about their safety with a disclosure^{xvii}, some fear that it assumes women are able to flee violence on information alone or that they wish to leave the relationship.^{xviii} Of further concern is the lack of policies to provide the resources women require to leave an abusive relationship, such as access to housing and income.^{xix}

Disclosure schemes are one intervention amongst many

It is commonly agreed upon that disclosure schemes must work alongside other interventions aimed at reducing intimate partner violence.^{xx} Many advocates recommend that risk assessment, safety planning and wrap-around supports become an essential part of any disclosure scheme or process.^{xxi} A promising practice identified by the disclosure scheme in the UK is the accompanying role of multi-agency risk assessment and safety planning forums, as a means to assess risk, review applications and provide wrap-around support in coordination with disclosures.^{xxii} The disclosure scheme introduced in the province of Saskatchewan in Canada has adopted a similar process in which a multi-sector panel reviews applications as well as recommends further safety planning actions.^{xxiii}

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- ⁱ Home Office (2016a) Domestic Violence Disclosure Scheme (DVDS) Guidance, London: Home Office
- ⁱⁱ Ibid.
- ⁱⁱⁱ Fitz-Gibbon, K. and Walklate, S. (2016) The efficacy of Clare’s Law in domestic violence law reform in England and Wales, *Criminology & Criminal Justice*, 17(03), 284-300
- ^{iv} Home Office (2013) Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment, London: Home Office
- ^v Lamont, R. (2018) *Family Law Oxford*: Oxford University Press
- ^{vi} Home Office (2016b) Domestic Violence Disclosure Scheme (DVDS) One year on – Home Office assessment of national roll-out, London: Home Office
- ^{vii} Fitz-Gibbon, K. and Walklate, S., 2016.
- ^{viii} Home Office, 2016a.
- ^{ix} Bessant, C. (2015) Protecting Victims of Domestic Violence—Have We Got the Balance Right? *The Journal of Criminal Law*, 79(02), 102-121
- ^x Fitz-Gibbon, K. and Walklate, S., 2016.
- ^{xi} Home Office (2012) Domestic violence disclosure scheme: A consultation: Summary of responses. London: Home Office.
- ^{xii} Fitz-Gibbon, K. and Walklate, S., 2016.
- ^{xiii} Ibid.
- ^{xiv} Grace, J. (2015) Clare’s Law, or the national Domestic Violence Disclosure Scheme: the contested legalities of criminality information sharing, *The Journal of Criminal Law*, 79(01), 36-45
- ^{xv} Fitz-Gibbon, K. and Walklate, S., 2016.
- ^{xvi} EVA BC (2020) Bill M217: The Interpersonal Violence Disclosure Act British Columbia’s Clare’s Law [Accessed on April 24 2020] <https://endingviolence.org/publications/clares-law-2019/>
- ^{xvii} Lamont, R., 2018.
- ^{xviii} Fitz-Gibbon, K. and Walklate, S., 2016.
- ^{xix} EVA BC, 2020.
- ^{xx} Lamont, R., 2018.
- ^{xxi} Women’s Aid (2016) *A response to Consultation on Domestic Abuse Offence and Domestic Violence Disclosure Scheme*. [Accessed on April 28 2020] <https://www.womensaidni.org/resources/consultation-domestic-abuse-offence-domestic-violence-disclosure-scheme/>
- ^{xxii} Fitz-Gibbon, K. and Walklate, S., 2016.
- ^{xxiii} Saskatchewan Association of Chiefs of Police (2019) Interpersonal Violence Disclosure Protocol