

The Efficacy of Clare's Law in Domestic Violence Law Reform in England and Wales

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Abstract

In 2011 the high profile murder of Clare Wood led to the introduction of the national domestic violence disclosure scheme ('Clare's Law') in England and Wales. The scheme aims to prevent the perpetration of violence between intimate partners through the sharing of information about prior histories of violence. Despite already spreading to comparable jurisdictions in the UK and Australia, to date the merits of a domestic violence disclosure scheme has been the subject of limited scholarly review and analysis. This article provides a timely critical analysis of the need for and merits of Clare's Law. It examines the data impediments to the scheme, the need to balance the right to protection with the right to privacy, and the question of victim empowerment versus responsabilisation and victim blaming. The article concludes that there is a need to heed caution in adopting this policy elsewhere.

Keywords

Clare's Law, domestic violence disclosure scheme, law reform, domestic violence, abuse histories, domestic abuse

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The Efficacy of Clare's Law in Domestic Violence Law Reform in England and Wales

On average two women are killed each week in England and Wales by a current or former partner (Office for National Statistics 2015). In the 12-month period from 2014 to 2015 it is estimated that in England and Wales alone there were 943,628 cases of domestic violence recorded by police (Woodhouse and Dempsey 2016; see also Walby, Towers and Francis 2016). A 2014 investigation into the serial perpetration of domestic violence found that between 4 to 20 per cent of domestic violence offending is serial in nature (Robinson et al 2014). Increasing awareness of the extent and nature of domestic violence in England and Wales has led to significant law and public policy reform over the last two decades including the 2004 *Domestic Violence Crime and Victims Act*, as well as the Home Office (2011c) cross-government strategy, *Call to end violence against women and girls*. More recently, the high profile killing of Clare Wood and the subsequent campaign led by Wood's father has prompted calls for greater information sharing about histories of abuse among potential victims. In England and Wales this campaign resulted in the 2011 introduction of the domestic violence disclosure scheme (Clare's Law), a scheme aimed at preventing the perpetration (and escalation) of violence between intimate partners through the sharing of information about prior histories of violence (Grace 2015).

The introduction of a disclosure scheme for domestic violence in England and Wales builds on previous disclosure schemes introduced for sex offenders in several international jurisdictions. Disclosure schemes for sex offenders, known as community notification laws, first emerged in the United States in the 1990s (Hinds and Daly 2001). Such laws 'authorise the public disclosure of a convicted? sex offender's personal information' to individuals and organisations in the residing community (Hinds and Daly 2001). The introduction of such laws was largely driven by public fears and a political perception that the public desired ready access to advice and information about sex offenders living in the community (Kemshall and Weaver 2012; Sample et al 2011). Following the US, sex offender disclosure schemes were first introduced in the UK in 2009 first piloted in England and Scotland (Kemshall and Weaver 2012). Research examining the effectiveness of sex offender disclosure schemes and laws has considered the symbolic versus instrumental effect of such schemes (Sample et al 2011), and found in the UK that such schemes have limited 'take-up' in practice (Kemshall and Weaver 2012: 549).

Parallels can be drawn between these two types of disclosure schemes, however, there are also important differences. Namely, sex offender schemes are community focused, while the domestic violence disclosure scheme is individual focused. To date the merits of a domestic violence disclosure scheme, such as Clare's Law in England and Wales, has been the subject of limited scholarly review and analysis. This dearth of analysis is particularly concerning since not only has the scheme already been piloted and introduced in England and Wales, it has also spread to other jurisdictions, such as Scotland, and been introduced in some Australian states with others considering similar developments. To address this gap in current knowledge, this article draws on a documentary analysis of submissions presented to the Home Office during the Clare's Law consultation period, government documents, political statements and media releases as well as relevant media articles. All documents were identified using online searches, including university library databases, national and international journals as well as internet search engines, including google scholar. This multi-faceted search allowed the research to capture relevant academic research as well as grey and relevant media literature. Key terms used to identify documents included Clare's Law, Clare Wood, domestic violence policy, disclosure scheme, victim centred reform. Once identified, all documents were thematically analysed. The result offer a critical insight of the merits of such a scheme from the victim, offender, media, political and system perspective.

Drawing on this analysis, this article presents the first thorough examination of the efficacy of this scheme. In order to do so this article is structured into six parts. Part 1 provides the background to the introduction of Clare's Law by examining the killing of Clare Wood and the subsequent review into police failings in the case. This is followed in part 2 with a detailed examination of the introduction, piloting and objectives of Clare's Law. In Part 3 these two sections are drawn together to consider the extent to which a scheme like this would have been of value in the *Wood* case. This discussion raises questions about the need for Clare's Law and leads into the second half of the article. Here we provide a critical analysis of the merits of a domestic violence disclosure scheme by focusing on three key issues: (1) the data impediments to the scheme, (2) the need to balance the right to protection with the right to privacy, and (3) the question of victim empowerment versus responsabilisation and victim blaming. In doing so, this article builds on a significant body of criminological, feminist and socio-legal research that has queried the efficacy of law reforms introduced to improve criminal justice responses to violence against women (see inter alia Duggan 2012; Douglas 2008; Smart 1989; Walklate 2008).

