



West Cork Whisper

WEST CORK WOMEN AGAINST VIOLENCE PROJECT NEWSLETTER

59th EDITION

APRIL, MAY, JUNE 2015

the justice system

This issue of the *West Cork Whisper* is about the Justice system in Ireland. The legal system is one of the best-resourced responses to domestic violence we have in this country. It is also the one most often relied upon by women who want to be able to live without violence, control, and abuse.

The vast majority of domestic violence cases are held in Family Law Court. These cases are heard in private (*in camera*) to protect the privacy of the family. Only officers of the court, the parties to the case and their legal representatives, witnesses and such other people **as the judge allows** will be in the courtroom while the case is being heard. There is greater accountability and transparency for these cases following the establishment of the Child Care Law Reporting Project after 2007.

Two recent documents: the Garda Inspectorate Report: '*Crime Investigation*', October 2014 and Safe Ireland's '*The Lawlessness of the Home, Women's experiences of seeking legal remedies to domestic violence and abuse in the Irish legal system*', launched 30th March 2015, highlight the flaws in our legal system and discuss women's actual experiences of court and the legal system. We recommend that everyone working with women who may have to use the court system, and indeed anyone with an interest in this area, study these reports.

The legal system is just one part of the comprehensive response we need for women. We in the Domestic Violence sector would like to see a total transformation of the response to domestic violence so that our country, at all levels, can be a safe place for women and children. To achieve this we need as a society to completely change how we think about, and respond to domestic violence, so women can be confident that they will be heard and that they will be taken seriously - by the legal system, by the political system and by civil society.

in this issue...

The Justice System	1
The Lawlessness of the Home..	2
Domestic Violence Court Orders.....	4
Court Accompaniment.....	6
Contact Card.....	7
Support Services	8

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)

'The Lawlessness of the Home' report is available at www.safeireland.ie.
Garda Inspectorate Reports can be found at www.gsinsp.ie.





The lawlessness of the home

New research, *The Lawlessness of the Home*, undertaken by Safe Ireland (the national organisation for Domestic Violence Services), has highlighted the very real problems encountered by women seeking justice through the Irish legal system. This ranges from the Garda Síochána, to Judges and Courts systems, legal representation and laws. The justice system for those who seek protection from domestic violence is not fit for purpose. This is something that all domestic services in Ireland know from their experience of supporting victims of abuse and which many individual women know from their efforts to obtain protection and redress. There are, of course in every region, individual champions of women victims such as particular guards, judges, social workers and

Inconsistency by Gardaí and courts in applying the law leads to perpetrators not being made accountable, unjust treatment of women and a failure to adequately protect women and children

members of the legal profession. We, in West Cork Women Against Violence, are fortunate in that we can identify individuals in law enforcement and in the courts service who are consistent in their understanding and protection of women who have suffered domestic abuse. However, these exceptions tend to prove the rule that there is a problem within the broader institutions and systems within which good people operate.

Women's Voices Silenced

Most importantly, women's voices are NOT being heard in our legal system. Often women are not taken seriously when they make a complaint to the Gardaí about an incident or when barring and safety orders are breached. Legal representatives advise them not to speak in court even when they feel they are being misrepresented. Women often stay quiet for fear of annoying the judge or fear of reprisal from a partner/ex-partner or to protect their children. In separation and divorce cases domestic violence within a relationship is often not taken into consideration.

Assessing Risk

High Risk predictive behaviours which we in the Domestic Violence

sector know and use to assess the level of risk that women may be under are ignored, not understood or missed by Gardaí and/or the court. These high risk behaviours include threats to kill and coercive sex which are not always heard in evidence in court. One of the red flags which domestic violence workers know all too well is cruelty to animals by a perpetrator. Cruelty to animals is the risk factor most commonly ignored, yet in international best practice it is recognised as a high risk factor which indicates the escalation of an abuser's violence and the increasing need to take action to protect the family involved. It is a serious deficiency that here in Ireland, Gardaí do not use a recognisable and tested risk assessment method in domestic violence cases.

Just a Domestic

It will come as a shock to many that there is NO crime of Domestic Violence on the Irish statute books. Instead, there is a range of offences under Irish law, which may be used to prosecute domestic violence. However, these can be blunt instruments when dealing with incidents of coercive control of victims by perpetrators. In the Safe Ireland research, when

women speak of abuse they have experienced, it is the control that abusers exert over them which is found to be the most debilitating. Domestic violence is often minimised by both lay people and Gardaí as "just a domestic." It is a phrase that blinds Irish society and its institutions to behaviour which if it occurred in public and between strangers would be met by the full force of the law. Existing law is often applied badly or not at all.

Justice Delayed is Justice Denied

In previous issues of *Whisper* we explained the various Orders which a woman can apply to protect her from harassment or threats by her abuser. Unfortunately, most abusers do not abide by the conditions of these Orders and when they continue to threaten and intimidate women they are then in breach of the order. When an abuser breaches the Order, or attempts to, the woman should in theory be able to contact the Gardaí and have him arrested. In reality, many Gardaí do not take these breaches seriously, some Gardaí do not even understand what constitutes a breach of the Order and so fail to act promptly. The abuser goes unpunished each time that failure occurs.

