

**Submission on Domestic Violence into Joint Oireachtas Committee on Justice
Defence and Equality**

May 2013

In Barnardos view the following needs to be undertaken to lead to greater protection of children from domestic violence.

Summary of recommendations:

- Expedite the Children First legislation
- Enhance interagency training on roll out of Children First to bring greater awareness of domestic violence to professionals working with children.
- Expedite legislation to ensure all decisions are made in the child's best interests and their views are taken into account when dealing with cases regarding their care, custody, access and adoption.
- Ensure all children involved in these cases have a Guardian *ad Litem* appointed to them.
- Reform the family law system by setting up specific family courts and promoting mediation between parents whilst also investing in support services to aid families going through family breakdown, especially those characterised by high conflict, acrimony and violence.
- Upskill all judiciary on the issue of domestic violence and its impact on children.
- Ensure that in cases where domestic violence has occurred that custody and access between the child and abusive parent is supervised.
- Nationwide roll out of child contact centres to provide safe, neutral space for children to form and develop relationships with non-resident parents, which also provide services for the perpetrator to address their anger/ controlling behaviour.
- Expedite the processing of Barring Orders.
- Ensure the Court considers the safety and well-being of children when granting a Barring Order and take steps to ensure their protection.
- Comprehensive legal aid service across the country to expedite the processing of applications.
- Ensure continuity of funding to allow refuges meet the demand for their services.
- Fully resource age appropriate services both in hospitals and in the community through the Child and Adolescent Mental Health Teams
- Expedite legislation governing the disclosure of counselling notes for criminal trials.

Introduction

Barnardos welcomes the opportunity to feed into the discussions of the Joint Oireachtas Committee on Justice, Defence and Equality on the theme of domestic violence and sexual violence. Barnardos is pleased that the Committee is exploring this issue again. Despite some legislative developments in this area, via the Civil Law (Miscellaneous Provisions) Act 2011, further reform is required in the interests of protecting victims and children from continuous harm.

The link between domestic violence and child abuse is well established, where children can be the victims themselves or experience the trauma of being a witness to the abuse. For children living with domestic violence or having experienced sexual abuse, their lives are often filled with feelings of confusion, isolation and shame. Also feelings of guilt that they have caused it or could have prevented it as well as fear and dread just waiting for it to happen again. The most common impact identified by children themselves was living in fear and intimidation on a daily basis, resulting in behavioural problems and aggressiveness¹. It can impact on all aspects of their lives: developmental delays, physical scars, behavioural and emotional problems, poor school performance and impaired social and relationships development. In the majority of cases, the abuser is well known to the child and this breach of trust can often have a long term negative impact on the child.

Unsurprisingly, coping with domestic violence impacts on a parent's parenting ability, sometimes being physically unable to attend to their child's needs or being emotionally detached to their child and this can damage the relationship between the parent and child. Also older children may end up assuming parenting duties for their younger siblings. Being exposed to domestic violence, can also feed its intergenerational nature as children learn from their parent's actions and accept that violent behaviour, in its various forms, is the norm in all intimate relationships.

Barnardos experience

Many families and children we work with experience domestic violence, abuse and neglect in some form. Barnardos offers a range of supports including parenting programmes, family and child support through anger management, problem solving and social skills and providing for access visits. We also run a specific programme in Thurles running one to one sessions and group work with mothers and children who have experienced domestic violence. This programme is an interagency collaboration involving the HSE and other organisations. Barnardos and One Family also run the pilot Child Contact Centres which facilitate contact between the child and the non-resident parent where the parental relationship has broken down (see below).

In addition for children who are involved in care proceedings and / or a custody /access dispute, the Barnardos Guardian *ad Litem* service ensures that the voice of the child and their best interests are taken into account when judges are deciding the outcomes of these cases. Unfortunately, as the appointment of Guardians is currently only at the discretion of the Court not all children in this situation have the opportunity to have their voice heard.

Barnardos also works with children who have experienced bereavement of a parent / sibling as a result of tragic circumstances including domestic violence. Intensive one to one counselling support is provided for children and their carers. In our experience the needs of this group of children who have witnessed the death of their parent or sibling are often lost in the midst of criminal proceedings and custody matters.