The killing of Clare Wood and the ‘systemic’ failure of the police

In February 2009 Clare Wood was killed by her ex-partner, George Appleton. A 2010 case review undertaken by the Independent Police Complaints Commissioner (IPCC 2010) found ‘systemic failings’ on the part of the police prior to the death of Clare Wood. At the time of Clare’s death, Appleton had previous convictions for harassment of former partners and common assault (IPCC 2010). Wood met Appleton on Facebook and was allegedly unaware of the extent of his violent criminal history (BBC News 2011). Wood separated from Appleton in October 2008 and in the five months leading up to her death she contacted the Greater Manchester Police on several occasions to complain about harassment, threats to kill, sexual assault and criminal damage perpetrated by Appleton (IPCC 2010). It is also evident from the IPCC report that the relationship had continued if intermittently. In the week prior to her death, Appleton was given a non-harassment order after he smashed the front door of Wood’s home (Queensland Parliament 2015). Wood never told her parents about the abuse. Appleton committed suicide six days after the killing, however, a Coroner’s investigation into Wood’s death returned a finding of unlawful killing by strangulation. The Coroner supported an earlier call made by the Association of Chief Police Officers (ACPO) for disclosure of information about abuse histories to persons involved in an intimate relationship through a ‘right to know’ approach (BBC News 2011).

The IPCC Report pointed to the police failure to adequately assess risk, errors made by call handlers and delays in submitting the case file to the Crown Prosecution Service (IPCC 2010). These findings are not unique but rather repeat concerns relating to inadequate risk assessment practices, ‘out of date’ policies and practices; police inaction and failings by call handlers from earlier IPCC reviews and research (see inter alia Horley 2013, Westmarland 2011, Robinson and Rowland 2009). In addition, a 2014 Report by the HM Inspectorate of Constabulary (HMIC) found that the police approach to domestic violence in England and Wales was unacceptable and that a range of changes were needed to improve core policy activity to ensure victims were not put at unnecessary risk (HMIC 2014). Against this background the *Wood* case, following on from the earlier murder of Katie Boardman in the same police jurisdiction (IPCC 2009), animated significant community debate as to how the justice system should better protect women from serial domestic violence offenders, including to what extent members of the criminal justice system should be obliged to disclose histories of domestic violence to more effectively protect subsequent partners and potential victims.

The introduction of Clare's Law

In the wake of Clare Wood's death, public demand for improved responses to domestic violence led by Wood's father, Michael Brown, prompted the introduction of the UK's first domestic violence disclosure scheme. Labelled a 'PR success' (Grace 2015: 1), proposals for the scheme were heavily politicised and victim-focused (Duggan 2012; Grace 2014), raising important questions surrounding the way in which individual victim's experiences are used at a political level to justify the expansion of legislation and introduction of criminal justice reform (Duggan 2012; see also Garland 2001; Savage and Charman 2010; Simon 2000; Walklate 2016). There is precedent in the UK for the introduction of such laws. For example, Sarah's Law, a sex offender's register, which allows parents controlled access to a register was introduced following the 2000 murder of 8 year old Sarah Payne by a known paedophile. These victim-focused laws, such as Clare's Law and Sarah's Law, reflect the shift over the last two decades to bring victims to the centre of the criminal justice system and create 'greater visibility' around victim's needs (Duggan 2012: 25). While this brings with it some definite benefits, that are also drawbacks when considered in the realm of domestic violence where the increased likelihood of criminalisation and further legislation does not necessarily provide effective safety and security outcomes for women victims of violence (Duggan 2012).

Nevertheless in answering the public call for victims of domestic violence to have greater access to information on partner's history, in October 2011 the Home Office published a public consultation paper on a domestic violence disclosure scheme. The Consultation sought views on three options: (1) to continue current disclosure arrangements under existing laws, (2) to introduce a 'right to ask' national disclosure scheme, and (3) to introduce a 'right to know' national disclosure scheme (Home Office 2011a). In response, the Home Office received 259 submissions revealing mixed support among the legal community, domestic violence support services, and other interested stakeholders for the introduction of a domestic violence disclosure scheme (Home Office 2012). 24 respondents favoured continuing the current approach. This view was held by several key domestic violence organisations who raised concerns about the introduction of *more law* into a space where existing laws were poorly resourced and operationalised. As noted in the submission provided by Women's Aid (2012), existing police powers were sufficient and extending them would not constitute an effective use of resources.

The pre-existing laws referred to by Women's Aid are governed under police common law powers allowing for information about a person's previous convictions or charges to be disclosed where there is 'a pressing need for disclosure in order to prevent further crime' (Kelly and Farthing 2012: at 8). Prior to Clare's Law, the need to disclose was determined on an individual case-by-case basis or where a successful request was made by a member of the public. Under these conditions information could be given about a person's past conviction(s) to prevent future crime. Further under the Multi-Agency Public Protection Arrangements (MAPPA)¹ police, as well as probation and prison authorities, are obliged to manage the risks of serious violence offenders in the community and to determine on an individual case basis whether the disclosure of information about the offender to others would better protect potential victims (Ministry of Justice 2012, see also Kelly and Farthing 2012: at 10).