The Law is NOT always Blind

The research also shows that attitudes to both victim and perpetrator are influenced by stereotypes based on gender, class, ethnicity and level of education. These stereotypes affect whether a woman who lives with domestic abuse gets a barring order and whether a man who is violent is punished for its breach.

The Lawlessness of the Home makes a number of extremely important recommendations which we in West Cork Women Against Violence will be working locally and lending our support to national efforts to bring about. These include:

- 1 An expansion of the Legal Definition of Domestic Violence
- 2 Establishing a system that ensures that the application of the law is consistent and cohesive.
- 3 The introduction of a risk assessment tool and homicide review structures across the various professional bodies and institutions with a role in protecting victims of domestic violence and their children.
- 4 Enactment of the Child & family relationships Bill but ensuring that victims of domestic violence are

not required to enter into mediation or post-parenting programs with the perpetrator. All such programs should be a matter of choice for the victim.

- 5 Ensure that there are special measures in place for victims of domestic violence so that barriers to accessing justice are removed.

All of these recommendations require that justice institutions and individuals are trained to understand and respond effectively to domestic violence.



Applying for Domestic Violence Orders

under the Domestic Violence Act 1996

CONTACT US
FREEPHONE
HELPLINE
 1800 203 136
OFFICE
TELEPHONE
 027 53847

We are concerned that incorrect information is given out by some agencies which can be extremely damaging to a woman - it gives false hope where a remedy may not be available to her. It is crucial that a woman receives the correct information so she can make the most appropriate decision for her and ensure that her safety is not compromised.

West Cork Women Against Violence Project provides support, information and, where possible, accompaniment for women who decide that they wish to apply for Legal Protection under Domestic Violence legislation. Any woman considering her legal options can contact us for information on the grounds that are needed to apply for Protection, Safety or Barring Order.

The following people may obtain Protection / Safety / Barring Orders under Domestic Violence Legislation:

- 1 Spouses:** There is no time requirement for married couples to be living together.
- 2 Co-habiting couples** (including same sex couples) – no time duration needed.
- 3 Parents against their children** over 18 years of age.
- 4 Children** can apply for protection but must have someone to apply on their behalf.
- 5 The Child and Family Agency** can apply for protection on behalf of a woman and her dependent children in circumstances where a woman cannot apply herself.

Specific conditions around who can apply for a Safety Order:

- A woman who has a child with someone (but may not have lived with them).

Specific conditions around who can apply for a Barring Order:

- A woman who has lived with her partner for at least 6 months out of the last 9 months.
- A Barring Order will not be made against a cohabitee or a son / daughter who owns the place of residency or has greater ownership rights than the applicant.

If a woman falls outside of these conditions (hasn't lived with him and doesn't have a child with him) then she has recourse through the NON FATAL OFFENCES AGAINST THE PERSON ACT 1997. **However, regardless of whether or not there is a Domestic Violence order in place, physical or sexual violence is a crime; and Gardai have the power to arrest and charge any person who is violent.** Gardai have the power to arrest a person for a Breach of the Peace; this "Common Law" provision still exists, and is useful in cases where the disorder takes place in a private space, such as a home, rather than in a public space. Breach of the Peace gives Gardai the right of entry to private premises, without a warrant.

application process for Domestic Violence Orders

Contact District Court Clerk

- 1 Outline Circumstances
- 2 Apply for Safety Order or Barring Order
- 3 Clerk sets date to see judge

SOLICITOR NOT NEEDED

Judge (Civil Hearing)

- 1 Considers application:
- 2 Grants Protection Order or Interim Barring Order or no order
- 3 Sets date for hearing

SOLICITOR NOT NEEDED

Applications are heard in civil process meaning the only individuals present are the applicant, respondent, judge, court clerk and solicitors only.

Respondent (Perpetrator)

- 1 Notification of court date
- 2 Served with copy of Protection Order or Interim Barring Order and Order comes into effect immediately
- 3 Also served with summons for Barring or Safety Order

SOLICITOR NOT NEEDED

Judge (Family Court)

- 1 Considers application:
- 2 Grants Safety Order or Barring Order or no order

SOLICITOR NEEDED

Safety Order

Respondent does not have to leave the home but must not harm the woman or put her in fear

Barring Order

Respondent has to leave the home and must not harm the woman or put her in fear

Information on Legal Orders
 can be seen on our website:
www.westcorkwomensproject.ie

Breach of Order

Report to Gardai

Hearing in Criminal Court

The criminal court is an open court.

We offer a court accompaniment service
 see next page for details

court accompaniment

“Going to court can be such a daunting experience.

For years I had ignored the advice of family, friends and the local gardaí and I didn't take those crucial steps to the court clerk or the solicitor. Every time I put it off his grip on me got tighter and the grips on my throat, the bruises and insults became secrets I shared only with myself. The longer I waited the more convinced I became that nobody would believe me anyway. After all I had been keeping up appearances for years - why change now.

Standing outside the courthouse that day with my solicitor, the legal jargon washing over me as she explained the various possible outcomes, I felt I was going to fail again, to give in and say don't take it any further. However when the lovely lady from the West Cork Women's Project arrived to support me I felt better. From the moment she stood next to me I drew strength from her presence.