Key statistics:

Due to its hidden nature, the full scale of children living with domestic violence or having experienced sexual abuse is always under reported. Recent studies did find that:

¹ Office of the Minister for Children and Youth Affairs (2007) Listening to Children: Children's Stories of Domestic Violence, Dublin

- In 2011, there were 2,076 specific incidents of child abuse disclosed to the Women's Aid National Freephone Helpline. In another 2,946 calls it was disclosed that children were present in homes where domestic violence was a feature².
- In 2011, 1,686 individual women and 2,142 individual children were admitted to a refuge. This represents an increase of nearly 25% in the number of women being admitted to emergency refuge since 2007³.
- Research by the NSPCC found that 80% of young people who had experienced serious physical abuse were living with domestic violence.
- The HSE receives approximately 2,300 new reports of Child Sexual Abuse annually but only approximately 520 of these cases are notified to a HSE Child Care Manager every year following some degree of initial assessment⁴.

Children First

Barnardos strongly welcomed the inclusion of exposure to domestic violence in the revised Children First guidance, published in 2011⁵. This sent a clear message that domestic violence is a form of child abuse. Barnardos has been a long time campaigner to place Children's First on a statutory basis and has fed into the recent Heads of Bills that were published but is now eagerly awaiting the Heads to be presented to the Dail for consideration. Enshrining Children First into law will place a legal obligation on all those working with children to report any child protection concerns they may have to the Child and Family Support Agency. Including domestic violence in the list of emotional abuses to the child will make professionals more aware of its impact. However, part of the success to implementing and adhering to Children First relies on all professionals especially those who have frequent contact with children such as pre-school staff, teachers, afterschool clubs staff being able to identify signs of abuse, report it and know where to offer support to the child. Improved interagency training led by the Child and Family Support agency around the issues of domestic violence is required to foster a shared understanding and improved coordinated response by all of the agencies who have a role to play.

Recommendation:

- Expedite the Children First legislation
- Enhance interagency training on roll out of Children First to bring greater awareness of domestic violence to professionals working with children.

Listening to Children's Experiences

Ireland ratified the UN Convention on the Rights of the Child in 1992, yet its adoption into Irish law and practice has been slow. Recent developments, specifically the passing of Article 42(a) in the Children's Referendum in November 2012, will now make it obligatory for all judges to ensure that the child's best interests will be paramount and to take the views of the child into account when dealing with proceedings affecting their care, custody, access and adoption. This is a significant development as although relevant legislation exists its current implementation is limited so often the views of children are rarely heard in family law cases and in cases around domestic violence issues such as granting Barring Orders.

² Women's Aid National Helpline and Support Services Statistics Report, 2011

³ Safe Ireland (2012) 2011 National Statistics

⁴ www.cari.ie

⁵ Department of Children and Youth Affairs (2011) Children First: National Guidance for the Protection and Welfare of Children

Naturally, Barnardos welcomes this development and awaits the legislative change which will bring it into effect. Although the court structures are trying to resolve adult disputes, listening to children's views and experiences will help create a more child-centred focus in a largely adversarial system. Barnardos believes that all children involved in family breakdown cases should be appointed a Guardian *ad Litem*. It is already provided for under Section 28 of the Guardianship of Infants Act 1964, as amended by Section 11 of the Children Act 1997, but it is not yet in force.

Recommendations:

- Expedite legislation to ensure all decisions are made in the child's best interests and their views are taken into account when dealing with cases regarding their care, custody, access and adoption.
- Ensure all children involved in these cases have a Guardian *ad Litem* appointed to them.

Family breakdown and separation

Unfortunately, even when a victim of domestic violence makes the decision to end the relationship with the abuser and / or seek a separation, the risk of abuse is not eliminated. In fact there is a heightened risk of abuse and issues around custody and access of children can exacerbate this risk to both the abused parent and the child themselves. Barnardos welcomes the intention of the Minister for Justice and Equality to reform the court system, establishing specific family courts and having a greater emphasis on non court process such as mediation. While Barnardos is in favour of couples pursuing mediation as a means to resolving their conflict and sorting out issues with regard to children and finance, it is not suitable for all cases. It is essential that trained mediators screen for any domestic violence or child protection concerns and refer these cases directly to the Court. Presently insufficient regard is given to the impact of domestic violence on the children when Courts make their decisions. Barnardos believes that any agreements reached within the court room must be mindful of the impact of domestic violence and no parent who is a perpetrator of domestic violence should have unsupervised custody and / or access to the child unless the Court is totally satisfied that no risk of harm is present. Linked to this, the judiciary should avail of further training on the issue of domestic violence and its impact on children.

Barnardos and One Family run a pilot service operating child contact centres in three locations in Dublin. This initiative is successful in enabling children to maintain contact with their non-resident parent, even an abusive parent, in a child centred, safe, supervised environment where it is in the best interests of the child to maintain that contact. Also a range of family support services are offered to help parents move beyond their conflict and towards organising contact themselves in the future. These can include programmes that address individual difficulties such as anger management, parenting skills, or resolving disputes between parents (mediation and conciliation). The staff are very conscious of the impact of domestic violence and are continuously vigilant for any abusive behaviour as there is a zero tolerance attitude towards violence.