That existing laws were discretionary rather than mandated was viewed positive by Kelly and Farthing (2012: 13) who stated that such discretion ensured against 'inappropriate disclosure and against an excessive administrative burden that could undermine police effectiveness'. However, a Regulatory Impact Assessment undertaken by the Home Office (2011b) argued enshrining disclosure processes into legislation would better ensure consistency and provide clearer safeguards to ensure police practice and decision making aligned with existing legislation, such as the *Data Protection Act 1998* and the *Human Rights 1998*. As such, and in contrast to the minority held view that the existing laws were sufficient (albeit in need of more consistent enforcement, see Refuge 2012), during the Consultation period 35 respondents supported the 'right to ask' option, 50 respondents favoured the 'right to know' option and 135 respondents supported the introduction of both options (Strickland 2013). Stakeholders described existing provisions as 'inadequate' (Strickland 2013), and expressed value in introducing legislation that would better protect women and increase police accountability to disclose (Home Office 2012). In response to the consultation, in March 2012 the Government announced that it would run a 14-month pilot domestic violence disclosure scheme in four locations: Gwent, Greater Manchester, Nottinghamshire and Wiltshire. Following this 14-month 'successful' pilot (Home Office 2013a), on 26 November 2013 the Home Secretary announced that the domestic violence disclosure scheme would be rolled out nationally from March 2014 to all 43 police forces across England and Wales (Strickland 2013).

Reflecting the options canvassed during the consultation period two key elements underpin Clare's Law; the 'right to ask' and the 'right to know'. In relation to the former an application can be made by any member of the public who applies to the police for information about whether a person has a history of domestic violence. In these cases three steps are followed:

1. Details about the applicant and request are taken by the police and checked within 24 hours of the initial request;
2. A face-to-face meeting with a police officer and the applicant is undertaken to verify application details within 10 working days of the initial request. Following which a full risk assessment is completed;
3. The police meet with multiple agencies (including prison and probation services as well as social and third-sector agencies) to discuss the application and determine whether disclosure is 'necessary, lawful and proportionate to help protect the potential victim from abuse'. (Home Office 2016)

The 'right to know' request occurs where the police proactively trigger a request to disclose information in order to protect a potential 'high risk' victim from harm from their partner. Mirroring the right to ask approach, police meet with multiple agencies to discuss the information and determine whether a disclosure should be made. The same requirements of necessity, proportionality and lawfulness are considered (Home Office 2016). In each case the proposal takes an estimated 4 weeks to be processed (Home Office 2013b). If the outcome of the application is for no disclosure to be made, guidelines provide that an officer should visit the applicant (preferably with a support worker) to discuss the applicant's concerns about their partner's behaviour and their own safety. Additionally, if at any stage of the above process, it is identified that the applicant (or another person) is at immediate risk then subsequent steps can be bypassed and an immediate disclosure made (Home Office 2013b).

Regardless of whether the request to disclose is based on a right to ask or right to know, all requests are considered through a risk assessment lens whereby disclosure is considered by a local forum, preferably a Multi-Agency Risk Assessment Conference (MARAC)² and only occurs where it is determined there is a 'pressing need'.³ As MARACs have access to a wide range of information from interested agencies and organisations it is thought that they are best placed to assess applications. Disclosure can include details of previous convictions, allegations, arrests, charges and failed prosecutions (Police Foundation 2014). While focused

on domestic violence relating offending, disclosure is not limited to such offences and can also include burglary, theft, robbery, affray, arson, possession of a firearm, cruelty to children, people trafficking and sexual offences. Thus the objectives of Clare's Law are threefold: to strengthen the ability of the police and other multi agency partnerships to provide appropriate protection and support to victims at risk of domestic violence; to reduce incidents of domestic violence through prevention; and to reduce the health and criminal justice related costs of domestic violence.

A Pilot Assessment of the scheme undertaken by the Home Office (2013b) revealed that in the four pilot locations between July 2012 and September 2013 there were 386 applications for a disclosure made, of which 231 were 'Right to Ask' requests and 155 were 'Right to know' requests. Of those applications, 111 applications resulted in a disclosure being made. The main reasons cited for cases where disclosure was not made, included where there was 'no pressing' need to disclose, where there was no relevant information available to suggest there was a risk of harm, and where the request did not meet the scheme's criteria (Home Office 2013b). Reflecting the gendered nature of domestic violence (Hester 2009; Walby et al. 2016), 98 per cent (n=380) of requests during the pilot period related to an at-risk female (Home Office 2013b).

In addition to the pilot assessment, a review undertaken by the Home Office (2016: 4-5) following the first year of the Scheme's operation found that police and partner agencies were 'largely positive' about the scheme but that 'better consistency' in the application of it and provision of support services was required across the forces. In the first calendar year of its operation (8 March 2014 to 31 December 2014) 4,724 applications were received and 1,938 disclosures were made nationally (Home Office 2016). Other statistics have emerged from various areas of England, which point to the extent of the scheme's use thus far. For example, in Warwickshire County since its March 2014 introduction 53 people have requested disclosure under the 'right to ask' provision. These requests came from 48 women and five men, and resulted in 47 disclosures being made (Maltby 2016). Reflecting a similar trend, since its introduction in West Mercia there have been 163 requests under the 'right to ask' provision, which have resulted in 61 disclosures (Blake 2016).

In the short time since Clare's Law was introduced in England and Wales similar register schemes have been debated, piloted and introduced in other UK and Australian state

jurisdictions. The Scottish government followed first, piloting the scheme in November 2014 before introducing the ‘Disclosure Scheme for Domestic Abuse Scotland’ nationally in October 2015 (Wilson 2015). Beyond the UK, in Australia the scheme has been proposed in several state jurisdictions, including New South Wales (NSW, Upton 2015), Queensland (Queensland Parliament 2015) and most recently, South Australia (Department for Communities and Social Inclusion 2015). In NSW a 2015 consultation on the merits of introducing a scheme, modelled on Clare’s Law, received over 65 submissions from relevant organisations and stakeholders (Upton 2015). Following the consultation, a domestic violence disclosure scheme was introduced by the state government as part of a \$60 million domestic and family violence response package (NSW Government 2015). More recently, in June 2015 the Queensland state opposition pushed for the introduction of Clare’s Law, including releasing their own discussion paper and opening a public consultation (Queensland Parliament 2015). That Clare’s Law has become a travelling crime and justice policy is concerning given the lack of evidence demonstrating its effectiveness and/or evidencing its impact in practice. The concerns that this raises are developed below.