I had been in touch with West Cork Women Against Violence for a couple of years, receiving support on the phone and access to a counsellor. The court accompaniment is another service they offer and is well worth availing of. They are familiar with the proceedings and can take some of the fear out of it. Would strongly recommend.

CLIENT OF WCWAV

Going to court can be a daunting experience at any time and attending a Family Law Court can be especially so. The experience of support workers in our project is that the more preparation a client does prior to the court day, the greater the chance of success. We offer pre-court support, court accompaniment and post court services to women experiencing domestic abuse.

“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.” Jane

pg 61 'The lawlessness of the home' Women's experiences of seeking legal remedies to domestic violence and abuse in the Irish legal system, Safe Ireland 2014

The court system is a difficult system for anyone to navigate through. The aim of Court Accompaniment is to provide specialised information and emotional support to the woman while she is going through the process.

Many clients are reluctant to ask their family members or friends to support them through the process, for fear of exposing them to intimidation and verbal abuse.

Many clients say that while the experience of going to court causes them great stress, having a support worker present gives them greater confidence. Clients say that all the support they receive is invaluable. The support worker helps the woman to remain focused and can clarify what is happening in court.

It is important that support workers are given time to help the client prepare for Court well in advance of the court day. However, if a client wishes us to provide court accompaniment it is important to book same with us at least one week prior to the court date. In a crisis situation the preparation time may not be available but the support workers are trained to emotionally support the woman in a crisis.

We offer emotional and practical support, not legal advice.

On the day of the court hearing we will meet with the woman about half an hour beforehand to talk through her concerns and offer support.

The support worker will also explain the procedures of Family Law, the physical layout of the Court House, the space or lack of space for the client to speak privately with her solicitor.

It is crucial that clients understand that a court start time of 10.30 am doesn't mean their case will be heard first. We recommend that you set aside an entire day for a court hearing.

It's recommendable that the client employs a solicitor, privately or through Legal Aid. It is not necessary to have a solicitor present when a woman decides to apply for a Protection Order. The support worker can advocate and support a client's legal aid application.

In the case of transport difficulties, i.e. if the client does not have own transport or there is no suitably timed local bus service available we may be able to arrange transport.


We are available to spend time post court to talk through the decisions of court and the next steps that are available.

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 L J
191, 205 (1989-90)

“It is between
rocks and
hard places
that diamonds
are made”

SAFIYA HENDERSON-HOLMES
AFRICAN- AMERICAN POET



"I remember one time I went to the police stations 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."

pg 47 'The lawlessness of the home'
Women's experiences of seeking legal remedies to domestic violence and abuse in the Irish legal system, Safe Ireland 2014

TÚSLA

An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency

we're here to help

If you - or someone you know - think we could help we're offering you this card to cut out and keep in your wallet for when you get the chance or courage to ring us. We've purposely made it discreet so only you will know what it is about. Trust us, Trust yourself

**We are here to
support you.**

1800 203 136

support services for women

cork

West Cork Women Against Violence Freephone 1800 203 136

Cuanlee Refuge, Cork.....021 427 7698

Free Legal Aid Clinic Locall 1890 350 259
Information and referral

IRD Duhallow Domestic Violence Support.....Helpline 087 7733 337
from Monday to Saturday 10am - 10 pm or office at 029 60633

Legal Aid Board, Cork.....021 455 1686 / 021 427 5998

Mná Feasa (Domestic Violence Project)021 421 1757

OSS, Cork..... Freephone 1800 497 497
(Domestic Violence Resource Centre for men and women)

S.A.T.U.....021 492 6100

Sexual Violence Centre..... Freephone 1800 496 496

Domestic Violence Social Work.....021 492 1728

Y.A.N.A. North Cork.....022 53915

kerry

Kerry's Women's refuge and Support Services (Adapt).....066 712 9100

Kerry Rape & Sexual Abuse Centre..... Freephone 1800 633 333

Legal Aid Board066 712 6900

Tralee Women's Resource Centre.....066 712 0622

national

Women's Aid Freephone 1800 341 900

west cork citizens' information service

West Cork Citizens' Information Service can provide you with information, advocacy and advice on all your rights and entitlements. The service is free, confidential and independent. Open daily, please call for times.

The Square, Bantry,076 107 8390

South Square, Macroom, 076 107 8430

CIS Outreach, Dunmanway every Wednesday 10am - 1pm

Legal Aid Board - monthly on 3rd Tuesday 10.30am - 4.30am - For an appointment with the Legal Aid Board please phone the Legal Aid Office on 021 455 1685

Free Legal Aid Clinic - monthly on 1st Tuesday 6pm - 7pm - For an appointment please contact West Cork Citizens' Information Service by either dropping in or phoning 076 107 8390.

MABS outreach Clinic - Each Friday 10am - 11.30am - For an appointment please phone MABS on 023 885 5155.

West Cork Women Against Violence Project, Harbour View, Bantry, Co. Cork
www.westcorkwomensproject.ie email: admin@westcorkwomensproject.ie