Recommendation:

- Reform the family law system by setting up specific family courts and promoting mediation between parents whilst also investing in support services to aid families going through family breakdown, especially those characterised by high conflict, acrimony and violence.

- Upskill all judiciary on the issue of domestic violence and its impact on children.
- Ensure that in cases where domestic violence has occurred that custody and access between the child and abusive parent is supervised.
- Nationwide roll out of child contact centres to provide safe, neutral space for children to form and develop relationships with non-resident parents, which also provide services for the perpetrator to address their anger/ controlling behaviour.

Barring Orders

Frequently lengthy delays are experienced in the granting of a Barring Order, with the average waiting time being between 8 – 12 weeks. This delay places the abused parent and children in further danger as the abuser can remain in the house until the Barring Order has been secured. Even when a Barring Order is granted, the Court focuses on the safety risk to the applicant and the wellbeing and safety of any children can be overlooked. This is an oversight that potentially puts the children at significant harm as the child can continue to have unsupervised contact with the abusive parent.

Recommendation:

- Expedite the processing of Barring Orders.
- Ensure the Court considers the safety and well-being of children when granting a Barring Order and take steps to ensure their protection.

Legal Aid

Barnardos welcomes that applications for legal aid are prioritised when seeking a Barring Order and Safety Order. However, delays continue to exist in processing claims for access and custody cases. Unless applicants lodge two applications, simultaneously, one seeking a Barring Order and the other seeking access, children can remain in vulnerable situations while their family's case is being processed.

Recommendation:

- Comprehensive legal aid service across the country to expedite the processing of applications.

Adequate support

The National Strategy on Domestic, Sexual and Gender Based Violence 2010-2014 outlines clear goals to be achieved⁶. Goal two relates to delivering an effective and consistent service to those affected. This action promotes services for victims and perpetrators and improving interagency co-ordination to improve service effectiveness. However, cutbacks to service providers have meant that victims including children have been left without support and remain vulnerable to further incidences of domestic violence. Safe Ireland data for 2011 shows that, on 2,537 occasions services were unable to accommodate women because a refuge was full or there was no refuge in the area. The corresponding figure for children was 2,302⁷. Constant funding crises in refuges are impacting on their ability to survive and meet the needs of their clients.

⁶ COSC and Department of Justice, Equality and Law Reform (2010) National Strategy on Domestic, Sexual and Gender Based Violence 2010 -2014

⁷ Safe Ireland (2012) 2011 National Statistics

Child specific supports such as the Child and Adolescent Mental Health Teams are also unable to meet demand with lengthy waiting lists and difficulties in staff recruitment being common problems. Also in-patient psychiatric treatment facilities specifically for children continue to be underdeveloped despite clear recommendations in A Vision for Change.

Recommendation:

- Ensure continuity of funding to allow refuges meet the demand for their services.
- Fully resource in age appropriate services both in hospitals and in the community through the Child and Adolescent Mental Health Teams.

Disclosure of Counselling Notes to Criminal Trials

Legislation is urgently required to govern the issue of disclosure of private records such as medical records and counseling notes for the purposes of criminal trials. The ongoing frequent requests from DPP or Gardaí for disclosing counselling notes have little regard to the confidentiality that is the cornerstone of the relationship between the counsellor and the client. Jeopardising this trusted relationship can have an adverse impact on the victim's recovery process. It could lead to victims not undertaking counselling services and / or deter victims from reporting crimes to Gardaí for fear that intimate details which may have nothing to do with the crime will be made public to others, including the perpetrator. Furthermore, failure to report crimes will allow the perpetrator to continue abusing others. The courtroom experience is already very daunting to a child victim who has to give evidence. To have any of their counselling notes disclosed will only exacerbate their feeling of isolation, intrusion and revictimisation, especially as these notes are often subjective and fragmented thoughts rather than an accurate statement of fact of the criminal event.

The legislation needs to balance the complainant's right to privacy with the accused's right to a fair trial. Such legislation would have to set out very stringent criteria and procedures to be fulfilled before the notes can be disclosed in a particular case. Victims and counsellors should have the right to make their case to a judge if they do not want their notes to be disclosed, and decisions to disclose confidential records should only be made by a judge. It would have to apply to all stages of the investigation or prosecution.

Recommendation:

- Expedite legislation governing the disclosure of counselling notes for criminal trials