Considering the value of Clare’s Law in the *Wood* case

In the wake of the death of Clare Wood politicians, victim advocates and concerned community members stated that had Wood and her parents known about Appleton’s violent history they may have been able to prevent her death. Former Home Office Minister, Ms Blears, noted, ‘Until women are given the right to know if their partner has a history of serial domestic abuse, they can’t be sure of the risk that they face’ (cited in Queensland Parliament 2015: 4). This is the question at the heart of this scheme and underlies the promised value of the law in preventing future acts of domestic violence.

An analysis of the IPCC findings in the *Wood* case suggests Clare Wood was acutely aware of her partner’s violent tendencies, albeit towards herself rather than another partner. She was in contact with the police in the period immediately prior to her death, had made complaints about the behaviour of the offender and had attempted to end the domestic relationship. Moreover, the series of events in the *Wood* case in the lead up to the killing suggest that a domestic violence scheme in itself would not have assisted in addressing her risks or needs. The IPCC review points to the importance of ensuring adequate support for women attempting to extricate themselves from high-risk relationships, and the need for better risk-assessment and case management at the frontline policing stage. Clare’s Law arguably

addresses neither of these critical issues but rather, in diverting police resources away from frontline case management may exacerbate failings identified in the IPCC review. In this respect the introduction of the new scheme carries with it an administrative burden which the police are arguably not resourced to manage effectively diverting police attention away from other crucial areas of domestic violence police service delivery. The Pilot Assessment reported that on average a Right to Ask application cost £690 and a Right to Know application cost £810 to process (Home Office 2013b). While these costs are likely to vary somewhat, it is worth noting that for the Pilot alone no additional funding was provided at the four locations to support the scheme. Rather the pilot costs were ‘absorbed within’ current budgets (Home Office 2013b). These costs are particularly concerning on the backdrop of public sector cuts and austerity measures introduced across England and Wales in recent years. For example, between 2011 and 2012 Towers and Walby (2012) report that funding to the domestic violence and sexual abuse sector was cut from £7.8 million to £5.4 million. Such cuts have led to increasing recognition of the inadequate resourcing of services for women victims of domestic violence, including refuges and IDVAs (Police Foundation 2014).

A further issue of concern is the perennial and well-documented tension between the incident focus of police work and the process nature of relationships (see *inter alia* Walklate and Mythen 2011). Recent work by Dekeseredy and Rennison (2013) has ably demonstrated that one point in which risks are at their highest for women is the process of extrication. Yet the police incident focused response remains. To this end Clare’s Law fails to address these systemic cultural problems in police responses to domestic violence, highlighted in the IPCC (2010) review of police contact with Clare Wood. The need for greater training on domestic violence and to address the problematic culture which underpins police inaction in responding to domestic violence, was highlighted in several submissions during the Home Office consultation period (for example, Kelly and Farthing 2012, Refuge 2012). Chief among these was the submission provided by Liberty which argued that addressing police culture and improving training was ‘surely the place to start’ in ensuring more effective responses to domestic violence (Kelly and Farthing 2012: 13). In building on this recommendation the second half of this article considers the broader merits of a domestic violence disclosure scheme by focusing on three key issues: (1) the data impediments to the scheme, (2) the need to balance the right to protection with the right to privacy, and (3) the question of victim empowerment versus responsibilised victim blaming.

Disclosing a hidden crime

A key impediment to the effectiveness of Clare's Law lies in the hidden nature of domestic violence. Both elements of the scheme rely on the accuracy of information contained in the Police National Computer (PNC), available to all police forces throughout the UK carrying details of convictions, bail conditions, custodial history, pending prosecutions, cautions, driving records, reprimands, formal warnings among other details (Home Office 2014b). While for many offences this would appear, at face value, to be an effective way to capture information about prior offending, research has consistently found that domestic violence is significantly underreported and that where reporting does occur there is attrition at each stage of the justice process (See, *inter alia*, Douglas 2008; MacQueen and Norris 2016). The Home Office (2014a) estimates that one in four domestic violence victims report to the police, a number that is likely to be lower in cases involving ethnic and minority communities (Police Foundation 2014). Such high levels of underreporting are compounded by cases where a crime is reported but no conviction is secured. Former Director of Public Prosecutions, Keir Starmer QC, noted that in the period 2009/10 over 6,500 domestic violence cases (the equivalent of 1 in every 3 cases) failed at the conviction stage due to victim unwillingness to attend court or a victim statement retraction (Starmer 2011). Based on these statistics it is entirely plausible that persons who make a request under the 'Right to Ask' scheme could be placed in a false sense of security where they are told their partner does not have a recorded history of violence (see also Refuge 2012). Equally so, persons who may have been serially violent to their partners, are likely to never be the subject of a 'right to know' disclosure where they do not have a prior arrest, conviction and/or caution on their record. As stated by Kelly and Farthing (2012: 11), the scheme: 'risks lulling people into a false sense of security that they can know everything about another person's past actions and their future behaviour'.

Of further concern are the cases the scheme may inadvertently capture that do not accurately reflect domestic violence histories. Disclosure can include third-party reports of suspected violence as well as malicious allegations of violence made by previous partners (Bessant 2015). For example, in cases where both partners seek protection orders against each other and a cross-order application or dual report is made, regardless of whether that application is carried through, a record would return on the part of both parties (for further discussion on dual reports and cross orders see Brooks and Kyle 2015; Douglas and Fitzgerald 2013). This is particularly likely to occur in cases where the perpetrator indicates to a first response officer that the violence is mutual and where such accusations are used as a form of

psychological abuse (Douglas and Fitzgerald 2013; Refuge 2012). In cases where a victim is cautioned, arrested and/or charged for using violence in self-defence against an abusive partner, it is plausible that they too will return a record under the scheme's 'right to ask' branch. Such likelihood has prompted concerns that the scheme may have 'the potential to penalise the victims it intends to protect' (Refuge 2012: 6).

Right to protection versus the right to privacy

From a procedural justice perspective Clare's Law, and indeed any domestic violence disclosure scheme, requires a careful balancing between the right to know and the right to privacy (Bessant 2015; Grace 2015). Under the scheme each request requires consideration to be given to the need for an individual's protection, and police obligations under the *Human Rights Act 1998*, the *Data Protection Act 1998* and the *Rehabilitation of Offenders Act 1974*. This brings into conflict the rights to protection afforded to victims (including in severe domestic violence cases the Article 2 right to life and the Article 3 right to freedom from inhuman or degrading treatment) and the rights afforded to a perpetrator or suspect (including the right to control personal information and the right to form relationships), as well as the rights to respect for private and family life (Bessant 2015).

Against the backdrop of deaths as in the *Wood* case it can be easy to explain away the rights of a suspected serial domestic violence perpetrator. However the importance of ensuring the rights of those who come into contact with the system should not be overlooked. As explained by Kelly and Farthing (2012: 12):

These safeguards are incredibly important. Although it may be tempting to mandatorily require disclosure in as many cases as possible, it must be remembered that there may be no substance to suspicions that a particular person poses a risk of committing domestic violence ... Given the severe impact such disclosure could have on the subject's ability to form social relationships and seek employment, and generally rehabilitate after punishment, it is essential that information released is in the most extreme case where the prospect of violence is not speculative but a real and foreseeable threat. A cautious and careful analysis is required.

In attempting to mitigate some of these concerns the guidance to the scheme provides that all information disclosed is to be treated confidentially and that disclosure of the information to other parties can result in prosecutions under the *Data Protection Act*. However, there remain concerns as to the rights of those whose information may be shared and the 'right to reply'

that subjects of a disclosure request should have (Grace 2015). While there is scope for consultation with the subject of an application for disclosure within the Scheme Guidance, that scope is heavily dependent on the perceived risks to the applicant on the part of the police (see Grace 2015: 43).

Representing the first test of these guidelines, the Pilot Assessment Report (Home Office 2013b) found that in deciding whether or not to engage the subject of a disclosure application as part of the decision making process, police have consistently urged on the side of caution in terms of potential risk to the victim. As noted by Grace (2014, 2015) and Bessant (2015) the assessment report suggests minimal consideration was given to the procedural and privacy rights of the subject of a disclosure and that during the pilot period there was no engagement with the subject of the 111 applications where a disclosure was made. Consequently, the pilot findings as well as the guidance that informs the operation of the scheme, has been critiqued for not placing ‘enough emphasis’ on the rights of the subject of an application to be consulted and/or notified, in the event that consultation is deemed not possible (Grace 2015: 41, see also Bessant 2015) and has led to calls for greater engagement with the subject of a disclosure (Grace 2014, 2015).

While we do not question the importance of the rights of the subject, we would argue that such privacy concerns need to be considered against the risk that sharing information about a request with the subject of the disclosure will pose for the applicant. Such information sharing would arguably place the applicant at heightened risk of victimisation and defeat the ‘protection’ purposes of the scheme. There are parallels to be considered here brought to the fore by Sherman et. al. (1992) who, in following up the consequences of the pro-arrest stance in cases of domestic violence, adopted in the United States on the back of the research reported by Sherman and Berk (1984) found that this response had the unintended consequence of heightening the violence for some women, particularly those from ethnic and minority communities. Adding to the point well made by Stanko (1995) that cessation of violence and criminal justice intervention are not connected.

Empowering the victim or displacing responsibility for ensuring safety

Our final consideration in examining the merits of Clare’s Law, and the notion of a domestic violence disclosure scheme more broadly, is the question of victim empowerment and responsibility versus the displacement of responsibility and the risks of victim blaming. Here

we argue that while Clare's Law has 'been lauded as a means to "empower women" by enabling them to "make informed choices" about whether they continue their relationship' (Bessant 2015: 118), there are risks associated with such empowerment that as yet appear to be unaddressed in analyses of the scheme.

By requiring a victim to request access to information and to act on that information once received, Clare's Law places responsibility for action directly with the applicant, who may be experiencing domestic violence already or if not, by the scheme's criteria is in a relationship where the behaviour of their partner has raised a level of concern. During the consultation stage this 'responsibilisation' of the potential victim was raised as a key issue. Such concerns are well captured in the Refuge submission in which they state, 'We believe it may create an unrealistic expectation that women should 'vet' their partners, and that it may lead to false reassurance'. (Refuge 2012: 11) Duggan (2012: 31) also notes that by transferring responsibility to the victim themselves, the scheme detracts from the accountability and responsibility of the perpetrator. It is the person at risk of violence who assumes the responsibility for protecting him or herself, deflecting from the responsibility of the individual to abstain from using abusive behaviour.

This responsibilisation of the victim is evident in that to make a request they must engage with the police, a criminal justice agency that victims of domestic violence have traditionally been hesitant to communicate with. As Griffith (2014: 109) describes, the central role of police may be 'the biggest stumbling block to the success of the scheme'. To this end, support service workers as well as other sector professionals, including those in the health sector (such as nurses and general practitioners) arguably have a key role to play in ensuring that the scheme is promoted and explained to any potential victims who present in settings away from the criminal justice system (for a discussion of the role of nurses, see Griffith 2014). Such public awareness strategies are essential given the Pilot Assessment highlighted practitioners' belief that there was low public awareness of the scheme and that those who were aware of it were confused as to how it operates (Home Office 2013b).

Moreover, as part of its empowerment approach, the scheme assumes that if provided with the necessary information potential victims will have the agency to safely extricate themselves from a relationship with a previously violent partner and that they will want to do so. This contrasts with survivor accounts, which reveal that while victims may want the violence to

stop this does not necessarily equate with wanting the relationship to end. Women's Aid (2012: 11) highlights this:

thousands of women know that they are living with domestic violence perpetrators, some of whom may have convictions, but still do not leave, including some cases where it would be very dangerous to leave. (see also Stark 2007)

Furthermore, and as explained by Refuge (2012: 2) during the consultation process, the simplicity in this assumption may place 'an unrealistic responsibility on the woman' in that:

it fails to take into account the considerable barriers to leaving a violent partner. We foresee situations where a woman may be 'blamed' by social services – and wider society – for failing to protect her children if she chooses not to leave her partner following disclosure.

This point on children is particularly salient, given the Pilot Assessment showed that in almost two-thirds of cases (n=245 cases) where a request was made, the applicant had children (Home Office 2013b). For these women the difficulty of extricating themselves from a potentially violent relationship is compounded by the presence of children.

This raises the concern that disclosures may promote subsequent police inaction, where police perceive that post-disclosure the situation is being managed by the victim themselves and they are not engaging in the risk management advised. This was raised in the submission made by Women's Aid (2012: 2) who pointed to the possibilities of no further action on the part of the police once information has been disclosed. For this reason, the assumption that when provided with the necessary information women will be able to leave an unsafe relationship, necessitates that the success of the scheme rests heavily on post-disclosure protocols and the ability of police to adequately connect persons with support services and Independent Domestic Violence Advisors (IDVAs),⁴ which can ensure high-risk women and children are kept safe in the period post-disclosure. The national roll out of the scheme in itself does not address, and may indeed exacerbate, difficulties that women face in connecting with services when seeking to leave a violent relationship (Grace 2014). Thus the question emerges concerning the extent to which the scheme actually addresses a real 'need' for women victims of domestic violence. As noted by Duggan (2012: 31) 'In these cases further proof of a partner's abusive background may compound fears, but may not do much to enable her to leave the relationship'. To this point the national roll out of Clare's Law must heed lessons

from an Independent Review of the Child Offenders Disclosure Pilot Scheme, which found that several people who accessed the scheme reported inadequate follow up in the period post-disclosure (Home Office 2010). If adequate support is not put in place then there is a real risk that women, armed with information about their partner's history, may be placed at greater risk than before disclosure.⁵

Finally, as a result of displacing responsibility from the system or perpetrator onto the victim, Clare's Law raises concerns surrounding the likelihood of victim blaming post-disclosure. If the scheme is predicated on the assumption that women will be able to, and indeed will want to, leave a partner if they find out they have a violent history, questions arise as to how the justice system will treat women who decide not to leave following disclosure of a violent history. The criminal justice system, police and courts in particular, have a long history of victim blaming and denigration in responses to violence against women, particularly through the mobilisation of problematic gendered scripts such as 'she asked for it'. This concern has been raised in emerging research examining the merits of the UK domestic violence disclosure scheme (Duggan 2012; Grace 2015), the sentiment of which is captured in the Refuge (2012: 6) submission:

If a woman discovers that her partner has a history of violence and chooses not to leave him, police officers may consider it to be "her fault" if he goes on to attack her, and they may fail to provide a sensitive and appropriate response. They might also blame her for any violence witnessed by her children. We already find that these unhelpful attitudes prevail in many areas and we work very hard to counter them.

The recency of the scheme's introduction and the difficulties of case tracking preclude an analysis of responses to cases that return to the justice system post-disclosure, we raise this as an area in need of further consideration and awareness for those working within the criminal justice system and for those considering the implementation of such schemes.

Conclusion

A critical examination of the justification for, and merits for the introduction of a domestic violence disclosure scheme in England and Wales raises key concerns surrounding the operation of Clare's Law and indeed its potential exacerbate the situation for women living with violence. Clare's Law is not able to provide a timely and risk-sensitive frontline response to women who fear violence from an intimate partner nor is it able to address the wider nature and extent of violence against women (and men) most of which is unlikely to come to the

attention of criminal justice agencies. As Mooney (2007) argues violence against women might be a public anathema but it is also a private common place. While recent efforts in England and Wales to take domestic violence seriously and improve police responses in this area of criminal justice are to be commended, this article demonstrates the importance of questioning the effect of such policies in practice. This is particularly important in the current climate of austerity where resources directed in one policy direction likely come at the cost of adequately funding other potentially more meritorious domestic violence policy responses. Further, and in the absence of evidence of its benefits in practice, the implications of this research are important given that Clare's Law has prompted like policies in comparable jurisdictions, including several Australian states thus suggesting the need for a careful examination of the nature and impact of such schemes. To this end, this article provides a timely analysis and highlights the need for caution in adopting this policy elsewhere.

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Reference List

- BBC News (2011) Clare Wood coroner in domestic violence 'right to know' call. *BBC News*, 24 May.
- Bessant C (2015) Protecting Victims of Domestic Violence- Have we got the balance right. *The Journal of Criminal Law* 79(2): 102-21
- Blake H (2016) Clare's Law – two years on. *West Mercia Police*, 8 March.
- Brooks O and Kyle D (2015) Dual reports of domestic abuse made to the police in Scotland: A summary of findings from a pilot research study. *The Scottish Institute for Policing Research*, Research Summary No: 23, May.
- Dekeseredy W, & Rennison C M (2013). Comparing female victims of separation/divorce assault across geographical regions. *International Journal for Crime and Justice*, 2(1), 65–81
- Department for Communities and Social Inclusion (2015) South Australian investigates new domestic violence prevention measures. *News Release*, 25 November, Government of South Australia.
- Douglas H (2008) The criminal law's response to domestic violence: What's going on? *Sydney Law Review* 30: 439-469.
- Douglas H and Fitzgerald R (2013) Legal processes and gendered violence: cross-applications for domestic violence protection orders. *UNSW Law Journal* 36(1): 56-87.
- Duggan M (2012) Using Victims' Voices to Prevent Violence Against Women: A Critique. *British Journal of Community Justice* 10(2): 25-37
- Garland D (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford University Press: Oxford.
- Grace J (2014) Disclosing Domestic Violence. *Criminal Justice Matters* 97(1): 18-19.
- 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(1): 36-45.
- Griffith R (2014) Domestic violence disclosure scheme: A guide to Clare's Law for district nurses. *British Journal of Community Nursing* 19(4): 107-9.
- Hester M (2009) *Who does what to whom? Gender and Domestic Violence Perpetrators*. Bristol: University of Bristol in association with the Northern Rock Foundation.
- Hinds L and Daly K (2001) The war of sex offenders: Community notification in perspective. *The Australian and New Zealand Journal of Criminology* 34(3): 256-276.

- Home Office (2010) *Child Sex Offender Review Public Disclosure Pilot: A process evaluation*. London: Home Office.
- Home Office (2011a) *Domestic Violence Disclosure Scheme: A Consultation*. London: Home Office.
- Home Office (2011b) *Domestic Violence Disclosure Pilots: Impact Assessment*. London: Home Office.
- Home Office (2011c) *Call to End Violence against Women and Girls: Action Plan*. London: Home Office.
- Home Office (2012) *Domestic Violence Disclosure Scheme – A Consultation: Summary of Responses*. London: Home Office.
- Home Office (2013a) *Clare’s Law to become a national scheme*. London: Home Office.
- Home Office (2013b) *Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment*. London: Home Office.
- Home Office (2014a) *Policy: Ending violence against women and girls in the UK*. London: Home Office.
- Home Office (2014b) *Guidance – Police National Computer*. Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488515/PNC_v5.0_EXT_clean.pdf (accessed 14 March 2016)
- Home Office (2016) *Domestic Violence Disclosure Scheme (DVDS): One year on – Home Office assessment of national roll out*. London: Home Office.
- Horley S (2013) Police’s response to victims of domestic violence is lamentable. Want to help? Here’s how. *The Telegraph*, 25 October.
- Independent Police Complaints Commission (2010) *IPCC Independent Investigation: Greater Manchester Police contact with Clare Wood prior to her death: Commissioner’s Report*. Available at: https://www.ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/clare_wood_report_final_10_march.pdf (accessed 14 March 2016)
- Independent Police Complaints Commission (2009) *IPCC Independent Investigation: Greater Manchester Police contact with Katie Boardman prior to her death: Commissioner’s Report*. Available at: https://www.ipcc.gov.uk/sites/default/files/Documents/investigation_commissioner_reports/commissioner_report_-_katie_boardman.pdf (Accessed 16 March 2016)
- Kelly R and Farthing S (2012) *Liberty’s Response to the Home Office Consultation on the Domestic Violence Disclosure Scheme*. London: Liberty.

- Kemshall H and Weaver B (2012) The sex offender public disclosure pilots in England and Scotland: Lessons for ‘marketing strategies’ and risk communication with the public. *Criminology and Criminal Justice* 12(5): 549-565.
- MacQueen S and Norris PA (2016) Police awareness and involvement in cases of domestic and partner abuse. *Policing and Society* 26(1): 55-76.
- Maltby L (2016) Clare’s Law is helping tackle domestic abuse. *Leamington Observer* 13 March.
- Mooney, J. (2007). Shadow values, shadow figures: real violence. *Critical Criminology*, 15, 159–70
- Ministry of Justice (2012) *MAPPA Guidance* (version 4). London: Ministry of Justice.
- New South Wales Government (2015) \$60 million to reduce domestic violence. *News Release*, 14 October, New South Wales Government.
- Office for National Statistics (2015) *Chapter 2: Violence Crime and Sexual Offences – Homicide*. Office for National Statistics: UK.
- Police Foundation (2014) Policing Domestic Abuse. *The Briefing*, October. London: The Police Foundation.
- Refuge (2012) *Submission to the Domestic Violence Disclosure Scheme Consultation*. England: Refuge.
- Robinson A and Rowlands J (2009) Assessing and managing risk among different victims of domestic abuse: Limits of a generic model of risk assessment. *Security Journal* 22(3): 190–204.
- Robinson A, Clancy A and Hanks S (2014) *Prevalence and Characteristics of Serial Domestic Abuse Perpetrators: Multi-Agency Evidence from Wales*. Cardiff: National Offender Management Service Wales.
- Sample L L, Evans M K and Anderson A L (2011) Sex offender community notification laws: Are their effects symbolic or instrumental in nature. *Criminal Justice Policy Review*. 22(1): 27-49.
- Savage S P & Charman S (2010) Public protectionism and ‘Sarah’s Law’: Exerting pressure through single-issue campaigns. In M Nash and A Williams (eds) *The Handbook of Public Protection*. Routledge, 434-454.
- Sherman, L.W. and Berk, R.A. (1984) The Specific Deterrent Effects of Arrest for Domestic Assault, *American Sociological Review*. 49: 261-272.
- Sherman, L.W., Schmidt, J.D., Rogan, D.P., Smith, D.A., Gartin P.R., Cohn, E.G., Collins, D.J. and Bacich, A.R. (1992) The Variable Effects of Arrest on Criminal Careers: The

- Milwaukee Domestic Violence Experiment. *The Journal of Criminal Law & Criminology* 83(1): 137-169.
- Simon J (2000) Megan's Law: Crime and Democracy in Late Modern America. *Law and Social Inquiry*. 25(4): 1111-1150.
- Smart C (1989) *Feminism and the power of law*. London: Routledge.
- Stanko, E.A. (1995) Policing Domestic Violence: Dilemmas and Contradictions. *Australian and New Zealand Journal of Criminology*, Special Supplementary Issue: 31-44.
- Stark E (2007) *Coercive Control: How men entrap women*. Oxford University Press: Oxford.
- Starmer K (2011) *Domestic Violence: the facts, the issues, the future*. Speech presented by the Director of Public Prosecutions, 12 April. Available from: http://www.cps.gov.uk/news/articles/domestic_violence_-_the_facts_the_issues_the_future/ (accessed 14 March 2016)
- Strickland P (2013) "Clare's Law": the Domestic Violence Disclosure Scheme. *House of Commons Library: Home Affairs Section* SN/HA/6250, 26 November.
- Towers J and Walby S (2012) *Measuring the impact of cuts in public expenditure on the provision of services to prevent violence against women and girls*. Northern Rock Foundation and Trust for London. Available from: <http://www.trustforlondon.org.uk/research/publication/professor-sylvia-walby-reports-on-the-impact-of-cuts-on-violence-against-women-services/> (Accessed 14 March 2016)
- Upton G (2015) Community consults on domestic violence disclosure scheme for NSW. *Media Release*, 22 June.
- Walby, S. Towers J. and Francis, B. (2016) Is violent crime increasing or decreasing? A new methodology to measure repeat attacks making visible the significant of gender and domestic relations. *British Journal of Criminology*, Advance Access, doi: 10.1093/bjc/azv131.
- Walklate S (2008) What is to be done about violence against women? *British Journal of Criminology* 48(1): 39-54.
- Walklate, S. (2016) The metamorphosis of the victim of crime: From crime to culture and the implications for justice. *International Journal for Crime, Justice and Social Democracy* 5(4): 4 - 16. DOI: 10.5204/ijcjsd.v5i4.280.
- Walklate, S. and Mythen, G. (2011) Beyond risk theory: Experiential knowledge and 'knowing otherwise' *Criminology & Criminal Justice* 11(2) 99-113

- Westmarland N (2011) Co-ordinating responses to domestic violence. In: Brown J, Walklate S (eds) *Handbook of Sexual Violence*. London: Routledge-Willan pp.287-307
- Woodhouse J and Dempsey N (2016) *Domestic violence in England and Wales: Briefing Paper*. Number 6337. House of Commons Library: UK.
- Women's Aid (2012) *Domestic Violence Disclosure Scheme Responses to consultation from Women's Aid Federation of England*. London: Women's Aid.
- Wilson L (2015) Clare's Law rolled out nationally. *The Scottish Independent*, 3 July.

¹ MAPPA guidance is provided for the police, prison service and probation to use in assessing and managing risks posed by violent and sexual offenders (Ministry of Justice 2012).

² MARACs are monthly meetings held across local communities where support services and local agencies (including the police, health, child protection, housing and IDVAs) share information about high-risk domestic violence cases. As of October 2014 there were 260 MARACs across England, Wales and Northern Ireland, managing over 57,000 high-risk domestic violence cases annually (Police Foundation 2014).

³ The Pilot Assessment revealed a concern that there was a 'lack of understanding' of what is meant by 'pressing need to disclose' which could lead to variances in how the term is applied in practice (Home Office 2013b).

⁴ IDVAs work with domestic violence victims to assess risk, develop a management plan and assist in connecting victims with relevant services and agencies.

⁵ These risks may be exacerbated in situations where a 'proactive' policing approach is adopted and a decision is made by a police officer to disclose information about a person's history to a partner who has not made a request. Proactive policing remains a contested space and the extent to which this concern emerges in practice should be considered as part of any evaluations of the scheme.